

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

CIVIL ACTION NO.: HBC 57 of 2016

BETWEEN : **FIJI PORTS CORPORATION LIMITED**
PLAINTIFF / RESPONDENT

AND : **VENU SHIPPING LIMITED**
DEFENDANT/APPLICANT

APPEARANCES/REPRESENTATION

PLAINTIFF / RESPONDENT : Mr E Narayan with Ms K Singh [Patel Sharma Lawyers]

DEFENDANT/APPLICANT : Mr N Lajendra [Lajendra Lawyers]

RULING OF : Acting Master Ms Vandhana Lal

DELIVERED ON : **22 March 2019**

JUDGMENT
[Injunction]

1. The defendant applied for following orders:
 - i. For an order that the plaintiff by itself and/or its servants and/or its agents be restrained from making adverse publications in the media concerning the liability of the defendant for removal of MV SuiIVEN and sending invoices and demanding payment pertaining to removal of MV SuiIVEN until the determination of Civil Action HBC No. 57 of 2016.

Application is made pursuant to Order 29 rule 1 of the High Court Rules and is supported by the affidavit of Ben Naidu.

2. Venu Shipping Limited [VSL] used to own a company vessel namely MV SuiIVEN [the vessel].

The vessel sank on 24 November 2011, resulting in Fiji Ports Corporation Limited filing a writ of summons against VSL claiming an order that the vessel be removed forthwith by VSL.

The defendant is denying the claim on the basis that VSL is not responsible for causing the vessel to sink to its current position.

According to VSL, by virtue of certain provision of Sea Ports Management Regulation 2008, the plaintiff is responsible to remove the vessel from said position.

Despite the matter pending before the court on the issue as to who is responsible to remove the vessel from its current position, the plaintiff proceeded to write VSL advising it that unless VSL proceeds to remove the vessel, VSL will not be allowed to access the port using any other vessels.

Solicitors for VSL wrote to the plaintiff's Solicitors stating that that the matter is before court to decide who is responsible for removal of the vessel.

The Chief Executive Officer of the plaintiff in an article in the Fiji Sun on 2 November 2016 said as follows:

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"We are ready to remove the two vessels but the costs will be paid by Venu Shipping Limited", he said.

According to the defendant, since the matter is pending in court it is not appropriate for the plaintiff's Chief Executive Officer to comment on the matter.

It is disrespectful to the court and causing the defendant great amount of adverse publicity where the general members of the public will be forming a view that VSL is at fault in causing the vessel to sink to its current position and is not taking any steps to comply with the legal requirements to remove the vessel.

The plaintiff also continues to send VSL invoices in respect of the removal of the vessel.

According VSL, the plaintiff is mounting pressure on VSL to pay the plaintiff despite the court action.

VSL is said to be financially good and in a position to given an undertaking as to damages. In August 2016, VSL is said to have purchased a brand new vessel named Saint Mary worth USD\$3.5million. VSL has other assets including trunks.

3. According to the plaintiff, the vessel sank within the boundaries of the Port of Suva.

The plaintiff and VSL including representatives of Maritime Safety Authority of Fiji met to discuss the best and quickest way for the defendant to remove the sunken vessel.

On 25 November 2015, the plaintiff via a letter informed VSL that VSL would be held responsible for any damage caused to the environment or any other port users due to the sunken vessel's present position and state.

VSL was to provide a "full incident report" with necessary remedial actions however no action was taken by VSL.

On 8 December 2015 the plaintiff issued a removal order on VSL for removal of the vessel as the vessel was endangering ships in navigating in and out of the harbour channel.

According to the plaintiff, the cost of removing the vessel and its destruction is a debt payable to the plaintiff by the owner of the vessel, VSL.

The plaintiff is said to have spent substantial amount of monies and is continuing to accrue despite the removal order being issued.

The plaintiff claims that the proceeding of the High Court does not prevent them from carrying out their obligation.

The communication made to the Fiji Sun were done so as part of the plaintiff's statutory function of being an operator of the Sea Ports in Fiji and as the same was of public interest.

Publication made to the Fiji Sun in relation to the sunken vessel was made in pursuant to the removal order dated 8 December 2015 and letter to the defendant dated 1 August 2016.

As part of statutory function, the plaintiff issued the removal notice to the defendant to which the defendant has failed to comply with.

Under section 27 (3) of the Sea Ports Management Act 2005, the plaintiff can arrange for removal of the vessel. Further under section 27 (4) of the Sea Ports Management Act 2005, the cost of removing a vessel and of its destruction shall be a debt payable to the plaintiff by VSL.

An invoice was issued for \$75, 210 for chargers to pull vessel to clear Suva Passage.

4. With the action pending in court with issue of liability yet to be determined the plaintiff through its Chief Executive Officer is commenting on the same holding VSL liable to remove the vessel and cost if the plaintiff removes the vessel.

According to VSL, this is not appropriate as its disrespectful to court and causing the defendant great amount of adverse publicity where the general member of the public will be forming view that the defendant is at fault in causing the vessel to sink and is not taking any action to comply with the legal requirements to remove the vessel.

5. The plaintiff argues that as part of its statutory duty it issued a removal order with defendant taking no action to remove the vessel which was endangering ships in navigating in and out of harbour channel.

Under the Sea Ports Management Act 2005, cost of removing a vessel and of its destruction is payable to the Plaintiff by Venu Shipping Limited.

The Plaintiff had pulled the vessel to clear the passage and hence issued an invoice to the defendant.

6. The matter is of public interest. There is no element of dishonesty or unreasonable conduct by the plaintiff. The plaintiff is responsible for the control and operation of the Port of Suva, hence it has issued the removal order pursuant to law.
7. I would accept the submission by Plaintiff that communication made for publication was done as part of its statutory function of being an operator of the Sea Ports in Fiji and this is of public interest.

With the plaintiff incurring cost for removal of the vessel is entitled to serve VSL with invoices to recover the cost.

Whether or not VSL is liable will be decided in the hearing.


8. Again I do not find there to be any adverse publication in made or there to be any element of dishonesty or unreasonable conduct by Defendant when sending invoices for payment pertaining to removal of Mr Sulven.

Since the matter is of public interest they have communicated with the newspaper to keep the public informed of its status.

9. There is not sufficient evidence before the court to state how VSL has been adversely affected by the publication or service of the invoices.
10. VSL via the affidavit and submission have not satisfied the court that overall consideration of the matters in issue justify injunctive relief as sought by VSL under the applicable laws for the grant of an injunction.
11. According I refuse to make any order on the summon and dismiss the same.

Venu Shipping Limited shall pay cost summarily assessed at \$1,000 to the Plaintiff in 14 days.




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Vandhana Lal [Ms]
Acting Master
At Suva.