

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

Companies Action No. HBE 05 of 2024

IN THE MATTER of sections 176 and 177
of the Companies Act 2015

AND

IN THE MATTER of **FAIRDEAL
EARTHMOVING CONSTRUCTORS
PTE LIMITED & WAILOALOA
SEASCAPE HOTEL PTE LIMITED**

BETWEEN : **SANJAY KUMAR** of Vuda, Lautoka, Company Director and
Businessman.

PLAINTIFF

AND : **PRAMOD KUMAR** of Namaka, Nadi, Company Director and
Businessman.

FIRST DEFENDANT

AND : **SHEILENDRA KUMAR** of Votualevu, Nadi, Company
Director and Businessman.

SECOND DEFENDANT

AND : **LANEWAY CONSTRUCTION PTE LIMITED** a limited
liability company having its registered office at Top Floor,
HLB House, 3 Cruickshank Road, Nadi Airport, Nadi, Viti
Levu.

THIRD DEFENDANT

Appearances : Mr. Roopesh Singh and Ms. A. B Swamy for the Plaintiff
Mr. M. Naivalu for the First Defendant
Mr. Chandra S. for the Second Defendant
Mr. Narayan & Ms. S. Kumar for the Third Defendant

Date of Hearing : 01 September 2025

Date of Ruling : 27 January 2026

R U L I N G

(Committal Proceedings)

INTRODUCTION

- 1 The background to this case is set out in my Ruling (**Kumar v Kumar** [2025] FJHC 137; HBE05.2024 (19 March 2025)).
- 2 The Applicant, Mr. Sanjay Kumar ("**Sanjay**") and his two brothers Mr. Pramod Kumar ("**Pramod**") and Mr. Sheilendra Kumar ("**Sheilendra**"), who are the first and second defendants in these proceedings - are directors and shareholders of two companies.
- 3 The two companies in question are Fairdeal Earthmoving Contractors Pte Limited ("**FEMPCL**") and Wailoaloa Seascape Hotel Pte Limited ("**WSHPL**").
- 4 Sanjay filed an Originating Summons on 11 March 2024 under sections 176 and 177 of the Companies Act 2015. He seeks various relief in respect of alleged shareholder oppression. He has long held the belief that Pramod and Shailendra have, over the years, worked together to control the affairs of FEMPCL and WSHPL and make business decisions which undermine his interests.
- 5 Sanjay also alleges that Pramod has, on more than one occasion, utilized the assets of FEMPCL either for his own personal benefit or, for the benefit of a company in which Pramod holds a beneficial interest – namely Laneway Construction Pte Limited ("**LCPL**").
- 6 By an Order of the Court dated 29 July 2024, LCPL was joined as a party (now 3rd defendant).

SUBSTANTIVE RELIEF SOUGHT

- 7 I simplify and summarize below the main relief which Sanjay seeks:
 - (i) that his shares in FEMPCL and WSHPL be purchased by Pramod and Sheilendra AND a timeline be fixed within which they are to purchase Sanjay's shares in the two companies.
 - (ii) that the value of his shares be determined as at the date of filing of the Originating Summons.

- (iii) that the process and method of determining the value of his shares be established.
- (iv) that the valuation of his shares take into account the consideration received from the sale of certain State Leases and the market value of other State Leases.
- (v) that the costs of valuation of shares be borne by FEMPCL and WSHPL, together with any Capital Gains Tax and VAT assessed by FRCS.
- (vi) that Pramod and Sheilendra are to account for the transfer of State Leases 23303 and 23304 into their personal names.
- (vii) that Pramod and Sheilendra be restrained from:
 - (a) selling, disposing of, or encumbering any shares or fixed assets of the two companies;
 - (b) dealing with the bankers of the two companies;
 - (c) varying or increasing the liabilities of the two companies.
- (viii) that Pramod and Sheilendra be restrained from selling, disposing of, or encumbering various titles and leases specified in the prayers.
- (ix) that Pramod and Sheilendra grant Sanjay unhindered access to the business records and documents of the two companies.
- (x) that Pramod and Sheilendra pay into the trust account of Patel & Sharma Lawyers the consideration received from the sale of certain lands specified in the prayers.
- (xi) that damages in favor of Sanjay for oppression as a shareholder and indemnity costs.

INJUNCTIONS

8 On 11 March 2024, Sanjay also filed *ex-parte* Summons seeking various injunctive relief.

9 On 12 March 2024, I did grant the following Orders:

- (i) **THAT** the 1st and 2nd Defendants are hereby restrained from selling, disposing, or encumbering in any manner whatsoever any of the shares and fixed assets owned by Fairdeal Earth Moving Contractors Pte Limited and Wailoaloa Seascape Hotel Pte Limited until further orders of this Court.

- (ii) **THAT** the 1st and 2nd Defendant are hereby restrained from dealing with the Bankers of Fairdeal Earth Moving Contractors Pte Limited and Wailoaloa Seascape Hotel Pte Limited in any way whatsoever, in varying or increasing the liability of Fairdeal Earth Moving Contractors Pte Limited and Wailoaloa Seascape Hotel Pte Limited, until further orders of this Court.
- (iii) **THAT** until further Orders of this Court, the 1st and 2nd Defendants are hereby restrained from selling, disposing or encumbering in any manner whatsoever the following Titles and Leases;
- i. State Lease No. 23303 being Lot 16 SO 7841 land known as Nasau (pt of) — Formerly (Pt Of) Lot 4 ND 5154 containing an area of 1012m².
 - ii. State Lease No. 23304 being Lot 17 SO 7841 land known as Nasau (pt of) — Formerly (Pt Of) Lot 4 ND 5154 containing an area of 1012m².
 - iii. State Lease No. 23293 'B' being Lot 6 SO 7841 land known as Nasau (pt of) — Formerly (Pt Of) Lot 4 ND 5154 containing an area of 1283m².
 - iv. State Lease No. 23293 'A' being Lot 7 SO 7841 land known as Nasau (pt of) — Formerly (Pt Of) Lot 4 ND 5154 containing an area of 1010m².
 - v. State Lease No. 23307 being Lot 8 SO 7841 land known as Nasau (pt of) — Formerly (Pt Of) Lot 4 ND 5154 containing an area of 1010m².
 - vi. State Lease No. 23295 being Lot 9 SO 7841 land known as Nasau (pt of) — Formerly (Pt Of) Lot 4 ND 5154 containing an area of 1010m².
 - vii. State Lease No. 23297 being Lot 10 SO 7841 land known as Nasau (pt of) — Formerly (Pt Of) Lot 4 ND 5154 containing an area of 1010m².
 - viii. State Lease No. 23298 being Lot 11 SO 7841 land known as Nasau (pt of) — Formerly (Pt Of) Lot 4 ND 5154 containing an area of 1291m².
 - ix. State Lease No. 23299 being Lot 12 SO 7841 land known as Nasau (pt of) — Formerly (Pt Of) Lot 4 ND 5154 containing an area of 1125m².
 - x. State Lease No. 23300 being Lot 13 SO 7841 land known as Nasau (pt of) — Formerly (Pt Of) Lot 4 ND 5154 containing an area of 1014m².
 - xi. State Lease No. 19780 being Lot 15 SO 5121 land known as Pt of Enamanu & Solawaru & ND 88 — Formerly CT 5248 & CL 3149 containing an area of 4.2897ha.
 - xii. Native Lease No. 29562 land known as Koromata Lot 5 on ND 3696 containing an area of 16 acre 1 rood 24 perches.
 - xiii. iTaukei Lease No. 31325 land known as Virewarewa & Lanovokulu (part of) Lot 5 on SO 6497 containing an area of 618m².
 - xiv. Certificate of Title No. 38377 land known as Lot 1 DP 9506 "Cawa, Solawaru and Enamanu" containing an area of 2062m².
 - xv. Certificate of Title No. 37841 land known as Lot 1 DP 9504 "Cawa, Solawaru and Enamanu" containing an area of 975m².
 - xvi. Certificate of Title No. 37187 land known as Lot 5 DP 9206 "Cawa, Solawaru and Enamanu" containing an area of 1069m².

(iv) **THAT** the 1st and 2nd Defendants are hereby ordered to provide the Plaintiff unhindered access to all cheque books, bank statements, all books incorporating cash sales and accounts, financial records kept by Fairdeal Earthmoving Contractors Pte Limited and Wailoaloa Seascape Hotel Pte Limited with their accountants whether by email or in any other manner, all communication with the accounts, communication with all customers and suppliers, emails, viber chats, groups, notes, receipts and any and all other documents that may be used with the business operations and in any dealings of Fairdeal Earth Moving Contractors Pte Limited and Wailoaloa Seascape Hotel Pte Limited.

10 The Orders were sealed and were served on the defendants, and also on the respective registered office of the two companies on 15 March 2024.

WERE THE INJUNCTIVE ORDERS BREACHED BY THE DEFENDANTS?

11 There are two main allegations of breach.

12 The first one is that, despite being served on 15 March 2024 with Orders restraining them from selling or disposing of any assets of FEMPCL and WSHPL, Pramod and Sheilendra did go ahead and published an advertisement in the Fiji Sun's issue of 16 March 2024. By those advertisements, they were calling for tenders for the purchase of:

- (i) Hotel Seascape, Wailoaloa, Nadi
- (ii) Commercial Property in Votualevu, Nadi

13 Both advertisements highlighted their requirement for an "*urgent sale*".

14 The second allegation is that Pramod and Sheilendra, in defiance of specific Orders granting Sanjay access, continue to refuse him access to all company information, books and documents.

First Allegation

15 As for the first allegation, it is beyond dispute that:

- (i) the Orders in question were duly served on the defendants on 15 March 2024.

- (ii) the advertisements in question were in fact published in the Fiji Sun on 16 March 2024.
- 16 The defendants say that by the time they were served, it was too late to recall the advertisements from the Fiji Sun.
- 17 In his affidavit sworn on 20 May 2024, Sanjay attaches material showing Fiji Sun's requirement that any advertisement intended to be published the following day must be submitted with payment or with LPO by 3.00 p.m. Any cancellation after this deadline will be allowed. However, the advertiser must still pay for the space.
- 18 I note that the attachments to the Affidavit of Service of Veremo Tuilevu sworn on 19 March 2024 show that the Orders were served on Pramod at 4.00 p.m. and on Sheilendra at 4.20 p.m. on 15 March 2024.
- 19 Sheilendra deposes in his affidavit of 15 April 2024 that:
- (i) there is no evidence that the defendants actually had anything to do with the advertisements.
 - (ii) it was Bayleys Real Estate Agents that had dealt with the Fiji Sun and was putting up the advertisements, as agents of FEMPCL.
 - (iii) once the Orders were served on 15 March 2024, they immediately notified FEMPCL to instruct Bayleys to take down the advertisement.
- 20 Sheilendra appears to suggest that by the time the Orders were served on them, it was too late in the day to take down the advertisements. Mr. Singh observes that there is no evidence that any attempt was ever made to contact the Fiji Sun to withdraw the advertisement.
- 21 Sanjay deposes at paragraphs 13, 14, 15,16 and 17 of his affidavit that the "excuses" given by Chetty Law are untenable and frivolous for the following reasons:
- (i) Pramod and Sheilendra are directors of FEMPCL. They were the ones who made all the decisions for FEMPCL. They cannot hide behind the corporate veil to mask their wanton and contumacious disobedience of the Orders.
 - (ii) on 26 March 2024, when the matter was called for mention in Court, the publication of the advertisement ten days earlier (on 16 March) was the central focus, overshadowing other matters.
 - (iii) yet, on 04 April 2024, two weeks after being served the Orders and the publication of the advertisements, the defendants were present in the opening of the tenders.

- (iv) the above is confirmed by the Tender Report dated 04 April 2024 which was issued by Bayley's Real Estate (a copy of which is exhibited in Sanjay's affidavit).
 - (v) the said Tender Report confirms the following:
 - (a) that both Pramod and Sheilendra ("Salen" in the Report) were in attendance during the opening of the tenders at Bailey's.
 - (b) that the Financial Controller of the two companies, Kamlesh, was also in attendance as well as a representative from HLB Crosbie Accountants who are the companies'- chartered accountants (the representative's name is Mann Judd).
- 22 Mr. Singh then highlights the rather interesting fact that, according to the Tender Report of Bailey's, the highest bidder received on both properties was a company called Laneway Construction Pte Limited ("LCPL").
- 23 As I had noted earlier in my Ruling in **Kumar v Kumar** [2025] FJHC 137; HBE05.2024 (19 March 2025):
- Parmod was director of LCPL until 11 July 2024. This was a day after certain allegations of conflict of interest were raised by Sanjay's counsel in Court on 10 July 2024.*
- 24 At the hearing of the application, arguments centered on whether or not the advertisements itself and the opening of the tenders constituted an act of "selling, disposing of, or encumbering" the assets in question.
- 25 From submissions advanced by Mr. Singh, Mr. Narayan and Mr. Dass (who was then acting for the second defendant), the following are noteworthy:
- (i) the injunctive orders in question restrain any sale of, or disposing of, or the encumbrance of any asset of the two companies.
 - (ii) the focus of the injunction is to stop the defendants from engaging in any act which may effectuate a transfer of ownership or diminish control over any asset affected by the injunction.
 - (iii) technically, the advertisements are not a sale or a disposal. They are merely an invitation to treat - inviting offers for the purchase of the assets in question.
 - (iv) each tender received is an offer. A legally binding contract for sale is created only when the advertiser accepts one of the offers.
- 26 Mr. Narayan's argument, as I understand it, is that the act of "selling" or "disposing" or "encumbering" all involve a completed legal transaction. The transactions require some sort or agreement or arrangement which then create enforceable obligations. In the result, proprietary rights are altered or burdened. Flowing from that, the

advertisements and the opening of the tenders in this case had not quite reached that stage. Therefore, Pramod and Sheilendra had not breached the injunctive orders.

27 Mr. Singh argues that the advertising and opening tenders are key steps in any process for the sale of property. An advertisement shows a clear intent to sell, and opening tenders is the next step. Once a tender is accepted and the acceptance communicated, an equitable right may arise which may be enforceable.

28 But for the fact that LCPL (a company over which Pramod was a director and shareholder at the material time) participated in the tender, and was in fact the highest tender, I would have accepted Mr. Narayan's argument.

29 In the circumstances of this case, this company was poised to benefit directly from the very process the injunction had sought to prevent. This highlights the following points:

- (i) that Pramod and Sheilendra not only disregarded the injunction, but Pramod in particular was positioned to gain from its breach.
- (ii) it is therefore hard to accept their argument that the advertisements were placed as a result of any inadvertence.
- (iii) to drive the point home, LCPL's tender would have been prepared by LCPL, and submitted, after the advertisements appeared in the Fiji Sun.
- (iv) Pramod and Sheilendra were not mere passive participants. Rather, they were actively engaged in a course of conduct which was aimed ultimately at circumventing the injunction.
- (v) the advertisement, the opening of tenders, and the presence of Pramod's company (LCPL) as the highest bidder, together, in the very least, reveal a contumacious and deliberate disregard of the Court's order.

30 In the circumstances of this case, I prefer the broader approach advanced by Mr. Singh over the technical view of Mr. Narayan.

31 While an advertisement may be regarded in law as "only" an invitation to treat, the act of publishing an advertisement during the subsistence of an injunction—such as those presently in force in this case—and thereby orchestrating the submission of a tender by a company in which one holds a direct interest, strikes at the very purpose and efficacy of the Court's order. This undermines the Court's authority.

32 Having said that, it is apparent that Sanjay was not consulted in the decision to place the advertisements in the first place. Arguably, and to say the very least, his exclusion lends some weight to the oppression he has asserted all along.

Whether Leave to Issue Committal Proceedings has Lapsed?

33 The same question was raised before me in Dayals Sawmillers Pte Limited v Dravo & Ors HBC 61 of 2022 (Ruling of 21 January 2026). I adopt the same reasoning.

34 In this case, the Motion for Hearing was entered within fourteen days of the granting of leave in compliance with Order 52 Rule 3 (2). However, the hearing was adjourned several times over after returnable date. These adjournments were made to allow for the filing of affidavits and to deal with a myriad of other interlocutory processes happening at the same time.

35 There is a general discretion available under Order 3 Rule 4 (1) to abridge time for compliance with timelines stipulated under the High Court Rules or fixed by the Court, although, that discretion is rarely (if ever) exercised to extend time for compliance with Order 52 Rule 3 (2), where the initial date set for hearing is already outside the fourteen day limit. However, in Dayals (paragraphs 43 to 57), as I do in this case, I understood that every adjournment I granted after the first returnable date was made in exercise of my discretion under Order 3 Rule 4 (1) to: (i) allow parties to comply with the filing of documents and (ii) extend the leave already granted.

Second Allegation

36 As to the second allegation, Sanjay then deposes at paragraphs 18 to 33 that the defendants have never disclosed the financial information of the two companies to him, or to have been given internet access to the companies internet banking, despite repeated requests (letters and emails dated 19 March 2024 to 04 April 2024 are attached to the affidavit).

37 According to Sanjay, the defendants have always told him to obtain the documents and information from the external accountants, HLB Crosbie and that, in any event, as a director, he is free to access those documents.

38 There is material in the affidavits which record Sanjay accusing the defendants of having instructed the accountants not to ever release any information or document to Sanjay, and, Sheilendra refuting the allegation and asserting that he only ever instructed the accountants not to release his personal information to Sanjay.

39 I am reluctant to make a finding in this instance on this second issue. I am of the view that when it comes to the disclosure of documents and access to company books, accounts and information, it would be ideal for the parties to schedule a board meeting where the logistics of these processes can be further discussed and agreed (or not agreed) and then be made an Order of the Court. As Mr. Singh knows, in **Pratap v Nand** [2025] FJHC 684; HBE18.2022, Orders were made by consent for the convening of board meetings at specific dates and times (and the agenda set) to discuss these things.

COMMENTS

40 There is an application by Sheilendra seeking an Order to allow the sale of a specific machinery belonging to the FEMPCL to a named customer, at a specific price. The reason given is that the proceeds of sale could then be applied towards servicing a particular bank loan of the company. Sanjay objects on the ground that the value of the machinery cannot be ascertained as yet, and absent that, there is a risk of a sale at an undervalue. In any event, the loan is being duly serviced. A sale of the property, as proposed, would serve no purpose. Such a course would (i) diminish the company's asset pool by removing machinery from which his share is to be assessed, and (ii) render the sale proceeds intangible to Sanjay in the sense that he would derive no realizable benefit from it.

CONCLUSION

41 I find that the defendants did breach the Orders restraining them from selling, disposing or encumbering the assets of the company when they caused an advertisement to be published on 16 March 2024 and when one of them (Pramod) submitted a tender for and on behalf of his company (LCPL).

42 Adjourn this to a date for mitigation and sanction. Costs to the plaintiff which I summarily assess at \$3,000-00 (three thousand dollars only) to be shared equally between the first and second defendants.



Anare Tuilevuka

JUDGE

27 January 2026