

**IN THE HIGH COURT OF FIJI AT LAUTOKA**  
**CIVIL JURISDICTION**

**CIVIL ACTION NO. HBC 54 OF 2023**

**BETWEEN** : **NEW ERA DEVELOPMENT PTE LIMITED** **PLAINTIFF**

**AND** : **PACIFIC OBOR GROUP PTE LIMITED** **1<sup>ST</sup> DEFENDANT**

**AND** : **JIN JIA** **2<sup>ND</sup> DEFENDANT**

**AND** : **LI KANG** **3<sup>RD</sup> DEFENDANT**

**BRFORE** : Mr. A.M. Mohamed Mackie-J.

**COUNSEL** : Mr. Fa .S. with Mr. Koroi - for the Plaintiff  
 : Ms. Nettles. V. For the Defendants

**HEARING** : On 21<sup>st</sup> May 2024.

**RULING** : On 17<sup>th</sup> November 2024.

**RULING**

1. The Plaintiff Company, by way of its Writ of Summons and the Statement of Claim filed on 13<sup>th</sup> March 2023, commenced this action against the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Defendants seeking , *inter alia* , the following substantive reliefs ;
  1. **A DECLARATION** that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have committed the act of fraudulent misrepresentation against the Plaintiff, and accordingly are equally liable for losses suffered by the Plaintiff;
  2. **AN ORDER** for restitution against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and in favour of the Plaintiff of the Plaintiff in the sum of **\$195,000.00 (One Hundred and Ninety-Five Thousand Fijian Dollars)**, which is the amount remaining and in the hands of the 1<sup>st</sup> Defendant after

deducting the **FJ\$75,000.00 (Seventy-Five Thousand Fijian Dollars)** paid to Maisuria Design Pte Limited;

3. **IN THE ALTERNATIVE, A DECLARATION** that the 1<sup>st</sup> Defendant holds the total sum of **\$195,000.00 (One Hundred and Ninety-Five Thousand Fijian Dollars)** as Constructive Trustee for the Plaintiff;
  4. **AN ORDER** that as Constructive Trustee for the Plaintiff, the 1<sup>st</sup> Defendant deliver up and pay to the Plaintiff the said sum of **FJ\$195,000.00 (One Hundred and Ninety-Five Thousand Fijian Dollars)**;
  5. **AN ORDER** for Special Damages against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in the sum of **FJ\$195,000.00 (One Hundred and Ninety-Five Thousand Fijian Dollars)**;
2. Summons being, reportedly, served on 17<sup>th</sup> March 2023, the Defendants on 2<sup>nd</sup> May 2023 filed their Statement of Defence, together with a Counter-Claim and moved for the dismissal of the Plaintiff's claim.
  3. Subsequently, on 24<sup>th</sup> May 2023, the Plaintiff filed an Amended writ of summons and the Statement of Claim moving for the same reliefs as above. It is observed that no leave had been obtained by the Plaintiff for the amendment, which had escaped the attention of the Court and the Solicitors for the Defendants.
  4. However, the Defendants on 14<sup>th</sup> July 2023 filed their Statement of Defence to the Amended Statement of Claim, together with a Counter Claim, and moved for the following reliefs:
    1. An Order for the Plaintiff to pay the sum of FJD 441,450.00 to the 1<sup>st</sup> Defendant.
    2. An Order for the Plaintiff to pay the sum of FJD 300,000.00 to the 3<sup>rd</sup> Defendant.
    3. An Order dismissing the Plaintiff's claim.
    4. Costs on a Solicitor Client indemnity basis.
  5. In the meantime, the Plaintiff on 16<sup>th</sup> June 2023 filed an **Inter-partes Summons**, supported by two Affidavits, one sworn by Mr. HEMANT KUMAR, and the other one sworn by Mr. XUWQUAN QIAN, the sole Director & Shareholder of the Plaintiff Company. Both these Affidavits sworn on 9<sup>th</sup> June 2023 accompanied documents marked as "HK-1" to "HK-2" and "XQ-1" to "XQ- 10" respectively. Mr. Hemant Kumar is said to be the Director of **Maisuria Design Pte Limited**, which is not a party to this action.
  6. The said Inter-partes Summons states that it is made pursuant to Order 15 Rule 18 of the High court Rules 1988 and pursuant to the inherent jurisdiction of this Court. The Plaintiff is seeking, *inter alia*, the following reliefs through the said **Inter-partes Summons**;

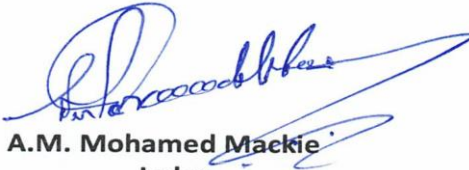
1. **A DECLARATION** that on the 7<sup>th</sup> of November 2019, in reliance on the Agreement titled **“Lomolomo Development – Consultancy Contract Between Pacific Obor Group Pte Limited and New Era Development Pte Limited”** and its contents, as being true, in particular, the representation that Hemant Kumar was the Managing Director of the 1<sup>st</sup> Defendant, and that Hemant Kumar had executed the same on behalf of the 1<sup>st</sup> Defendant, the Plaintiff executed the same and paid the Deposit to the 1<sup>st</sup> Defendant in the sum of **\$294,300.00 (Two Hundred and Ninety-Four Thousand Three Hundred Fijian Dollars)** pursuant to Clause 9 of the aforementioned Agreement:
  2. **A DECLARATION** that the Agreement titled **“Lomolomo Development – Consultancy Contract Between Pacific Obor Group Pte Limited and New Era Development Pte Limited”** and its contents, in particular, the representation that Hemant Kumar was the Managing Director of the 1<sup>st</sup> Defendant, and that Hemant Kumar had executed the same on behalf of the 1<sup>st</sup> Defendant, was not true in that Hemant Kumar was not the Managing Director of the 1<sup>st</sup> Defendant, and Hemant Kumar did not execute the aforementioned Agreement;
  3. **A DECLARATION** that it would be just fair that the 1<sup>st</sup> Defendant immediately return and refund the Deposit paid by the Plaintiff to the 1<sup>st</sup> Defendant in the sum of **\$294,300.00 (Two Hundred and Ninety-Four Thousand Three Hundred Fijian Dollars)** or such other sum deemed just by this Honorable Court;
7. The 2<sup>nd</sup> Defendant on 24<sup>th</sup> January 2024 filed his separate Affidavits in response to both the above Affidavit in support sworn by HEMANT KUMAR and XUWQUAN QIAN and filed on 16th June 2023. The Plaintiff opted not to file Affidavit in reply thereto.
  8. At the hearing of the Inter- Partes Summons, both the learned Counsel have made their oral submissions.
  9. On careful perusal of the prayers in the Amended Statement of Claim (ASOC) and in the Inter-partes Summons, I find that the reliefs sought in both instances are almost identical. I, also find that the reliefs sought in the Summons are final in nature, which cannot be granted through an interlocutory Application. It is also observed that while the monetary relief sought in the prayer to the ASOC is limited only to FJD 195,000.00, in the prayer to the current Summons, the claim has been enhanced to FJD 294,300.00. The relief sought in the interlocutory Summons cannot exceed the reliefs sought in the substantive action. In the event this Court grants the reliefs in the interlocutory Summons, the substantive action by way of the Statement of claim will become redundant.
  10. The next pertinent question that begs an answer is when the Plaintiff, in its Amended Statement of Claim, has alleged fraud, misrepresentation and unconscionable conduct on the part of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as its causes of action, how can this Court grant the final and substantial reliefs summarily in the absence of evidence being led at the trial.

11. Moreover, when the Statement of Defence paints a different picture as to what actually transpired between the parties during the times material, and particularly, when there is a Counter-Claim by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, this Court cannot proceed to grant reliefs as prayed for in the interlocutory Summons.
12. The final and effectual adjudication of the disputes presented to the Court by the parties, through their respective Pleadings, will have to be through the process of trial, where both the oral and documentary evidence led will be subjected to deep scrutiny. The Court cannot by-pass this process and grant relief as prayed for in the interlocutory Summons filed by the Plaintiff.
13. Accordingly, for the aforesaid reasons, the Court decides to refuse to grant the reliefs sought in the Inter-partes Summons filed on the 16<sup>th</sup> June 2023 and dismiss the same with a summarily assessed costs of \$\$1,000.00 payable by the Plaintiff unto the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. After filing of the Reply to Defence and Defence to Counter Claim by the Plaintiff, if they are minded to, the parties have to follow the normal course.

**FINAL ORDERS:**

- a. The Inter-partes Summons filed by the Plaintiff on 16<sup>th</sup> June 2023 is hereby dismissed.
- b. The Plaintiff shall pay the Defendants a sum of \$1,000.00 (One Thousand Fijian Dollars) being the summarily assessed costs, within 21 days from today.
- c. The Plaintiff is at liberty to file reply to Defence and Defence to Counter Claim within 21 days.
- d. The matter shall take the normal course.



  
A.M. Mohamed Mackie  
Judge

**At High Court of Lautoka on this 27th day of November 2024.**

**SOLICITORS:-**

**For the Plaintiff: Law Solutions- Barristers & Solicitors.**

**For the Defendants: Alpha Legal - Barristers & Solicitors.**