

in the High Court of Fiji at Suva

Civil Jurisdiction

Civil Action No. HBC 234 of 2007

BETWEEN: Total Fiji Limited

Plaintiff

A N D: Auto World Trading(Fiji) Limited

Defendant

Appearances: Ms Radhika Naidu for the plaintiff

Mr Suresh Chandra for the defendant

Date of hearing : 20<sup>th</sup> May, 2014

### RULING

1. By notice of motion filed on 15<sup>th</sup> April,2014, the defendant moves that the dates fixed for the trial of this action be vacated upon the grounds set forth in the affidavit of Kunaal Kavindra Lal.

2. *The affidavit in support*

In his affidavit in support of the motion Kunaal Kavindra Lal, director of the defendant company states:

- a) The defendant has sought assistance of an overseas counsel and a local counsel, in respect of its counter-claim for damages and “*they are being briefed*”. Mr Robert Newton from Australia has indicated that the hearing dates from 9<sup>th</sup> to 13<sup>th</sup> June,2014, is not suitable to him, because a report by expert brief on damages is not available to him as yet, and he is going through the brief. Additionally, it is stated that Mr Shelvin Singh will be assisting as local counsel and he will also need time to be briefed.

- b) The report by the expert brief on damages will be prepared by Crowe Horwarth, an accounting and consultancy firm from New Zealand. This may not be available in time before the hearing.
- c) Upon the receipt of the expert brief on damages all the discovery procedures need to be complied with and the plaintiff may have to decide to respond to the report.
- d) The plaintiff has been granted leave to recall its witnesses. The defendant is unaware whether the witnesses would be recalled.

3. *The supplementary affidavit*

In his supplementary affidavit, Kunaal Kavindra Lal states:

- a) Mr Ravindra Lal is the Managing Director of the company and he is “*currently tending to Mrs Usha Kiran, Director who is suffering from cancer*”. Copies of the medical reports of Mrs Usha Kiran and a medical report dated 12 May 2014 certifying Mrs Kiran’s illness and that Mr Lal is required to be with her.
- b) The absence of Mr Ravindra Lal and Mrs Usha Kiran will prejudice the defendant if the hearing continues from 09 June, 2014, as they have knowledge of the matter and were involved in this case, since 2007. They alone make decisions and would be witnesses for the defendant in this case.

4. *The hearing*

Mr Suresh Chandra, counsel for the defendant supported the case for the adjournment on the grounds stated in the two affidavits referred to above. He submitted further that the plaintiff would not be prejudiced by the adjournment, as it was in occupation of the premises.

Responding to my query whether the plaintiff was objecting to the adjournment, Ms Radhika Naidu, counsel for the plaintiff stated she does. The plaintiff has not filed an affidavit in opposition, nor were any grounds urged by its counsel.

5. *The determination*

5.1. I will in the first instance set out the sequence of matters that have transpired in this case.

- a) This action commenced by a statement of claim filed on 31<sup>st</sup> May,2007, seeking a declaration that :
  - (i) The plaintiff has a lease over CT 3157 and 3357 till 31<sup>st</sup> December,2019.
  - (ii) The defendant's notice to quit is invalid.
  - (iii) Alternatively, relief against forfeiture.
- b) The defendant filed statement of defence and counterclaim.The plaintiff filed reply.The defendant filed reply to defence and defence to counterclaim. Summons for directions were filed. The pre-trial conference was held on 29<sup>th</sup> September,2008, as contained in the copy pleadings. Or 34 summons dated 7<sup>th</sup> November,2008 was also filed.
- c) The defendant then, sought leave to amend its counter-claim to include losses of rental income and other losses arising upon the plaintiff not vacating the premises, consequent to the termination of the tenancy. The amendment was allowed. The plaintiff filed reply to defence.
- d) The case proceeded to hearing.The plaintiff called three witnesses and closed its case.
- e) The defendant made a second application to amend its counter-claim, to include a ground for eviction on sub-letting. The application was allowed. The plaintiff filed its reply to the statement of defence and the second amended counterclaim.
- f) The plaintiff then filed leave to appeal against that decision.The plaintiff filed affidavit in opposition to the leave.The application for leave was subsequently withdrawn.
- g) On 10<sup>th</sup> September,2013,the supplementary affidavit verifying defendant's list of documents was filed .
- h) On 20<sup>th</sup> September,2013, the case was called for review. Mr Suresh Chandra stated that the discovery process is going on. **I made Order that the discovery be completed by 4<sup>th</sup> October,2013, and the pre-trial conference be held within twenty-one days.**

- i) On 9<sup>th</sup> October,2013, the solicitors for the defendant issued notice to the solicitors for the plaintiff requesting a pre-trial conference.
- j) On 5<sup>th</sup> November,2013, the matter was called over. Mr Nagin said that he had received the pre-trial conference minutes from Mr Suresh Chandra.
- k) On 9<sup>th</sup> December, 2013, when this case was called over, Mr Nagin, counsel for the plaintiff and Mr Suresh Chandra, counsel for the defendant were present. This case was fixed for hearing from 9<sup>th</sup> to 13<sup>th</sup> June,2014, being dates suitable to both counsel. Messrs Nagin and Suresh Chandra have been in carriage of this matter throughout.

5.2. In my judgment, the supporting affidavit of Kunaal Kavindra Lal requesting the case to be adjourned to suit foreign and local counsel is unacceptable. As regards the expert brief on damages, this matter is now is past the discovery stage .

5.3. I turn to the additional affidavit filed and the attached medical reports. When I informed Mr Suresh Chandra that the reports do not state that Mrs Usha Kiran, a director of the defendant company is unable to be present in Court from 9<sup>th</sup> to 13<sup>th</sup> June,2014, his response was that she may not be able to attend Court. I need hardly deal with the reason given for the other director of the defendant company, Mr Lal's inability to be present in Court, namely that he "*is her only carer and he needs to be in Australia to look after his wife*".

5.4. I decline the summons for an adjournment.

#### 6. Orders

- i. The application for adjournment of the hearing from 9<sup>th</sup> to 13<sup>th</sup> June,2014, is declined.
- ii. I make no order as to costs



A.L.B.Brito-Mutunayagam

Judge

29<sup>th</sup> May , 2014