

IN THE HIGH COURT OF FIJI
[WESTERN DIVISION AT LAUTOKA]
CIVIL JURISDICTION

Civil Action No. HBC 112 OF 2016

BETWEEN **HARISH CHAND** trading as **i-TAUKEI FOOD INDUSTRIES**
Level 1 Unit 1/9 Lot 9, Bila Street, Carreras Road, Votualevu,
Nadi.

Plaintiff

AND : **RAJSAMI INVESTMENTS LIMITED** a limited liability
company having its registered office at Stage 2, Baadal
Place, Makoi, Nasinu, Fiji.

1st Defendant

AND : **RAM SAMI & SONS (FIJI) LIMITED** having its registered
office at 37 Badal Place Makoi, Nakasi.

2nd Defendant

AND : **RAJENDRA SAMI** of 8 Miles, Makoi, Nasinu, Director.

3rd Defendant

Appearances: Mr. K Vuataki for Plaintiff/Applicant
 Ms. S. Devan for Defendant/Respondent

Date of Hearing: 06 September 2016

Date of Ruling: 14 November 2016

RULING

Introduction

[01] This is an application for interim injunction.

[02] By his ex-parte summons filed on 20 June 2016 the Plaintiff sought certain injunctive orders against the defendants. Having considered the urgency as urged by the applicant, I granted the orders sought by the applicant on ex-parte basis.

[03] Upon serving the orders on the respondents, the respondents filed *ex-parte* application to discharge the orders granted in favour of the applicant upon their *ex-parte* application. Having considered the application and having convinced by the application and submissions advanced by the respondents on 30 June 2016, I discharged the injunction orders I granted on ex-parte basis.

[04] The applicant has now made an application for interim injunction against the respondents. Basically, the applicant wants this Court to consider his ex-parte application afresh *inter-partes*.

[05] The applicant seeks the following orders against the respondents:-

1. **THAT** the Defendants, their servants and or agents or howsoever be restrained from continuing to unlawfully occupy Lot 9 Bila Street, Carreras Road, Votualevu, Nadi premises demised to plaintiff as lessee and be also further restrained from preventing the plaintiff from gaining access to the demised premises and continuing with its occupation and business thereon until further Order.
2. **THAT** the Defendants, their servants and or agents or howsoever whether by itself or by its agents or servants or otherwise however, allow the Plaintiff to commence and continue with the conduct and management of the business affairs at Lot 9 Bila Street, Carreras Road, Votualevu, Nadi until further Order.
3. **THAT** the Defendants, their servants and or agents or howsoever allow the Plaintiff to move back onto the premises at Lot 9 Bila

Street, Carreras Road, Votualevu, Nadi to commence its business thereon until further Order.

4. **THAT** the Defendants, their servants and or agents or howsoever be restrained from unlawfully interfering with the Plaintiff's trade or business on premises at Lot 9 Bila Street, Carreras Road, Votualevu, Nadi until further Order.
5. Costs of this application be in the cause.

[06] The application supported by an affidavit of Harish Chand, the applicant in support.

[07] The respondents filed affidavit of Rajendra Sami in response.

[08] At the hearing both parties orally argued the matter. In addition, they also filed written submission.

The Claim

[09] In his amended writ of summons indorsed with the statement of claim the plaintiff seeks amongst other things special damages, general damages and permanent injunction against the defendants restraining them from breaking into and or remaining on the property and from restraining them from unlawfully interfering with the plaintiff's conduct of the business on the demised property. The claim arises out of a Tenancy Agreement the plaintiff had with Bula Island Food Supplies Limited (*Bula Island*) submissions.

[10] Respondents submit that we have a preliminary issue regarding the amended statements of claim. The amendment has been made without leave of the Court. We have filed our striking out application. That application is pending before the Master. The respondent adds that it

would be prudent to hear this application after the striking out application being heard and determined. We sought further and better particulars. However, they have filed amended statement of claim with leave of the Court.

The submissions

Applicant

- [11] The applicant's submissions is that under the High Court Rules to file striking out application. But they failed to do so. We had invested lot of money in the business. Caveat has been removed without notice to us. He further submits that the first defendant knew that we were tenants. The question is what is just in the circumstances.

Respondent

- [12] In response, the respondent submits that the lease has not been registered. Breach of the lease, if any, lies against the previous owner. Material facts have not been pleaded. The strength of the plaintiff case is in question.
- [13] In reply to the respondent's response, the applicant submits that we have a separate case pending against Bula Island, the registered proprietor.

Discussion

- [14] The application for interim injunction is made pursuant to the O.29 R. 1 (1) of the High Court Rules ('HCR'). The Court may grant an interim injunction at any time pending determination of the substantive matter.
- [15] The principles applicable when granting an interim injunction were considered as *American Cyanamid Co. v Ethicon Ltd* [1975] 1 ALL ER 396 where Lord Diplock considered:-

- (a) Is there a serious issue to be tried?
- (b) Are damages an adequate remedy?
- (c) Balance of convenience

Serious Issue

- [16] In July 2015 the plaintiff entered into a Tenancy Agreement with the Bula Island, the then registered proprietor of the demised property. The agreement had a covenant that forbids Bula Island to sell the property on Lot 9 within 4 years from July 2015 with option that the plaintiff to have first right to purchase the property at the end of four years.
- [17] It will be noted that the plaintiff had the Tenancy Agreement with Bula Island, the previous owner of the property and not with the defendants. Therefore, the plaintiff might have cause of action against Bula Island for breach of Tenancy Agreement. The Plaintiff says that he has a separate case pending against Bula Island.
- [18] The allegation by the defendants is that the first defendant knew that the plaintiff was the tenant of Bula Island and on 23 April 2016 the staff of the plaintiff was locked out of the property as a new padlock with steel cable was put on top of the Plaintiff's lock so that the plaintiff staff could not gain access to the property. The plaintiff further complains that the defendants have been interfering with the day to day running of the business even though they are not the registered proprietor of the property.
- [19] The issue that may arise against the defendants is that whether the defendants trespassed, entered and broke into the property and lock out the plaintiff's staff and security guards thereon to prevent re-entry by the plaintiff and its staff.

[20] Another issue that may arise against the defendants is that whether their action was done with intention to injure the plaintiff's business.

[21] For the present purpose, I consider that there are serious issues to be decided at the trial.

Adequacy of Remedy

[22] Turning to the question whether damages are an adequate remedy in the circumstances.

[22] The applicant claims against the respondents general damages together with permanent injunction.

[23] In my earlier ruling delivered on 30 June 2016 discharging the injunctions issued ex-parte, I found that damages would be adequate remedy for the plaintiff and the defendants are in a position to pay them (see paragraph 16 of my ruling on 30 June 2016).

[24] The applicant cannot claim damages from the respondents for breach of the tenancy agreement as there was no tenancy agreement with the respondents. Only damages, if any, the applicant could claim against the respondents would be damages for their alleged unlawful eviction and thereby causing loss to the plaintiff's business.

[25] The respondents have purchased the property and they are the registered proprietors of the same.

[26] The applicant seeks a permanent injunction against the respondents to restrain them from doing any acts as stated in their application (see paragraph 5 above).

[27] The respondents have become the new owners of the property. In this context, the strength of the applicant's case, especially the case for obtaining permanent injunction has become doubtful. As a result, it appears that the applicant has no strong prima facie case against the defendants for a permanent injunction at the end of the trial.

[28] Moreover, the amended claim filed by the applicant is under attack. The respondents have filed a striking-out application. That application is pending before the Master for determination. The grounds that are taken for striking out the amended claim are as follows:-

(i) The Plaintiff has failed to plead how it has derived legal or equitable right to the property

(ii) The Plaintiff has failed to plead the lease agreement pursuant to which he claims he was in possession of the demised premises

(iii) The Plaintiff has failed to provide full and proper particulars of the financial contributions he allegedly made to the property.

(iv) The Plaintiff has failed to plead facts for the pleading that the defendants have no proprietary right to the property, which is fatal for his claim for an action in trespass.

(v) The plaintiff has failed to particularise the special damages he is claiming.

(vi) The Plaintiff has failed to plead the grounds why he is claiming general damages.

(vii) The Plaintiff's pleadings are bad in law and the court should not allow the plaintiff to continue with its action unless and until its pleadings are rectified.

[29] In an application filed under O.18, r.18 of the High Court Rules (HCR), the Court may strike out any pleadings on the ground that it discloses no reasonable cause of action against the defendant or allow the plaintiff to amend the pleadings rectifying the pleadings complained of.

[30] In any event, the plaintiff's claim hinges on the striking out application. His claim may be struck out or he may be ordered to amend the claim.

[31] Lord Diplock in *American Cyanamid Co v Ethicon Ltd* [1975] 1 All ER 503 states that:

“The Court should go on to consider... 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 trial. If the damages...would be an 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” (at 408-C).

[32] I apply the above dictum to the present application. In my previous ruling made dissolving the injunction, the same injunction the applicant seeks in this application, I found that damages would be adequate remedy for the plaintiff. I also found in that ruling that the defendants have shown sufficient cross-undertaking that they are in a financial position to pay the damages the court would order if the plaintiff were to succeed at the trial in establishing their right to a permanent injunction. I reiterate my findings made in my previous ruling that damages would be adequate remedy and that the defendants are in a financial positions to pay them.

Balance of Convenience

[33] The third principle that is to be considered when granting interim injunction is that the balance of convenience.

[34] In *American Cyanamid*, Lord Diplock held:

“It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises” (at 408E).

[35] I have decided that adequacy of damages would be available to the applicant in this case. Therefore, the question of balance of convenience does not arise.

Conclusion

[36] I, for all these reasons, would refuse to issue the interim injunction sought by the applicant. I accordingly dismiss and struck out the application for interim injunction. The respondent did not push for an order for costs against the applicant. I would, therefore, refrain from making an order for costs against the applicant.

Final Orders:

1. Application for interim injunction refused.
2. No order as to costs.

M. H. Mohamed Ajmeer
14/11/16

.....

M. H. Mohamed Ajmeer

JUDGE

At Lautoka

14 November 2016

