

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 229 of 2022

Sudesh Mani

Plaintiff

v

Prameshwar Kumar

Kokilamma

Defendants

Counsel: Mr S. Rattan for the plaintiff
Mr P. Sharma with Mr M.Degei for the defendants
Date of hearing: 15th November,2022
Date of Ruling: 18th November,2022

Ruling

1. The plaintiff entered into a Sale and Purchase Agreement,(SPA) on 21st May, 2018, with the defendants to purchase a land in the Province of Ra. The defendants agreed to sell premises Lot 10 on Pt of Naqalau, contained in Crown Lease No. 14480 having an area of 4087m², (land) to the plaintiff for a sum of \$ 40,000.00.

2. The plaintiff seeks:
 - a. An interim injunction restraining the defendants and/or their agents from instituting proceedings against the following occupants: the plaintiff, Subramani, Chand Mani, Shelvin Mani, Sheetal Mani, Sakshi Mani and Shrivali Mani for vacant possession of the land until the final determination of the plaintiff's claim,
 - b. An interim injunction restraining the defendants and/ or their agents and/or servants from selling and/or transferring the land until final determination of the orders sought by the plaintiff.

3. The plaintiff, in his supporting affidavit states that on 26th August, 2019, the SPA was varied by a Variation SPA. He paid \$26,000.00 into the Trust Account of Messrs. Neel Shivam Lawyers, acting as common solicitors. On 26th August, 2019, a sum of \$10,000.00 was disbursed to the defendants from the Trust Account. He is willing to pay the balance purchase price. The defendants have failed and neglected to execute the necessary documents and application forms, in particular the application for consent to transfer and sub-division, in terms of the SPA. The plaintiff states that he has made substantial investments on the land including the upgrading and extension of the existing dwelling in an estimated sum of \$76,051.50. On 28th June, 2022, he registered a caveat on the land. The defendants are resident in Auckland.

4. The affidavit in opposition filed by Ritikesh Rohitesh Kumar states that he is the Power of Attorney holder of the first defendant. A copy has not been attached. He states that neither the signed agreement nor the defendants gave the plaintiff and his family members consent and/ or authority to occupy the land before settlement and make improvements. The illegal occupation of the land by the plaintiff and his family members has caused the defendants loss of approximately \$21,450.00 by receipt of rent illegally obtained. The plaintiff's rights are preserved by the caveat

The determination

5. The plaintiff states that on 4th July, 2022, the defendants issued an eviction notice demanding immediate vacant possession by 5th August, 2022. He contends that there is an imminent threat that the defendants could sell the land to a third party.
6. The defendants contend that the plaintiff was not given consent to occupy the land, make improvements nor give it on rent. It was further contended at the hearing that the plaintiff was in breach of the SPA by taking possession before settlement and was a trespasser.
7. The parties admittedly entered into the SPA.
8. Clause 5.0 of the SPA titled “*Possession*” provides that:

The vacant possession of the property will be given to the Purchaser upon execution of this agreement.

The Purchaser will be entitled of all income generated from the said property excluding the area maintained by the Vendors with the existing dwelling on it upon execution of this agreement. (emphasis added)
9. In my view, Clause 5.0 clearly gave the plaintiff the right to possess the land upon execution of the SPA.
10. The Court does not at the interlocutory stage “*resolve conflicts of evidence on affidavit as to facts nor to decide difficult questions of law which call for detailed argument and mature considerations*”. However, as Singh J in *Prasad v Narhari Electrical Company Ltd*, [2005] FJHC 444; HBC0427.2005 (19 October 2005) stated “*it was not completely precluded from doing so particularly where contemporary documents point to strength of a party's case – Series 5 Software Ltd. v. Clarke & Others – 1996 1 ALL ER 853*”.
11. The plaintiff states that he has paid a sum of \$ 26,000.00 of the purchase price. He has attached a copy of the Trust Account ledger and receipts to his supporting affidavit.

12. The defendants have withdrawn \$ 10,000.00, as provided in the Variation to SPA and stated by Mr Degei, counsel for the defendants at the hearing.
13. The plaintiff has been issued with an eviction notice, which was preceded by a Notice of breach issued by the plaintiff to the defendants on 25th June, 2022, with a request to perform their obligations under the SPA.
14. 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)
15. In my view, there is a serious issue to be tried.
16. On the question of adequacy of damages, Lord Diplock in the *American Cyanide* stated:

...the governing principle is that the court should first consider whether if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage. If on the other hand damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether, on the contrary hypotheses that the defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the plaintiff's undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a position to pay them, there would be no reason on this ground to refuse an interlocutory injunction.

17. The plaintiff states that he has expended a sum of \$76,051.50 on the land. He was given possession of the land on 21st May, 2018.
18. In my view, damages will not be an adequate remedy to the plaintiff if he is unsuccessful after the trial.
19. On the balance of convenience, Lord Diplock in *NWL v Woods*, [1979] 3 All ER 514 at pg 625 said:

*In assessing whether, what is compendiously called, the balance of convenience lies in granting or refusing interlocutory injunctions in actions between parties of undoubted solvency the judge is engaged in weighing the respective risks that injustice may result from his deciding on way rather than the other at a stage when the evidence is incomplete. On the one hand there is the risk that if the interlocutory injunction is refused but the plaintiff succeeds in establishing at the trial his legal right for the protection of which the injunction had been sought he may in the meantime have suffered harm and sought he may in the meantime have suffered harm and inconvenience for which an award of money can provide no adequate recompense. On the other hand there is the risk that if the interlocutory injunction is granted but the Plaintiff fails at the trial the defendant may in the meantime have suffered harm and inconvenience which is simply irrecompensable. The nature and degree of harm and inconvenience that are likely to be sustained in these two events by the defendant and the plaintiff respectively in consequence of the grant or the refusal of the injunction are generally sufficiently disproportionate to bring down, by themselves, the balance on one side or the other; and this is what I understand to be the thrust of the decision of the House in *American Cyanamid v Ethicon*.*

20. McCarthy P in *Northern Drivers Union v. Kawau Island Ferries Ltd*, (1974) 2 NZLR 617 at 620 and 621 stated:

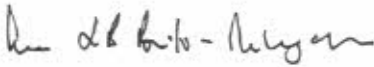
The purpose of an interim injunction is to preserve the status quo until the dispute has been disposed of on a full hearing. . It is always a matter of discretion, and as the citation from Lord Pearce endorses, the Court will take into consideration the balance of convenience to the parties and the nature of injury which the defendant, on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right, and that which the plaintiff, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right. (emphasis added)

21. The plaintiff states that the defendants have not resided in the country for many years and will not suffer any losses due to the grant of an interim injunction pending the final determination. The defendants reside in Auckland.
22. I would note that the affidavit in oppositions is sworn by the defendant's son.
23. I have considered the consequences to the plaintiff vis a vis the consequences for the defendants if the interim injunctive orders are granted.
24. In my view, the balance of convenience favours the plaintiff.
25. The overall ends of justice of this case requires that interim relief be granted until the serious questions raised are determined at the substantive hearing.
26. The plaintiff has given the monies held in the Trust Account as an undertaking as to damages.

27. **Orders**

- a. I grant an interim injunction restraining the defendants and/or their agents from instituting proceedings against the the plaintiff, Subramani, Chand Mani Shelvin Mani Sheetal Mani Sakshi Mani and Shrivali Mani for vacant possession of premises Lot 10 on Pt of Naqalau, in the Province of Ra contained in Crown Lease No. 14480 having an area of 4087m² until the final determination of the plaintiff's claim,
- b. I grant an interim injunction restraining the defendants and/ or their agents from selling and/or transferring premises Lot 10 on Pt of Naqalau, in the Province of Ra contained in Crown Lease No. 14480 having an area of 4087m²until final determination of the orders sought by the plaintiff.
- c. Costs in the cause.




A.L.B. Brito-Mutunayagam
JUDGE
18th November, 2022