

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 165 of 2019

Teng Hui Construction Company Pte Ltd

Plaintiff

v

Jagdishwar Prasad

Bindra Mati

Defendants

Counsel: Mr J. Rabuka for the plaintiff
Mr F. Haniff for the defendants

Date of hearing: 26th March, 2020

Date of Ruling: 17th June, 2020

JUDGMENT

The background

1. On 28th June, 2019, the defendants filed summons for possession and injunction with a supporting affidavit seeking an Order that the plaintiff and its agents give up possession of the land and premises in Lot 1 on DP no. 2357, CT 11510; be restrained from entering the premises; and, return the original keys and five set of duplicate keys of the 20 units in the premises to the defendants. On 19th August, 2019, I gave directions to the parties to file affidavits in opposition and reply.

2. On 13th September,2019, I heard counsel for both parties. On 6th November,2019, I held that the plaintiff has no legal right to occupy the premises nor retain the keys and made Order,(Order) as follows:
 - a) *The plaintiff, its servants and/or agents:*
 - i. *shall give up possession of the land and premises, in Lot 1 on DP No. 2357 comprised in CT No. 11510 to the defendants;*
 - ii. *are restrained from entering the land and premises, in Lot 1 on DP No. 2357 comprised in CT No. 11510;*
 - iii. *shall return the original keys and the five sets of duplicate keys of the 20 units in the premises to the defendants; until the final determination of this action.*
 - b) *The plaintiff shall pay the defendants \$1500 as costs summarily assessed within 15 days of this Ruling.*
3. On 19th November,2019, the plaintiff filed inter partes summons to stay execution and set aside my Order on the ground that the plaintiff was not granted an adjournment on the date of hearing to file affidavit in opposition. On 6th February,2020, I declined the summons.
4. On 13th February,2020, I granted the defendants leave ex parte in terms of Or 52,r 2 to issue committal proceedings against the plaintiff company and its Directors Jiayun Chen and Zhifeng Chen.
5. The defendants, by notice of motion apply for an order of committal against the plaintiff company and an order that its Directors, Jiayun Chen and Zhifeng Chen be committed to prison for contempt in failing and/or refusing to comply with my Order of 6th November,2019, served on the plaintiff company and its Directors.

6. The hearing of the motion took place on 10th March,2020. Mr Jiayun Chen, Director of the plaintiff company pleaded not guilty. Mr Haniff, counsel for the defendants moved to call evidence. The matter was adjourned to 25th March,2020.
7. On 25th March,2020, the following witnesses gave evidence for the defendants.
8. PW1,(*Mesake Waqa, Law clerk, employed at Haniff Tutoga, solicitors for the defendants*) gave evidence in chief by way of affidavit. His affidavit states that on 14th November,2019, he personally served a copy of the Order on the plaintiff at 15,Grantham Road, Suva,(premises), its registered office at 24 Gaji Road, Samabula, its offices at 99 Gordon Street and 27 Denison Road, Suva, and to Law Solutions, solicitors for the plaintiff. He was not cross examined.
9. PW2,(*Marie Kafoa, Personal Assistant, employed at Haniff Tutoga, solicitors for the defendants*) also gave evidence in chief by way of affidavit. Her affidavit states that Mr Haniff sent copies of the Order to the representative of the plaintiff by emails, to urge the plaintiff to comply, failing which committal proceedings will be issued. She was not cross examined.

10. PW3, (*Nikhil Prasad Chand, Accountant and Legal Officer of Whistle Security Services*) said that his Company was hired by the first defendant to look after his premises. On 20th November, 2019, he was told to remove the people in the premises. He took 6 security guards and went to the premises with the Court Order. There was a man sleeping in the premises. They asked him to leave the premises. He phoned a lady, who came to the premises. She looked at the Order they gave her, but refused to move out. He complained to the Raiwaq Police Station. The Police told him that they cannot do much, as their job is to maintain peace. He secured the door and windows. The security guards of the Company were on day and night duty. There were no incidents for two days. Two days later, on 22nd November, 2019, they came back to the premises with an iTaueki security person, who is at the premises. PW3 said that his security guard told him that unknown people were in the premises.

He was not cross examined.

11. Finally, PW5, (*the first defendant*) produced his evidence in chief by way of affidavit. He said that the plaintiff company has not moved out of the premises. When he went to the premises with a contractor, Mr Chen, Director of the plaintiff company chased him out of the premises with an iron rod. The keys to the units have not been returned in terms of the Order. He is not able to get into the units. Locksmiths in Fiji cannot make keys for doors made in China. He hired security. PW5 produced photographs of a door which Mr Chen kicked on or about 5th December, 2019. Mr Chen asked his security what right they have to put timber across the windows and doors. The plaintiff's security guard is on duty at the premises as depicted in the photograph he produced. One was his guard and the other was a guard of the plaintiff. He was not cross examined.

12. At the conclusion of the case for the defendants, Mr Rabuka, counsel for the plaintiff stated that he was not calling evidence and does not have a case.
13. I am satisfied from the evidence of PW1 and PW2 that my Order, the application for committal proceedings and statement were served on the plaintiff company.
14. I am satisfied from the evidence before me that the plaintiff company and Jiayun Chen and Zhifeng Chen, the directors of the plaintiff company have wilfully disobeyed the Order and have been continuing to disobey the Order in failing to give up possession of the premises and return the keys of the premises to the defendants.
15. The plaintiff company and its directors Jiayun Chen and Zhifeng Chen were made aware of the consequences of disobedience of the Order.
16. On the unchallenged evidence led before me, I am satisfied that the defendants have proved the allegation of contempt of court beyond reasonable doubt.
17. In *Hadkinson v Hadkinson*, [1952] 2 All ER 567 at pg 569 Romer LJ said:

It is plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of the obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.

18. I convict the plaintiff company and its Directors Jiayun Chen and Zhifeng Chen of contempt of Court. in failing to give up possession of the land and premises in Lot 1 on DP No. 2357 comprised in CT No. 11510 to the defendants and return the original keys and the five sets of duplicate keys of the 20 units in the premises, to the defendants

19. I invite submissions on sentence.



A.L.B. Brito-Mutunayagam

**A.L.B. Brito-Mutunayagam
JUDGE**

17th June, 2020