

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 15 of 2020

BETWEEN

MOHAMMED YASEEN a.k.a **MOHAMMED AYSEEN** of 117

Ragg Avenue, Namdi Heights, Suva, Businessman.

PLAINTIFF

AND

NOORZA JAHAN of Lot 1 Pasvali Street,

Wailoku, Suva, domestic Duties.

FIRST DEFENDANT

AND

NAZEEM KHAN of 28A Koki Place, Laucala Beach Estate,

Suva, Businessman.

SECOND DEFENDANT

Counsel

: Mr K. Gosai for the Plaintiff
Defendants absent and unrepresented

Date of Hearing : 03rd February 2020

Date of Ruling : 25th February 2020

RULING

(On the application for interim injunction)

[1] The plaintiff instituted these proceedings seeking the following reliefs:

- (1) An injunction restraining the First defendant and second defendant by itself and/or their servants or agents from selling, leasing, transferring, assigning and/or in any manner or form howsoever from dealing or disposing of the property comprised in Certificate of Title being Lot 29 on Deposit Plan No. 2315 and consisting an area of One Rood and Three Tenths of a perch until further order of this court.
- (2) An order for specific performance of the sale and purchase agreement made 24 September 2019 and stamped on 3 October 2019.
- (3) A declaration that the First and Second Defendant are in breach of the sale and purchase agreement signed on 24 September 2019 and stamped on 3 October 2019.
- (4) An order requiring the First Defendant and Second defendant to transfer Certificate of Title No. 9589 to the Plaintiff.
- (5) An order that the First Defendant and Second Defendant do all such acts and execute all such documents as may be necessary to transfer Certificate of Title No. 9589 to the plaintiff or alternatively, the Chief Registrar of the High Court of Fiji be appointed to convey in the name of the First defendant and Second Defendant herein to the plaintiff the property legally described as Certificate of Title No. 9589 being Lot 29 on Deposit Plan No. 2315 and consisting an area of One Rood and Three Tenths of a perch subject to the Sale and Purchase Agreement signed on 24 September 2019

and stamped on 3 October 2019, for all the estate, right, title and interest of the First defendant and Second Defendant therein and may be directed to execute the conveyance in favour of the plaintiff named herein further and in the alternative damages for breach and/or refusal to complete the sale.

- (6) Further and in the alternative damages for breach and/or refusal to complete the sale.
- (7) Costs of the proceedings on a full indemnity basis.
- (8) Such further order and/or relief as this Honourable Court may deem just and expedient.

- [2] The plaintiff on 17th January 2020 the plaintiff filed ex-parte summons which was converted by the court into an inter-parte summons seeking the following orders pursuant to Order:

An injunction restraining the First Defendant and the Second Defendant by themselves and/or by their servants or agents from selling, leasing, transferring, assigning and/or in any manner or form howsoever from dealing or disposing of the property comprised in Certificate of Title being Lot 29 on Deposit Plan No. 2315 and consisting an area of One Rood and Three Tenths of a perch until further order of this court.

- [3] Plaintiff entered into the sale and purchase agreement sought to be enforced, with the defendants who are his daughter and the son-in-law respectively, to purchase the property which is the subject matter of these proceedings and the settlement was to be effected within 90 days.
- [4] The plaintiff's position is that he has complied with his part of the agreement and has already paid the defendants \$86,051.56 but the defendants have refused to transfer the property as agreed.
- [5] It is important to note that injunction is an equitable remedy granted at the discretion of the court. The power which the court possesses to grant injunctions should be cautiously exercised only on clear and satisfactory grounds. An application for injunction is an appeal to an extraordinary power of the court and

the applicant is bound to make out a case showing clearly a necessity of its exercise.

[6] In the case of **American Cyanamid Co. v Ethicon Ltd** [1975] 2 W.L.R. 316, [1975] A.C. 396 Lord Diplock laid down certain guidelines for the courts to consider in deciding whether to grant or refuse an interim injunction which are still regarded as the leading source of the law on interim injunctions. They are:

- (i) Whether there is a serious question to be tried at the hearing of the substantive matter;
- (ii) Whether the party seeking an injunction will suffer irreparable harm if the injunction is denied, that is whether he could be adequately compensated by an award of damages as a result of the defendant continuing to do what was sought to be enjoined; and
- (iii) In whose favour the balance of convenience lie if the injunction is granted or refused.

However, in his judgment Lord Diplock also made the following comments:

I would reiterate that, in addition to those to which I have referred, there may be many other special factors to be taken into consideration in the particular circumstances of individual cases.

Kerr LJ in Cambridge Nutrition Ltd v BBC [1990] 3 All ER 523 at 534 said:

It is important to bear in mind that the American Cyanamid case contains no principle of universal application. The only such principle is the statutory power of the court to grant injunctions when it is just and convenient to do so. The American Cyanamid case is no more than a set of useful guidelines which apply in many cases. It must never be used as a rule of thumb, let alone as a straitjacket The American Cyanamid case provides an authoritative and most helpful approach to cases where the function of the court in relation to the grant or refusal of interim injunctions is to hold the balance as justly as possible in situations where the substantial issues between the parties can only be resolved by a trial.

- [7] In this action there is a serious question to be tried. The defendants have not denied entering into the sale and purchase agreement sought to be enforced by the plaintiff. The defendants did not file any objection to the application of the plaintiff. However, as I have stated above since interim injunction is a discretionary remedy whether the defendants object to the application or not the plaintiff must satisfy the court that it has sufficient grounds for the court to exercise its discretionary power in his favour.
- [8] I will now consider whether the damages will be an adequate remedy. The plaintiff has quantified in the statement of claim, the amounts paid to the defendants. It is evident that there is a housing loan over this property and the defendant have defaulted the repayment of the loan. The learned counsel for the plaintiff submits that damages is not adequate, given that the plaintiff has been giving money to the 1st and 2nd defendants since 10th March 2017. The amounts paid to the defendants can be recovered by way of damages at the substantive hearing of the matter. Therefore, damages will be an adequate remedy.
- [9] The plaintiff is seeking to restrain the defendants from disposing of this property but there are no materials before this court indicating that the defendants have any intention of disposing this property or they were making arrangement to sell or to dispose of this property.
- [10] In **Hubbard & Another v Vosper & Another** [1972] 2 Q.B. 84 Lord Denning said:
- In considering whether to grant an interlocutory injunction, the right course for a judge is to look at the whole case. He must have regard not only to the strength of the claim but also the strength of the defence, and then decide what is best to be done. Sometimes it is best to grant an injunction so as to maintain the status quo until the trial. At other times it is best not to impose a restraint upon the defendant but leave him free to go ahead. The remedy by interlocutory injunction is so useful that it should be kept flexible and discretionary. It must not be made the subject of strict rules.
- [11] The learned counsel submits if the defendants do not pay the loan the bank will sell the property by mortgagee sale to recover the balance due to them. Any order

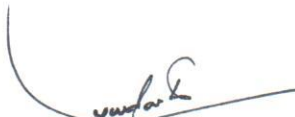
restraining the defendants from disposing the property will not restrain the bank from selling the property by mortgagee sale.

[12] From the above it appears that the question in whose favour the balance of convenience lie if the injunction is granted or refused, does not arise in this matter.

ORDERS

1. Application for interim injunction is refused.
2. I will make no order for costs.




Lyone Seneviratne

JUDGE

25th February 2020