

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 49 of 2020

BETWEEN : **EXTREAM SPORT FISHING (FIJI) LIMITED** a limited liability company having its registered office at HLB Crosbie & Association, Chartered Accountants, HLB House, 3 Cruickshank Road, Nadi trading as **EXTREME RESORT**.
PLAINTIFF

AND : **JUXTA BEACH (FIJI) LIMITED** a limited liability company having its registered office at 74 Ellis Place, Fantasy Island.
DEFENDANT

Appearances: Mr. K. Tunidau. for the Plaintiff
Mr. Narayan and Ms. Lata for the Defendant
Ms. Prasad L. for EFL
Date of Hearing: 29 June 2020
Date of Ruling: 31 August 2020

R U L I N G

1. This matter began with an urgent *ex-parte* application by the plaintiff, ESF. ESF is the first defendant in HBC 240 of 2017.
2. ESF had taken out injunctive orders on 28 February 2020 when the power poles which are at the heart of the issue in HBC 240 of 2017, were accidentally knocked down by a passing truck.
3. No one knows who the truck belongs to.
4. That incident resulted in power supply to ESF's premises being cut.
5. The urgent *ex-parte* injunction was filed to restore power so that ESF's business could continue as normal.

6. As it happened, rather than filing an interlocutory application in HBC 240 of 2017, ESF instituted a completely new action in HBC 240 of 2017.
7. This move then raised the following valid technical points:
 - (i) there was no consent granted by the Director of Lands to institute this fresh action in HBC 49 of 2020 – although, Mr. Narayan Junior accepts that no consent would have been required had the matter proceeded as an interlocutory in HBC 240 of 2017.
 - (ii) there was no consent of the Director of Lands given before the injunctive orders were given, although, Mr. Narayan Junior accepts that no consent would have been required had the matter proceeded as an interlocutory in HBC 240 of 2017.
 - (iii) the manner in which the undertaking as to damages were given orally on oath in court.
 - (iv) The injunctive orders were not perfected but simply read:

Injunction granted to Monday 02 March 2020.
8. The objections raised are all valid and they should all serve to remind counsel of the need to be vigilant in proceedings such as this.
9. However, at the end of the day, I must admit that when I dealt with the interim injunction application, I was mindful of the urgency of the situation – which was clear to me – as well as the fact that the power lines in question go to the heart of the issues between the parties in HBC 240 of 2017.
10. The onus is still on ESF to convince me that the interim injunction should continue until the issues are determined.
11. If I applied the **American Cyanamid** test, I would say that, yes, there are serious issues to be tried and these are set out in HBC 240 of 2017. I would also say that the balance of convenience favour the injunction because, in effect, the injunction is simply to restore the parties position to where they were in HBC 240 of 2017 before the power poles were knocked down, and also, to restore power supply to EFS's hotel business operation on his land.
12. On the lack of consent of the Director of Lands, I do not think this was a dealing in land *per se*. I am of the view that it would be a dealing in land if I was ordering that the power poles be erected for the first time. The power poles have always been

there on site and furthermore, their being there, in fact happened on account of a purported easement given by JBFL vide a letter dated 02 July 2013.

13. The said letter states:

Dear Sir

Easement for Placement of Power Poles, Stays & Lines FEA reference G714-12

We confirm approval of easement for extension of power supply to our hotel through Juxta Beach property as required by FEA letter dated 1s July 2013.

However, approval is granted for a temporary extension only and it should be removed once permanent 3 phase underground power is available on the site.

It will be your responsibility to extend your own underground cables from the high Voltage Transformer once it is installed on the site.

14. I say that, bearing in mind that there are issues surrounding this as I have foreshadowed above.
15. The undertaking as to damages given in this instance I am satisfied are sufficient.
16. At the end of the day, the cases allow me to stand back and consider where the interest of justice lies. I think it lies in preserving the status quo in HBC 240 of 2017 and extending the injunction until further orders would serve that.
17. I am also of the view that the two matters HBC 240 of 2017 and HBC 49 of 2020 should be consolidated, and I do so order accordingly.
18. In the final, I think the manner in which ESF has proceeded has been rather unfortunate. The defendant JBFL is entitled to raise those objections. I order costs in favour of JBFL which I summarily assess at \$800 (eight hundred dollars only).



Anare Tuilevuka

JUDGE

Lautoka

31 August 2020