

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

**Civil Action No. HBC 43 of 2023**

**BETWEEN** : **PUNJAS PTE LIMITED** a duly registered company having its registered office at 63 Vitogo Parade, Lautoka. **PLAINTIFF**

**AND** : **PRIYA ANJINI PRASAD** of Suva. **DEFENDANT**

Appearances : Mr. Victor Sharma for the Plaintiff  
Mr. Prasad D. for the Defendant

Ruling on Submissions

Date of Ruling: 26 February 2026

## **JUDGMENT**

### **INTRODUCTION**

1. At the heart of this matter is the question whether a former employee's move to a rival enterprise breaches ongoing confidentiality obligations and a restraint of trade covenant contained in her contract with her former employer.
2. The employer's Originating Summons filed on 03 March 2023 poses the following question:

Whether the Defendant breached the *Deed of Confidentiality and Restrictions after Termination* ("**Deed**") with the Plaintiff entered on 04 October 2013?
3. The employer seeks the following relief:
  - (i) A Declaration that the Defendant breached the Deed.
  - (ii) An Order restraining the Defendant for a period of three years commencing 12 November 2022 from doing any work for or be employed in any capacity whatsoever by or for any person, firm or company which will, or is likely to benefit whether directly or indirectly

Hari Punja, Sanjay Punja, Rohit Punja, Ajay Punja or their spouses or children or any of their companies including subsidiaries and associated companies.

- (iii) Costs on an indemnity basis.
- 4. The former employee in question is Ms. Priya Anjini Prasad ("**Anjini**"). The former employer is Punja's Pte Limited ("**PPL**"). The new employer is FMF Foods Limited ("**FFL**").
- 5. The Deed is set out in clause 14.1.5 of the employment contract which Anjini and PPL signed on 16 September 2013 (reproduced below).

14. *The Employee covenants and undertakes that:*

14.1 *She will not at any time **within three (3) years from the termination of employment** (for whatever reason) ("the termination date") either **directly or indirectly** and either on her own or as an agent for any person firm or company:*

14.1.5 *do any work for or be employed in any capacity whatsoever (including by way of illustration only as a consultant, adviser, reviewer supervisor, employee or independent contractor) by or for any person, firm or company which will, or is likely to, benefit whether directly or indirectly or indirect **Hari Punja**.... or any of their companies including subsidiaries and associated companies...*

(my emphasis)

## **BACKGROUND**

- 6. Anjini began employment with **PPL** on 16 September 2013. She was initially engaged as an *Export Clerk*.
- 7. On 11 March 2022, Anjini was promoted to the position of *Coordinator of Exports* at PPL. However, in October 2023, she resigned from her job at PPL.
- 8. PPL asserts that Anjini's employment ceased on 12 November 2022. Anjini, however, maintains that she resigned on 22 November 2022. I accept 22 November 2022 as the operative date of cessation, this being an undisputed period of active service (see paragraphs 10 and 11 below).

9. Both parties acknowledge that Anjini joined FFL immediately after leaving PPL – although they disagree slightly on the exact start date. However, the difference has no bearing on this judgement.

### **OPERATING PERIOD OF THE DEED**

10. The Deed's purported operative period is six months.
11. That six-month period extended from 22 November 2022 being the date of her resignation from PPL - to 22 May 2023.

### **DEFENDANT'S POSITION**

12. In paragraphs 6 and 7 of her affidavit in opposition, sworn on 5 April 2023 and filed on 13 April 2023, Anjini outlines her job descriptions at PPL and FFL. She then states at paragraph 8 *inter-alia* that:
- (i) Fiji's constitution allows her the freedom to pursue gainful employment anywhere.
  - (ii) PPL cannot stop her from pursuing gainful employment with FFL.
  - (iii) she is aware of the confidentiality rules of both companies. She has not revealed any such material of PPL to FFL.
  - (iv) the shipping documentation for exporting companies are standard.
  - (v) the nature of her work in either PPL or FFL does not require her to deal directly with customers.
  - (vi) PPL does not state in the affidavits filed on its behalf how her employment with FFL has affected PPL.
13. In paragraph 9 of her affidavit, Anjini states that PPL's claim is mere speculation. PPL's allegations that she has used, or will use, confidential information from her time at PPL in her work at FFL – lack evidentiary support.
14. Anjini further asserts that restrictive trade practices are against policy and violates the Fijian Competition and Consumer Commission Act (2010).

### **PLAINTIFF'S POSITION**

15. Navin Prasad asserts in his affidavit in reply sworn on 06 June 2023 that Anjini has had nine (9) years' experience with PPL. During that time, she would have amassed information on PPL's export market. She is in a position to exploit this information to PPL's detriment.

16. Prasad further deposes that Anjini's job descriptions at PPL and FFL substantially overlap and are, in effect, identical<sup>1</sup>. He says that PPL and FFL are the only two flour millers in Fiji. They are also the only two companies in Fiji with factories which produce biscuits. In her roles at both entities, Anjini engages with the same export products and markets.

## DISCUSSION

17. *Prima facie*, a deed such as that embodied in clause 14.1.5 would operate to restrain a former employee's freedom, post-termination, to exercise and apply his craft and skills in gainful employment.
18. That restraint is the Deed's primary function.
19. While an employee, such as Anjini, is at liberty to enter into any arm's-length restrictive covenant, such covenant remains subject to the common law doctrine of *restraint of trade*.
20. Accordingly, because of its *prima facie* restrictive effect on the freedom to trade, or ply one's skills and craft, it is said that a restrictive covenant is thus *prima facie* void<sup>2</sup> and/or *may be illegal as contrary to public policy*<sup>3</sup>.
21. However, a Court may still uphold a restrictive clause as valid. As the Fiji Court of Appeal said in **Burns Philp (South Seas) Company Ltd v Lees Trading Company Ltd** [1993] FJCA 25; Civil Appeal 3 of 1993 (20 August 1993):

*.....it depends on the circumstances of the case including the extent of the restraint and the position of the negotiating parties to each other.*

22. In **CLASS Medical Centre Pte Ltd v Ng Boon Ching** [2010] 2 SLR 386, the Singaporean Court of Appeal said:

*...they can be held to be valid if the party seeking to rely on the restrictive covenant can show that, firstly, the clause concerned is reasonable in the interests of the parties and, secondly, the clause is also reasonable in the interests of the*

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<sup>1</sup> see paragraph 3 of his affidavit.

<sup>2</sup> see Singapore Court of Appeal decision in **CLASS Medical Centre Pte Ltd v Ng Boon Ching** [2010] 2 SLR 386 at paragraph 44.

<sup>3</sup> see **Burns Philp (South Seas) Company Ltd v Lees Trading Company Ltd** [1993] FJCA 25; Civil Appeal 3 of 1993 (20 August 1993):

We accept that agreements in restraint of trade may be illegal as contrary to public policy. We accept it depends on the circumstances of the case including the extent of the restraint and the position of the negotiating parties to each other.

*public. Additionally, there must be a legitimate proprietary interest to be protected...[T]he court will only enforce the covenant if it goes no further than necessary to protect the legitimate interests.*

23. The above suggests that the onus is on the party seeking to rely on the restrictive covenant. Notably, in **Morris v. Saxelby** (1916) 1 AC 688) which is cited in **Burns Phillip** (supra), the Court said that:

*...the onus of proving that the covenants are contrary to the public interest lies on the party attacking the contract.*

24. However, this was a non-issue before the Fiji Court of Appeal in **Burns Phillip**.

25. In **Singh v Grants Waterhouse Agency** [2000] FJCA 32; ABU0059U.2000S (17 November 2000), the Fiji Court of Appeal, citing **Mason v The Provident Clothing & Supply Co Ltd** [1913] UKLawRpAC 37; [1913] AC 724, and **Herbert Morris Ltd v. Saxelby** [1916] 1 AC 688, said thus:

It is well established that the respondents [i.e. the former employer], in seeking to enforce the contractual restraint, had the onus of proving that the restraint was no wider than was required for their protection and hence they had to adduce evidence of the facts which established the nature and extent of the proprietary rights which justified such protection.

26. The Fiji Court of Appeal went on to say that the former employer's interest in protecting its trade connections with major customers who might be known personally to the former employee:

**... could not justify a blanket prohibition on all competition throughout Fiji, and in particular competition, even in Suva, for cash customers who come off the street.**

27. On the former employer's argument that the former employee had learnt everything he knew about the business and would not be in a position to set up such a business if he had not acquired specialized knowledge from the former employer, the Fiji Court of Appeal referred to **Herbert Morris** as authority that <sup>4</sup>:

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<sup>4</sup> As the Court said:

The respondents based their case in support of the validity of the contractual restraint on the evidence of Mr. McCoy, quoted above that:

*"The defendant has learned everything that he knows about horse betting from the plaintiffs business and would not be in a position to set up such a business with betting trade connections in Australia if that specialized knowledge had not been acquired by him during his 18 years with the plaintiff company."*

- (i) the general skills and know-how which a former employee picks up on the job — such as common business practices, organizational methods, or industry techniques — are not trade secrets. An employer cannot prevent a former employee from using their “general knowledge, skill, and experience” in future employment as this would unfairly restrain them from working in their field <sup>5</sup>.
- (ii) what the former employer is really trying to protect in the case was not a trade secret at all, but simply the employee’s skill and knowledge carried over to a competitor<sup>6</sup>.

28. I prefer the Fiji Court of Appeal approach as articulated in Grants Waterhouse (supra)<sup>7</sup> and the Singaporean approach in CLASS Medical (supra). In my view,

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However, it is well established that an employer is not entitled to protection against the use by a former employee of such knowledge in a competitive business.

<sup>5</sup> As the Fiji Court of Appeal said:

In Herbert Morris the House of Lords unanimously rejected a claim by an employer to contractual protection against competition from a former employee who had acquired his knowledge and skill in their employment. At pages 703-5 Lord Atkinson said:

*“It is claimed however ....that this organisation and general method of business are trade secrets which the respondent is not entitled either to divulge to another, or use his knowledge of them in the service of any persons other than themselves. The respondent cannot, however, get rid of the impressions left upon his mind by his experience on the appellant’s works; they are part of himself; and in my view he violates no obligation express or implied arising from the relation in which he stood to the appellants by using in the service of some persons other than them the general knowledge he has acquired of their scheme of organisation and methods of business.*

<sup>6</sup> The passage from Herbert Morris quoted by the Fiji Court of Appeal:

*It is moreover ...perfectly clear ... that the danger against which the appellants desired to be protected is neither the enticing away of customers, nor the divulgence or use and employment of any trade secret. It is this, that the respondent would carry away and might put to use on the establishment of their trade rivals the superior skill and knowledge he, the respondent, has by his talent acquired in their works..... an employer [cannot] prevent his employee from using the skill and knowledge in his trade or profession which he has learnt in the course of his employment by means of directions or instructions from the employer. That information and that additional skill he is entitled to use for the benefit of himself ... A good deal has been said about organisation. The evidence is singularly scanty in regard to details upon the exact meaning of that word in the present case; but I apprehend that a man who goes into an office is entitled to make use in any other office, whether his own or that of another employer, of the knowledge which he has acquired in the former of details of office organisation..... To acquire the knowledge of the reasonable mode of general organisation and management of a business of this kind, and to make use of such knowledge, cannot be regarded as a breach of confidence”.*

In the same case Lord Parker said at 712:

*“All that he could carry away was the general method and character of the scheme of organization practised by the plaintiff company. Such scheme and method can hardly be regarded as a trade secret.”*

<sup>7</sup> As the Fiji Court of Appeal said:

With respect Fatiaki J. reversed the onus of proof which clearly lies on the party seeking to uphold the validity of the restraint. See Herbert Morris [1916] 1 AC 688 at 706-7 per Lord Parker.

It is clear that his Lordship’s consideration of this case was distracted by a number of false, irrelevant or marginal issues. The only real issue that required serious consideration was the prima facie validity

the onus ought to be placed on the party invoking the covenant to establish the reasonableness of the restrictions, rather than on the party seeking to resist or derogate from it.

29. The focus must be upon the restriction rather than upon the breach of the covenant. As stated, even where the employee has freely entered into the covenant— it remains *prima facie* contrary to public policy.
30. The main question in this case is whether or not the plaintiff has established that the Deed in clause 14.1.5 is at all enforceable. This, in turn, will depend on whether or not clause 14.1.5 is reasonable (in duration, in protecting a legitimate business interest) in its terms?
31. I am not convinced that there was trade secret involved. What PPL has really been concerned about was to stop Anjini from carrying over to FFL and using there the general skill and knowledge which she had acquired during her employment at PPL.
32. Accordingly, to borrow the words of the Fiji Court of Appeal in **Singh v Grants Waterhouse Agency** [2000] FJCA 32; ABU0059U.2000S (17 November 2000)):

The contractual restriction in this case is in terms directed against competition from the former employee, and is therefore prima facie invalid...

### CONCLUSION

33. In the final, I dismiss the claim and award costs to the defendant which I summarily assess at \$2,000 – 00 (two thousand dollars only).



Anare Tuilevuka  
**JUDGE**

26 February 2026

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of this contractual restraint. If it was prima facie valid it should have been enforced by interlocutory injunction, but if it was prima facie invalid the *ex-parte* injunction should have been dissolved.

In our judgment, for the reasons we have given, the exercise of discretion by Fatiaki J. miscarried, and the appeal must be allowed.