

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

CIVIL ACTION NO. HBC 188 OF 2019

BETWEEN : **VISPANDRA GOUNDAR** trading as Neels Restaurant of
Sigatoka Town, Sigatoka, Fiji, Businessman.

APPLICANT

AND : **SURIYA NARAYAN** of Level 1, Surs Building, Sigatoka, Fiji,
Businessman.

RESPONDENT

Appearances : Mr M. Anthony for the applicant
No appearance for the respondent

Date of Hearing : 26 July 2019

Date of Ruling : 26 July 2019

R U L I N G

[on *ex parte* injunction]

[01] This is an application by the prospective plaintiff (*‘the applicant’*) for an *ex parte* injunction against the prospective defendant (*‘the respondent’*). The application is supported by an affidavit sworn by the applicant. In addition, he has also filed a supplemental affidavit.

[02] Basically, the injunction is sought to release the property held under distress to the applicant forthwith.

[03] The application is made under Order 29, Rule 1 of the High Court Rules 1988, as amended. Rule 1 provides:

“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." (Emphasis supplied)

[04] On 22 July 2019, the respondent has issued the distress to recover an outstanding rental of \$40,342.58 allegedly payable by the applicant to the respondent. In carrying out the distress, the bailiff has locked the plaintiff's shop on the same day the distress notice was issued.

[05] The applicant says the initial rent for the property (shops No. 1, 2, 3 & 4) was \$4,360.00 a month. There was an ongoing dispute over the rent payable by the applicant as the respondent has rented out two of the shops (No. 1 and 2) to a different tenant. As a result, the applicant occupies only shops No. 3 and 4).

[06] The outstanding rent appears to have been calculated on the basis of the initial rent for the four shops before the respondent giving out the two shops to another tenant. Further, interest also has been levied on the outstanding rent for which there is no provision in the agreement.

[07] From the affidavit evidence adduced by the applicant, it appears that the distress has been issued unlawfully.

[08] I am satisfied that there is urgency in the matter as the distress is seriously affecting the plaintiff's restaurant business.

[09] The applicant has given undertaking as to damages. I am satisfied with the undertaking given in his supplemental affidavit.

[10] The applicant is a prospective plaintiff. He is seeking the injunction before filing his substantive claim. However, he undertakes to file his substantive claim within a week. The plaintiff can make an application for injunction before the issue of the writ or originating summons if the case is one of urgency, and in that case the court may grant the injunction applied for on terms providing for the issue of the writ or originating summons: see the HCR, O 29, R 3.

[11] Having gone through the application, the affidavits and the documents adduced and having heard the oral submissions of counsel for the plaintiff, I am satisfied that I should grant an *ex parte* injunction in this matter. I accordingly grant the injunction as sought to be valid till 13 August 2019 on the condition that the applicant must issue his substantive claim within one week. The applicant must serve this order together with all the documents on the respondent forthwith. The matter is adjourned to 13 August 2019 (at 9.30am) for hearing *inter partes*.

The result

1. *Ex parte* interim injunction is granted to be valid till 13 August 2019.
2. Applicant shall serve this order together with all other documents on the respondent forthwith.
3. Applicant shall file and serve his substantive claim within one week from today.
4. The matter is adjourned to 13 August 2019 for *inter partes* hearing at 9.30 am.

H.M. Mohamed Ajmeer
26/7/19
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M.H. Mohamed Ajmeer
JUDGE



**At Lautoka
26 July 2019**

Solicitors: AC Law, Barristers and Solicitors for the applicant