

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 50 of 2022

Rohitesh Shalendra Roy

Plaintiff

v

Challenge Engineering PTE Limited

Defendant

Counsel: Ms K. Dugan for the plaintiff
Ms N. Choo for the defendant
Date of hearing: 22nd March, 2022
Date of Ruling: 29th April, 2022

Ruling

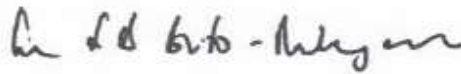
1. By ex parte notice of motion filed on 3rd February, 2022, the plaintiff sought an interim order restraining the defendant from locking him out from its premises and interfering with his conduct of business till final determination of this matter.
2. On 4th February, 2022, I heard counsel for the plaintiff on that occasion and granted the interim relief sought until 7th February, 2022, on the basis that the defendant was threatening to forcefully remove him, if he did not give vacant possession by 4 February 2022, as stated in the plaintiff's supporting affidavit. The plaintiff gave the necessary undertaking with supporting documents.

3. On 7th February,2022, Ms Dugan, counsel for the plaintiff sought time to serve the Order on the defendant. I extended the interim relief granted until 9th February,2022. On 9th February,2022, I gave directions to the parties to file affidavits in opposition and reply and extended the interim relief granted until the hearing on 22 March, 2022. The hearing was conducted on that day and the interim relief granted was extended till determination of this application.
4. The background facts are not in dispute and are as follows. The defendant, by email of 19th May,2020, made an offer to the plaintiff to rent a space in its building at Challenge Plaza at Laucala Beach Estate. The email sets out the terms of the lease, bond, legal fees and operating hours. The plaintiff accepted the offer. He paid the bond deposit and fees. On 25th May, 2020, the defendant confirmed the tenancy by giving its consent to the Suva City Council to register a new licence for the plaintiff's shop. On 26th May 2020, the defendant consented to the plaintiff taking over the EFL meter at the premises. The defendant admits that the parties "*purportedly*" entered into a rental agreement on 19th May,2020, for the period 1st June, 2020, to 31st May,2023.
5. The plaintiff states that he has paid all rental dues on time. He will lose his investment and future earnings by a premature cancellation of the agreement and suffer irreparable harm and monetary losses.
6. The plaintiff, in his statement of claim seeks an Order that he be allowed to complete the remainder term of the tenancy agreement and general damages for losses suffered as a result of the threatened breach of the agreement by the defendant.
7. The defendant in the affidavit in opposition filed on its behalf states that no proper lease agreement was entered into. There is no acceptable evidence of the plaintiff's alleged investment nor evidence of his income. He has breached the agreement by failing to pay the rentals. The defendant has the right to terminate the tenancy agreement and ask for vacant possession by giving one month notice.

8. The principles governing the grant or refusal of an interlocutory injunction are laid down in the *American Cyanamid*.
9. 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)
10. 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.
11. In *Honeymoon Island (Fiji) Ltd v Follies International Ltd*, [2008]FJCA36; ABU0063.2007S (4 July 2008) the judgment of the Court stated:

The Court must be satisfied that there is a serious question to be tried, in other words whether the applicant has any real prospect of succeeding in its claim for a permanent injunction at the trial. If the Court is satisfied that there is a serious question to be tried the Court must then consider whether the balance of convenience lies in favour of granting or refusing to grant the interlocutory relief sought: American Cyanamid Co v Ethicon Ltd
12. In the present case, the plaintiff does not have a proprietary right over the defendant’s property. I find that there is no threat. There is no evidence before me to suggest that the defendant intends to forcefully evict the plaintiff.
13. It is not in dispute that there was no written tenancy agreement entered into between the parties for the plaintiff to claim any right as a tenant. He is hence a monthly tenant.
14. I note that the plaintiff has not established that he has paid the rentals to date.

15. In my view, a landlord cannot be prevented from exercising its right to terminate a lease upon giving due notice to his tenant.
16. In my view, there is no serious issue to be tried.
17. In any event, the plaintiff has not satisfied Court that damages would not be a sufficient remedy if he is successful at the trial.
18. I would note that as Ms Choo, counsel for the defendant submitted that the plaintiff claims damages.
19. In my view, the appropriate course of action is to discharge the interim orders granted on 4th February,2022.
20. I make order that the interim orders granted are to be discharged one month from the date of this decision, in order to give the plaintiff time to relocate its shop.
21. **Orders**
 - a. The interim orders granted on 4th February,2022, stand discharged on 29th May,2022.
 - b. Costs in the cause.


A.L.B. Brito-Mutunayagam
JUDGE
29th April , 2022

