

IN THE HIGH COURT OF FIJI
AT LAUTOKA
WESTERN DIVISION

Civil Action No. 142 of 2017

BETWEEN : **SOUTH PACIFIC FERTILIZERS LTD (SPF)** a duly incorporated company having its registered office at Lautoka Waterfront Road, Vetari, Lautoka, Fiji.

PLAINTIFF

AND : **ALLIED HARVEST INTERNATIONAL PTE LTD** a duly incorporated company having its registered office at 3 Anson Road #34-02, Springleaf Tower, Singapore.

DEFENDANT

Solicitors : Krishna & Company for the Plaintiff
AP Legal for the Defendant

R U L I N G

1. South Pacific Fertilisers Ltd (“SPFL”) is a limited liability company. The Sugar Cane Growers Fund holds 90.6 shares in SPFL. The other 9.4% shares is held by the Sugar Cane Growers Council pursuant to the Sugar Industry Act.
2. SPFL wanted to buy fertilisers (urea) for sugar cane farmers in Fiji. Accordingly, on 18 April 2017, SPFL floated a tender to purchase urea. In due course, the tender process was completed and on 27 April 2017 the tender was awarded to Allied Harvest International Pte Limited (“AHIPL”), a company duly incorporated in Singapore - to supply 400 metric tonnes of Urea at USD\$278.00 per metric tonnes to SPFL.
3. Pursuant to their arrangement, the urea was duly shipped to Fiji by AHIL and on 16 June 2017, 420 metric tonnes of urea arrived at the port of Lautoka on the ship, Coral Chief 1707S.

4. Upon the arrival of the consignment in Lautoka, SPFL could not have the goods released. The reason for that is because AHIPL would not release the shipping documents. AHIPL would not release the documents because, as far as it was concerned, SPFL had not paid for the consignment.
5. SPFL insists that it had settled the full purchase price of USD\$111,2000-00 to AHIPL prior to the shipment. AHIL asserts otherwise.
6. On 14 July 2017, SPFL filed an Originating Summons in Expedited Form seeking the following Orders:
 - (i) a declaration that the plaintiff has paid all its dues as per its contract with the defendant.
 - (ii) indemnity costs
 - (iii) such other relief as the Court deems just and fair.
7. On the same day that SPFL filed its Originating Summons, it filed an ex-parte Notice of Motion seeking the following Orders:
 1. All packages and goods as described in Bill of Lading number CNTAO1008856W subject to payment of all Fiji Ports Terminal Ltd and Fiji Revenue Customs Authority charges and dues be released forthwith to South Pacific Fertilizers Ltd.
 2. Upon payment of all charges and dues paid to Fiji Ports Terminal Ltd and Fiji Revenue Customs Authority, the 20' foot, 20 dry containers containing 8400 bags Granular Urea in 50kg Bag be immediately released to South Pacific Fertilizers Ltd.
 3. Costs of this application on a solicitor client basis.
 4. Such further or other orders this Honourable Court considers just and equitable in the circumstances.
8. SPFL relies on an affidavit sworn by one Ashween Nischal Ram, the General Manager of SPFL, sworn on 14 July 2017. By that affidavit, Ram annexes the following documentation:

- (i) a trail of email correspondence between SPFL and AHIL from 18 April 2017 to 04 May 2017 to show how they had negotiated their agreement.
 - (ii) A contract executed on 02 May 2017.
 - (iii) An email by AHIL to SPFL on 05 May 2017 with a revised contract which SPFL duly executed on 08 May 2017. Email also advised SPFL that there had been an error in the contract executed on 05 May 2017 and requested SPFL to again sign the contract with the correct details.
 - (iv) An email by SPFL to AHIL dated 08 May 2017 to query on the revised bank account details.
 - (v) An email confirmation from AHIL re- the new bank account details followed by a telephone conversation to confirm the same.
 - (vi) After this confirmation, SPFL then wired USD\$111,200-00 to AHIL on 09 May 2017.
 - (vii) AHIL confirmed receipt of the funds on 09 May 2017.
9. I accept that whether or not the purchase price was indeed paid by SPFKL must remain an issue to be resolved at the substantive hearing of this matter.
10. However, for now, there is some urgency in the matter as the sugar cane farmers throughout Fiji await the distribution of the fertilisers and also, because the quality of the fertilisers, I am told from the bar table, deteriorates, whilst the contractual issues between the parties remain pending for resolution in this court.
11. SPFL has given an undertaking as to damages and there is no reason before me to doubt that in the event that the issues are resolved in favour of AHIL,

that SPFL will be ready to settle whatever damages and costs are ordered against it. There is no suggestion before me either that SPFL is insolvent or is at risk of insolvency.

12. In **Rampra Exports (Fiji) Ltd v Export Freight Services Ltd** [2015]

FJHC 513; HBC267.2014 (10 July 2015), Mr. Justice Amaratunga, when faced with a similar situation, said as follows:

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 Cyanamid** (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 1st 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 1st 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 2nd 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.

13. I follow the wisdom of Amaratunga J in the above reasoning. Accordingly, I order as follows:

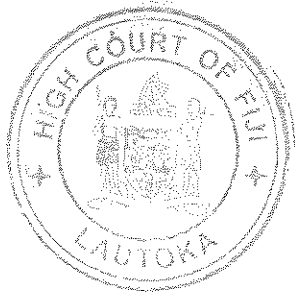
(1) That Orders 1, 2 and 4 of the previous Orders shall remain and are to be extended.

(2) Order 3 is replaced and amended by the following:

“The defendant is to release all relevant documents required for the release of the fertilisers as per Orders 1 and 2”.

(3) The consignment be released forthwith to SPFL by the relevant authorities upon presentation of the relevant documents.

(4) The matter is adjourned to 28 September 2017 for argument at 8.30 a.m. on the issue of whether or not SPFL has paid AHIL for the consignment, and also costs.



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Anare Tuilevuka
JUDGE
11 September 2017.