

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

**Civil Action No. HBC 156 of 2009L**

**BETWEEN** : **MEL KAYLANI INVESTMENT LIMITED** having its registered office at Suite 1, 21 Sukuna Road, Nadi Main Street, Fiji and trading as **TROPICAL MESSAGE & BEAUTY/EN VOGUE HAIR SALON** and **MELINDA WAKEHAM** of Suite 2/3 Sukuna Road, Nadi Town, Nadi, Fiji, Businesswoman

**Plaintiffs**

**AND** : **WYNDHAM VACATION RESORTS ASIA PACIFIC (DENARAU ISLAND) LIMITED** an Australian Corporation and having its office at 130 Bundall Road, Bundall, Queensland, Australia

**Defendant**

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**INTERLOCUTORY JUDGMENT**

**Of: Inoke J.**

**Counsel Appearing: Mr. K. Maraiwai for the Plaintiffs  
Ex-Parte Application**

**Solicitors: Messrs Iqbal Khan & Associates for the  
Plaintiffs  
No Appearance for the Defendant**

**Date of Hearing: 31 August 2009  
Date of Judgment: 31 August 2009**

**INTRODUCTION**

[1] The Plaintiffs were given a license by the predecessor of the Defendant hotel operator to operate a wedding centre facility at the Resort under a contract entered into in 2005.

[2] On 31 July this year, the Defendant gave notice to the Plaintiffs that their contract was to terminate in a month and for them to leave the Resort premises. The Plaintiffs say that the Defendant did not give them any prior notice or any explanation as to why their contract was terminated.

### **THE APPLICATION**

[3] The Plaintiffs brought this application ex parte for interim injunction to restrain the Defendant from evicting them until final determination of the substantive action. The application was supported by an affidavit sworn by Ms Melinda Wakeham, the second named Plaintiff.

[4] The Plaintiffs also filed a Writ of Summons and Statement of Claim against the Defendants on 28 August 2009 claiming damages and other relief for breach of the contract of 2005.

### **CONSIDERATION OF THE APPLICATION**

[5] The application was moved by Counsel Mr Marawai. One of the issues that immediately struck me and which I asked Counsel to address me on was whether damages was an adequate remedy in this case. Further, there was no undertaking as to damages given by the applicant. I therefore ordered that the application proceed inter parte and ordered accordingly. The reasons for my judgment are set out below.

[6] The application must meet the requirements of **Order 29 rule 1(2)** of the **High Court Rules 1988** and the **American Cyanamid**<sup>1</sup> principles, i.e. that there are serious issues to be tried, damages are not an adequate remedy and the balance of convenience lies in his favour: **Natural Waters of Viti Ltd v Crystal Clear Mineral Water (Fiji) Ltd [2004] FJCA 59; ABU0011.2004S & ABU0011A.2004S (26 November 2004); Glenore**

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<sup>1</sup> (1975) 1 All E R 396

**Ltd v Global Premium Services Ltd [2009] FJHC 174; HBC148.2009L**  
**(21 August 2009).**

[7] Having not been satisfied at this stage that this is not a case where damages are not an adequate remedy and there being no undertaking as to damages given, I took the view that the matter should proceed inter parte and ordered accordingly.

[8] The Orders that I made were

- 1) Matter proceed inter-partes returnable on 7 September 2009 @ 9.30 am.**
- 2) Plaintiff to serve Writ, Motion, Affidavit and this order on the Defendant at Wyndham Vacation Resort, Denarau Island before the return date.**
- 3) Costs reserved.**

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**Sosefo Inoke**  
**Judge**