

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

**HBC No.: 267 of 2014**

**BETWEEN** : **RAMPRA EXPORTS (FIJI) LIMITED** a limited liability company having its registered office at 28 Rodwell Road, Suva, Fiji

**PLAINTIFF**

**AND** : **EXPORT FREIGHT SERVICES LIMITED** a limited liability company having its registered office at Lot 1, DP 7484, Tamavua-i-Wai, Walu Bay, Suva, Fiji and having its postal address as G.P.O. Box 13575, Suva, Fiji

**FIRST DEFENDANT**

**AND** : **SHIPPING SERVICES (FIJI) LIMITED** a limited liability company having its registered office at High Street, Toorak, Suva, Fiji.

**SECOND DEFENDANT**

**Counsel** : **Mr. Naidu R for the Plaintiff**  
**Mr. Solanki B for the First Defendant**  
**Mr. Valenitabua S for the Second Defendant**

**Date of Hearing** : **27<sup>th</sup> October, 2014**

**Date of Judgment** : **10<sup>th</sup> July, 2015**

**JUDGMENT**

**INTRODUCTION**

1. The Plaintiff filed a writ of summons, and statement of claim against the Defendants seeking inter alia, a declaration that the Defendants did not have a lien over the goods imported by them in the containers in the possession of the Defendants. The 1<sup>st</sup> Defendant is engaged in the business of custom brokerage and also provided bonded container yard for storage of containers. The three containers in issue relating to 1<sup>st</sup> Defendant are in the bonded yard of the 1<sup>st</sup> Defendant and they are claiming common

law lien over the contents for failure to pay container detention charges. The remaining container in issue is in Port of Suva, and the 2<sup>nd</sup> Defendant is claiming lien based on the Bill of Lading. It is the local agent for shipping line which presumably belonged the containers, in which the imported items in the said container were shipped. The Plaintiff is seeking orders by way of summons against the 1<sup>st</sup> and 2<sup>nd</sup> Defendant from preventing the Plaintiff having access to the said 4 containers.

## **FACTS**

2. The Plaintiff is engaged in the business of importing goods including foods and then selling it locally or re exporting them. The containers in issue belonged to the shipping lines including, Maersk Shipping Line and the goods contained therein were imported by the Plaintiff for commercial purpose.
3. The 1<sup>st</sup> Defendant was also the custom broker for the Plaintiff and the three containers mentioned in the summons are stored in the bonded yard of the 1<sup>st</sup> Defendant. It is not clear on the terms of the contract between the Plaintiff and 1<sup>st</sup> Defendant, but the containers in issue were kept in the bonded yard of the 1<sup>st</sup> Defendant and the goods were released from time to time from the said containers upon the fulfillment of other legal obligations like payment of customs duty etc. The goods were stored in the same containers that shippers shipped and they were kept in the bonded yard of the 1<sup>st</sup> Defendant.
4. The 2<sup>nd</sup> Defendant is engaged in providing shipping freight rates on behalf of Maersk Shipping and also the shipping agent for the same shipping line. According to the statement of defence they were the carrier's agent under the Bill of Lading. There is only one container in issue in this summons relating to 2<sup>nd</sup> defendant and that is still in the Port.
5. The Plaintiff imported following 4 containers which are in the bonded yard of the 1<sup>st</sup> Defendant.

<u>Container Nos.</u>	<u>Contents</u>	<u>Date into Bonded Yard</u>
a. HLBU1317817	Toilet paper	16/06/2014
b. MSKU8640247	Toilet paper	29/05/2013
c. MRKU3745963	Noodles	29/08/2013
d. MSKU0762085	Biscuits	18/03/2014

6. The Plaintiff is the consignee of the goods therein, but they have been in the bonded yard of the 1<sup>st</sup> Defendant. The Plaintiff had access to the said containers till the end of May, 2014 when 1<sup>st</sup> Defendant refused the access to the goods contained therein.
7. Until end of May 2014, the Plaintiff had access to the goods imported and stored in the bonded yard belonging to the 1<sup>st</sup> Defendant, but after that the access was denied by the 1<sup>st</sup> Defendant.
8. The 1<sup>st</sup> Defendant claims common law lien over the goods stored in the bonded yard for failure to pay the container detention charges.
9. The 1<sup>st</sup> Defendant had instituted winding up action the Plaintiff on debt of FJ\$ 110,970.00 resulting from the failure to pay container detention charges from 2012.
10. According to the affidavit in support at paragraph 17, the Plaintiff had also imported a consignment of a branded baby diapers packed in a **Container No MRKU 2723548** and 2<sup>nd</sup> Defendant, who is the agent for MAERSK Shipping Line, had refused to release the same to the Plaintiff. This container is presently inside the Port of Suva, incurring demurrage charges.
11. The 2<sup>nd</sup> Defendant is refusing to release the container from the Port for the alleged lien on the Bill of Lading, as the carrier's agent, but the 2<sup>nd</sup> Defendant had failed to file an affidavit in opposition. The 2<sup>nd</sup> Defendant had filed a statement of defence and also a counter claim for \$25,000 failure to pay container detention charges for the previous shipments.

12. According to the 1<sup>st</sup> Defendant, they have informed about container detention charges 17<sup>th</sup> October, 2012 and till the filing of the winding up notice for the accumulated debt resulting from the unpaid container detention charges, were not disputed.
13. On 13<sup>th</sup> March, 2014 the solicitors for the 1<sup>st</sup> Defendant had given an ultimatum to settle the container detention charges immediately. The said letter also informed that failure to do so would result all the containers in the bonded yard including any fresh arrivals on behalf of the Plaintiff would be on 'hold' till the final settlement of container detention charges.
14. According to the Plaintiff (Affidavit in reply paragraph 4) the first Defendant only acted as a logistic company who possessed the customs entry to take containers HLBU1317817 and MSKU0762085 out of the Port and stored them at his bonded yard.
15. Defendants had denied the Plaintiff access to all the containers stated in the summons and some of the food items have already expired and other goods are also perishable though exact date of expiry is not available to the court.

#### **ANALYSIS**

16. The main contention of the Plaintiff is that they did not have a contract to pay container detention charges hence are not liable for that. The Plaintiff has also raised issues relating to the alleged lien of 1<sup>st</sup> Defendant, on behalf of the shipping line. The Plaintiff had also raised the issue of sudden denial of access to goods they imported and stored in the 1<sup>st</sup> Defendant's bonded yard.
17. Apart from that the Plaintiff states any dispute as to container detention charges needs to be determined in accordance with the Bill of Lading, and also state there is no common law lien and the 1<sup>st</sup> Defendant had also abused the process of the court by filing a winding up action while holding to the goods.

## PRELIMINARY ISSUE

18. The 1<sup>st</sup> Defendant had raised a preliminary issue and state that the orders sought in the injunction are similar to the final relief hence should not be granted.
  
19. The final orders sought in the statement of claim contained in the writ of summons are as follows
  - (1). *A Declaration that the said goods contained in container numbers: HLBUI1317817, MSKU8640247, MRKU 3745963, MSKU0762085 and MRKU2723548 are property of the Plaintiff.*
  - (2) *A Declaration to the First and Second Defendants do not have a lien over the said goods*
  - (3) *An Order that the First Defendant Export Freight Services Limited by itself and/or by its servants and/or its agents or otherwise howsoever do forthwith release and hand over to the Plaintiff, Rampra Exports (Fiji) Limited possession of goods more particularly toilet paper contained in container numbers: HLBUI1317817 and MSK8640247 and Treff cream biscuits contained in container number: MSKU076085 that are currently stored at the First Defendant's bonded yard at Walu Bay in Suva;*
  - (4) *An injunction restraining the First Defendant Export Freight Services Limited by itself and/or by its servants and/or its agents or otherwise howsoever from interfering or hindering in any way with the Plaintiff's exercise of its right to take possession of goods more particularly toilet paper contained in container numbers: HLBUI 1317817 and MSKU8640247 and Treff cream biscuits contained in container number: MSKU0762085 that are currently stored at the First Defendant's bonded yard at Walu Bay in Suva;*
  - (5) *An Order that the Second Defendant Shipping Services (Fiji) Limited by itself and/or by its servants and/or its agents or otherwise howsoever do forthwith release and hand over to the Plaintiff, Rampra Exports (Fiji) Limited possession of goods more particularly giggles baby diapers contained in container numbers: MRKU2723548 that are currently at the Suva Wharf;*
  - (6) *An injunction restraining the Second Defendant Shipping Services (Fiji) Limited by itself and/or by its servants and/or its agents or otherwise howsoever from interfering or hindering in any way with the Plaintiff's exercise of its right to take possession of goods more*

*particularly giggles baby diapers contained in contained numbers: MRKU2723548 that currently at the Suva Wharf;*

- (7) *Damages in the sum of \$66,375.00 for expired Noodles;*
- (8) *Damages for detention of goods;*
- (9) *Damages for injury to business, loss of sales and revenue, damage to goodwill and reputation;*
- (10) *Interest pursuant to Section 3 of the Law Reform (Miscellaneous Provisions) (Death and Interest) Act on the amount found to be due to the Plaintiff at such rate and for such period as the court think fit;*
- (11) *Costs on an indemnity basis;*
- (12) *Further or other relief.*

20. A summons was filed on the same day supported by an affidavit, for the release of the goods sought following orders

*'An Order that the First Defendant Export Fright Services Limited By itself and or by its servants and or its agents or otherwise howsoever do forthwith release and hand over to the Plaintiff, Rampra Exports (Fiji) Limited possession of goods more particularly toilet paper contained in container numbers: HLBU1317817, MSKU8640247 and Terff Cream biscuits contained in container number MSKU0762085 that are currently stored at the First Defendant's bonded yard at Walu Bay in Suva.*

*An injunction restraining the First Defendant Export Freight Services Limited by itself and / or by its servants and or its agents or otherwise howsoever from interfering or hindering in any way with the Plaintiff's exercise of its right to take possession of goods more particularly toilet paper contained in container numbers HLBU1317817, MSKU8640247 and Terff Cream biscuits contained in container number MSKU0762085 that are currently stored at the First Defendant's bonded yard at Walu Bay in Suva.*

*An order that the Second Defendant Shipping Services (Fiji) Limited By itself and or by its servants and or its agents or otherwise howsoever do forthwith release and hand over to the Plaintiff, Rampra Exports (Fiji) Limited possession of goods more particularly giggles baby diapers contained in container number MRKU2723548 that are currently at the Suva Wharf.*

*An injunction restraining the Second Defendant Shipping Services (Fiji) Limited by itself and /or by its servants and or its agents or otherwise howsoever from interfering or hindering in any way with the Plaintiff's exercise of its right to take possession of goods more particularly giggles baby diapers contained in container number MRKU2723548 that are currently at the Suva Wharf .....'*

21. Fiji Court of Appeal in *Digicel (Fiji) Ltd v Fiji Rugby Union* [2015] FJCA 84; ABU21.20149 (unreported) (decided on 12 June 2015) cited with authority *Ba Town Council v Fiji Broadcasting Commission* (1976) 22 FLR 91 and held

*'[45] In Ba Town Council v Fiji Broadcasting Commission (1976) 22 FLR 91 an interlocutory injunction had been sought to prevent press and radio publishing and broadcasting any information regarding a soccer tournament held at the Govind Park, Ba. The alleged right was not only to prevent media entering the park but also to effect a total ban on the publishing of all football information.*

*[46] The Court said thus: "It is not the practice of the Court to grant interlocutory injunctions which will have the practical effect of granting the sole relief claimed" (per Kermode J)'*

22. When observe closely the reliefs sought in the writ of summons are substantially the same except there were additional orders for declarations and for damages and interest. If the damages and interest reliefs are left out then the only relief is the declaration that the goods in issue are property of the Plaintiff and that there were no lien over said goods.
23. The main issue in this case does not rest entirely on the said reliefs, as the 2<sup>nd</sup> Defendant had already filed a statement of defence counterclaiming for unpaid container detention charges. The main issue regarding the refusal to release the goods relate to alleged liens. The 1<sup>st</sup> Defendant is claiming common law lien, whereas the 2<sup>nd</sup> Defendant is claiming for lien under Bill of Lading. Both of them are relying on liens, while the 1<sup>st</sup> Defendant is relying on common law, the 2<sup>nd</sup> Defendant is relying on the Bill of Lading, so the issue is whether they can rely on such liens. Whether lien contained in Bill of Lading can be exercised after discharge from final port of discharge is also an issue.

24. I could not find any affidavit in opposition and or the statements of defence dispute the ownership of the goods in issue. Since all the goods were imported by the Plaintiff and Bills of Lading were issued, in its name there cannot be a dispute as to the consignee of the items. Bill of Lading is a contract that evidence the shipment of the goods. (see *Leduc V Ward* (1888) 20 QB 475.
25. The goods were in the possession of the Defendants due to the respective roles that they play in the import procedure. According to the Plaintiff 1<sup>st</sup> Defendant was only a supplier of logistics regarding the two containers HLBUI317817 and MSKU0762085 and the local agent for the said shipment was a third party, from whom the Plaintiff had bought the freight rates. On what terms, 1<sup>st</sup> Defendant was engaged as logistic supplier is not clear as neither party had addressed that vital issue either in pleadings or in the respective affidavits. Presumably, the 1<sup>st</sup> Defendant's alleged lien was not directly relating to the said containers, but for accrued unpaid container detention charges, for previous shipments.
26. So the main issue is whether the Defendants have liens over the goods contained in the respective containers, even if the container detention charges were in arrears. There is a serious issue as to whether the Defendants have a lien over the said containers and this will result in their ability to detain the goods in said containers. So, the final orders sought cannot be categorized as the same as the summons seeking injunction. The very nature of detention relied by both defendants depend on the final outcome as to the existence of respective liens.
27. It should be borne in mind though the orders sought against the both defendants are similar their defences relating to the liens are not the same. While the 1<sup>st</sup> Defendant is claiming common law lien over the goods in their bonded yard, the 2<sup>nd</sup> Defendant is claiming lien over the Bill of Lading over the goods in the single container in the port, but the 2<sup>nd</sup> Defendant had failed to point out lien in their Bill of Lading which is annexed SCV8, which was filed by the Plaintiff. The 2<sup>nd</sup> Defendant did not file an affidavit in



opposition for the summons filed by the Plaintiff, seeking access to items in the container.

28. In *Tappenden (trading as English & American Autos) v Artus and Another* [1963] 3

All ER 213 at 216 Lord Diplock held,

*'The common law lien of an artificer is of very ancient origin, dating from a time when remedies by action on contracts not under seal were still at an early and imperfect stage of development; see the old authorities cited by Lord Ellenborough C J in Chase v Westmore. Because it arises in consequence of a contract, it is tempting to a twentieth century lawyer to think of a common law lien as possessing the characteristics of a contractual right, express or implied, created by mutual agreement between the parties to the contract. But this would be to mistake its legal nature. Like a right of action for damages, it is a remedy for breach of contract which the common law confers on an artificer to whom the possession of goods is lawfully given for the purpose of his doing work on them in consideration of a money payment. If, pursuant to the contract, the artificer does the work, he is entitled to retain possession of the goods so long as his charges, whether agreed in advance or (if not so agreed) payable on a quantum meruit, are satisfied. The remedy can be excluded by the terms of the contract made with the artificer, either expressly or by necessary implication from other terms which are inconsistent with the exercise of a possessory lien (cf Forth v Simpson in the same way as the common law remedy in damages for breach of contract may be excluded or modified by the terms of the contract itself. But this does not mean that the remedy of lien, any more than the remedy in damages, is the result of an implied term in the contract to which what we may conveniently call The Moorcock criteria, relevant to implying terms in a contract, apply. The test whether or not the remedy exists is not whether or not its existence is necessary to give business efficacy to the contract. Judged by this test there would in modern times never be an artificer's lien.*

*The common law remedy of a possessory lien, like other primitive remedies such as abatement of nuisance, self-defence or ejection of trespassers to land, is one of self-help. It is a remedy in rem exercisable on the goods, and its exercise requires no intervention by the courts, for it is exercisable only by an artificer who has actual possession of the goods subject to the lien. Since, however, the remedy is the exercise of a right to continue an existing actual possession of the goods, it necessarily involves a right of possession adverse to the right of the person who, but for the lien, would be entitled to immediate possession of the goods. A common law lien, although not enforceable by action, thus affords a defence to*

*an action for recovery of the goods by a person who, but for the lien, would be entitled to immediate possession.'*(emphasis added)

29. The above judgment was authoritatively applied in *Your Response Ltd v Datateam Business Media Ltd* [2014] 4 All ER 928.
30. To claim a lien, as a defence, there need not be a contractual obligation and neglect of payment of it, to exercise such lien. The right to common law lien is a result of non-payment for the work done, and it is a defence for action for recovery. Whether 1<sup>st</sup> Defendant could claim common law lien remains unanswered at this stage on the material before me.
31. Firstly, the position of the 1<sup>st</sup> Defendant is not clear, it may have supplied logistics including customs brokerage, bonded yard for storage etc but the alleged lien was not over the services it provided, but for container detention charges. The contractual relationship between the Plaintiff and 1<sup>st</sup> Defendant was not revealed to claim such payment.
32. Neither side submitted any case law relating to lien over goods in containers by a party having possession of the containers for the failure to pay a sum of money due .Though factually different in the case of *Chellram v Butlers* [1978] 2 Lloyds Rep 412 at 417 Megaw L. J held,

*'We have already said that at first sight the consequences of the defendants' submissions, if right, appeared to us to be startling. We remain of that view, despite Mr. Evan's suggestions as to the business desirability, or necessity, of such a lien from the point of view of the defendants. If the defendants were right, the plaintiffs, and others in their position, would be committing themselves to have all their goods which are at any time in the possession of the defendants withheld, and after notice , sold by the defendants , in order to provide repayment of the whole amount or the indebtedness which the defendants had allowed their operations to incur towards them...'*

33. The Plaintiff and 1<sup>st</sup> Defendant were discussing about the container detention charges and there was ultimatum issued by the 1<sup>st</sup> Defendant, and a winding up action was also filed for the said debt. This is another pending proceedings and I do not wish to say more on that.
34. The container detention charges were presumably applied for efficient usage of containers, but such business efficiency cannot itself create a lien unless it has created by a contractual obligation on the part of the Plaintiff to pay it to the 1<sup>st</sup> Defendant. In the case of Jarl Tra V Convoys [2003] 2 Lloyds Report 459 at 465 held,
- ‘However , the scope of the claimants’ consent in the present case has to be determined not by reference to what these particular shippers had in contemplation but by reference to wording of cl.7 of Siowalls’ conditions and the terms on which the carriage, handling and storage of goods is generally conducted. The fact is that it is by no means uncommon for those whose business involves the handling and storage of goods, such as carriers, wharfingers, warehouse keepers and freight forwarders, to include in their terms of business a right to exercise a lien for their charges on goods delivered into their possession. Indeed, one might almost say that it is more common than not to find almost say that it is more common than not to find in such terms of business a clause providing for a lien of some description.’*
35. At this hearing neither party submitted any contractual relationship between the Plaintiff and 1<sup>st</sup> Defendant, more specifically the issue of container detention charges and contractual obligation to pay such charges to the 1<sup>st</sup> Defendant.
36. The goods were imported by the Plaintiff and the three Bills of Lading relating to the containers in issue regarding the 1<sup>st</sup> Defendant are annexed as SCV4 to the affidavit in support of the summons.
37. There is no material before me that establishes common law lien over the goods contained in a Bill of Lading after the delivery of the goods at the place of delivery and in this instance it was the Port of Suva. Even in the arrival notices relating to two of these containers there were no provision to charge container detention charges by the 1<sup>st</sup> Defendant.

38. Even if there was unpaid container detention charges whether there is a common law lien over the goods inside the containers, which include perishable items is an issue. The prolong storage would not only diminish their value but also ultimately make them worthless if detained beyond the expiry date of the goods contained therein. Apart from that re-exporting of some of the goods were also stalled due to the acts of the 1<sup>st</sup> Defendant, as the access to the items inside the container were denied after May, 2014.

39. Lord Diplock in the case of *Tappenden (trading as English & American Autos) v Artus and Another* [1963] 3 All ER 213 at 216

*Since a common law lien is a right to continue an existing actual possession of goods (ie, to refuse to put an end to a bailment), it can only be exercised by an artificer if his possession was lawful at the time at which the lien first attached. To entitle him to exercise a right of possession under his common law lien adverse to the owner of the goods, he must show that his possession under the original delivery of the goods to him was lawful *Bowmaker Ltd v Wycombe Motors Ltd*—and continued to be lawful until some work was done by him on the goods. Where, therefore, as in the present case, possession of the goods was originally given to the artificer not by the owner himself, but by a bailee of the owner, the test whether the artificer can rely on his common law lien as a defence in an action for detinue brought against him by the owner is whether the owner authorised (or is estopped as against the artificer from denying that he authorised) the bailee to give possession of the goods to the artificer. This, it seems to us, is the test which, after some vacillation, is laid down by the modern authorities. It is as a result of applying this test that the cases which have been cited to us fall on one side or other of the line.*

40. So, the goods have come to the possession of the 1<sup>st</sup> Defendant not from the Plaintiff but from a bailee or through other means that had not been described fully, by either party. The basis of possession of the containers in its bonded yard are not clear in order to claim a lien over alleged container detention charges. The 1<sup>st</sup> Defendant cannot be considered as an ‘artificer’ and the alleged lien was not based on the services it had supplied, but for container detention charges. There are no contractual obligation between the Plaintiff and 1<sup>st</sup> Defendant as in the case of *Jarl Tra V Convoys* [2003] 2 Lloyds Report 459 where such logistic suppliers had contracts relating to goods in their possession and also

deal with property if lien is exercised. This may be important specially when dealing with perishable items like foods.

41. The 1<sup>st</sup> Defendant's alleged common law lien is not based on any work done by them to the Plaintiff. As admitted in the affidavit in opposition the Plaintiff had offered to pay 1<sup>st</sup> Defendant's charges for storage in bonded yard. Whether such common law lien can be exercised for the said goods by the 1<sup>st</sup> Defendant cannot be considered at this stage as this is the defence contained in the statement of defence and the relationship between the parties needs to be clear, as regard to payment of container detention charges.
42. It is noteworthy that there are some arrival notices which indicate container detention charges. These are annexed in SCV 20, to affidavit in support but these were denied by the Plaintiff and this relates only to three consignments in container Nos. MSKU8640247, MSKU1753229 and PONU7956781. Out of these three containers only MSKU8640247 is presently with the 1<sup>st</sup> Defendant's yard. These arrival notices were denied by the Plaintiff and this needs to be proved at hearing. Whether the 1<sup>st</sup> Defendant could claim lien for any outstanding container detention charges for this container also needs to be considered.
43. The 2<sup>nd</sup> Defendant who did not file any affidavit in opposition also claimed a lien over the container which is yet to be cleared at Port of Suva. The Bill of Lading relating to said container clearly indicate container detention charges and it also contains a clause for lien. But this container is yet to be discharged from the port and any detention charges would accrue only upon the discharge as per the said Bill of Lading annexed SCV 8 to affidavit in support of summons. So the position relating to 2<sup>nd</sup> Defendant is that it could exercise lien for container detention charges on said container if there was outstanding arrears for container detention charges. The lien can be exercised in terms of the Bill of Lading and there is no evidence to support such exercise on the container No MRKU 2723548. Since there was no affidavit in opposition filed by 2<sup>nd</sup> Defendant there was no material except statement of defence to consider at this hearing.

44. In **American Cyanamid Co v Ethicon Ltd** [1975] 1 All ER 504 at 509 Lord Diplock held,

*‘The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial....’*

45. Due to the actions of the Defendants the Plaintiffs goods stored in the containers will become worthless due to expiry of foods and other perishables and, or less valuable as time pass by. This would inflict an injury to the Plaintiff in its business.

46. As to the grant of injunctions Lord Diplock in **American Cynamid** (supra) further at p 510 held

*‘As to that, the governing principle is that the court should first consider whether if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage. If, on the other hand, damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether, on the contrary hypothesis that the defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the plaintiff's undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of the application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a financial position to pay them, there would be no reason this ground to refuse an interlocutory injunction.’*

47. The items in the containers are perishable and keeping such items for long period of time would diminish its commercial value hence any recovery even in a public auction would not result desired outcome and will incur more damage to the Plaintiff. The Plaintiff had

even requested 1<sup>st</sup> Defendant to conduct an auction, in order to minimize the damage, but this suggestion has not received a positive response.

48. Considering the circumstances the balance of convenience favours the Plaintiff. The detention of the perishable goods imported for distribution for local market and for re-export, would incur more damage to Plaintiff in the loss of business opportunity. It would be difficult to measure such damage.

## **CONCLUSION**

49. There are serious questions to be tried in relation to the liens claimed by the Defendants. The 1<sup>st</sup> Defendant is claiming common law lien and it is not clear whether such lien can be exercised over the containers stated in the summons. The 2<sup>nd</sup> Defendant's lien is based on the Bill of Lading, but again whether it can exercise this lien over the container which is yet to be discharged from the port is also an issue. Allowing the goods to perish in the containers will create losses to all the parties. The balance of convenience lies with the Plaintiff to have access to their goods imported for commercial use. In the circumstances the orders sought in the summons are granted in favour of the Plaintiff. The cost of this application will be cost in the cause.

## **FINAL ORDERS**

- a. An Order that the First Defendant Export Frigate Services Limited By itself and or by its servants and or its agents or otherwise howsoever do forthwith release and hand over to the Plaintiff, Rampra Exports (Fiji) Limited possession of goods more particularly toilet paper contained in container numbers: HLBU1317817, MSKU8640247 and Terff Cream biscuits contained in container number MSKU0762085 that are currently stored at the First Defendant's bonded yard at Walu Bay in Suva.
- b. An interim injunction restraining the First Defendant Export Freight Services Limited by itself and/or by its servants and or its agents or otherwise howsoever from interfering or hindering in any way with the Plaintiff's exercise of its right to take possession of goods more particularly toilet paper contained in container numbers HLBU1317817,

MSKU8640247 and Terff Cream biscuits contained in container number MSKU0762085 that are currently stored at the First Defendant's bonded yard at Walu Bay in Suva.

- c. An order that the Second Defendant Shipping Services (Fiji) Limited By itself and or by its servants and or its agents or otherwise howsoever do forthwith release and hand over to the Plaintiff, Rampra Exports (Fiji) Limited possession of goods more particularly giggles baby diapers contained in container number MRKU2723548 that are currently at the Suva Wharf.
- d. An interim injunction restraining the Second Defendant Shipping Services (Fiji) Limited by itself and/or by its servants and or its agents or otherwise howsoever from interfering or hindering in any way with the Plaintiff's exercise of its right to take possession of goods more particularly giggles baby diapers contained in container number MRKU2723548 that are currently at the Suva Wharf.
- e. The cost of this application will be cost in the cause.
- f. The matter is adjourned to the Master for directions.

Dated at Suva this 10<sup>th</sup> day of July, 2015



*Amulya*  
.....  
Justice Deepthi Amaratunga  
High Court, Suva