

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

**Civil Action No. HBC 92 of 2025**

**BETWEEN:**            **ALL FREIGHT LOGISTICS PTE LIMITED** a limited liability company incorporated under the Companies Act 2015 having its registered office at Lot 6 Jai Hanuman Vatuwaqa, Suva

**PLAINTIFF**

**AND:**                    **TASVINDRAN MURTHI** of Lot 11 Church Street, Nadera, Nasinu, former Commercial Manager of AFL

**FIRST DEFENDANT**

**AND:**                    **STEP ON CLOUDS FREIGHT AND LOGISTICS PTE LIMITED** having its registered office at Lovoni Road, Tamavua.

**SECOND DEFENDANT**

**For the Plaintiff:    Mr. Rokodreu**

**For the Defendant: Mr. Patel**

**Date of Hearing:     20<sup>th</sup> August 2025**

**Date of Ruling:     17<sup>th</sup> September 2025**

**RULING ON APPLICATION FOR INJUNCTION**

1. This is the Ruling on the Inter Partes Summons filed on the 28<sup>th</sup> February 2025, seeking the following orders: -

- a) The First Defendant **TASHVINDRAN MURTHI** by himself his agents or servants or otherwise be restrained from dealing with and specifically business operations similar to the Plaintiff pending determination of the Writ action filed herein or until further order of this Court.
  - b) The First Defendant **TASHVINDRAN MURTHI** by himself, his agents or servants or otherwise be restrained from dealing with and/all client of the Plaintiff pending determination of the herein application.
  - c) The First Defendant **TASHVINDRAN MURTHI**, by himself, his agents or servants or otherwise he restrained from dealing with and/all clients all of the Plaintiff's clients until the determination of herein application.
  - d) Both the Defendants, by themselves, their agents or servants or otherwise be restrained from with and specifically business operations similar to the Plaintiff pending determination of the Writ action filed herein or until further order of the Court.
  - e) Costs of this application be in the cause.
  - f) Any other order such orders as the Court may deem just.
2. The Application is supported by the affidavit of **ALFAAZ MALLAM** sworn and filed herewith. The application is made pursuant to Order 29 of the High Court Rules 1988 and under the inherent jurisdiction of the High Court.
3. At the first call of the Inter Partes Summons on the 2<sup>nd</sup> day of April 2025, even though the Court had directed for the Summons to be heard inter partes, the Defendants were not present and in their absence the Court made the following interim orders: -
- i. The first Defendant **TASHVINDRAN MURTHI** by himself, his agents or servants or otherwise is restrained from dealing with and specifically business operations similar to the Plaintiff pending determination of the Writ Action filed herein or until further order of the Court.
  - ii. The first Defendant **TASHVINDRAN MURTHI** by himself his agents or servants or otherwise is restrained from dealing with and/all clients of the Plaintiff pending determination of the herein application.

- iii. The first Defendant **TASHVINDRAN MURTHI** by himself his agents and or servants or otherwise is restrained from contacting and/or dealing with all the Plaintiff's client until the determination of the herein application.
  - iv. Both the Defendants by themselves, their agents or servants or otherwise is restrained from with and specifically business operations similar to the Plaintiff pending determination of the Writ Action filed herein or until further order of the Court.
  - v. The matter is adjourned to 7/5/2025 for review of the injunction.
4. The Defendants filed a Notice of Motion dated 9<sup>th</sup> April 2025 for an Order that the interim injunction granted on the 2<sup>nd</sup> of April 2025 be dissolved and/or discharged upon the grounds contained in the affidavit in support of **TASHVINDRAN MURTHI** sworn and filed herein.
5. The Court gave directions for affidavits in opposition and reply, and the matter was fixed for hearing on the review of the injunction on the 20<sup>th</sup> of August 2025.
6. The parties made oral submissions supplemented by written submissions and the matter is now adjourned for Ruling on whether the interlocutory injunction remains till the final disposal of this case, or the same is discharged and the matter takes its normal course.

The submissions for the Defendant to discharge the injunction

7. In their submissions, the Defendants submit that the injunction was obtained in their absence, due to an acknowledged administrative error in the Registry's Cause list.
8. By way of background, the Defendants submits as follows: -
- The 1<sup>st</sup> Defendant was formerly employed by the Plaintiff. In late 2024 the 1<sup>st</sup> Defendant began considering resignation due to an unhealthy work environment and by February 2025 had expressed his intention to resign.

- The 2<sup>nd</sup> Defendant, Step on Clouds Freight and Logistics Pte Ltd (SOC), is a separate legal entity with no contractual or fiduciary relationships with the Plaintiff. The 1<sup>st</sup> Defendant only joined SOC as a Director upon being offered the job in early 2025, after his employment with the Plaintiff had already become untenable.
  - The Plaintiff alleges that the 1<sup>st</sup> Defendant engaged in misconduct by inflating job summaries and soliciting customers and that SOC was incorporated by the 1<sup>st</sup> Defendant to compete with the Plaintiff in the business. These allegations are strongly denied.
  - He maintains that: -
    - i. Any alleged discrepancies in job summaries were unintentional oversights, rectified through salary deductions.
    - ii. The alleged admissions were obtained under duress;
    - iii. He did not solicit customers or misappropriate the Plaintiff's business opportunities; and
    - iv. The Plaintiff itself engaged in overcharging practices for which it is accountable.
  - On 2<sup>nd</sup> April 2025 the Plaintiff obtained the interim injunction orders ex parte, restraining the Defendants from engaging in business activities and having equal participation as the Defendants economically. This order was made in the absence of the Defendants due to an error in the cause list issued by the Civil Registry.
9. The law surrounding the grant of interim injunctions is well established in Fiji. The leading authority which the Courts have used as a guideline is the case of American Cyanamid & Co vs Ethicon Ltd [1975] AC 396. The test established in American Cyanamid is as follows: -
- Is there a serious question to be tried?
  - Would damages be an adequate remedy for a party injured by the Court's grant or its failure to grant an injunction?
  - Where does the balance of convenience lie?

10. The Defendants submit that this current case deals with an employer/employee relationship and the cause of action requires an analysis of how the courts in Fiji typically evaluate restrictive covenants, confidentiality obligations, or competition after employment.
  
11. The Defendants cite the authority of Mechanical Services Pte Ltd vs Datt [2021] FJHC 251; HBC 22 of 2021 (4 October 2021) where the High Court stated as follows: -

“[14] The plaintiff makes many allegations against the 1<sup>st</sup> defendant. If the plaintiff expects the court to exercise its discretionary power in its favour and grant the injunction sought, it must substantiate these allegations by providing evidence. A bare statement in the affidavit saying that it was brought to his notice by someone is not sufficient for the court consider whether there is a serious question to be tried at the hearing of the substantive matter.

[15] The plaintiff in the substantive matter seeks damages for breach of the employment agreement which in my view, from what I have stated above, is not only an adequate remedy but also the only remedy available to the plaintiff if it is successful in establishing the claim against the defendants.”
  
12. The Defendants submit that it is clear from the respective pleadings, the affidavits and the annexures, that the Plaintiff has failed to establish a serious question to be tried against the Defendants.
  
13. The 2<sup>nd</sup> Defendant is a limited liability company, a separate legal entity which was never privy to the employment contract between the Plaintiff and the 1<sup>st</sup> Defendant and therefore cannot be bound by any alleged fiduciary obligations.
  
14. The allegations of misconduct, customer solicitation and data manipulation are unsubstantiated and contradicted by contemporaneous documents, including the Plaintiff's own correspondence showing the alleged overpayment was approximately \$10, 000, not \$110, 455.85 as claimed.

15. The Plaintiff has made allegations that the 1<sup>st</sup> Defendant was poaching their clients to do business with the 2<sup>nd</sup> Defendant but has failed to provide any evidence to support such allegations.
16. The Defendants further submit that the Plaintiff has failed to demonstrate why damages would be inadequate if it were ultimately successful at the Trial. In the substantive matter the Plaintiff seeks damages for breach of the employment agreement, which is not only an adequate remedy, but the only remedy available to the Plaintiff if it is successful in establishing the claim against the Defendants.
17. By contrast, the Defendants face irreparable harm if restrained from conducting business and/or engaging in further employment, such as the injunction deprives them of their primary source of livelihood. Such harm cannot be compensated by damages, particularly given the uncertainty of recovery from the Plaintiff.
18. The injunction does not preserve the status quo. Instead, it disrupts the Defendants' ability to continue earning a livelihood while allowing the Plaintiff to maintain its operations unhindered.
19. As to the balance of convenience, the Defendants cite the authority of 3SA Carpet Ltd vs Goiri [2019] FJHC 882; HBC 219 of 2019 (10 September 2019), Justice Amaratunga referred to Herbert Morris Ltd vs Saxelby [1916] 1 AC 688 at 707 as follows: -
- "Herbert Morris Ltd v. Saxelby [1916] 1 AC 688 at 707(per Lord Parker):**
- "...the only reason for upholding such a restraint on the part of an employee is that the employer has some proprietary right, whether in the nature of trade connection or in the nature of trade secrets, for the protection of which such a restraint is - having regard to the duties of the employee - reasonably necessary. Such a restraint has, so far as I know, never been upheld, if directed only to the prevention of competition or against the use of the personal skill and knowledge acquired by the employee in his employers business"*
20. The Defendants submit that the balance of convenience overwhelmingly favours the Defendants. The Plaintiff continues to operate the business and generate revenue. By contrast, the Defendants' operations are entirely paralysed by the injunction.

21. The Defendants submit that if the Plaintiff is ultimately successful, damages would be calculable. If the Defendants are restrained until the Trial and are later vindicated, the harm suffered will be permanent and irrecoverable.
22. The Defendants also submit that the Plaintiff's action breaches section 32 of the Constitution – the right to work and to freely participate in economic activity. The right is fundamental to the dignity and livelihood of every individual. It includes the right to choose their own work, trade, occupation, profession or other means of livelihood.
23. The effect of this interim injunction is to restrain the Defendants from carrying out their chosen business while the Plaintiff continues to gather profits.
24. The Defendants therefore submits that the current injunction be discharged with costs to be assessed on the higher scale, citing the case of R. Hooker Pte Ltd vs Nivesh Stanley Joseph [2024] HBC 342 of 2024
25. The Defendants therefore prays for the following: -
  - i. The interim injunction granted on 2<sup>nd</sup> April 2025 be dissolved and/or discharged.
  - ii. The substantive matter proceeds in the ordinary course with both parties afforded the right to be heard and without being deprived of their livelihood and commercial freedom; and
  - iii. The Plaintiff be ordered to pay the Defendant's costs of this application on an indemnity basis or otherwise as this Honourable Court deem just.

The submissions for the Plaintiff for the status quo to remain

26. The Plaintiff has raised an initial objection, that the Motion filed by the Defendants did not set out the relevant law or Rules that they rely on for the orders sought in the Motion. This objection was overruled by the Court, and the Defendants were allowed to present their arguments.

27. Another ground of objection is that the Defendants have not asked for costs in the Motion therefore they are not entitled to ask for costs at this stage.
28. The Plaintiff submits that the current injunction should continue until the final determination of this matter. Counsel submits that they have fulfilled the Court's direction converting their initial Ex Parte Summons into an Inter Partes Summons and they duly served the Defendants. On the returnable date they appeared as directed and obtained the interim injunction in the absence of the Defendants, who had failed to appear despite being served with the Summons.
29. The Plaintiff submits that their position is that the injunction ought to remain in place until the final determination of the substantive matter.
30. The Plaintiff relies on their affidavit in support and the fact that the 1<sup>st</sup> Defendant was still employed by the Plaintiff when he apparently opened another company, the 2<sup>nd</sup> Defendant, in direct competition with the Plaintiff.
31. The Plaintiff further submits that the parties were subject to an employment contract, which was very clear that the 1<sup>st</sup> Defendant would not be in direct competition with the Plaintiff within three months of him leaving the Plaintiff's employment.
32. The Plaintiff's position is that the nature of the 1<sup>st</sup> Defendant leaving the Plaintiff's employment and his subsequent actions need to be threshed out at the substantive Trial of this matter.
33. The Plaintiff submits that the injunction should remain in place. The Motion should therefore be dismissed with costs.

#### Analysis

34. This application for interim injunction was made pursuant to Order 29 rules 1 and 2 of the high Court Rules 1988, which provides as follows: -

*“Application for injunction (O.29, r.1)*

1.-(1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party’s writ, originating summons, counterclaim or third-party notice, as the case may be.

(2) Where the applicant is the Plaintiff and the case is one of urgency and the delay caused by proceeding in the ordinary way would entail irreparable or serious mischief such application may be made *ex parte* on affidavit but except as aforesaid such application must be made by Notice of Motion or Summons.”

35. The leading authority on such applications is the case of American Cyanamid vs Ethicon Ltd [1975] AC 398 and Lord Diplock’s pronouncement of the law at pages 408 and 409 of the judgment as follows: -

“As to that, the governing principle is that the court should first consider whether, if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage. If, on the other hand, damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether, on the contrary hypothesis that the defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the plaintiff's undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of the application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a financial position to pay them, there would be no reason upon this ground to refuse an interlocutory injunction.

It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises. It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case.

Where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo. If the defendant is enjoined temporarily from doing something that he has not done before, the only effect of the interlocutory injunction in the event of his succeeding at the trial is to postpone the date at which he is able to embark upon a course of action which he has not previously found it

necessary to undertake; whereas to interrupt him in the conduct of an established enterprise would cause much greater inconvenience to him since he would have to start again to establish it in the event of his succeeding at the trial.”

36. The principles that have been distilled from the above authority is as follows: -

- Is there a serious question to be tried?
- Are damages an adequate remedy?
- Where does the balance of convenience lie?

37. In addition to the above, the authorities are also clear that there is a corresponding obligation on applicants for such Ex Parte orders to disclose all the relevant facts frankly and fully (Sequitur Hotels Pty Ltd vs Satori Holdings Pte Ltd [2021] FJHC 276; HBC 270 of 2019 (3<sup>rd</sup> April 2020).

38. It is common ground between the parties that the 1<sup>st</sup> Defendant had signed a 3-month non-competition clause upon leaving the employment of the Plaintiff.

39. This 3-month period has now been extended by virtue of the current injunction that is in place. This has undoubtedly affected the 1<sup>st</sup> Defendant’s ability to earn a living in his preferred line of work. The 2<sup>nd</sup> Defendant was not subject to this 3-month non-competition clause yet is being affected by the current injunction.

40. The Court therefore makes the following findings with respect to the injunction before the Court: -

**(a) Is there a serious question to be tried?** The initial three month non-competete period has already lapsed. There is no longer a serious question to be tried.

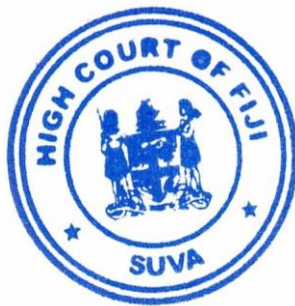
**(b) Are damages an adequate remedy?** This matter will now take its own course, and the Court will make a full determination of the issues in dispute after the trial of the substantive matter. Damages are an adequate remedy.


**(c) Where does the balance of convenience lie?** The balance of convenience lies in favour of the injunction being discharged and the parties to move the substantive matter for Trial

41. The Defendants have been put to costs to defend this action and protect their interests therefore they are entitled to cost which shall be assessed summarily.

**This is the Court's ruling on this matter: -**

- 1. The injunction granted by the Court on the 2<sup>nd</sup> of April 2025 is hereby discharged in full and any restrictions placed thereby on both the Defendants are set aside.**
- 2. The Plaintiff will pay costs to the Defendants summarily assessed at \$1, 000 – one month to pay.**
- 3. The matter will thereafter take its own course.**



  
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**Mr. Justice U. Ratuveli**  
**Puisne Judge**

**cc: - Redwood Law**

**- Patel Skiba Lawyers**