

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No. HBC 22 of 2021**

**BETWEEN**

**MECHANICAL SERVICES PTE LIMITED** a limited liability company having  
its registered office at 18 Matua Street, Walubay, Suva, Fiji  
(hereinafter together with its successors and permitted  
assigns known as (“the employer”) of the one part.

**PLAINTIFF**

**AND**

**ANEL ANENDRA DATT** of Race Course Road, Namousau, Ba, Fiji.

**FIRST DEFENDANT**

**AND**

**AUTOMATED BUILDING SERVICES PTE LTD** a limited liability  
company having its registered office at Level 1,  
11 Renwick Road, Suva, Fiji.

**SECOND DEFENDANT**

**Counsel** : Mr. Chand A. for the Plaintiff  
Ms. Devan S. for the Defendant

**Date of Hearing** : 12<sup>th</sup> April 2021

**Date of Ruling** : 04<sup>th</sup> October 2021

## **RULING**

*(On the application for injunctions)*

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

1. An Interlocutory injunction to restrain the First Defendant, during the period of 6 months from 9<sup>th</sup> December 2020, and within a 50 kilometer radius directly in relation to the Plaintiff's business premises in Fiji, from carrying on or being connected, engaged or interested directly or indirectly or alone or with any person or persons whether as principal, partner, agent, director, shareholder, employee or otherwise in any business which competes or may compete with the business of the Plaintiff in relation to electrical, mechanical and refrigeration contracting, servicing, consultancy and advisory services;
2. An interlocutory injunction to restrain the First Defendant, for a period of 12 months after 09<sup>th</sup> December 2020, from, either on his own account or on behalf of any other person (such as the Second Defendant), canvassing, soliciting or attempting to solicit, serve or act for, any person, firm or corporation who or which has been a client or customer of the plaintiff during the period of 12 months before 13 April 2018, and with whom he had contact or for whom he was responsible during that 12 month period;

3. An interlocutory injunction to restrain the First Defendant and the Second Defendant (whether acting by its directors, officers, employees, or agent, or any of them, or otherwise howsoever), from –
  - (a) Using or disclosing any Intellectual Property and/or Confidential Information of the Plaintiff as defined in clauses 11 and 12 of the First Defendant’s employment contract with the Plaintiff signed by him on October 2020 including, without limitation –
    - (i) The contents of the Plaintiff’s information such as –
      - (A) The “contacts” module with all client, supplier and subcontractor contact details;
      - (B) The “projects” module with all of the Plaintiff’s financial information and communications regarding each of the Plaintiff’s project;
      - (C) The “service” module with all information about the Plaintiff’s service based clients, their sites and all site related information;
      - (D) The “tender” module with all information about current tenders and tendered work;
      - (E) The “documents and forms” module with all propriety forms and templates;
      - (F) The “reports” module where all reports about current tenders, tendered work and service based projects can be generated;
    - (ii) The contents of the plaintiff’s tender drive, including without limitation –
      - (A) Costing sheets;
      - (B) Bills of quantities and/or schedules of rates;
      - (C) Supplier pricing;

(D) Sub-contractor quotes;

(E) Client information;

(b) Otherwise misusing the said Intellectual Property and/or Confidential Information or any of it;

4. An interlocutory injunction to restrain the First Defendant from otherwise acting in further breach of his contract of employment with the Plaintiff until after the trial of this action or until further order;
  5. Delivery of all documents and/or materials in the possession, power, custody or control of the defendants or either of them the use of disclosure of which would offend against the forgoing injunctions or any of them;
  6. An enquiry as to damages caused by, at the Plaintiff's sole discretion, an account of profits made defendants by reason of their breaches of confidence;
  7. Sum of \$2,365.98 against the 1<sup>st</sup> defendant;
  8. Damages;
  9. Interest;
    - a) At such a rate and for such a period until judgment as the Court deems just and;
    - b) After judgment until payment at the rate of 4%.
  10. Costs;
  11. Such further and/or other relief the court may deem just.
- [2] The plaintiff filed an ex-parte summons on 27<sup>th</sup> February 2021 seeking the 1 to 4 orders above.
- [3] The 1<sup>st</sup> defendant was an employee of the plaintiff on 01<sup>st</sup> of October 2020 the plaintiff and the defendant entered into a contract of employment.
- [4] The plaintiff alleges that on 09<sup>th</sup> December 2020 the 1<sup>st</sup> defendant left the plaintiff company and he was subsequently employed by the 2<sup>nd</sup> defendant.

[5] Clauses 11 and 12 of the contract of employment between the plaintiff and the 1<sup>st</sup> defendant are as follows:

**11. CONFIDENTIALITY**

11.1 The officer shall:

- (a) not, either during or after the period of appointment under this agreement, except in the proper cause of the Officer's duties or as permitted by the Employer, use or divulge to any person any confidential information concerning the Employer or parties and customers and clients who deal with the Employer including but not limited to any trade secret, present and future business plans, technical information and industrial property; and
- (b) During the period of appointment under this agreement, use the Officer's best endeavour to stop and prevent the publication or disclosure of any information referred to in paragraph (a).

11.2 The Officer's obligations under this clause shall continue despite the termination or expiry of this Agreement or the Officer's employment under it.

11.3 The obligations of the Officer pursuant to this clause shall not derogate from any entitlement or rights of the Employer under any statute, at common law, in equity or otherwise with respect to confidential information.

11.4 Except to the extent required by law or as permitted in advance in writing by the parties, the parties undertake not to disclose the terms of this letter to any person

**12. RESTRAINT OF TRADE**

12.1 The Officer agrees that at any time during his/her employment or for the period of six months following the termination of his/her employment

with the Employer or any related holding company, the Officer will not for any reason (directly or indirectly) without prior consent from us:

- (a) Carry on or be connected engaged in or interested either directly or indirectly or alone or with any other person or persons whether as an employee, principal, partner, agent, director, shareholder or otherwise in any business which competes or may compete with the business of the Employer in relation to Air Conditioning, Electrical, Mechanical and Refrigeration contracting, Servicing, Consultancy and Advisory service or any business with the same business specialisation of the Employer.
- (b) Solicit the clients, customers and suppliers for the employer during and after 1 year of your employment with the employer.
- (c) Pouch or recruit any workers or employees from the Employer during and after 1 year of your employment with the employer

12.2 This restraint applies for period of 6 months following the termination date and within 50-kilometer radius directly in relation to the Company's business premises in Fiji (including any of the branches).

- [6] The fact that the 1<sup>st</sup> defendant left the plaintiff company and joined 2<sup>nd</sup> defendant company is not disputed by the defendants.
- [7] Before considering the facts of the matter I will first deal with the law relating to granting of injunctions.
- [8] 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.

[9] **American Cyanamid Co. v Ethicon Ltd** [1975] 2 W.L.R. 316, [1975] A.C. 396

In this case 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.

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.

In the case of **Lawrence David Ltd v Ashton** [1989] IRLR 22, CA;

The evidence disclosed that there were serious issues of law and fact to be tried and that if the appellants were right, they would not be compensated adequately in damages. In these circumstances an interlocutory injunction would be granted to enforce, pending trial, the restrictive covenant in the contract of employment, subject to some

clarification. The term of the contract which referred to information or trade secrets would not be enforce by an injunction. The inability of the appellants to define with any degree of precision what they sought to call confidential information or trade secrets militated against the granting of the injunction sought on the matter.

[10] The fact that the 1<sup>st</sup> defendant left the plaintiff company and joined the 2<sup>nd</sup> defendant company before the expiration of the period of six months, is not in dispute. The learned counsel for the 1<sup>st</sup> defendant submits that the restrained of trade clause is unreasonable for the reason that the geographical restrain covers every major town and city which I say is correct. The plaintiff company has branches in Nadi, Labasa and Suva. 50 kilometers radius from the three largest cities covers a vast area and almost every business enterprise is situated within that area. No one can or should refrain a person from earning his living expenses.

[11] In the affidavit in support it is averred that the affirmant managed to get hold of the quotations given by the 1<sup>st</sup> defendant to one of the plaintiff's customers and the quotation is annexed to the affidavit in support as Annexure 6. However, there is no evidence that the person who received this quotation is a customer of the plaintiff.

[12] In paragraph 20 of the affidavit in support the affirmant who is the Director of the plaintiff company states that it has been brought to his notice that the 1<sup>st</sup> defendant has started approaching the plaintiff's customers in Western Division. But he does not say provided these information and who were the customers the 1<sup>st</sup> defendant approached.

[13] At paragraph 23 of the affidavit in support it is started that it has been brought to the notice of the Director by the staff that the 1<sup>st</sup> defendant has interfered and has approached to following clients requesting them to give the job to the defendant:

- i.* Marriot resort;
- ii.* Design Engineers;
- iii.* Nadi Police Station Job Site;
- iv.* Dinesh Residence;
- v.* Sofitel Resort;



*vi.* Kanta Construction.

- [14] The plaintiff makes many allegations against the 1<sup>st</sup> defendant. If the plaintiff expects the court to exercise its discretionary power in its favour and grant the injunction sought, it must substantiate these allegation by providing evidence. A bear statement in the affidavit saying that it was brought to his notice by someone is not sufficient for the court consider whether there is a serious question to be tried at the hearing of the substantive matter.
- [15] The plaintiff in the substantive matter seeks damages for breach of the employment agreement which in my view, from what I have stated above, is not only an adequate remedy but also the only remedy available to the plaintiff if it is successful in establishing the claim against the defendants.
- [16] For the reasons aforementioned the court makes the following orders.

### **ORDERS**

1. The summons filed on 02<sup>nd</sup> February 2021 is struck out and the orders sought are refused.
2. There will be no order for costs.

Lyone Seneviratne

**JUDGE**

04<sup>th</sup> October 2021