

In the High Court of Fiji  
At Suva  
Civil Jurisdiction

Civil Action No. HBC 185 of 2020

Down Under Pte Limited  
Plaintiff

v

Mahend Chand Maharaj  
Defendant

Bank of South Pacific  
Interested party

Counsel: Mr S.Valenitabua with Mr V. Filipe for the plaintiff  
Mr G. O' Driscoll for the first defendant  
Mr.N. Tokalau for the Interested party

Date of hearing: 23<sup>rd</sup> July,2020

Date of Ruling: 17<sup>th</sup> August,2020

**Ruling**

1. The plaintiff, a tenant of the defendant since 2008, seeks an interim injunction to restrain the defendant from evicting him. The plaintiff alleges that the defendant is threatening eviction and interfering with its quiet enjoyment of the property zoned as "*Commercial*".

2. The plaintiff, in its summons seeks that the first defendant be restrained from:
- (1) *Re-entering and/or evicting the Plaintiff from that part of the piece of land described as Certificate of Title No. 15236 being Lot 2 on Deposited Plan No. 2572 and Lot 4 on Deposited Plan No. 2279 ...*
  - (2) *Re-entering and/or evicting the Plaintiff from Building 1 and/or Building 2 situated on Lot 2 on Deposited Plan No. 2572 and Lot 4 on Deposited Plan No. 2279 respectively within that piece of land described as Certificate of Title No. 15236 ..*
  - (3) *From issuing a Notice of Distress for Rent or issuing a Notice to Vacate or issuing a Notice of Ejectment or to Threaten Eviction against the Plaintiff pertaining to the piece of land described as Certificate of Title No. 15236 and Lot 2 on Deposited Plan No. 2572 and Lot 4 on Deposited Plan No. 2279 therein and pertaining to Building 1 and Building 2 situated therein ...*
  - (4) *Interfering with and/or causing interference to and/or permitting interference with the Plaintiff's occupation, use and quiet enjoyment of Lot 2 on Deposited Plan No. 2572 and Lot 4 on Deposited Plan No. 2279 respectively within that piece of land described as Certificate of Title No. 15236 and of Building 1 and Building 2 situated therein .. anyway whatsoever and howsoever with the Plaintiff's access to and from Lot 2 Deposited Plan No. 2572 and Lot 4 on Deposited Plan No. 2279 respectively within that piece of land described as Certificate of Title No. 15236 and to Building 1 and Building 2 situated therein ..*
  - (5) *Demanding payment of rent from the Plaintiff until further order of this Honourable Court.*
5. The supporting affidavit states that the plaintiff owns and operates a nightclub/public bar in the buildings on Lot 2 on DP No. 2572 and Lot 4 on DP No. 2279 of the defendants' land, CF No. 15236. Ninety percent of the structure, improvements and chattels in Building 1 are owned by the plaintiff. The defendant took out a mortgage against the property, inclusive of the chattels, buildings and improvements from the Interested Party. The defendant has been increasing the rent over the last 12 years. In 2017, the plaintiff received a handwritten note from the defendant unilaterally determining and increasing the rental from 2017. The plaintiff has been making rental payments under protest.
6. The defendant has not filed affidavit in opposition.
5. Mr O' Driscoll, counsel for the first defendant submitted that there has been no imminent threat or breach of the plaintiff's rights.

6. Mr Valenitabua, counsel for the plaintiff in answer to Court referred to a message, which states that “ *I will be giving him an eviction notice for I not carry a security bond from downunder*”.
7. The principles governing the grant or refusal of an interlocutory injunction are laid down in the *American Cyanamid*. The *American Cyanamid* was concerned with an application by the registered proprietors of a patent for a *quia timet* interlocutory injunction to restrain the alleged threatened infringement of its patent.
8. Lord Diplock in *Siskina v Distos SA*, (1979)AC 210 at page 256 stated that a right to obtain an interlocutory injunction is “*ancillary and incidental to the pre-existing cause of action..(and) dependent upon there being a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff.*”(emphasis added)
9. In *Strategic Nominations Limited v Gulf Investments Fiji Ltd & Others*, (Civil Appeal No. ABU0039 of 2009) Marshall JA said that Lord Diplock in the *American Cyanamide* was concerned with a case where “*there was a threatened continuing breach of a proprietary right of the Plaintiff by the Defendant*”. He concluded that in “*law there is no basis.. for invoking the interim injunction jurisdiction*”, where there is no such threat.
10. In the present case, in my view, the plaintiff does not have a proprietary right over the defendant’s property. There is no evidence before me to suggest that the defendant intends to forcefully evict the plaintiff. A landlord cannot be prevented from exercising its right to terminate a lease upon giving due notice to his tenants.
11. I do not find it necessary to deal with the contention that the plaintiff will substantially loose its buildings and assets in “*the event the Interested Party proceeds to mortgagee sale*”, (emphasis added)
12. The application for interim relief is declined.

13. *Orders*

- a. The summons of the plaintiff is declined.
- b. The plaintiff shall pay costs summarily assessed in a sum of \$ 750 to the defendant and \$750 to the Interested party.



*A.L.B. Brito-Mutunayagam*

A.L.B. Brito-Mutunayagam  
JUDGE

17<sup>th</sup> August, 2020