

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION**  
**AT LAUTOKA**

**[CIVIL JURISDICTION]**

**CIVIL ACTION NO. HBC 52 of 2025**

**BETWEEN** : **DHURUP CHAND GOSAI** of United States of America  
presently residing at Yasi Yasi, Tavua, Businessman.  
**PLAINTIFF**

**AND** : **CHAND CONSTRUCTION & ALUMINIUM JOINERY WORKS**  
PTE LIMITED having its registered office at Votua Road,  
Narere, Nasinu, Vitilevu.  
**FIRST DEFENDANT**

**AND** : **NAVNIL CHAND** of Yasi Yasi, Tavua, Self employed.  
**SECOND DEFENDANT**

**AND** : **LAND TRANSPORT AUTHORITY**  
**THIRD DEFENDANT**

Before : Master P. Prasad

Counsels : Mr. N. Sahu Khan for Plaintiff  
Mr. Daveta for 1st and 2nd Defendants  
Ms. N. Ali for 3rd Defendant

Date of Hearing : 16 May 2025

Date of Decision: 22 August 2025

**RULING**

1. The Plaintiff filed a Writ of Summons and a Statement of Claim on 06 March 2025 (**SOC**) alleging the following:
  - a) the Plaintiff registered a business in Fiji with the intention of operating a service station and a supermarket on land purchased by him in Yasi Yasi and Matallevu, Tavua (**Plaintiff's land**).
  - b) the 2<sup>nd</sup> Defendant is the Director of the 1<sup>st</sup> Defendant i.e. the company, which was registered by the 2<sup>nd</sup> Defendant.

- c) in order to develop the Plaintiff's land, he decided to purchase a commercial excavator with an intention to hire it out later and generate income.
  - d) the Plaintiff then paid: (i) \$147,000.00 for a commercial excavator together with a tilt bucket, a trench bucket and a rock breaker with registration number MV577 (**Excavator**); (ii) \$8,500.00 for a second-hand Toyota Previa motor vehicle with registration number FA 954 (**FA954**); and (iii) \$1,500.00 for a Nissan pick-up truck with registration number DB294 (**DB294**) (collectively referred to as "**Vehicles**").
  - e) the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had falsely and/or fraudulently convinced the Plaintiff to purchase and register the Vehicles in the names of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants by asserting to the Plaintiff that since he was from the United States of America (**USA**) and did not have a valid licence for the Excavator, the Plaintiff could not own the same in Fiji.
  - f) once the Plaintiff had knowledge that he could own the Vehicles in his own name he requested the 2<sup>nd</sup> Defendant to transfer the Excavator to the Plaintiff, but the 2<sup>nd</sup> Defendant has failed to do so.
  - g) the 2<sup>nd</sup> Defendant sought a sum of \$50,000 from the Plaintiff before the 2<sup>nd</sup> Defendant executed any transfer.
  - h) the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are using the Excavator for business purposes and generating income from the same.
2. The Plaintiff seeks 24 reliefs from the Court including: (i) the 1<sup>st</sup> and 2<sup>nd</sup> Defendants transfer the Excavator and FA945 in the Plaintiff's name; (ii) the 1<sup>st</sup> and 2<sup>nd</sup> Defendants be restrained from dealing with and damaging the Excavator and FA945; (iii) the 1<sup>st</sup> and 2<sup>nd</sup> Defendants be restrained from interfering with the Plaintiff's use of the Excavator and FA945; (iv) special damages; (v) loss and/or damages to the Excavator and FA945; (vi) general, aggravated and punitive damages; and (vii) costs and any such other relief this Court seems just and equitable.
3. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants (**Defendants**) in their Statement of Defence and Counterclaim (**SOD**) state as follows:
- a) that the Defendants do not deny that the Plaintiff made payment towards the Excavator but deny any payment made by the Plaintiff towards FA954 and DB294.
  - b) there was a verbal agreement for a business arrangement between the Plaintiff and the Defendants whereby the Plaintiff would provide the necessary capital while the Defendants would conduct operations in Fiji.
  - c) the Plaintiff holds dual citizenship and has four properties in Fiji and the Defendants deny that they falsely represented to the Plaintiff that he could not own the Excavator in Fiji.
  - d) there was a business arrangement between the Plaintiff and the Defendants whereby all parties agreed that the Vehicles would be registered in the Defendants names.

- e) all works carried out with the Excavator was on the demand of the Plaintiff, which included works carried out on the Plaintiff's land.
  - f) by counterclaim, the Defendants claim that the Plaintiff has engaged in a pattern of harassment, embarrassment and vexatious litigation due to which the Defendants have incurred costs and expenses.
  - g) the Defendants claim that the Plaintiff's SOC be dismissed and further seek damages for a total sum of \$120,000.00 together with costs.
4. The Plaintiff filed an *Ex-Parte* Notice of Motion pursuant to Orders 8, 29 and 32 Rule 1 of the High Court Rules 1988 (**Application**) together with an Affidavit in Support seeking the following orders:

1) *That the First and Second Defendants release and/or give possession of the Commercial Excavator Registration No, MV 577, having engine No. 4TNV98BI267A, together with a 1200MM – Tilt Mud Bucket – FR80, 350MM Trench Bucket-FR80 and a Rock Breaker FR 80, to the Plaintiff forthwith.*

2) *That the Second Defendant release and/or give possession of the Motor Vehicle Registration No. FA 945, having engine No.ZAZB112813 to the Plaintiff forthwith.*

3) *That the Plaintiff be entitled to use the Commercial excavator registration number MV 577, and a 1200MM – Tilt Mud Bucket-FR80, 350MM Trench Bucket- FR80 and a Rock Breaker FR 80 and Motor Vehicle Registration No. FA 945, free from any hindrance and/or interference by the First and Second Defendants.*

4) *That ALTERNATIVE to Orders 1 to 3 above there be an Order:*

*The possession of the commercial excavator (excavator) together with a 1200MM-Tilt Mud Bucket – FR80, 350MM Trench Bucket – FR80 and a Rock Breaker FR 80 and a motor vehicle Registration No. FA 945 to be taken from the First and Second Defendants and be parked at the Ba Magistrate's Court precinct until further order of the Honourable Court and the car keys of the Commercial Excavator and said vehicle to be kept in the custody of the Senior Court Officer of the Ba Magistrate's Court until further order of the Honourable Court.*

5) *That the Police, High Court Sherriff(s), Bailiff(s) of the Magistrate's Court of all Jurisdiction and any registered Bailiff to assist in locating, recovery and seizure of the Commercial Excavator registration No, MV 577, together with a 1200MM – Tilt Mud Bucket – FR 80, 350MM Trench Bucket – FR80 and a Rock Breaker FR 80 and Motor vehicle Registration No. FA 945.*

- 6) *That the Plaintiff, Police, High Court Sherriff(s), Bailiff(s) of the Magistrate's Court of all Jurisdictions and any private registered Bailiff be entitled to go onto any property where the Commercial Excavator registration No. MV 577 and the 1200MM – Tilt Mud Bucket – FR80, 350MM Trench Bucket – FR80 and a Rock Breaker FR 80 and Motor Vehicle Registration No. FA 945 are kept, to recover the same forthwith therefrom.*
- 7) *That the First and Second Defendants be restrained from interfering and/or hindering with the use of the Commercial Excavator registration No. MV 577 and the 1200MM – Tilt Mud Bucket – FR80, 350MM Trench Bucket – FR80 and a Rock Breaker FR 80 and Motor Vehicle Registration No. FA 945 in any manner whatsoever and/or howsoever.*
- 8) *That the First and Second Defendants be restrained from taking possession of or and using the Commercial Excavator registration No. MV 577 and the 1200MM – Tilt Mud Bucket – FR80, 350MM Trench Bucket – FR80 and a Rock Breaker FR 80 and Motor Vehicle Registration No. FA 945 in any manner whatsoever and/or howsoever.*
- 9) *That the First and Second Defendants be restrained from Transferring, selling and/or encumbering the Excavator registration No. MV 577 and the 1200MM – Tilt Mud Bucket – FR80, 350MM Trench Bucket – FR80 and a Rock Breaker FR 80 and Motor Vehicle Registration No. FA 945 in any manner whatsoever until further order of this Honorable Court.*
- 10) *That the First and Second Defendants and/or their servants and/or agents and/or employees be restrained from damaging the Commercial Excavator registration number MV 577, and the 1200MM – Tilt Mud Bucket – FR80, 350MM Trench Bucket – FR80 and a Rock Breaker FR 80 and Motor Vehicle Registration No. FA 945 and DB 294, in any manner whatsoever and/or howsoever.*
- 11) *That the First and Second Defendants provide full, proper and detailed accounts to the Plaintiff of all income received and expenses (with documentary evidence) from the use hire and/or rental of the excavator registration number MV 577 since 30<sup>th</sup> April 2024.*
- 12) *That the First and Second Defendants provide all Bank Statements where all income are deposited by the First and/or Second Defendants of all income received and expenses (with*

*documentary evidence) from the use hire and/or rental of the excavator registration number MV 577 since 30<sup>th</sup> April 2024.*

*13) That the First and Second Defendants be restrained from operating all and/or any Bank Accounts where all income is deposited by the First and/or Second Defendants of all income received and expenses from the use hire and/or rental of the excavator registration number MV 577 since 30<sup>th</sup> April 2024.*

*14) That the First and Second Defendants deposit all monies earned from the use of the excavator into Court until further Order.*

*15) That the Third Defendant be restrained from transferring the Excavator registration number MV 577 and motor vehicle Registration No. FA 945 from the First and Second Defendant respectively to any other person or entity until further order the Honourable Court.*

*16) Such further and/or other relief that may seem just and equitable to this Honourable Court.*

*17) Costs on an indemnity basis.*

5. The Court, upon hearing the Plaintiff, granted an interim injunction against the Defendants on 19 March 2025 for prayers 9, 10 and 15 of the Application. The Application was then made *Inter-Partes*.
6. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants opposed the Application and have filed an Affidavit in Opposition deposed by the 2<sup>nd</sup> Defendant. The Plaintiff also filed an Affidavit in Reply. At the hearing parties made oral submissions and filed respective written submissions as well.
7. During the hearing, counsel for the 3<sup>rd</sup> Defendant advised the Court that the 3<sup>rd</sup> Defendant had no objections to the orders sought by the Plaintiff against it. Furthermore, counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants consented to the Orders made on 19 March 2025 be effective until final determination of this matter. This Court now has to consider the remainder of the prayers sought in the Plaintiff's Application.
8. The Plaintiff's Application is made on the premise that he is the rightful owner of the Vehicles, and the Defendants are using the Excavator for their business and making profits from it since its registration on 30 April 2024. The Plaintiff claims that the Application was necessary to secure its interest over the Vehicles as the Defendants are not in a financial position to refund monies lawfully due to the Plaintiff from the profits derived.

9. The granting of an interlocutory injunction is a matter of discretion. Its main purpose is to safeguard a plaintiff from harm caused by a breach of rights that cannot be adequately remedied through damages if the plaintiff ultimately wins the case. However, this protection must be balanced against the potential harm to the defendant, who may be unjustly restricted from exercising their own rights if they are later found to be in the right. The court must carefully assess where the balance of convenience lies. As stated by Lord Diplock in **American Cyanamid Co. v. Ethicon Ltd** [1975] AC 396 at 406, the court must evaluate: (i) whether there is a serious question to be tried; (ii) whether damages would be an adequate remedy; and (iii) whether the balance of convenience favours granting or refusing interlocutory injunction.
10. Justice Laddie, having considered number of cases including **American Cyanamid** (supra), concluded in **Series 5 Software v. Clarke** [1996] 1 All ER 853 at page 865 as follows:

*“...it appears to me that, in deciding whether to grant interlocutory relief, the court should bear the following matters in mind. (1) The grant of an interim injunction is a matter of discretion and depends on all the facts of the case. (2) There are no fixed rules as to when an injunction should or should not be granted. The relief must be kept flexible. (3) Because of the practice adopted on the hearing of applications for interim relief, the court should rarely attempt to resolve complex issues of fact or law. (4) Major factors the court can bear in mind are (a) the extent to which damages are likely to be an adequate remedy for each party and the ability of the other party to pay, (b) the balance of convenience, (c) the maintenance of the status quo, and (d) any clear view the court may reach as to the relative strength of the parties’ cases.”*

11. Justice Prematilaka JA in **Sea Pilots (Fiji) Ltd v Peckham** [2025] FJCA 12; ABU055.2024 (17 February 2025) discussed in detail the considerations for granting an interim injunction and the order in which these factors should be assessed. Prematilaka J held as follows:

*[8] The three considerations for granting an interim injunction - serious question to be tried, irreparable harm, and balance of convenience - are well established in common law jurisdictions, following the principles in **American Cyanamid Co v Ethicon Ltd** [1975] UKHL 1; [1975] AC 396 (HL).*

*[9] The order in which these factors are considered is crucial, and generally, courts will only proceed to the second and third steps if the first requirement is satisfied. The order of considerations are:*

**1. Serious Question to Be Tried**

The threshold inquiry is whether the claim is neither frivolous nor vexatious and that there is a real prospect of success. If there is no serious question to be tried, the application for an injunction fails outright, and the court does not need to proceed to the next steps. In ABC v O'Neill [2006] HCA 46; (2006) 227 CLR 57, the High Court of Australia confirmed that the requirement of a serious question to be tried is not a high bar but must be met before considering other factors.

**2. Irreparable Harm/adequacy of damages**

If there is a serious question to be tried, the court then assesses whether the applicant would suffer irreparable harm if the injunction is refused. This means that damages must not be an adequate remedy. In Siskina (Cargo Owners) v Distos Cia Naviera SA [1979] AC 210, Lord Diplock emphasized that interim relief should only be granted where there is a real risk of harm that cannot be remedied by damages. Under irreparable harm, the judge should also consider whether the party sought to be restrained (the defendant) would be unable to satisfy an order for damages if the applicant ultimately succeeds at trial<sup>[13]</sup> because even if damages in theory would be an adequate remedy, they are not practically adequate if the defendant lacks the financial means to pay them and this also ensures that an applicant is not left with a hollow judgment—a damages award that is unrecoverable. Lord Diplock in American Cyanamid emphasized that damages must be an adequate and practical remedy. If damages are theoretically adequate but cannot be enforced against the defendant, this may justify an injunction. The House of Lords in F Hoffman-La Roche & Co AG v Secretary of State for Trade and Industry [1975] AC 295 held that an injunction may be appropriate where there is uncertainty about the defendant's ability to meet a damages award. The Privy Council in National Commercial Bank Jamaica Ltd v Olint Corp Ltd [2009] UKPC 16 reinforced that courts should consider not only whether damages are an adequate remedy but also whether they are realistically recoverable.

**3. Balance of Convenience**

If irreparable harm is established, the court then considers the balance of convenience—whether the harm caused by granting or refusing the injunction would be greater on

either party. In **American Cyanamid**, Lord Diplock explained that where damages are not an adequate remedy, the court must weigh the relative hardship to each party.

[10] If there is no serious question to be tried, the court should not proceed to consider irreparable harm or balance of convenience. In **Eng Mee Yong v Letchumanan** [1980] AC 331, the Privy Council confirmed that a case with no reasonable cause of action cannot justify injunctive relief and in **Ladbroke (Football) Ltd v William Hill (Football) Ltd** [1964] 1 WLR 273, it was held that if a claim is groundless, the court need not go further. The test for an interim injunction is sequential. If a party fails to establish a serious question to be tried, the court must dismiss the application without considering the second and third steps. Courts will only evaluate irreparable harm and balance of convenience after the first criterion is met. This approach ensures that the injunction process remains fair, efficient, and consistent with established legal principles.

[11] However, even if (1) – serious question to be tried – is answered in the affirmative, the judge must still consider (2) – irreparable harm and (3) – balance of convenience before granting an injunction. The three-stage test is sequential, and satisfying (1) alone is not sufficient for an injunction to be granted because the purpose of an interim injunction is to prevent injustice pending the final determination of the case. However, simply having a serious question to be tried does not automatically justify injunctive relief. The courts must also ensure that the applicant will suffer irreparable harm that cannot be compensated by damages if the injunction is refused and the balance of convenience favors granting the injunction (i.e., the inconvenience to the defendant does not outweigh the benefit to the plaintiff). Lord Diplock in **American Cyanamid** emphasized that all three factors must be considered. Even if a serious question to be tried exists, the court must move to the second and third steps before granting an injunction. The Privy Council in **National Commercial Bank Jamaica Ltd v Olint Corp Ltd** [2009] UKPC 16 reaffirmed that an injunction should only be granted if irreparable harm is proven and the balance of convenience favors the applicant. The High Court of Australia in **Australian Broadcasting Corporation v O'Neill** [2006] HCA 46; (2006) 227 CLR 57 reiterated that the three-stage test is cumulative and each step must be satisfied and mere existence of a serious question to be tried does not justify an injunction unless the other two criteria are met. If damages are an adequate remedy, the injunction should be refused. If the balance of

convenience favors the defendant, the injunction should be refused. If both (2) and (3) are satisfied, the injunction should be granted. Even after answering (1) in the affirmative, a judge must still consider (2) and (3) and an injunction can only be granted if all three conditions are met.

[12] However, if a judge cannot determine whether there is a serious question to be tried because it involves disputed facts, the established position is that the judge should proceed to consider the second and third factors—irreparable harm and balance of convenience. This principle is derived from **American Cyanamid** where Lord Diplock emphasized that courts should not conduct a "mini-trial" at the interlocutory stage but rather assess whether the claim is frivolous or vexatious. If the case is not frivolous and presents arguable issues, the court should assume that there is a serious question to be tried and move to the next steps.

[13] The House of Lords in **American Cyanamid** held that where the existence of a serious question to be tried is uncertain due to disputed facts, the court should assume that there is a serious question and proceed to assess irreparable harm and balance of convenience. The High Court of Australia in **Australian Broadcasting Corporation v O'Neill** [2006] HCA 46; (2006) 227 CLR 57 (HCA) reaffirmed **American Cyanamid**, stating that at the interlocutory stage, courts should not attempt to resolve disputed factual issues but instead focus on the adequacy of damages and balance of convenience. The Privy Council in **National Commercial Bank Jamaica Ltd v Olint Corp Ltd** [2009] UKPC 16 emphasized that an injunction should not be refused solely because resolving the serious question to be tried involves factual disputes but move on to the second and third considerations i.e. where factual disputes prevent a clear resolution of the first limb, courts should move to the second and third limbs rather than engage in premature fact-finding. This ensures that interlocutory injunctions remain a protective rather than a determinative measure, preserving the status quo until a full trial resolves the factual disputes.”

12. Mandatory injunctions are granted at an interlocutory stage where the case is unusually strong and clear. While the consideration of the **American Cyanamid** guidelines is not a *sine qua non* of mandatory injunctions, Lord Hoffmann in **National Commercial Bank Jamaica v Olint Corp Ltd** [2009] 1 W.L.R. 1405 had the following view on a more flexible approach:

*“There is...no reason to suppose that, in stating [the American Cyanamid] principles, Lord Diplock was intending to confine them to injunctions which would be described as prohibitory rather than mandatory. In both cases, the underlying principle is the same, namely, that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other: see Lord Jauncey in R v Secretary of State for Transport, Ex p. Factortame Ltd (No.2) [2992] 1 A.C. 603, 682-683. What is true is that the features which ordinarily justify describing an injunction as mandatory are often more likely to cause irremediable prejudice than in cases in which a defendant is merely prevented from taking or continuing with some course of action: see Films Rover International Ltd v Cannon Film Sales Ltd [1987] 1 WLR 670, 680. But this is no more than a generalisation. What is required in each case is to examine what on the particular facts of the case the consequences of granting or withholding of the injunction is likely to be. If it appears that the injunction is likely to cause irremediable prejudice to the defendant, a court may be reluctant to grant it unless satisfied that the chances it will turn out to have been wrongly granted are low; that is to say, that the court will feel, as Megarry J said in Shepherd Homes Ltd v Sandham [1971] Ch 340, 351, ‘a high degree of assurance that at the trial it will appear that the injunction was rightly granted.’*

13. The Plaintiff’s counsel submits that there are serious questions to be tried in this matter and that damages is not an adequate remedy. The Plaintiff’s counsel identified the serious questions to be tried as: whether there was any verbal agreement between the parties for doing business together; whether the Plaintiff is entitled to have the registration of the Excavator and FA954 transferred to his name; whether the 2<sup>nd</sup> Defendant had misled the Plaintiff into believing that the Plaintiff could not own the Excavator and FA954 as the Plaintiff did not have a Fijian Driver Licence; whether the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had wrongfully and/or unlawfully registered the Excavator and FA954 under their names; were the 1<sup>st</sup> and 2<sup>nd</sup> Defendants holding the Excavator and FA954 as implied trustees of the Plaintiff and breached their duty as trustees; whether the Plaintiff is entitled to reimbursement of all income derived from the use of the Excavator by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants; whether the 1<sup>st</sup> and 2<sup>nd</sup> Defendants should provide full accounts of any and all income derived from the use of the Excavator; and whether the Plaintiff is entitled to general, aggravated and punitive damages.
14. The Defendants’ counsel made no submissions on whether there is a serious question to be tried.
15. This Court notes the Defendants’ admission in their SOD regarding the Plaintiff advancing money for the purchase of the Excavator. However, the Defendants

claim that the purchase was the result of an agreement between the parties, under which the Excavator was to be registered in the Defendants name, and works were to be carried out using the Excavator by the Defendants as part of an alleged business arrangement with the Plaintiff.

16. It is clear from the above that there are factual conflicts between the Plaintiff's version and the Defendants' version, especially in relation to the purported business arrangement, purchase agreement of the Vehicles, and registration of the Vehicles and so forth. Hence, there are disputed facts in this matter.
17. I therefore find that the Plaintiff's claim as per his SOC is neither frivolous nor vexatious. The said claim does present arguable issues hence meets the threshold for a serious question to be tried. The determination whether there was a verbal agreement and/or a business arrangement between the parties and the terms thereof are issues which cannot be conclusively decided solely on submissions and affidavits. These are critical factual questions that require thorough examination and presentation of evidence during trial.
18. In regard to whether damages are an adequate remedy, the Plaintiff's counsel submitted that the alleged breach of trust by the Defendants is not compensable in damages. The Plaintiff's counsel also submitted that in the event of a successful claim, any award of damages would be nugatory as the Defendants have not given any undertaking as to damages nor declared and provided sufficient particulars of any assets to satisfy the same.
19. I note that while the counsel for the Defendants in his submissions stated that the Defendants were capable of paying damages if the same was ordered at the conclusion of the trial, no evidence to substantiate the same has been provided in the 2<sup>nd</sup> Defendant's Affidavit in Opposition.
20. However, the Plaintiff has also not shown any evidence to suggest that there is uncertainty about the Defendants' ability to meet a damages award. The evidence produced in the affidavits before this Court shows that the 1<sup>st</sup> Defendant is a duly registered company and according to the Plaintiff's own assertions the Defendants have been generating income from the use of the Excavator.
21. In any event, besides seeking an order for the return of the Excavator, the Plaintiff has himself claimed for 'loss and/or damages' as part of the reliefs sought in his SOC. Such a pleading not only demonstrates that damages is an adequate remedy, but it also suggests that quantification of damages is not impossible, at least by the Plaintiff's own assessment.
22. Therefore, there is no merit in the Plaintiff's submissions that damages is not an adequate remedy. If the Plaintiff were to succeed at trial, he would be adequately compensated by an award of damages for any loss he suffered and

he might also successfully obtain an order for the transfer of the Excavator to himself.

23. The Plaintiff asserts that the Defendants have been using the Excavator for their business and that the Plaintiff, being the alleged owner, has been paying for the fuel and wages for the Excavator operator. The Plaintiff's counsel in his submissions also stated that due to the extensive use of the Excavator and FA954, the values of both these vehicles are being depreciated and at the conclusion of the substantive matter the Plaintiff might get a used Excavator not worth half its value and probably requiring repairs. Based on these assertions the Plaintiff seeks orders for the return of the Excavator and FA945 and in the alternative that the said vehicles be parked at the Court precinct until further orders of the Court.

24. The Plaintiff further relies on the fact that he has given sufficient undertaking as to damages by providing evidence of land that he owns in Fiji. The Plaintiff has annexed to his Affidavit in Support copies of the following: (i) copies of two Agreements for Lease for commercial purposes in Tavua issued by the iTaukei Land Trust Board (TLTB); and (ii) Agreement for Lease for residential purposes also in Tavua issued by TLTB. While the Plaintiff also claims that he has been granted an Instrument of Tenancy from TLTB, the document which is annexed to the Plaintiff's Affidavit in Support marked "Q" is an Instrument of Tenancy issued to one Divendra Chand and not to the Plaintiff. The Plaintiff further states in his Affidavit in Support that he owns a courier business in the USA earning US\$600,000.00, has 2 houses in California, USA and he gives his "usual undertaking as to damages". There is no evidence substantiating the existence and ownership of the USA business nor the houses in California.

25. Generally prohibitory injunctions are more readily granted than mandatory injunctions due to the higher threshold to be met. This was the view of Megarry J in **Shepherd Homes v Sandham** [1971] Ch. 340 wherein His Lordship said:

*"the court is far more reluctant to grant a mandatory injunction than it would be to grant a comparable prohibitory injunction. In a normal case the court must, inter alia, feel a high degree of assurance that at the trial it will appear that the injunction was rightly granted; and this is a higher standard than is required for a prohibitory injunction."*

26. I note that the Plaintiff has not provided any evidence that the Defendants are continually using the Excavator in a manner which is causing the Excavator to depreciate exponentially. A document marked "O" annexed to the Plaintiff's Affidavit in Support refers to an invoice for payment of fuel for a "digger" and a "tractor". There is no reference to any Excavator in the said invoice. There is also no evidence before this Court of any actual damage to the Excavator while it has been in the Defendants custody.

27. Even if the value of the excavator depreciates, this Court is of the view that the Plaintiff if successful in his claim would be entitled to damages as compensation.
28. The Plaintiff has also sought orders for the Defendants to provide accounts of and bank statements for all income derived by the Defendants from the use of the Excavator, and for the Defendants to deposit all money earned from such into Court.
29. Given the earlier finding that damages is an adequate remedy in this matter, there is no need for such other orders in relation to the Defendants' bank accounts.
30. Furthermore, D. Bean and A. Burns in *Injunctions* (14<sup>th</sup> ed, Thomson Reuters, 2022) at page 45 discussed the case of **Cayne v Global Natural Resources Plc** [1994] 1 All E.R. 225 and **Cambridge Nutrition Ltd v BBC** [1990] 3 All E.R. 523, and stated the following:

*“Where the grant or refusal of an interim injunction will have the practical effect of putting an end to the action, the court should approach the case on the broad principle of what it can do in its best endeavour to avoid injustice, and to balance the risk of doing injustice to either party. In such a case the court should bear in mind that to grant the injunction sought by the claimant would mean giving him judgment in the case without permitting the defendant the right of trial. Accordingly, the guidelines on the balance of convenience do not apply in such a case since, whatever the strengths of either side, the defendant should not be precluded by the grant of an interim injunction from disputing the claimant’s claim at a trial.”*

31. Applying the above rationale to this case, I find that granting the orders sought by the Plaintiff for release of the Excavator to himself will in essence dispose of the substantive action. Such an injunction should not be granted unless there is clearly no defence to the Plaintiff's claim against the Defendants, however such is not the case here. The determination of whether there was a verbal agreement and/or business arrangement between the parties and the terms thereof are issues to be decided at trial. The success of either the Plaintiff or the Defendants case cannot be solely decided on the current affidavit evidence before this Court.
32. Moreover, an order to seize and park the Excavator at the Court precinct will also not ensure that the value of the same would not depreciate any less, and that it would not sustain damages.

33. In light of the above, I find that it cannot be clearly stated that the balance of convenience favours the Plaintiff. Instead, the balance of convenience favours that the *status quo* remains in this matter.

34. Since damages can be an adequate remedy in this matter and this being not a strong and clear case to warrant a mandatory injunction, I find that it is not necessary to grant an interim injunction until determination of the substantive matter.

35. Accordingly, I make the following Orders:

- a) By consent, the interim injunction granted on 19 March 2025 for orders sought in prayers 9, 10 and 15 of the Plaintiff's Application is hereby extended until final determination of this matter;
- b) Orders sought in prayers 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, 16 and 17 are refused; and
- c) Costs in the cause.



**P. Prasad**  
**Master of the High Court**



**At Lautoka**  
**22 August 2025**

*Solicitors: Plaintiff – Messrs. Nazeem lawyers*

*1<sup>st</sup> and 2<sup>nd</sup> Defendants – Messrs. Daveta Advocates*

*3<sup>rd</sup> Defendant – In house counsel*