

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

CIVIL ACTION NO. HBC 144 OF 2018

BETWEEN : **THEN INDIA SANMARGA IKYA SANGAM** a duly incorporated company with special dispensation to not use "Limited" after its name and having its registered office at Vonovou Lane, Park Street, Nadi, Fiji.

PLAINTIFF/APPLICANT

AND : **NASINU LAND PURCHASE & HOUSING CO-OPERATIVE LIMITED** a duly incorporated company and/or society duly registered under the Co-operatives Societies Act and having its registered office at 6 ½ miles, Nasinu, Suva.

DEFENDANT/RESPONDENT

Appearances : Mr R. Gordon with Mr W. Pillay

Date of Hearing : 20 July 2018

Date of Ruling : 20 July 2018

R U L I N G

[On *ex parte* injunction]

[01] This is an *ex parte* notice of motion filed 17 July 2018 seeking certain interim injunctive orders (*'the application'*). The application is supported by an affidavit of Karna Waddi Raju, the General Manager of the plaintiff sworn on 16 July 2018 (*'the supporting affidavit'*). The supporting affidavit annexes some 13 documents marked as 'KWR1' to 'KWR13'.

[02] The application is made pursuant to Order 29, RR 1 & 2 of the High Court Rules 1988, as amended (*'HCR'*) and under the inherent jurisdiction of the court. O 29 provides:

Application for injunction (O 29, R 1)

"1.-(1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a

claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.

(2) Where the applicant is the plaintiff and the case is one of urgency and the delay caused by proceeding in the ordinary way would entail irreparable or serious mischief such application may be made ex parte on affidavit but, except as aforesaid such application must be made by notice of motion or summons.

(3) The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit."

- [03] In the case of urgency, the application for the grant of injunction may be made *ex parte* where the applicant is the plaintiff if the delay would entail irreparable or serious mischief (O 29, R 2).
- [04] The plaintiff states that on or about 3 October 2015 there was a sale and purchase agreement ('SPA') made between the plaintiff and the defendant where the defendant agreed to sell and the plaintiff agreed to purchase 10 acres less or more of the Principal Land ('the Land') for the sum of \$120,000.00 exclusive of VAT. The plaintiff also states that the purchase price of \$120,000.00 had been paid in full, \$12,000.00 upon execution of the SPA and \$108,000.00 subsequently. 'KWR7' shows payment of \$108,000.00.
- [05] The SPA has a default clause that if the defendant makes default in the performance of the agreement and such default continues for 21 days after the notice to the defendant, then the plaintiff may seek remedies: 1. Rescind the SPA, 2. May sue for specific performance or 3. Sue for damages. The plaintiff sues the defendant seeking among other things specific performance.
- [06] The plaintiff explains the reasons why the application is made *ex parte*. The plaintiff fears that the land is about to be sold or transferred and if an *ex parte* order is not granted restraining the defendant from dealing with the land, the application for injunction will be rendered nugatory. The plaintiff further states

that by reason of the defendant's breach and/or intended further breach the plaintiff has suffered loss and damages and/or will suffer irreparable loss, harm and damages.

[07] Having perused the application, the supporting affidavit and having heard the submissions made by the plaintiff's counsel, I am satisfied that there is urgency in the matter and that the delay caused by proceeding in the ordinary way would entail irreparable or serious mischief would be caused to the plaintiff if an interim injunction is not granted as the plaintiff asks. It seems to me that the plaintiff had completed its obligations under the SPA including the payment of the entire sale price and that the defendant is refusing to perform the SPA. I would, therefore, grant orders sought in a, b, c & d of the prayer in the application. These orders together with all the documents must be served on the defendant forthwith. I would adjourn the matter for *inter partes* hearing at 9.30 am on 14 August 2018.

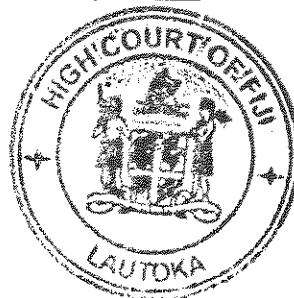
The outcome

1. *Ex parte* interim injunction granted.
2. *Inter partes* hearing will be at 9.30 am on 14 August 2018.

M. H. Mohamed Ajmeer 20/7/18

M. H. Mohamed Ajmeer

JUDGE



At Lautoka

20 July 2018

Solicitors:

For the plaintiff/applicant: M/s Gordon & Co, Barristers & Solicitors