

IN THE HIGH COURT OF FIJI AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 83 of 2023

BETWEEN

LASER TECH ELECTRICAL PTE LTD, a limited liability company
duly registered under the Companies Act 2015 having its
registered office at Lot 1 Section II
Lease No. 63867, Lautoka.

PLAINTIFF

AND

SOUTH SEAS CLUB, a body duly registered under the provisions of
Charitable Trust Act 1945 having its registered office at
Nede Street, Lautoka.

FIRST DEFENDANT

AND

JAN MOHAMMED address unknown and acting as the Chairperson of Board of South Seas Club, however, unknown to the plaintiff.

SECOND DEFENDANT

AND

MILIKA of Lautoka, accounts officer of 2nd defendant, acting as a registered bailiff.

THIRD DEFENDANT

AND

RAYMOND SINGH, CECIL JAMES and **SANJAY PRASAD** of Lautoka as the Interim Administration Committee of the South Seas Club.

NOMINAL DEFENDANTS

Counsel : Mr Nand S. for the Plaintiff
Ms Cava E. for the 1st - 3rd Defendants
Mr Pillay W. for the Nominal Defendants

Date of Hearing : 08th May 2023

Date of Ruling : 02nd June 2023

RULING

[1] The plaintiff filed the writ of summons alleging that it was illegally evicted by the defendant and sought the following reliefs:

1. A declaration that the eviction against the plaintiff by the 2nd defendant is illegal, unlawful unconstitutional and cruel.
2. A permanent injunction 1st, 2nd, 3rd and the nominal defendants by themselves, their servants, their agents and/or whosoever from preventing, interfering and/or restraining the plaintiff and/or his servants, agents, invitees, customers and whosoever from entering or having unrestricted access to the property more particularly described as Lot 1 Section II Lease No.63867, Lautoka where LASER TECH ELECTRICAL PTE LTD is located until the final determination of this action or further order of this Honourable Court.
3. An order for special damages against the 1st, 2nd and 3rd defendants for direct loss of business for the sum of \$5,000.00 per day from 12th April 2023.
4. An order for special damages against the 1st, 2nd and 3rd defendants for breach of tenancy agreement and for illegal distress of rent.
5. An order for punitive and exemplary damages against the 1st, 2nd and 3rd defendants as pleaded in paragraphs 4 to 36.
6. An order that the plaintiff be allowed enter and resume business operation on the said property.
7. An order that the 1st, 2nd, 3rd and nominal defendants either by themselves and/or through their servants and/or agents or

howsoever be permanently restrained from evicting the plaintiff until the determination of this action.

8. That the 1st, 2nd, 3rd and nominal defendants be restrained from exercising distress of rent against the plaintiff.
9. Interest on monetary award at the rate of 13.5⁰%.
10. Costs on Solicitor/Client indemnity basis.
11. Any other order as this Honourable Court may deem fit in the circumstances.

[2] The plaintiff, on 13th April 2023 filed a notice of motion seeking the following orders:

- (1) An interim order that the defendants by their servants and/or agents and whosoever be restrained from interfering howsoever with the plaintiff's possession and occupation of the premises at Lot 1 Section II Lease No.63867 of Lot 9 Nede Street, Lautoka.
- (2) An order that the plaintiff has access to the premises being Lot 1 Section II Lease No.63867 of Lot 9 Nede Street, Lautoka.
- (3) An order that this court deems fit and just.

[3] The plaintiff and the 1st defendant are the tenant and the landlord of Lot 1 Section II Lease No.63867, Lautoka, respectively. The tenancy agreement was entered into in the year 1992 and the agreed rent was \$200.00 per month and from 2021 it was increased to \$1,125.00 per month.

[4] There had been a dispute among the trustees of the defendant civil action No. HBC 101 of 2021 was instituted and the court ordered that the suspension of membership of five members in question be uplifted and the board was to continue in its interim management position. Being aggrieved by the decision of the High Court the defendant (plaintiff in that action) appealed to the Court of Appeal and the Court Appeal made, inter alia, the following order:

- 1) A stay of all the High Court orders put in issue in this matter, beginning with Ruling of 18th February, 2022 is granted pending the hearing and determination of the Appeal by the Full Court.

[5] On 21st March 2023 the Court of Appeal issued the Notice of Non-Compliance stating that;

- 1) The registrar in this matter has certified, non-compliance with the Rule 18 of Court of Appeal Rules.
- 2) The appellant has failed to file the appeal record within the 42 days after the Judge's notes and transcripts was collected by the appellant's counsel.
- 3) Therefore, the appeal has been marked abandoned.

[6] The learned counsel for the nominal defendants informed court at the hearing that Court of Appeal has, however, decided to hear the appeal but no stay of proceedings has been ordered.

[7] The guide lines laid down by Lord Diplock in **American Cyanamid Co v Ethicon Ltd** [1975] AC 396 are still regarded as the leading source of the law of injunction where it was held that in granting or refusing of interim injunction following guidelines can be taken into consideration:

- (a) A serious question to be tried at the hearing of the substantive matter.
- (b) Whether the damages is an adequate remedy.
- (c) In whose favour the balance of convenience lie if the injunction is granted or refused.

In the case of **Cambridge Nutrition Ltd v BBC** [1990] 3 All ER 523 at 534j Kerr L.J. made the following observations;

It is important to bear in mind that the American Cyanamid case contains no principle of universal application. The only such principle is the statutory power of the court to grant injunctions when it is just and convenient to do so. The American Cyanamid case is no more than a set of useful guidelines which apply in many cases. It must never be used as a rule of thumb, let alone as a straightjacket.... The American Cyanamid case provides an authoritative and most helpful approach to cases where the function of the court in relation to the grant or refusal of interim injunctions is to hold the balance as justly as possible in situations where the substantial issues between the parties can only be resolved by a trial.

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.

[8] On 04th April 2023 the 1st defendant served the notice to vacate on the plaintiff on the ground that the plaintiff was in arrears of rent. In the said notice it is stated that;

If you claim to have paid rent to someone else, we hold you responsible for assisting in defrauding the club. Rent should only be paid to the Club office and no one else.

- [9] On 11th April, 2023 at 8.30 pm the plaintiff was locked out of the premises.
- [10] The receipts attached to the affidavit in support of the plaintiff show that it has been paying rent. There had been a dispute between the Management Committee and the Board of Trustees. However, the receipts issued to the plaintiff are from South Seas Club, the 1st defendant. The dispute between the Management Committee and the Trustees has not yet been resolved and it is still before the Court of Appeal. The 1st defendant cannot blame the plaintiff for not paying the rent to the Board of Trustees. The plaintiff states in the affidavit in support that after the ruling delivered on 21st December, 2021 rent was paid to the Interim Management.
- [11] There is another serious issue to be determined at the hearing of the substantive matter that is whether there is a breach of section 39 of the Constitution. Section 39 of the Constitution provides:
- (1) Every person has the right to freedom from arbitrary evictions from his or her home or to have his or her home demolished, without an order of a court made after considering all the relevant circumstances.
 - (2) No law may permit arbitrary evictions.
- [12] At this stage of the case I do not wish to discuss this issue in detail. However, from the facts it appears that the defendant is in breach of this constitutional provision.
- [13] It is therefore, clear that there are serious questions to be tried at the hearing of the substantive matter.
- [14] If the plaintiff is evicted without following the procedure provided by law it would take time for the plaintiff to find a proper place to conduct his business and it would loss income which could be difficult to ascertain irremediable prejudice would be caused to the plaintiff if the injunction is refused.

[15] For the reasons set out above the plaintiff is entitled to the injunctive order sought in the notice of motion filed on 13th April 2023.

[16] In the same notice of motion the plaintiff has also sought an order that the plaintiff has access to the premises being Lot 1 Section II Lease No.63867 of Lot 9 Nede Street, Lautoka. Since the court has decided to grant an injunction restraining the defendant from interfering with the possession of the subject property there is no necessity to declare that the plaintiff has access to the subject property.

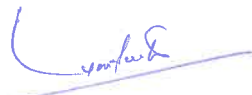
ORDERS

(1) Order (1) sought in the notice of motion filed on 13th April 2023 is granted until the final determination of the substantive matter.

(2) The defendant is order to pay the plaintiff \$1000.00 as costs of this application within 21 days from the date of this ruling.



02nd June 2023


Lyone Seneviratne

JUDGE