

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

CIVIL ACTION NO. HBC 240 OF 2019

BETWEEN : **LEE AND LOUISE ACREMAN** trading as Taste (Fiji) having its registered office at Malawai Plantation in Votualevu, Nadi in Fiji and its principal place of business at Lot 1, Cawa Road, Martintar, Nadi in Fiji.

APPLICANT

AND : **RAMBHA RAJAN AND RADHIKA GOUNDER** of address known to the applicant, Businessman and Businesswomen respectively.

RESPONDENTS

Appearances : Mr I. Tikoca for the plaintiffs/applicants
No appearance for the defendants/respondents

Date of Hearing: 18 September 2019

Date of Ruling : 18 September 2019

R U L I N G

[on *ex parte* injunction]

[01] This is an application for *ex parte* interim injunction against the respondents. It seeks orders restraining the respondents from levying distress against the plaintiff and/or the plaintiff's property, and from interrupting the quiet possession or occupation and business operation of the plaintiff at Lot 1, Cava Road, Martintar, Nadi.

[02] The application has been supported by an affidavit sworn by Louise Anne Acreman, the applicant.

[03] It has been made under O 29, R 1 of the High Court Rules 1988, as amended, which 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." [Emphasis supplied]

[05] The applicant who is the plaintiff says that she has a 10-year-lease with the respondents and running a business on the premises and paying rent regularly without any arrears. She further says that the respondents are attempting to remove her from the premises on the pretext of arrears of rents while there are no arrears of rent.

[06] The notice of distress issued by the respondents through their solicitors to the applicant has no definite amount of arrears and they say they don't know the amount of arrears. The notice, so far as relevant, reads:

"Please note your clients are required to give vacant possession of the premises by 15th of September 2019 despite the rent due being an issue. There is no issue that rental is in arrears but only question is by how much."

[07] On three previous occasions, the applicant alleges, the respondents had done this, and last occasion they took the premises while the customers were in the premises and removed the lock after his lawyer intervened.

- [08] The applicant's affidavit evidence demonstrates that the applicant has no arrears and up to date in the payment of rent. It appears that the respondents are attempting to issue distress without mentioning the arrears in rent.
- [09] It appears that the respondents are attempting to issue distress and remove the applicant from the rented premises unlawfully.
- [10] I am satisfied that there is urgency in the matter as the applicant's business will be seriously affected if the respondents are allowed to issue unlawful distress.
- [11] I am also satisfied with the undertaking given by the applicant as to damages.
- [12] Having satisfied with the application, the affidavit in support and the documents annexed to it, and having satisfied with urgency and undertaking as to damages, I grant an *ex parte* injunction as sought in the application (prayers 1, 2 & 3) to be valid for 2 weeks. This order together with all documents must be served on the respondents forthwith.
- [13] The matter is now fixed for *inter partes* hearing at 9.30 am on 2 October 2019.

The result

1. *Ex parte* interim injunction granted to be valid till 2 October 2019.
2. Applicant shall serve this order and all the papers on the respondents forthwith.
3. The matter is fixed for *inter partes* hearing at 9. 30 am on 2 October 2019.

M.H. Mohamed Ajmeer
18/9/19
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M.H. Mohamed Ajmeer
JUDGE

At Lautoka
18 September 2019

Solicitors:

Lal Patel Bale Lawyers for the applicant

