

In the High Court of Fiji
At Suva
Action No. HBC 49 of 2018

Roopal Patel
First plaintiff
And
Advantage Cars Limited
Second plaintiff
And
Narjarin Nisha trading as Toso Viti Rentals
First defendant
And
Arvindra Prasad Sharma
Second defendant
And
Land Transport Authority
Third defendant

COUNSEL: Mr S. Nandan with Ms B. Kinivuai for the plaintiffs
The first and second defendants in person
The third defendant absent and unrepresented
Date of hearing: 29th March, 2018
Date of Ruling: 12th April, 2018

Ruling

1. By ex parte notice of motion, the plaintiffs sought the following interim orders:
 - i. *the 1st and the 2nd Defendant deliver immediate possession of the Motor Vehicles Registration Numbers JH 098/LR 4666 and JH 262/LR 4681 to the Plaintiffs.*
 - ii. *the 1st and the 2nd Defendant deliver immediately the Rental Plates LR 4681 LR 4666 to the Plaintiffs.*
 - iii. *the Defendants be restrained from dealing, transferring or causing any charges to be registered against the Motor Vehicles Registration Numbers JH 098 / LR 4666 and JH 262 / LR 4681 until further order of the court.*
 - iv. *the Plaintiffs be at liberty to seek police assistance for the enforcement of the above orders.*
 - v. *Any other or further order that the court deems meet.*

2. Roopal Patel, the first plaintiff and director of the second plaintiff, in her affidavit in support states that on 29th November, 2017, she entered into a Business Sale Agreement with the first defendant, to purchase five rental permits and the "*business name of Toso Viti Rentals*". The first defendant, "*Narjarin Nisha's partner one Mr Arvindra Sharma* (the second defendant) *was also involved in making of decisions regarding the transaction*". Five vehicles of the second plaintiff's stock were registered in the name of "*Toso Viti Rentals*", since the first defendant had provisional approval for five new rental permits, which had to be renewed. The first defendant never paid any monies to purchase the vehicles. The second plaintiff remains the beneficial owner of the vehicles. It paid the registration costs and third party policies.
3. The affidavit in support continues to state that on 18th and 19th January, 2018, after the permits were renewed, the first defendant gave the original permits and other relevant documents to the first plaintiff's husband "*Rizwan Ali Haroon*". The second plaintiff paid \$4,000.00 to the first defendant. The first defendant "*and her husband*" then changed their minds and did not want to sell "*Toso Viti Rentals*". "*Mr Sharma*" (the second defendant), at the office of Reddy & Nandan, the second plaintiff's lawyers, threatened that he would not transfer the permits and keep the vehicles. He has exhibited a clear intention to defraud the plaintiffs.
4. The first plaintiff started to operate "*Toso Viti Rentals*" with the consent of the first defendant. On 19th February 2018, "*one Mahendra Prasad and one Ratu Vilitatilacabuka*" took out vehicles LR4681 and LR4666 on rental. They advised him that the second defendant had taken the keys of the vehicles from them. She reported the matter to the Samabula Police Station. The second defendant came to the Police Station and said he paid \$100,000 for the five cars. The affidavit concludes stating that the second defendant has exhibited a clear intention to defraud the plaintiffs of the vehicles and monies.
5. On 1st March, 2018, on hearing Mr Nandan, counsel for the plaintiffs, I granted the ex parte orders sought in ii and iii of paragraph 1 above, until 6th March, 2018. The defendants were granted time to file affidavit in response. The ex parte orders granted were subsequently extended, until the date of hearing.

6. The second defendant, in his affidavit in response titled "*AFFIDAVIT OF 1ST AND 2ND DEFENDANTS*" states that he is familiar with this matter. The first defendant did not enter into a Business Sale Agreement. There was no sale of 5 rental permits nor the business name "*Toso Viti Rentals*". The LTA is the issuing authority for permits and transfers. Permits cannot be sold. The "*confirmed permit*" was received on 18th January, 2018. The sale could not commence on 29th November, 2017. On 24th November, 2017, he paid the full amount of \$ 100,000 in cash for the five vehicles to the second plaintiff. The permits and all original documents were stolen by "*Rizwan and Roopal Patel*". The matter was reported to Samabula Police Station. The document prepared by the plaintiffs are forged. He received \$4,000.00 from the plaintiffs, as rent for the original operating place of "*Toso Viti Rentals*". The second defendant's Lawyers "*forcefully wanted (him) to sign irrelevant documents*". All cash sales by Toso Viti Rentals were receipted by the first plaintiff, without a T.I.N. number "*which is cheating*". Mahendra Prasad took the car and handed it over to the right place. The second defendant states that he did not take the key from him.
7. The second plaintiff in her affidavit in reply states that she is "*purchasing a business; the rental plates are simply the asset of the business*". There was no "*deal*" to sell the vehicles to the defendants. The second defendant has not provided any documentary evidence of payments nor of any tenancy agreement. Mr Avinesh Reddy of Reddy & Nandan Lawyers explained that a new agreement will have to be executed, since there were changes to be done to the Business Sale Agreement. The second plaintiff gave her statement to the Police. The plaintiffs have not defrauded the defendants.

The hearing

8. Mr Nandan submitted that the defendants have admitted that a sum of \$ 4000 was received from the second plaintiff, for the rental permits. No rental agreement has been produced by the defendants, in support of their assertion that this sum was paid as rent for a property. Five vehicles belonging to the second plaintiff were registered in the name of "*Toso Viti Rentals*", in order that the second defendant's rental permits do not expire. The defendants have admitted that the vehicles initially belonged to the second plaintiff. They have not produced any documentary evidence to establish that they paid for the vehicles.

9. Mr Nandan further submitted that there is a serious issue to be tried. He cited the *American Cyanamide* case. There would be a real likelihood of irreparable harm and substantial injustice to the plaintiffs. Damages is not an adequate remedy, as the defendants do not have means to meet an order for damages nor to maintain the vehicles. The plaintiffs, as car dealers, can meet an order for damages and have given an undertaking as to damages. The plaintiffs are willing to keep the vehicles in their stock, till the final determination of this action. The balance of convenience favours the plaintiffs. The defendants have failed to deliver the rental plates, in terms of the ex parte order granted and should not be heard.
10. The second defendant submitted that the agreement relied on by the plaintiffs is forged. He said that a public service permit cannot be sold. The issuing authority of the permit is the LTA. Only the LTA can transfer rental permits. The LTA issued the permits to "*Toso Viti Rentals*". The permits can only be operated from that place of business. The first defendant's permits were used by the first and second plaintiffs without her authority.
11. Mr Nandan, in reply said that the Business Sale Agreement contemplates the sale of the business, which does not require the permission of the LTA. He said that he was unaware of any law prohibiting the sale of rental permits.
12. At the conclusion of the hearing, the ex parte orders granted were extended, until the date of Ruling.

The determination

The third relief

13. I will in the first instance, consider the third relief sought by the plaintiffs, in their summons.
14. The plaintiffs seek that the *“the Defendants be restrained from dealing, transferring or causing any charges to be registered against the Motor Vehicles Registration Numbers JH 098 / LR 4666 and JH 262 / LR 4681 until further order of the court”*.
15. The first plaintiff states that she entered into a Business Sale Agreement with the first defendant, for the purchase of five rental permits and the business name of *“Toso Viti Rentals”*. She paid \$4,000.00 as a deposit. The first plaintiff states that the first defendant had provisional approval for five new rental permits, but did not have five registered vehicles to renew the permits, as required by LTA Regulations. Five vehicles of the second plaintiff's stock were hence registered in the name of the first defendant. The first defendant never paid any monies to purchase the vehicles. The second plaintiff remains the beneficial owner of the vehicles. The second plaintiff, in her supplementary affidavit, has produced a statement from the Samabula Police Station certifying that she had made a complaint that the first and second defendants had defrauded her this year.
16. The second defendant denies that the first defendant entered into the Business Sale Agreement and states that he paid a sum of \$ 100,000.00 for the five vehicles.
17. In my view, there is a serious issue to be tried, as to the second plaintiffs' claim that it is the beneficial owner of the vehicles.

18. The second plaintiff, in her affidavit in support states that the second defendant has exhibited a clear intention to defraud the plaintiffs of the vehicles and monies.
19. There is no evidence before Court that there is an imminent threat of the defendants disposing the vehicles. It follows and I hold that there is no imminent threat and no reason for the ex parte order granted to continue.
20. Lord Diplock in *Siskina v Distos SA*,(1979)AC 210 at page 256 stated that a right to obtain an interlocutory injunction is “*ancillary and incidental to the pre-existing cause of action..(and) dependent upon there being a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff.*”(emphasis added)
21. In *London Borough of Islington v Elliot and Morris*,(2012) EWCA Civ 56, the Court of Appeal reviewed the principles that apply in the grant of a *quia timet* injunction before damage has taken place. The basis of the claim was an allegation that roots of a tree from a property owned by the council constituted an actual or potential nuisance to the neighbour’s property. The claimants sought a *quia timet* injunction to have the trees removed, even though actual damage had not yet occurred. The Court of Appeal held that the justification for granting a *quia timet* injunction depended on whether the prospect of damage was sufficiently imminent and certain.
22. In *Strategic Nominations Limited v Gulf Investments Fiji Ltd & Others*, (Civil Appeal No. ABU0039 of 2009) Marshall JA said that Lord Diplock in the *American Cyanamide* was concerned with a case where “*there was a threatened continuing breach of a proprietary right of the Plaintiff by the Defendant*”. He concluded that in “*law there is no basis.. for invoking the interim injunction jurisdiction*”, where there is no such threat.
23. In my view, an award of damages will be adequately compensate the plaintiffs.

24. The five third party policies and Rental Agreements attached to the first plaintiff's affidavit in support constitute prima facie evidence that the first defendant is the owner of the five vehicles.
25. The court is not required to seek to resolve conflict of evidence or difficult questions of law at the interlocutory stage. Lord Diplock in the *American Cyanamide* case stated:
- It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claim of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial.*
26. In my view, the balance of convenience does not favour the plaintiffs.
27. In the exercise of my discretion, I decline the application for an interim injunction, to restrain the defendants from dealing, transferring or causing any charges to be registered against the motor vehicles bearing registration numbers JH 098 / LR 4666 and JH 262 / LR 4681.
- The first and second reliefs*
28. The plaintiffs seek mandatory interim orders as follows: that the "1st and the 2nd Defendant deliver immediate possession of the Motor Vehicles Registration Numbers JH 098/LR 4666 and JH 262/LR 4681 ..(and) deliver immediately the Rental Plates LR 4681 LR 4666 to the Plaintiffs".
29. It is an accepted principle of law that the Court will not grant a mandatory interim injunction, unless there is an "unusually strong and clear" case, per Megarry J in *Shepherd Homes Ltd v Sandham*, [1971] Ch 340 at pg 349 .
30. In *Redland Bricks, Ltd v. Morris*, [1969] 2 All ER 576 at page 579 Lord Upjohn said:
- The grant of a mandatory injunction is, of course, entirely discretionary and unlike a negative injunction can never be "as of course." ...*
- 1. A mandatory injunction can only be granted where the plaintiff shows a very strong probability on the facts that grave damage will accrue to him in the future...It is a jurisdiction to be exercised sparingly and with caution but, in the proper case, unhesitatingly. (emphasis added)*

31. I reiterate that the documents produced by the plaintiffs are prima facie evidence that the first defendant is the owner of the five vehicles. The onus is then on the second plaintiff to establish at the trial, that it has a beneficial interest in the vehicles.
32. In the circumstances, I decline the application of the plaintiffs for the first and second defendants to deliver immediate possession of the motor vehicles registration numbers JH 098/LR 4666 and JH 262/LR 4681 to them.
33. The next mandatory relief sought is for delivery of the rental plates to the plaintiffs.
34. The second defendant states that the sale of a rental permit is illegal. It is only the LTA which can issue and transfer rental permits. That contention is no longer correct.
35. Section 11 of the Land Transport(Public Service Vehicles)(Amendment) Regulations 2017, enables the holder of a permit to sell it. Section 11 A (2) provides that the LTA may transfer a permit “ *to the purchaser under an agreement for the bona fide sale and purchase of the permit between the permit holder and the purchaser*”.
36. The second defendant disputes that the first defendant entered into the Business Sale Agreement. He states that the Agreement is forged. He states that he has reported the theft of “ *the permits and all original documents by Rizwan and Roopal Patel(the first plaintiff) to Samabula Police*”.
37. In my view, the plaintiffs do not have a strong and clear case and importantly not established that grave damage will accrue to them, if the mandatory interim injunctions sought are not granted.

38. Moreover, the two mandatory orders sought will have the effect of granting the substantive reliefs sought by the plaintiffs, in prayer 2 and 3 of their statement of claim.
39. In *NWL Ltd v Woods*, [1979] 3 All ER 614 at page 625 Lord Diplock said that the American Cyanamid was not dealing with a case where “*the grant or refusal of an injunction at that stage would, in effect, dispose of the action*”.
40. In *Wakaya Ltd v Chambers*, ((Civil Appeal No. CBV0008/11) the Court declared that the grant of the interim injunction “*virtually brought about the final relief that the Petitioner wanted*”, as it had prevented the first respondent from carrying out what he intended to do, namely the burying the body of his son on the land belonging to the second respondent.
41. The applications for mandatory interim orders that the “*1st and the 2nd Defendant deliver immediate possession of the Motor Vehicles Registration Numbers JH 098/LR 4666 and JH 262/LR 4681 ..(and) deliver immediately the Rental Plates LR 4681 LR 4666 to the Plaintiffs*”, are declined.

42. **Orders**

- a. The summons of the plaintiffs is declined.
- b. Costs in the cause.



A.L.B. Brito-Mutunayagam

A.L.B. Brito-Mutunayagam

JUDGE

12th April, 2018