

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

Civil Action No. HBC 336 of 2019

BETWEEN: **FARM 2 U FRESH FIJI LIMITED** a limited liability company having its registered office at Lot 1 Nokonoko Road, Laucala Beach Estate, Nabua, Suva.

Plaintiff/Respondent

AND: **TIVI WEST PTE LIMITED** a limited liability company having its registered office at Factory 8, Kalabu Tax Free Zone, Daniva Road, Nasinu.

Defendant/Appellant

COUNSEL: Mr. Pal, Amish for the Plaintiff/Respondent
Mr. Vulaono, Aminiasi for the Defendant/Applicant

DATE OF RULING: 23rd May, 2025

RULING

(On the application for stay pending appeal)

- [1] The court on 28th February, 2024 in its judgment granted the Plaintiff as per its claim and ordered the Defendant to pay the Plaintiff, FJD\$835,250 (Eight Hundred Thirty Five Thousand Two Hundred and Fifty Dollars Only). The court also ordered Pre and Post Judgment interest in the rate of 8% per annum. Being dissatisfied with the judgment of the court, the defendant appealed to the Court of Appeal and filed a notice of motion supported by an affidavit of Tony Dunn dated 14th August, 2024, seeking an order staying the payment of the said amount until the final determination of the appeal.
- [2] When the matter came up before this court for hearing both counsel filed written submissions and the learned counsel for the defendant-appellant cited the decision in **Natural Waters Viti Ltd v Crystal Clear Mineral Water (Fiji) Ltd** [\[2005\] FJCA 13](#); ABU0011.2004S (18 March 2005), in support of his submissions.
- [3] In **Natural Waters of Viti Ltd v Crystal Clear Mineral Water (Fiji) Ltd, Civil Appeal No. ABU0011 of 2004S**, whereby the Court of Appeal held that in an application of **stay pending appeal** the court should consider the following;
- “a) *Whether, if no stay is granted, the applicant’s right of appeal will be rendered nugatory (this is not determinative). See Philip Morris (NZ) Ltd v Liggett & Myers Tobacco Co (NZ) Ltd* [\[1977\] 2 NZLR 41](#) (CA).

- b) *Whether the successful party will be injuriously affected by the stay.*
- c) *The bona fides of the applicants as to the prosecution of the appeal.*
- d) *The effect on third parties.*
- e) *The novelty and importance of questions involved.*
- f) *The public interest in the proceeding.*
- g) *The overall balance of convenience and the status quo.”*

[4]. In the same judgment the Court of Appeal made the following observations;

Many of the factors to which we have referred relate to the overall balance of convenience and the status quo. When regard is had to all of these factors, we are satisfied that the interests of justice are against the grant of a stay. This is particularly so in view of our comment above that the application for leave to appeal is unlikely to succeed. We can find no factors that come anywhere near outweighing this consideration -indeed most of the factors are to the contrary.

[5]. I will now consider whether the defendant-appellant’s right of appeal will be rendered nugatory if the stay is not granted.

[6] In his affidavit filed in support of the application for **stay pending appeal** the defendant has averred that the appeal will not be rendered nugatory if the stay is granted. The stay will not be prejudicial to the plaintiff as they can still be able to enforce the judgment, should the defendant’s appeal fails. However, if the stay is refused and the Plaintiff enforces the judgment before the appeal process is exhausted, the defendant-appellant will not be able to recover any money or assets paid or loss as a result of any enforcement action.

[7] The application of the defendant-appellant is only for the stay of the payment of the judgment sum. Therefore, the execution of the judgment if not stayed, it will not be prejudicial to the plaintiff but to the defendant. As defendant-appellant has stated in the affidavit, that they will not be able to recover any money or assets paid to the Plaintiff as the result of any enforcement action.

[8] The other grounds set out in the decision in **Natural Waters of Viti Ltd v Crystal Clear Mineral Water (Fiji) Ltd** (*Supra*) have no application to the present application. There is no effect on the third parties or any public interest since this is a claim personal against the defendant-appellant.

[9] The deponent for the plaintiff-respondent in her affidavit in opposition states that if the defendant-appellant is so concerned about the recovery of any monetary payment, they can pay the judgment sum to Court together with accumulated interest and costs into Court pending the determination of the appeal.

[10] The plaintiff-respondent further states that the defendant-appellant has not written to the plaintiff about its concerns regarding payment of any monies nor its concerns about recovery if the defendant-appellant succeeds on appeal.

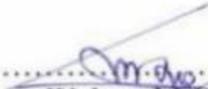
[11] After considering both parties affidavits and submissions, this court grants the defendant-appellant's application but with a condition.

ORDERS:

[12] Below are the court orders;

1. The application for **stay pending appeal** is allowed.
2. The defendant-appellant is ordered to pay FJD\$835,250 (Eight Hundred Thirty Five Thousand Two Hundred and Fifty Dollars Only) to the Court whilst awaiting the outcome of the appeal.
3. No order for Costs made and the parties shall bear their own costs.




Waleen M George
Acting Puisne Judge
HIGH COURT OF FIJI

At Suva this 23rd day of May, 2025

Solicitors: AP Legal, Barristers & Solicitors, Suva – Plaintiff/Respondent
Siwatibau and Sloan, Barrister & Solicitors, Suva – Defendant/Appellant