

Scan & file

[Signature]
27/10/15

**IN THE SUPREME COURT OF TONGA
CIVIL JURISDICTION
NUKU'ALOFA REGISTRY**

CV 71 of 2014

**BETWEEN : 1. VILIAMI MASIMA
2. 'ELISAPETA MASIMA**

- Plaintiffs

**AND : 1. HUA LATU
2. FANGUPO LATU**

- Defendants

T. Fakahua for the Plaintiffs

Ms. L. Tonga for the Defendants

DECISION

[1] On 10 September 2014 the Plaintiffs commenced proceedings against the Defendants arising out of the admitted remittance by the Plaintiffs of AUD\$40,000, then equivalent to TOP\$69,105.44, into bank account ANZ 1643576. The name of this account is "Samuela Latu T/A Latu Enterprises".

Rec'd 27/10/15
[Signature]

- [2] Although the remittance is admitted the terms upon which it was made are in dispute. According to the Plaintiffs the sum was intended as a loan, repayable after 3 months, and bearing interest at 10%. According to the Defendants the payment represented an “investment” in Latu Enterprises Ltd.
- [3] This is an application for an interim injunction. The Plaintiffs are seeking orders:
- “(a) any monies in the name [of] either the defendants or their children or in the name of Latu Shipping Agency in any banks in Tonga [be] seized until further orders” and
- (b) that “all the goods listed in [paragraph ii of the application be] seized until further order”.
- [4] According to paragraph (ii) of the application and paragraph 11 of the Statement of Claim the listed vehicles and vessels are in the possession of the Defendants and the Plaintiffs apparently believe that some or all of the remitted sum was used for their purchase. This claim is denied by the Defendants and there is no evidence before the Court to support the Plaintiffs’ belief.
- [5] A bundle of documents was filed by Ms Tonga on 10 November without objection. Perusal of these documents discloses an “investment” of TOP\$69,105.00 by the First Plaintiff in Latu Enterprises Ltd in 2012. The documents also appear to reveal that the company is trading profitably. In my view there is insufficient risk or urgency to warrant a form of mareva injunction being granted. I am

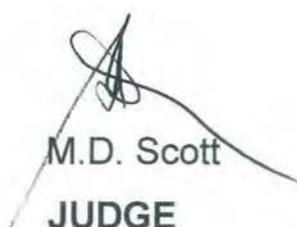
also of the opinion that there is insufficient evidence to warrant seizure of the listed chattels.

[6] In addition to taking issue as to the terms under which the remittance was made, Ms Tonga, by way of alternative defence also pleads that the money was received not by the Defendants but by Latu Enterprises Ltd. It is this company, she submitted, that was the proper Defendant. If this is the case then the claim, as presently drafted, could not succeed.

[7] In all the circumstances I decline to make the orders sought.

Result: Plaintiffs' application dismissed with costs to be taxed if not agreed.

DATED: 20 February 2015.



M.D. Scott

JUDGE

M. Taufa
18/2/2015