

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

**Civil Action No. HBC 38 of 2023**

**BETWEEN :** CORAL COAST LAND DEVELOPMENT FIJI LIMITED  
**Plaintiff**

**AND :** LUPING ZHOU  
**Defendant**

**Counsel :** Mr. S Nand for the Plaintiff  
No appearance for the Defendant

**Hearing :** 14 March 2025

**Judgment :** 14 March 2025

**EXTEMPORE JUDGMENT**

[1] This is an application by the Plaintiff, by way of a Summons filed on 22 November 2024, seeking an order that the Defendant deposit the sum of \$700,000.00 in the interest-bearing Trust account of the High Court Registry. The Plaintiff relies on an affidavit in support executed by Mohammed Hakim dated 18 November 2024.

[2] Since the Plaintiff's summons was filed, the Defendant's solicitors have withdrawn and new solicitors, Alliance Legal Consultancy, are now representing the Defendant.<sup>1</sup> On 14 February 2025, the Defendant was afforded a further and final opportunity to file an affidavit in opposition to the Plaintiff's summons but did not do so. Nor did the Defendant or his new counsel attend today's hearing.

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<sup>1</sup> A Notice of Change of Solicitors was filed on 19 February 2025.

- [3] The Plaintiff's claim pertains to the sale of several apartments owned by the Defendant. The Plaintiff sought to purchase the apartments and paid large sums of money to the Defendant. In the Plaintiff's Statement of Claim, the Plaintiff pleads that in about 2018 the Plaintiff paid the amount of \$600,000 to the Trust Account of its then solicitor who subsequently paid these monies to the Trust Account of the Defendant's solicitor on 7 December 2018. The Plaintiff pleads that a further amount of \$100,000.00 was paid by the Plaintiff directly to the Defendant on 30 July 2019.<sup>2</sup>
- [4] The Defendant filed a Statement of Defence and Counter Claim on 6 June 2024. The Defendant admits that the payments of \$600,000.00 and \$100,000.00 were made as pleaded by the Plaintiff. Therefore, there is no dispute that the Plaintiff paid the amount of \$700,000 to the Defendant or his agent for the purposes of purchasing apartments owned by the Defendant.
- [5] In respect to the present application, the Plaintiff seeks an order that the Defendant deposit the said amount of \$700,000 into the Trust account of the High Court Registry. The purpose is to protect the Plaintiff's position should it succeed with its claim – Mr Hakim deposes that the Defendant is a foreign national and that there is a risk that the Defendant will leave the country. The Plaintiff relies on O.29, r.2(3) of the High Court Rules 1988 which reads:
- Where the right of any party to a **specific fund** is in dispute in a cause or matter, the Court may, on the application of a party to the cause or matter, order the fund to be paid into court or otherwise secured.*<sup>3</sup>
- [6] I informed Mr Nand during the hearing that my concern in this matter is with the words, '*specific fund*'- whether it suffices to show that the monies were paid to the Defendant or is the applicant required to show that the monies are presently held in a specific and identifiable account. Mr. Nand argues that the former suffices and relies on the authorities cited in his written submissions. I have read the decision of the High

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<sup>2</sup> Mr Hakim deposes to these matters in his affidavit dated 18 November 2024.

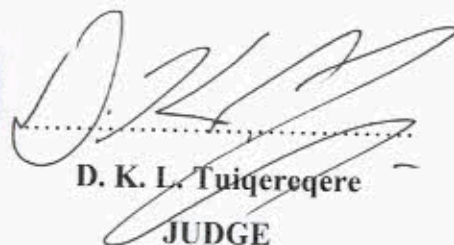
<sup>3</sup> My emphasis.

Court in *Basic Industries Limited v Yasin* [2000] FJHC 54 (6 April 2000). That case too involved an application for an order of the kind sought in this case under O.29, r.2(3). However, in that particular case there was no dispute that the funds in question 'was being held by Maharaj Chandra & Associates' for the benefit of the defendant and 'that there was real risk of dissipation of the sum and [the Court] ordered its payment into Court forthwith'.

[7] In the present matter, the amount of \$600,000 is not currently held by the Defendant's previous solicitors - despite there being a suggestion to the contrary by Mr. Hakim at paragraph 23 of his affidavit. Mr. Nand informed the Court that the amount of \$600,000, paid to the Defendant's solicitors in 2018, was subsequently released to the Defendant. There is no information before this Court as to the location of the monies (\$700,000) paid to the Defendant in 2018/2019 – including whether the Defendant still retains these monies. In my view, the words '*specific fund*' require an applicant to show that the funds are held in a specific location or account. In the absence of evidence of this in the present matter, pertaining to the amount of \$700,000 or any part thereof, I am not satisfied that the Court is permitted under O.29, r.2(3) to make the order sought by the Plaintiff.

[8] As such, the Plaintiff's application is dismissed. There will be no order as to costs.



  
D. K. L. Tuiqereqere  
JUDGE

**Solicitors:**

**Nand Lawyers for the Plaintiff**

**Alliance Legal Consultancy for the Defendant**