

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

CIVIL ACTION NO. HBC 185 OF 2020

BETWEEN : **IANIF INVESTMENTS PTE LTD** a company incorporated in the Fiji Islands and having its registered office at Sigatoka, Fiji trading as Super Savers Supermarket.

PLAINTIFF

AND : **EDWARD SHARMA** and **EMAM BI aka IMAM BI** both of Nacovi, Nadi, Landlords.

DEFENDANTS

Appearances : Mr S. Singh for the plaintiff
Mr D. S. Naidu for the defendant

Date of Hearing : 1 September 2020

Date of Ruling : 1 September 2020

R U L I N G

[on interim injunction]

[01] This is an application for an interim injunction. The injunctive orders sought arise out of a distress for rent issued by the defendant against the plaintiff in respect of arrears of rents for the months of July and August 2020, plus unpaid rental performance bond and interest.

[02] Initially, the court granted the orders on *ex parte* basis to be valid till today. Today, 1 September 2020, the matter came on for inter partes hearing. At the hearing, the parties agreed that the arrears of rents demanded by way of distress for rent has been settled. As such, the distress for rent has been satisfied and dealt with.

[03] However, counsel for the plaintiff submits that there should be an interim injunction as in orders 1 and 3 of the application with the necessary modification. He says such injunctive orders are necessary for the protection of the plaintiff's right and interest under the lease agreement.

- [04] In July 2019, the plaintiff has signed a lease agreement for the shop with the defendant for 5 years at the monthly rent of \$8,000.00 VIP. The plaintiff operates a supermarket by the name of 'Super Savers Supermarket' at Sonaisali Nadi with 10 employees.
- [05] The lease agreement between the parties continues to be treated a *prima facie* enforceable by interim injunction. It appears that there is no dispute on the facts, especially the existence of the lease agreement for 5 years commencing July 2019. In *Office Overload Ltd v Gunn* [1977] FSR 39 it was held that the 'balance of convenience' test is not applied, in a case which was 'plain and uncontroversial' on the facts.
- [06] I am satisfied that there is a serious issue about terminating the agreement on account of non-payment of rent or late payment of rent. The agreement allows the landlord (defendant) to legally demand the payment of rent when due, and if the default continues for 7 days.
- [07] I would, therefore, grant an interim injunction as in prayer 1 and 3 of the application with modification suggested by counsel for the parties.
- [08] The money deposited by the plaintiff into Court may be released to the defendant. Thereafter, the plaintiff is to pay the rent to the defendant in accordance with the lease agreement. The substantive matter is returned to the registry for its normal course.

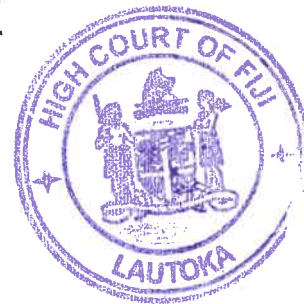
Result

1. Without prejudice to defendants' rights under the law or under the lease agreement between the parties, the defendants whether by themselves, their servants, agents or otherwise howsoever shall be restrained from levying or executing a distress of rent or evicting the plaintiff or terminating the Lease Agreement dated 6 July 2019, over the Supermarket/Shop area on Crown Lease No. 17944 being Lot 1 on DP 7647.
2. Without prejudice to defendants' rights under the law or under the lease agreement between the parties, the defendants whether by themselves, their servants, agents or otherwise howsoever shall be restrained from interfering with the quiet enjoyment and business operations of the plaintiff from Crown Lease No. 17944 being Lot 1 on DP 7647.

3. The registry is to release the money deposited into court by the plaintiff to the defendant. Thereafter, the plaintiff is to pay the rent to the defendant in accordance with the lease agreement.
4. No order as to costs.
5. Substantive matter returned to the registry for its normal course.

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M.H. Mohamed Ajmeer
JUDGE



At Lautoka
1 September 2020

Solicitors:

Shelvin Singh Lawyers, Barristers & Solicitors for the plaintiff
Pillai Naidu & Associates, Barristers & Solicitors for the defendants