

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

CIVIL CASE NO. HBC 266 OF 2023

**BETWEEN** : **XIAOLONG HU and LIJUAN ZHENG**  
Plaintiffs

**AND** : **LIANG DING**  
First Defendant

**WEIXIANG CAO**  
Second Defendant

**JULIAN SUNG KONG YUEN**  
Third Defendant

**REGISTRAR OF COMPANIES**  
Fourth Defendant

**ATTORNEY GENERAL OF FIJI**  
Fifth Defendant

**RESERVE BANK OF FIJI**  
Sixth Defendant

**Appearances** : **Mr Cakau and Ms Tosokiwai for Plaintiffs**  
**Mr Jamnadas for 1<sup>st</sup> Defendant**  
**Ms Tivao for 2<sup>nd</sup> & 3<sup>rd</sup> Defendants**  
**Ms Manueli and Ms Naulumatua for 4<sup>th</sup> & 5<sup>th</sup> Defendants**  
**Mr Baleidrokadroka for 6<sup>th</sup> Defendant**

**Hearing** : **2 May 2024**

**Judgment** : **9 August 2024**

## JUDGMENT

### (Summons to Strike Out Claim & Set Aside Interim Injunctions)

- [1] The Plaintiffs are the original shareholders, directors and founders of WG International Real Estate Co. (Fiji) PTE Limited (which I will refer to as “WG Ltd”). The company was established by the Plaintiffs in order to construct a multi-level building in Suva, identified by the Plaintiffs as the WG Friendship Plaza. The First and Second Defendants are now the majority shareholders of WG Ltd. They are also directors, along with the Plaintiffs, of the company. According to the Plaintiffs, the First, Second and Third Defendants have taken over control and management of the construction of WG Friendship Plaza.
- [2] The Plaintiffs have brought these proceedings to recover their shareholding and control of WG Ltd. The Plaintiffs’ claim that the First, Second and Third Defendants fraudulently wrested control and majority ownership of WG Ltd from them.
- [3] In order to protect their position, the Plaintiffs sought and were granted interim injunctive relief on 19 December 2023.<sup>1</sup> The interim orders being:
- i. The First, Second, and Third Defendant, and their servants and agents are hereby restrained from proceeding with any advertising for sale, transfer, lease or the sale of property, comprised in Certificate of Title - Volume 17, Folio 1655, DP 2165, Allotment 8, Section XXXI, more commonly described as Lot 59, Macgregor Road, Suva, otherwise known as the WG Friendship Plaza, until further orders of the court.
  - ii. The First, Second and Third Defendant, their servants and agents are hereby restrained from any changes or dealing with the share structure of WG International Real Estate PTE Limited in the form of sale, purchase, assignment or in any manner whatsoever until further orders of the court.
  - iii. The First, Second and Third Defendant, their servants and agents are hereby restrained from marketing, advertising and or selling the strata titles of the WG Friendship Plaza until further orders of the court.

<sup>1</sup> *Hu v Ding* [2023] FJHC 912 (19 December 2023).

[4] The Second and Third Defendants have filed the following summons:

- i. A summons striking out the Plaintiffs' claim.
- ii. A summons to set aside the interim injunctive orders.

[5] The First Defendant supports the position of the Second and Third Defendants. The three defendants argue that the Plaintiffs claim of fraud has no factual or evidential basis whatsoever and that the Plaintiffs have misled the Court by failing to disclose material facts that undermine their case.

### **Background**

[6] The material facts as elicited from the Plaintiffs' pleadings and the parties sworn evidence are as follows:

- i. **2013:** WG Limited is incorporated. The Plaintiffs, who are married, are the founding shareholders and directors of the company. The shareholding split is 80/20 for Mr Xiaolong Hu and Ms Lijuan Zheng, respectively.
- ii. **2016 to 2019:** The first named Plaintiff, Mr Xiaolong, has a business relationship with the First Defendant's father-in-law (Xu Jinliang) and the Second Defendant's father (Cao Baitian). Several agreements are executed between the parties from 2016 and 2019 related, in the main, to the construction of WG Friendship Plaza (which I will refer to as the 'Business Agreements').<sup>2</sup>
- iii. **28 September 2016:** The first of the Business Agreements is executed. It is between the first named Plaintiff and Xu Jinliang. According to the English translation, in exchange for a contribution from Mr Jinliang he will receive a 30% shareholding allocation in WG Ltd.
- iv. **7 December 2016:** Resolution is passed by A Plus Investment Pte Ltd (which I will refer to as 'A Plus') to sell shares to WG Limited.

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<sup>2</sup> Copies of each of the Chinese agreements along with an English translation have been produced by the First and Third Defendants.

- v. **9 December 2016:** A Share Transfer Agreement is executed transferring A Plus shares to WG Limited.
- vi. **2017:** WG Limited applies to Suva City Council for permits to construct the WG Friendship Plaza. The construction of the Plaza appears to commence this year.
- vii. **23 March 2017:** According to the Third Defendant, he begins working for WG Ltd from this time.
- viii. **18 December 2017:** The second of the Business Agreements is executed between Cao Baitian and the first named Plaintiff. According to the English translation, in exchange for a contribution by Mr Cao of 5 million RMB he obtains a corresponding financial interest in the WG Friendship Plaza.
- ix. **2&4 April 2018:** Shareholders Resolution Approving New Share Issuance ("the 2019 Resolution") for WG Limited is prepared and signed by the First and Second Defendants (it is not signed by the Plaintiffs until, allegedly, 28 July 2019). The 2019 Resolution purports to transfer 44% of the Plaintiffs' shares in WG Ltd to the First Defendant and 8% to the Second Defendant. The 2019 Resolution speaks of a cash contribution by the incoming shareholders, '*calculated on the basis of the net assets of the Company ending on Dec 31, 2017*', to be made by 30 June 2020.
- x. **23 May 2018:** The third of the Business Agreements is executed by Xu Jinliang, Cao Baitian and the first named Plaintiff. According to the English translation, Mr Jinliang and Mr Baitian agree to increase their contribution in the WG Friendship Plaza in exchange for a shareholding in WG Ltd of 10% and 9% respectively.
- xi. **24 June 2019:** The fourth of the Business Agreements is executed by the three parties; the first named Plaintiff, Xu Jinliang and Cao Baitian. According to the English translation, this agreement represents a resolution of outstanding disputes between the parties. It is agreed that based on contributions already made by Mr Jinliang and Mr Baitian they will receive a shareholding in WG Ltd of 44% and 5% respectively. It is noted that Mr Baitian had paid 5 million CNY (Yuan). It is agreed that '*[w]ithin seven days from the date of signing this agreement, each shareholder shall complete the necessary procedures for*

*changing the ownership of shares in coordination with each other*'. The agreement deals with other aspects of the construction of WG Friendship Plaza including managing the development of the project. The agreement provides that the controlling shareholder will be responsible for the actual operation and management of the project and the other shareholders will have participation and advisory rights in operational matters. Provision is also made for existing assets. The agreement provides:

*Real Estate (located in Nasese, Suva): Sell the originally acquired real estate at an appropriate time and invest the proceeds in the construction of subsequent projects.*

- xii. **25 June 2019:** The fifth of the Business Agreements is executed between the first named Plaintiff and Cao Britain. The parties agree that Mr Baitian's contribution will, in fact, constitute an 8% shareholding in WG Ltd.
- xiii. **27 June 2019:** The Plaintiffs return to Fiji. On the same date, a meeting is held at KPMG's offices to organise the share transfers as agreed in the agreements of 24 and 25 June 2019.
- xiv. **28 June to 17 July 2019:** Emails are exchanged between KPMG and William Wu (who is representing WG Ltd). Mr Wu advises KPMG on 17 July 2019 that the First and Second Defendants are to hold the WG Ltd shares for Xu Jinliang and Cao Baitian respectively.
- xv. **26 and 28 July 2019:** The Plaintiffs say that there is an agreement in the Chinese language executed on these dates with the First and Second Defendants. The agreements allegedly provide that First and Second Defendants will contribute a cash investment to WG Ltd based on the value of WG Ltd as at 31 December 2017.<sup>3</sup>
- xvi. **28 July 2019:** The Plaintiffs purportedly sign the Shareholders Resolution Approving New Share Issuance for WG Limited prepared on 2 April 2018. The Plaintiffs plead that their signatures are a forgery having been copied and pasted

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<sup>3</sup> Paragraph 11 of Plaintiffs' Statement of Claim and paragraph 11 of Mr Hu's affidavit dated 5 December 2023. The Plaintiffs have not produced a copy of these agreements.



by the First and Second Defendants from the Chinese agreements dated 26 and 28 July 2019.

- xvii. **29 November 2019.** The Plaintiffs leave Fiji to travel to China. They say they are unable to return to Fiji until 2023 because of COVID-19 restrictions.
- xviii. **2 December 2019:** A Sale and Purchase Agreement is entered into between A Plus and Anwar & Anwar Paradise Properties Ltd for the sale of 193 Queen Elizabeth Drive, in the amount of \$1.15 million Fijian Dollars.
- xix. **April 2020:** The Third Defendant says he begins managing WG Ltd from this time.
- xx. **24 June 2020:** The Plaintiffs plead that the share transfer to the First and Second Defendants (of 44% and 8%) are effected with the Companies Office on this date following the filing of documents with the Registrar of Companies.
- xxi. **19 October 2020:** An extraordinary general meeting for A Plus is conducted. Resolutions are passed appointing the First and Third Defendants as Directors and authorizing the Directors to execute the documents pertaining to the sale of 193 Queen Elizabeth Drive, Nasese.
- xxii. **8 December 2020:** A Transfer of Land is completed for the sale of 193 Queen Elizabeth Drive, Nasese.
- xxiii. **7 January 2021:** The Plaintiffs write to the Registrar of Titles seeking a caveat over the Nasese property and contesting its sale. According to the contents of the letter, the Plaintiffs purport to be the Directors of A Plus, advise that they have not been told of the sale and advise the Registrar that they wish to protect their interest. The letter further reads, *'We are also shareholders in WG International Real Estate Co (Fiji) Ltd as to 48% of that company'*.<sup>4</sup>
- xxiv. **25 June 2021:** The first named Plaintiff is notified by email of an extraordinary general meeting for WG Limited, the notification being sent to [wgcnfiji@vip.163.com](mailto:wgcnfiji@vip.163.com). The purpose of the meeting is also conveyed, being a share restructure of WG Ltd.

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<sup>4</sup> The Registrar refuses to register a caveat as the Plaintiffs are not recorded as directors of A Plus.

- xxv. **23 July 2021:** An extraordinary meeting is conducted. A resolution is passed increasing the share structure of WG Ltd.
- xxvi. **27 October 2022:** The Plaintiffs plead that the Registrar of Companies records the share structure changes on this date.
- xxvii. **18 April 2023:** The Plaintiffs return to Fiji.
- xxviii. **24 May 2023:** The Plaintiffs' solicitors write to the Registrar of Companies seeking information as to how the share structure change to WG Ltd in 2022 could be made without the knowledge of all the directors. In the same letter, the solicitors confirm the earlier shareholding arrangement of 48% to the Plaintiffs, 44% for the First Defendant and 8% for the Second Defendant.
- xxix. **14 June 2023:** The Plaintiffs' solicitors write to the Fiji Police alleging fraud and theft by a number of persons, including the First and Third Defendants.

#### **Present proceedings**

- [7] These proceedings were filed on 1 September 2023. The Plaintiffs' plead the following:
- i. The First and Second Defendants fraudulently obtained shares in WG Ltd by forging their signatures on the Shareholders Resolution Approving New Share Issuance for WG Limited and using the forged document to effect a change with the Registrar of Companies.
  - ii. There was fraud by the Third Defendant unlawfully and fraudulently arranged for the share transfer changes with the Registrar of Companies, namely the transfers to the First and Second Defendants in June 2020 and the share structure increase in October 2022.<sup>5</sup>
  - iii. The filing of the share transfer by the Third Defendant in June 2020 was in breach of s 242 of the Companies Act 2015 and reg 10 of the Companies Regulations 2015.

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<sup>5</sup> The Plaintiffs' do not particularise how the Third Defendant's conduct was fraudulent (or unlawful).  
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- iv. The Fourth Defendant was negligent, reckless or indifferent with respect to recording the share changes to WG Ltd without verifying the legitimacy of the filed documents.
  - v. The First and Third Defendants fraudulently sold the Nasese property owned by A Plus. They did not have authority to do so.
  - vi. The First and Third Defendants broke into a safe located at the property at 193 Queen Elizabeth Drive and stole the Plaintiffs' valuables, including jewelry, in the amount of \$196,400.
  - vii. The relief sought includes orders reverting shareholding of WG Ltd back to the Plaintiffs, the first three defendants account for the proceeds of the sale of 193 Queen Elizabeth Drive, plus specific (\$196,400) and general damages, interest and costs.
- [8] The Sixth Defendant filed a Defence on 19 October 2023, the Fourth Defendant on 23 October 2023, and the Second and Third Defendants on 27 October 2023<sup>6</sup>. The First Defendant filed a Defence and Counterclaim on 8 November 2023<sup>7</sup>.
- [9] The First, Second and Third Defendants deny the allegations against them. They state that the First and Second Defendants shareholding in WG Ltd is legitimate and supported by the Business Agreements executed between 2016 and 2019. The First Defendant counterclaims on the basis that the Plaintiffs' claim is an abuse of process.
- [10] On 6 December 2023, the Plaintiffs filed an Ex-Parte application for injunctive relief with supporting affidavits by the first named Plaintiff dated 5 December and 13 December 2023. Injunctive orders were granted on 19 December 2023 subject to the Plaintiffs' filing an affidavit with an undertaking as to damages – the affidavit was filed by the first named Plaintiff in January 2024.
- [11] On 14 December 2023, the Second and Third Defendants filed a Summons to strike out the Plaintiffs' claim against them on the basis that the pleadings disclosed no reasonable cause of action and the allegations of fraud were not sufficiently particularised. There

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<sup>6</sup> The Second and Third Defendants are represented by the same solicitors.

<sup>7</sup> The First Defendant filed an Amended Defence and Counterclaim on 22 November 2023.



followed a further summons filed by the Second and Third Defendants to set aside the injunctive orders. The Third Defendant executed affidavits in support.<sup>8</sup>

- [12] The hearing of the two summons proceeded on 2 May 2024. Counsel for all parties attended. However, only counsel for the Plaintiffs, the First Defendant, and the Second and Third Defendants wished to be heard.

### SUMMONS TO STRIKE OUT CLAIM

- [13] Ms Tivao, for the Second and Third Defendants, advanced two broad grounds for the strike out by the Second and Third Defendants. Firstly, that the Plaintiffs' allegations of fraud had not been properly particularized and, secondly, the Plaintiffs had not disclosed a reasonable cause of action. Ms Tivao considered each of the Plaintiffs' allegations of fraud as follows:

- i. **The share transfer to the First and Second Defendants:** The allegation here by the Plaintiffs is that their signatures on the Shareholders Resolution Approving New Share Issuance of 2 April 2018 is a forgery. Ms Tivao stated that the Business Agreements from 2016 to 2019 demonstrated that the First and Second Defendants' shareholding in WG Ltd was legitimate. She submitted that the allegations by the Plaintiffs in the pleadings were vague and general, and failed to properly specify the alleged fraudulent actions. Ms Tivao pointed out that in Mr Hu's affidavit in response, he accepted that he did receive funds from the Second Defendant as an equity swap, which was in contrast to the pleadings that there had been no financial consideration for the share transfer to the First and Second Defendants.
- ii. **The share restructure of WG Ltd in 2022:** Again, Ms Tivao argued that there is a lack of particularization of the fraud. Further, the facts available show that the share structure increase was legitimate. She referred to an extraordinary shareholder meeting in 2021 where the increase was discussed. She stated that the Plaintiffs accepted that the meeting occurred, that they were aware of it and knew the purpose of the meeting but decided not to attend.<sup>9</sup> She submitted that in light of the concession by Mr Hu there was no factual basis to support the share structure increase having been fraudulent.

<sup>8</sup> The first affidavit is dated 23 December 2023 and a Supplementary Affidavit is dated 18 January 2024.

<sup>9</sup> As per para 40 d of Mr Hu's Affidavit dated 5 April 2024.

- iii. **The sale of the property at 193 Queen Elizabeth Drive:** Ms Tivao argued that the Plaintiffs had no standing here as they did not, at any time, have any shareholding or ownership in A Plus. Further, the Plaintiffs were aware that the property would be sold as per the Business Agreement of 24 June 2019.

[14] Mr Jamnadas, for the First Defendant, accepted that the Court has a discretion to order further and better particulars where pleadings are not well formulated. He suggested that this avenue was not available for the Plaintiffs because the uncontested facts ripped apart the Plaintiffs' claims of fraud. For example, the Plaintiffs knew of the share transfer in June 2019, they knew of the extraordinary meeting to discuss the share restructure in 2021, and they knew of the sale of the property at 193 Queen Elizabeth Drive. He submitted that the pleadings, in its current form, were an abuse of process. He submitted that the authorities show that the courts will not entertain a dishonest motivation for bringing a claim. He argued that there were blatant contradictions between the facts pleaded in the Plaintiffs' Statement of Claim and the facts deposed by Mr Hu in his affidavits.

[15] Mr. Cakau, for the Plaintiffs, stated that the Plaintiffs admitted the fact of the Chinese Business Agreements. It appears, however, that the Plaintiffs do not accept the English translations because these documents were not signed by the Plaintiffs or translated by registered translators. I sought Mr Cakau's clarification of the Plaintiffs' position on the following:

- i. Whether the Plaintiffs accepted that they were aware of the extraordinary meeting on 23 July 2023 and its purpose. There was acceptance of this, but it was pointed out that the fraud in relation to the share structure increase stemmed from the original fraud of the document of 2 April 2018. The original shareholding transfer was fraudulent and, therefore, all actions by the First and Second Defendants (with the assistance of the Third Defendant) that followed was fraudulent. Further, the Plaintiffs understood that they were the majority shareholders of WG Ltd and, therefore, believed that no changes could be made to WG Ltd without their approval.
- ii. The Plaintiff accepted that the agreement of 24 June 2019 was originally signed in the Mandarin version. The Plaintiffs' position on the English translation was

difficult to understand. Counsel stated that the Plaintiffs do not recognize the English translation despite the statement in Mr Hu's affidavit dated 5 April 2024, at 40 c., that he did accept the contents.<sup>10</sup> No cogent explanation was offered by counsel for the Plaintiffs' position that they did not recognize the English translation. The Plaintiffs did not expressly depose that the English translation was inaccurate and, if inaccurate, which specific aspects of the translation.

#### **Decision on summons to strike out claim**

- [16] The summons to strike out the Plaintiffs' claim is made under O.18, r.18(1)(a) and (d) of the High Court Rules 1988. The provision reads:

*The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that-*

*(a) it discloses no reasonable cause of action or defence, as the case may be;*

*(b) it is scandalous, frivolous or vexatious;*

*(c) it may prejudice, embarrass or delay the fair trial of the action; or*

*(d) it is otherwise an abuse of the process of the Court;*

*and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.<sup>11</sup>*

- [17] The principles applicable to a strike out application are well settled. In *National NBF Finance (Fiji) Limited v. Buli* [2000] FJCA 28, the Court of Appeal stated:

*The law with regard to striking out pleadings is not in dispute. Apart from truly exceptional cases the approach to such applications is to assume*

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<sup>10</sup> Counsel suggested that the Court disregard this admission by Mr Hu.

<sup>11</sup> My emphasis.



*that the factual basis on which the allegations contained in the pleadings are raised will be proved. If a legal issue can be raised on the facts as pleaded then the courts will not strike out a pleading and will certainly not do so on a contention that the facts cannot be proved unless the situation is so strong that judicial notice can be taken of the falsity of a factual contention. It follows that an application of this kind must be determined on the pleadings as they appear before the court.*<sup>12</sup>

- [18] Seneviratne J offered the following helpful discussion of the authorities in *South Pacific Metals Ltd v Silikiwai* [2021] FJHC 386 (15 December 2021) at [5]:

*In Carl Zeiss Stiftung v Rayner & Keeler Ltd (No 3) [1970] Ch 506 it was held that the power given to strike out any pleading or any Part of a pleading under this rule is not mandatory but permissive, and confers a discretionary jurisdiction to be exercised having regard to the quality and all the circumstances relating to the offending plea.*

*In Drummond-Jackson v British Medical Association [1970] 1 W.L.R. 688; [1970] 1 All ER 1094 it was held;*

*Over a long period of years it has been firmly established by many authorities that the power to strike out a statement of claim as disclosing no reasonable cause of action is a summary power which should be exercised only in plain and obvious cases.*

*In the case of Walters v Sunday Pictorial Newspapers Limited [1961] 2 All ER 761 it was held:*

*It is well established that the drastic remedy of striking out a pleading or, part of a pleading, cannot be resorted to unless it is quite clear that the pleading objected to, discloses no arguable case. Indeed, it has been conceded before us that the Rule is applicable only in plain and obvious cases.*

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<sup>12</sup> My emphasis.

*In Narawa v Native Land Trust Board* [2003] FJHC 302; HBC0232d.1995s (11 July 2003) the court made the following observations:

*In the context of this case I find the following statement of Megarry V.C. in Gleeson v J. Wippell & Co. [1971] 1 W.L.R. 510 at 518 apt:*

*“First, there is the well-settled requirement that the jurisdiction to strike out an endorsement or pleading, whether under the rules or under the inherent jurisdiction, should be exercised with great caution, and only in plain and obvious cases that are clear beyond doubt. Second, Zeiss No. 3 [1970] Ch. 506 established that, as had previously been assumed, the jurisdiction under the rules is discretionary; even if the matter is or may be res judicata, it may be better not to strike out the pleadings but to leave the matter to be resolved at the trial.”<sup>13</sup>*

- [19] Pathik J provided the decision in *Narawa v Native Land Trust Board*.<sup>14</sup> His Lordship further stated at page 4:

*In considering this application I have also borne in mind the following passage from Halsbury's Laws of England 4<sup>th</sup> Ed Vol. 37 para. 434 on 'abuse of process' which I consider pertinent:*

*“An abuse of the process of the court arises where its process is used, not in good faith and for proper purposes, but as a means of vexation or oppression or for ulterior purposes, or, more simply, where the process is misused. In such a case, even if the pleading or indorsement does not offend any of the other specified grounds for striking out, the facts may show that it constitutes an abuse of the process of the court.*

<sup>13</sup> My emphasis.

<sup>14</sup> [2003] FJHC 302 (11 July 2003).



*and on this ground the court may be justified in striking out the whole pleading or indorsement or any offending part of it . Even where a party strictly complies with the literal terms of the rules of court, yet if he acts with an ulterior motive to the prejudice of the opposite party, he may be guilty of abuse of process, and where subsequent events render what was originally a maintainable action one which becomes inevitably doomed to failure, the action may be dismissed as an abuse of the process of the court.”<sup>15</sup>*

[20] The Court’s power to strike out a claim must be sparingly used and only in clear and obvious cases. A party ought not to be denied access to the courts unless the cause of action is so untenable that they cannot succeed. Even where a case appears weak, such that it is unlikely to succeed, this does not suffice to warrant striking out. It is, however, an abuse of the process of the court for a party to bring a case otherwise than in good faith or for proper purposes. A claim may be struck out for disclosing no reasonable cause of action. The facts must be taken as pleaded in the Statement of Claim unless admissions to the contrary by a plaintiff is deposed. An interlocutory application is not the time to resolve factual disputes.

[21] The primary cause of action pleaded against the Second and Third Defendants (as well as the First Defendant) is fraud. The Plaintiffs allege that the First and Second Defendants fraudulently made themselves shareholders of WG Ltd by using a document they knew to be forged to effect this. The Plaintiffs’ plead as follow:

- i. The First and Second Defendants forged their signatures on a Shareholders Resolution Approving New Share Issuance for WG Limited dated 2 April 2018. The Resolution purported to transfer 44% and 8% of the shares of WG Ltd to the First and Second Defendants, respectively. The Plaintiffs never signed the 2019 Resolution.
- ii. The signatures were copied and pasted from a Chinese agreement executed with the First and Second Defendants and dated 26 and 28 July 2019. This agreement

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<sup>15</sup> My emphasis.

provided for the First and Second Defendants each making a cash investment contribution of 44% and 8% of the value of WG Ltd as at 31 December 2017. The deadline for making the cash investment was 30 June 2020.

- iii. The amount required by the First and Defendants to meet the 44% and 8% value of WG Ltd was \$14,094,691.42 and \$2,562,671.17. The First and Second Defendants did not make any such cash contribution by 30 June 2020.
  - iv. The forged 2019 Resolution was used by the First and Second Defendants to effect the transfer. The Third Defendant lodged the 2019 Resolution with the Registrar of Companies on 24 June 2020.
  - v. The First and Second Defendants held the shares for third parties in China.
- [22] The Plaintiffs also plead that the transfer in June 2020 was irregular and unlawful. That the filing by the Third Defendant was in breach of s 242 of the Companies Act 2015 and reg 10 of the Companies Regulations 2015.<sup>16</sup>
- [23] The allegations against the Third Defendant are:
- i. He unlawfully and fraudulently filed company documents on 24 June 2020, 3 June 2022 and 27 October 2022 without:
    - o Notifying the Plaintiffs of meetings convened for the purpose of share restructuring.<sup>17</sup>
    - o Receiving approval from the Plaintiffs.
    - o Convening a shareholder meeting for the purpose of increasing the share structure of WG Ltd.<sup>18</sup>
    - o Obtaining the Reserve Bank of Fiji's prior approval and verification to change the share structure.

<sup>16</sup> The Plaintiffs do not disclose how the transfer breached these provisions.

<sup>17</sup> The Plaintiffs now accept that they were notified of the meeting.

<sup>18</sup> The Plaintiffs now accept that a meeting was convened.

- o Obtaining a resolution ‘including the Plaintiffs as Directors whose shares were affected by the filing done’.
- ii. He, along with the First Defendant, fraudulently signed off on the sale of the property at 193 Queen Elizabeth Drive. The allegation being that they did not have lawful authority to sign as an authorized officer of A Plus or to sign the Transfer form as a Director and Secretary of A Plus.
- iii. That the Plaintiffs only discovered that the property had been sold fraudulently when they returned to Fiji in 2023 and that they have not received the proceeds of the sale.<sup>19</sup>

[24] The share structure increase in WG Ltd is pleaded to have occurred in 2022, resulting in a significant share increase for both the First and Second Defendants. The Plaintiffs have alleged collusion on the part of the first three defendants.

[25] The elements for establishing fraud were discussed by the Supreme Court in *Kuar v Singh* [2022] FJSC 19 (29 April 2022). Gates J stated:

[51] *Observations made in the speeches of the House of Lords on the subject of fraud in Bradford Third Equitable Benefit Building Society v. Borders [1941] 2 All E.R. 205 make for an important starting point. At p216H Lord Russell of Killowen said:*

*“To make a charge of fraud is a serious thing, and before people make it, they should be clear as to the grounds and facts upon which they rely and the basis of their charge.”*

[52] *Lord Wright at p218G cautioned:*

*“The importance of the established rule that fraud must be precisely alleged and strictly proved.”*

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<sup>19</sup> This allegation is contradicted by the Plaintiffs’ letter of 7 January 2021 to the Registrar of Titles showing they were then aware of the sale.

*In the instant case neither of these requirements were met. They fell well below the standard required.*

[53] *In the Bradford case the Plaintiff had been unable to connect the representative of the building society with a certain meeting and with other communication in which the contractors had made misleading statements, orally and in a brochure, claiming the society had given its support to their company. The Plaintiff failed before the High Court, succeeded in the Court of Appeal, and failed again before the House of Lords.*

[54] *Viscount Maugham set out at p211A the requirements of proof:*

*“My Lords, we are dealing here with a common law action of deceit, which requires four things to be established. First, there must be a representation of fact made by words, or, it may be, by conduct. The phrase will include a case where the defendant has manifestly approved and adopted a representation made by some third person. On the other hand, mere silence, however morally wrong, will not support an action of deceit: Peek v. Gurney (2), at p.390 per Lord Chelmsford, and at p.403, per Lord Cairns, and Arkwright v. Newbold (3), at p.318. Secondly, the representation must be made with a knowledge that it is false. It must be wilfully false, or at least made in the absence of any genuine belief that it is true: Derry v. Peek (4) and Nocton v. Ashburton (Lord) (5). Thirdly, it must be made with the intention that it should be acted upon by the plaintiff, or by a class of persons which will include the plaintiff, in the manner which resulted in damage to him: Peek v. Gurney (2) and Smith v. Chadwick (6), at p.201. If, however, fraud be established, it is immaterial that there was no intention to cheat or injure the person to whom the false statement was made: Derry v. Peek (4), at p.374, and Peek v. Gurney (2), at p. 409. Fourthly, it must be proved that the plaintiff has acted upon the false statement and has*



*sustained damage by so doing: Clarke v. Dickson (7). I am not of course, attempting to make a complete statement of the law of deceit, but only to state the main facts which a plaintiff must establish."*

- [26] The first allegation, then, by the Plaintiffs is that the First and Second Defendant, with the assistance of the Third Defendant, fraudulently transferred shares in WG Ltd to the First and Second Defendants, being 44% and 8%, respectively. They allegedly did so by copying and pasting the Plaintiffs' signatures onto the 2019 Resolution from a Chinese agreement. The problem for the Plaintiffs with their allegations of fraud here is, put simply, the two Business Agreements dated 24 June and 25 June 2019. The two agreements demonstrate that the First and Second Defendants have a legitimate entitlement to the share transfer. Further, the transfer was to be made based on financial contributions already made (ie there was no requirement for the First and Second Defendants to make any further contributions). The content of the two agreements could not be clearer in this regard. The agreement of 24 June 2019 further provided that the transfers were to be effected within 7 days (which is consistent with steps taken by KPMG on behalf of WG Ltd in late June and July 2019 as per email communications<sup>20</sup>).
- [27] If the Plaintiffs' disputed the fact of the Chinese agreements of 24 and 25 June 2019 and/or the English translations, then this would need to be determined at trial. However, the Plaintiffs have accepted the fact of the Chinese agreements. Their position with respect to the English translations is unclear. The first named Plaintiff states that the English translation of the agreement of 24 June 2019 *'requires the signatures of the plaintiffs and a notarized certificate before it can effect'*.<sup>21</sup> However, the English translation does not purport to be anything other than a translation of the Chinese agreement. The translation does not require the Plaintiffs' signatures. Only in the event that the Plaintiffs' dispute the English translation as produced by the Third Defendant will some consideration need to be given to arranging for an independent and authorized translation. However, Mr Hu does not depose that he disputes the English translation. In fact, Mr Hu expressly states at paragraph 40 c of his affidavit dated 5 April 2024 that in respect to the English translation *'the plaintiffs hereby confirm that we admit the contents'*.

<sup>20</sup> The Plaintiffs do not dispute these email communications with KPMG; para 36 of Mr Hu's affidavit dated 4 April 2024.

<sup>21</sup> Para 40 c. i. of Mr Hu's affidavit for Striking Out dated 5 April 2024.



[28] The agreements of 24 and 25 June 2019 negate the Plaintiffs' allegations of fraud against the First, Second and Third Defendants. If the English translation is correct, then the Plaintiffs' claims of fraud in its Statement of Claim cannot succeed. It is as simple as that. The agreements verify that the First and Second Defendants have a legitimate entitlement to the shares in WG Ltd. As such, the Plaintiffs are required, for the purposes of the present summons to strike out, to clearly and unequivocally refute the correctness of the English translation of the agreements of 24 and 25 June 2019. They have not done so. As then Master Bull (now Bull J) stated in *Fiji Public Service Association v Nabong* [2017] FJHC 649 (24 July 2017), at 24:

*It is now well settled that in evaluating affidavit evidence, the failure to contradict an issue, or reply specifically to a material allegation, is treated as an acceptance or admission of the said issue or allegation...*

[29] The Plaintiffs' failure to unambiguously refute the correctness of the English translation of the two agreements can only be taken as an admission by the Plaintiffs that the documents are accurate translations. Accordingly, the First and Second Defendants were entitled to the share transfer of 44% and 8% respectively. The transfer was, therefore, not fraudulent.

[30] The next allegation of fraud by the Plaintiffs pertains to the allegation that the First and Second Defendants with the Third Defendant's assistance, arranged for a share structure increase. According to the defendants, the changes were authorised by a shareholder resolution at an extraordinary general meeting, of which notification of the meeting was provided by email to the first named Plaintiff. The Plaintiffs accept this evidence.<sup>22</sup>

[31] In any event, the Plaintiffs have not particularized the alleged fraud here by the First, Second or Third Defendants. That is, no doubt, because, as counsel for the Plaintiffs' acknowledged at the hearing, the allegations are premised on the initial share transfer having been fraudulent. If that transfer was not fraudulent, however, then the allegations of fraud in respect to the share restructure also cannot be fraudulent. Put another way, if the First and Second Defendants were entitled to the share transfer then they were authorised to pass company resolutions effecting a share restructure. There is, in my

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<sup>22</sup> At paragraph 40 d. of Mr Hu's affidavit dated 5 April 2024.

view, another piece of evidence of the Plaintiffs own making that undermine their allegations of fraud. They plead that they did not know of the share transfer. Their counsel argued at the hearing that the Plaintiffs believed that they remained the majority shareholder of WG Ltd when they were in China from 2019 to 2023. That contention does not hold water. In their letter to the Registrar of Titles dated 7 January 2021, they expressly stated '*[w]e are also shareholders in WG International Real Estate Co (Fiji) Ltd as to 48% of that company*'. They were, therefore, aware that they were not the majority shareholders of WG Ltd when they received notification of the extraordinary meeting in June 2021 to discuss the share restructure.

[32] There remains the allegation of fraud in respect to the sale of the property owned by A Plus at 193 Queen Elizabeth Drive. The allegation is that the Plaintiffs were unaware of the sale until their return in April 2023, and as per the pleadings, the First and Third Defendants allegedly signed the sale transfer as director and secretary when they had no such authority to do so. The first named Plaintiff also deposes in his affidavit dated 5 December 2023 that he is a shareholder of A Plus.<sup>23</sup>

[33] There are several problems for the Plaintiffs here. The first problem, again, is the agreement of 24 June 2019. The parties expressly agreed in that document that they would sell the Nasese property and use the sale proceeds for the construction project. The Plaintiffs are seen, from this document, to have knowledge of the sale from this agreement contrary to their pleading. Secondly, the Plaintiffs' have no locus standi. The Plaintiffs were not shareholders of A Plus. WG Ltd is the shareholder, not the Plaintiffs. If there was any fraud with respect to the sale of the Nasese property, it is WG Ltd that is harmed and entitled to recover, not the Plaintiffs. Thirdly, the First and Third Defendants did have authority to sign the transfer of the property in December 2020 as a result of resolutions passed in October 2020 by A Plus, making them directors and expressly authorizing the sale.

### **Summary**

[34] The Plaintiffs case is straightforward. The First and Second Defendants forged their signatures on the 2019 Resolution. They could not have signed the Resolution as they

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<sup>23</sup> At 26.

left Fiji on 6 July 2019 and the signatures were purportedly signed on 28 July 2019.<sup>24</sup> The forged document was used by the First and Second Defendants to have their share transfer registered by the Registrar of Companies. With their fraudulently acquired shareholding the First and Second Defendants, with the assistance of the Third Defendant, were then able to arrange for the share restructure.

- [35] With the exception, perhaps, of the allegation of the forged document each thread of the Plaintiffs' allegations pertaining to the fraud has been shown by the First and Third Defendants to be untrue (on uncontested or admitted evidence). The most damning piece of evidence against the Plaintiffs' allegations are the Business Agreements dated 24 and 25 June 2019. The allegation of the forged signatures does not suffice by itself to establish that the share transfer was fraudulent. Even if the signatures were forged, the First and Second Defendants were entitled to the share transfer. They were not required to make any cash investment.
- [36] That being the case, to my mind the only issue is whether the circumstances of this case amount to an apparently weak case that is unlikely to succeed but should be left to go to trial, or the cause of action of fraud is so untenable so as to justify striking it out. I am satisfied that it is the latter. The agreements of 24 and 25 June 2019 are fatal to each allegation of fraud against the First, Second and Third Defendants pertaining to the share transfer and restructure in WG Ltd as well as the sale of the property at 193 Queen Elizabeth Drive. Further reinforcing that view has been the conduct of the Plaintiffs. Firstly, their failure to plead the fact of the agreements of 24 and 25 June 2019 which, surely, they must have realised was fatal to their claim. Secondly, their failure to produce (in any of these interlocutory applications, including their own earlier ex parte summons for injunctive relief) the Chinese agreements of 26 and 28 July 2019, which are fundamental to their allegations of fraud.<sup>25</sup>
- [37] The result, in my view, is that the Plaintiffs simply cannot succeed with their cause of action in fraud against the First, Second and Third Defendants. With the Plaintiffs' Statement of Claim stripped of its claim in fraud, the proceedings are reduced to the following allegations:

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<sup>24</sup> I am not sure why the Plaintiffs needed to have been in Fiji to sign the Resolution. The Defendants signed the same document in April 2018 so there was no need for them to have been in the same country when the Plaintiffs signed the document.

<sup>25</sup> Plead at paragraphs 11 and 16 of the Statement of Claim.



- i. The filing of the share transfer by the Third Defendant in June 2020 was in breach of s 242 of the Companies Act 2015 and reg 10 of the Companies Regulations 2015.<sup>26</sup>
- ii. The First and Third Defendants caused forms to be filed with the Registrar of Companies on 24 June 2020, 3 June 2022 and 27 October 2022 in breach of the rules of filing company documents.<sup>27</sup>
- iii. The Registrar of Companies was negligent, reckless or indifferent with respect to recording the changes to WG Ltd without verifying the legitimacy of the filed documents.<sup>28</sup>
- iv. The First and Third Defendants broke into a safe located at the property at 193 Queen Elizabeth Drive and stole the Plaintiffs' valuables, including jewelry, in the amount of \$196,400.<sup>29</sup>

[38] The Plaintiffs' allegations in [37] are bare in their details and require better particularization. I am faced with the question whether to strike out the entire claim or permit the Plaintiffs an opportunity to provide further and better particulars in respect to these allegations. I am conscious that striking out an entire claim should only be made in rare cases.

[39] While I have a concern about the Plaintiffs failure to disclose material facts in their pleadings, thus raising the issue as to whether their claim has been brought in good faith and for proper purposes, I will permit the Plaintiffs an opportunity to file an Amended Statement of Claim removing their allegations of fraud<sup>30</sup> and providing further and better particulars of the allegations in [37] above.

### **SUMMONS TO SET ASIDE INTERIM INJUNCTIONS**

[40] Ms. Tivao, for the Second and Third Defendants, made the following arguments:

<sup>26</sup> Paragraphs 10, 15, and possible 20 of the Statement of Claim.

<sup>27</sup> Paragraph 43 of Statement of Claim.

<sup>28</sup> Paragraph 22 of Statement of Claim.

<sup>29</sup> Paragraphs 41 and 42 of Statement of Claim.

<sup>30</sup> At paragraphs 9-18, 20, 36, 39-40, & 44-48 of the Statement of Claim. The Plaintiffs' relief will also need to be amended to reflect the changes.

- i. The Plaintiffs had a duty, on an ex-parte application for injunctive relief, to inform the Court of all material facts relevant to the application. The Plaintiffs failed to discharge this duty. They failed to disclose the Business Agreements. They failed to inform the Court of the equity swap that entitled the Second Defendant to the 8% shareholding in WG Ltd.
- ii. The Plaintiffs have misled the Court with respect to their undertaking as to damages. No details are provided in the affidavit of the Plaintiff's financial ability to pay any damages. For example, no bank account details are provided and no indication of any assets.

[41] Mr. Jamnadas, for the First Defendant, provided lengthy and careful submissions, summarized as follows:

- i. He described the Plaintiff's actions as akin to a magician. He stated that they have placed a lot of irrelevant information before the Court in order to deceive but they have failed to supply the most important information in this case. He described this conduct as a blatant deception by the Plaintiffs. He submitted that the interim injunction should be set aside in their entirety with indemnity costs against the Plaintiffs.
- ii. He submitted that the Plaintiffs have been defunctive. By way of an example, he referred to Mr William Wu, who was allegedly the Plaintiff's agent and a person trusted by the Plaintiffs. He stated that a number of e-mails and communications provided by the First Defendant, annexed to his affidavit, demonstrate that Mr. Wu was aware of the sale of the Nasese property and the transfer of shares in WG Ltd in 2019. This undermined the Plaintiff's allegations of fraud and their alleged lack of knowledge.
- iii. He submitted that a party cannot mislead the court and expect equitable relief.
- iv. He referred to several instances between January 2021 and May 2023 where the Plaintiffs accepted that they had a 48% shareholding in WG Ltd and, therefore, must have been aware of the transfer. This negated any allegation of fraud.



- v. He submitted that the Plaintiffs' undertaking as to damages was no undertaking at all. The first named Plaintiff claims to be a chairperson of a company in China but Mr Jamnadas argued that this does not equate to any financial worth.

[42] Ms Tosokiwai, for the Plaintiffs, stated that she did not accept that the Plaintiffs did not have clean hands. She stated that the Plaintiffs claim is based almost entirely on the forged 2019 Resolution in that the Plaintiffs signatures could not have been made as their travel documents show they were not in Fiji at the time.

#### **Decision on summons to set aside interim injunction**

[43] In *Sequitur Hotels PTY Ltd v Satori Holdings PTE Ltd* [2020] FJHC 276 (3 April 2020) Stuart J cited<sup>31</sup> the following passages from the English Court of Appeal decision in *Brinks Mat Ltd v Elcombe* [1988] 1 WLR 1350, at 1356:

*In considering whether there has been relevant non-disclosure and what consequences the court should attach to any failure to comply with the duty to make full and frank disclosure, the principles relevant to the issues in these appeals appear to me to include the following:*

*1. The duty of the applicant to make a 'full and fair disclosure of all the material facts' ...*

*...*

*5. If material non-disclosure is established, the court will be 'astute to ensure that a plaintiff who obtains (an ex parte injunction) without full disclosure ... is deprived of any advantage he may have derived by that breach of duty.' ...*

[44] On an ex parte application 'the applicant has a duty of candour'.<sup>32</sup> Unquestionably, the failure by the Plaintiffs to draw this Courts attention to the fact and content of the agreements of 24 and 25 June 2019 (during the hearing of the ex parte application) is unfathomable. The agreements of 24 and 25 June 2019 are central to, and undermine,

<sup>31</sup> At 27.

<sup>32</sup> *Madsen v Darmali* [2024] NSWSC 76.

their allegations of fraud. That will be clear from my decision on the summons to strike out the claim. I can only conclude that the omission by the Plaintiffs was deliberate. The failure to disclose and/or produce the agreements was a material non-disclosure by the Plaintiffs. The failure justifies setting aside the interim injunctions.

- [45] A further reason for this Court to dissolve the injunctive orders stems from the Plaintiffs' affidavit containing their undertaking as to damages. In my earlier judgment granting the injunctive orders, I stated that the decision was subject to the following:

*The Plaintiffs are to file and serve by or before 4pm on 19 January 2024 an affidavit providing an undertaking as to damages for these interim injunction orders and supplying information demonstrating their ability to satisfy such undertaking.*

- [46] The first named Plaintiff deposed such an affidavit on 18 January 2024. The matter of setting out a deponent's financial circumstances, in order to demonstrate their ability to pay damages, ought to be straightforward. Their financial ability may be demonstrated by way of bank statements or titles to property, or other assets. No such details are provided by the Plaintiffs. Indeed, I am unable to glean the Plaintiffs' financial circumstances from the content of the affidavit for the first named Plaintiff. As such, I cannot accept that he has demonstrated the Plaintiffs' ability to satisfy any undertaking as to damages.

### Orders

- [47] Accordingly, I make the following orders:
- i. The Court's Injunctive orders of 19 December 2023 are dissolved.
  - ii. The Plaintiffs' pleadings in their Statement of Claim with respect to the allegations of fraud against the First, Second and Third Defendants are struck out.<sup>33</sup>
  - iii. The Plaintiffs are to file an Amended Statement of Claim by 30 August 2024.<sup>34</sup>


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<sup>33</sup> See [39], footnote 30.

<sup>34</sup> See [39].

- iv. The First Defendant is entitled to costs summarily assessed in the amount of \$2,500 to be paid by the Plaintiffs within 30 days.
- v. The Second and Third Defendant are entitled to costs summarily assessed in the amount of \$4,000 to be paid by the Plaintiffs within 30 days.



  
D. K. L. Tuiqereqere  
JUDGE

**Solicitors:**

**Vosarogo Lawyers for the Plaintiffs**

**Jamnadas & Associates for the First Defendant**

**Shirley Lavenia Susan Legal for the Second & Third Defendants**

**Office of Attorney-General's Chambers for the Fourth & Fifth Defendants**