

IN THE HIGH COURT AT SUVA IN THE CENTRAL DIVISION
CIVIL JURISDICTION

HBC: 230/2023

BETWEEN:

ZONG LIN CONSTRUCTIONS PTE LIMITED

FIRST PLAINTIFF/APPLICANT

HIA BUILDING PLUS PTE LIMITED

SECOND PLAINTIFF/APPLICANT

AND:

LIN WENJUN

DEFENDANT/RESPONDENT

ANGEL CAPITAL INVESTMENT PTE LIMITED

DEFENDANT/RESPONDENT

ZHENG ZHUI

DEFENDANT/RESPONDENT

Date of Hearing : **12th September 2023**
For the Plaintiffs/Applicants : **Mr. Pal. A**
For the Defendant/Respondent : **Mr. Matanitobua. I**
Date of Ruling : **1 November 2023**
Before : **Levacı SLTTW, Acting Puisne Judge**

RULING
(APPLICATION FOR RELEASE OF CHATTELS)

Motion

1. The Applicant had filed an interlocutory Summons seeking the following Orders:
 - (i) *An Interim Order that the Plaintiffs by their servants, agents or contractors be granted access to the Property comprised in State Lease 21139 being Lot 29 on SO 7531 in the presence of the Court Sherriff and a representative of the Defendants for the purposes of taking an inventory of the chattels of the First and Second Plaintiff on the Property and filing the same in Court within 7 days of the inventory being taken;*
 - (ii) *An Order that the Plaintiff's access to the Property and remove of the chattels of the Plaintiffs from the Property as contained in the Inventory filed by the Plaintiffs pursuant to prayer 1 above and that such removal be the cost of the Plaintiffs and under the supervision of the Court Sherriff;*
 - (iii) *An Order that the Defendants, by themselves, servants, agents, contractors or persons under their control, instruction or direction be restrained from interference of execution of the Orders set out in prayer 2 above;*
 - (iv) *An Order that costs of the application be costs in the cause*

Background

2. The Plaintiff/Applicant claims for the release of 11 containers in the Defendants property. They also claim for losses from the deterioration of the materials as well as the container, theft of the materials in the containers and any other associated expenses.
3. The First Plaintiff/Applicant is an equal shareholder of the Second Plaintiff/Applicant. The First Plaintiff/Applicant is solely owned by the Third Plaintiff/Applicant. The Third Plaintiff/Applicant is the shareholder and director of the First Defendant for which the Second Defendant is the same and are all business partners.
4. The Third Plaintiff/Applicant and Second Defendant invested in Rock Hard Rock Mines and Quarries PTE Ltd which was eventually settled, after a dispute. The Third Plaintiff/Applicant and Second Defendant disputed over the shareholding in the First Defendant which is subject of a pending Civil matter in the High Court (Civil Action No. 215 of 2021).
5. The Plaintiff/Applicant now seeks for the release of all the Containers.

Affidavits

6. The Plaintiff/Applicant had filed his Affidavit in support as follows –

‘3. That I am the director and shareholder on the First Plaintiff. The First Plaintiff is a construction company that I run and operate. The Second Plaintiff is a sister company of the First Plaintiff with the First Plaintiff holding 50% shares in the Second Plaintiff. I am a director of the Second Plaintiff.

4. I was also the sole director and shareholder of the First Defendant.

5. Some years ago I was friends with Zheng Zhui. We had mutual investments and business interests.

6. In or around October 2020, Zheng Zhui usurped my shareholding and directorship in the Defendant becoming the sole shareholder and director. I have challenged the change of shareholding and Directorship in Court. Suva High Court Civil Action no. HBC 215 of 2021 is relevant.

7. Zheng Zhui and I have had disputes in other investments including in a company called Rock Hard Rock Mines & Quarries Limited. This dispute also ended up in Court with Suva High Court Winding Up Action No. HBE 52 of 2021 being relevant. Terms of Settlement were entered into and the matter was settled.

8. Whilst all of this was going on, the Plaintiff had construction material stored at the Property. There was contained in the shipping containers as well stored under sheds and in open air, depending on the nature of the material. The relevant container details are:

Number	Container Number	Colour	Size
01	MSCU16925-.4	Yellow	22G1
02	MSCU307271-5	Yellow	22G1
03	THLU366359-7	Green	22G1
04	CATU032820-0	Grey	22G1
05	TGHU0118876-0	Red	22G1
06	GLDU717153-6	Red	22G1
07	TGU029576-3	Red	22GI
08	THLU194549-9	Blue	22GI
09	Maxu623186-5	Red	45GI
10	TGU037526-2	Red	22GI
11	MAGU232765-6	Red	22GI

9. Some of the containers were imported by HIA Building Plus Pte Limited, a sister company of the Plaintiff on behalf of the Plaintiff. The Plaintiff is owner of those

containers as well. Annexed hereto and marked as C is a company profile of HIA Building Plus Pte Limited.

10. I am annexing the Bills of Lading for some of the containers as evidence of ownership. These are annexed and marked as D.

11. The other materials stored in sheds and in the open includes:

- a. Antiseptic wood flooring
- b. tiles
- c. Timber (assorted)
- d. Assorted construction materials
- e. Steel bending machines and other assorted tools.

12. I have made attempts to remove all the construction material from the Property however the Defendant has denied me access to the Property including blocking access to the driveway of the property.

13. The Construction materials do not belong to the Defendants and there is no reason why it should not allow me to remove the Plaintiff's chattels. The Plaintiff is doing it at its own costs.

14. Furthermore, the removal of the chattels will mean that the property will be unoccupied and can be utilized for some other purpose.

15. There is no rental arrangement or leasing arrangement between the Plaintiffs and the Defendants. For this reason, the Defendants cannot hold onto the chattels under a lien or distress for rent.

16. The Plaintiffs require the chattels for use in its construction business. Furthermore the Plaintiffs have received offers for the sale of some of the Chattels in its inventory. It is a well-known fact that supply of a lot of construction materials has been impacted due to delayed shipment, supply chain issues and increased shipping costs. Since the Plaintiffs have excess stock, construction companies have approached it to sell some chattels to them in order for them to carry out their projects.

17. The offers represent a good business opportunity to the Plaintiffs which is at risk due to the actions of the Defendants.

18. Due to the acrimonious relationship between me and Zheng Zhui, it is unlikely that the Defendants will agree to the removal of the chattels without a Court Order. This is why it have become necessary for the Plaintiffs to make this application.

19. I have also been made aware by the neighbors to the Property that unknown persons have been coming to the Property at night and collecting items from the Property. These items are most likely owned by the Plaintiffs. However since I have no access to the property, I am unable to confirm this.

20. If the status quo is maintained, there is a risk more thefts will occur and the Plaintiffs will lose more items. Furthermore, the items will deteriorate in value and condition especially those that are in the open.

21. Additionally, the Plaintiffs will suffer financial losses if it cannot fulfil the contracts or more commercially viable bids because it does not have access to the materials. The value of the losses cannot be quantified as there is no measure of losses- there is no way of telling the contracts that may be lost.

22. The Plaintiffs need to have access to its chattels to avoid unquantifiable and unavoidable losses or damages to it.

23. For the purposes of disclosure, I declare that proceedings in Suva High Court being Suva High Court Civil Action No. 165 of 2022 were filed via Originating Summons proceedings for the removal of the chattels. The action was not substantially determined and with leave of the Court, withdrawn for the First Plaintiff without orders.

24. I am giving an undertaking as to damages by First Plaintiff for all three plaintiffs in relation to this application. The First Plaintiff is owner of the following properties:

- a. State Lease 21157 being Lot 23 on SO 7531 containing a residential property on Fantasy Island and is valued about FJD 2.8m
- b. The Company owns a warehouse on State Lease 21138 and State Lease 21153 about FJD 350,000.00
- c. State Lease 21143 worth about FJD 280,000
- d. The Company also owns a residential property at 4 Nuku Circle, Fantasy Island, Nadi valued at about 3m.'

7. The Defendant/Respondents have filed an Affidavit in Opposition as follows –

5. That in relation to paragraph 2 of the Affidavit, I affirm that my company being the First Defendant, holds ownership of the property identified as State Lease Number 21139, being Lot 29 on SO 7531. I further state unequivocally that the property in question contains no materials belonging to the Plaintiffs as they have alleged. Annexed hereto and marked 'ZZ-1' is a copy of the Title State Lease No. 21139.
6. That I cannot provide commentary on the contents of the paragraph 3 of the Affidavit due to insufficient information.
7. That regarding paragraph 4 of the Affidavit, I acknowledge in content. I clarify that I allowed the Third Plaintiff to act as a Director and Shareholder in the First Plaintiff Company during my absence from Fiji. I had explicitly instructed the

Third Defendant to safeguard my interests in the said company until my return to Fiji to regularize the same.

8. That I acknowledge and accept the contents of paragraph 5 of the Affidavit.
9. That in response to paragraph 6, I assert the allegation suggesting that I usurped the shareholder and directorship roles of the Third Plaintiff for the First Defendant Company is misleading. All appropriate alterations have been executed with the Registrar of Companies, recognizing me as both the Shareholder and Director of the First Defendant Company. I affirm that I am currently contesting a separate Civil Action Number 215 of 2021. The relevance of the table added to this paragraph is unclear to me, and thus I cannot offer commentary on it.
10. That I accept the contents of paragraph 7 of the Affidavit.
11. That I categorically deny the allegations in paragraph 8. I assert that I have maintained control over the said property for an extended period. Had the Plaintiffs been genuinely concerned about their materials, immediate steps should have been taken for their recovery.
12. That regarding paragraph 9, I abstain from commenting due to insufficient information.
13. That as for paragraph 10, I likewise cannot offer commentary. However I express reservations concerning the authenticity of the referenced bill of lading.
14. That I categorically disagree with the allegations presented in paragraph 11 and challenge the Plaintiff to provide strict proof thereof.
15. That concerning paragraph 12, I reiterate that I am not in possession of any materials that belong to the Plaintiff. Without my consent, the Plaintiff trespassed onto my property causing damage and removing items. I have initiated a police complaint against the Plaintiff and his agents for the trespass and theft report nos. 616/5/22, 708/4/22 and 400/6/22. Annexed hereto and marked 'ZZ-2' are photographs.
16. That in response to paragraph 13, if the Plaintiffs believe they have a valid grievance their proper recourse would be to file a police complaint.
17. That in response to paragraph 14, I reassure that I have no materials belonging to the Plaintiff under my possession.
18. That I have no further comments regarding the contents of paragraph 16 and reiterate my earlier defenses.
19. That as for paragraph 17, I abstain from commenting due to lack of sufficient information.

20. That in response to paragraph 18, I restate my earlier position that I do not possess any materials belonging to the Plaintiff.
21. That regarding paragraph 19, I affirm that issues concerning my property are my responsibility, and I am not answerable to the Plaintiff regarding the same.
22. That paragraph 20 does not necessitate a response.
23. That in response to paragraph 21, I reiterate my earlier positions without further comments.
24. That similarly, for paragraph 22, I maintain my earlier defences without additional commentary.
25. That I acknowledge the contents of paragraph 23, I note that the Plaintiffs had previously filed a similar action that was ultimately withdrawn, thereby wasting judicial resources. This application appears to be another frivolous and vexatious action that amounts to an abuse of court process.'

Law and Principles on applications for interim restraint of parties and removal of chattels

8. Order 29 Rule (1) and (2) of the Fiji High Court Rules states –

'Rule 1 (1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause of matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counter claim or third party notice, as the case may be.

Rule (2) (1) On the application of any party to a cause or matter in the Court may make an order for the detention, custody or preservation or any property which is the subject matter of the cause or matter or as to which any question may arise therein, or for the inspection of any such property in the possession of a party to the case or matter.

Rule (2) (2) For the purposes of enabling any order under paragraph (1) to be carried out the Court may by order to authorize any person to enter upon any land or building in the possession of any party to the cause or matter.'

9. In the Applicants submissions, they argue that the injunction sort is a mandatory injunction capable of being issued as interlocutory and the principles are set out in Redland Bricks -v- Morris [1962] All ER (applied by Jitoko J in Noodles Bakery Ltd -v- Long Life Noodles

Bakery Ltd [2003] FJHC 291; HBC0260R.2003S (28 August 2003) where the applicant can show a strong probability on the facts that grave damages would occur in future.

10. What Counsel for the Applicant did not submit to this Court, is that this form of relief is used sparingly. Jitoko J in Noodles Bakery Ltd (Supra) referred to Lord Upjohn's remarks in Redland Bricks (P.579) (Supra):

“A mandatory injunction can only be granted where the Plaintiff can show a very strong probability on the facts that grave damage will accrue to him in the future. As Lord Dunedin said, it is not sufficient to say “times” (Attorney- General for Dominion of Canada –v- Ritchie Contracting and Supply Company [1919] AC 999, 1005, PC) It is a jurisdiction to be exercised sparingly and with caution, but in the proper case, unhesitatingly”

11. In that case of Noodles Bakery Ltd (Supra), was a claim for the tort of passing-off. The Defendant's application before the court was to dissolve the mandatory injunction that was issued prior, for the benefit of the Plaintiff on the strength of their evidence that they were beginning to manufacture a similar product, brand name and labelling not too dissimilar to that of the Defendant some 18 months earlier than that of the Defendant. The Defendant argued that a registered trademark had already been lodged. The Court held given the equal difficult questions of law requiring a full hearing, the interest of both is best served if the mandatory injunction is removed.
12. It is clear and without contention that the facts in Noodles Bakery Ltd and the issue in dispute which gave rise to the interim relief is distinguished from the facts before this Court.
13. The Court hence considers the basis of an interlocutory injunction.
14. In Supreme Court Practice 1988 (Sweet and Maxwell, London Vol 1) page 479 and 480, para 29/1/2 states –

‘General principles – The usual purpose of an interlocutory injunction is to preserve the status quo until the rights of the parties have been determined in the action. The injunction will almost always be negative form, to restrain the defendant from doing some act. Very exceptionally it may be mandatory, requiring an act to be done; see para 29/1/5. A cross undertaking from the Plaintiff to be answerable in damages if the injunction proves to have been wrongly granted is almost always required; see para 29/1/12.

The principle to be applied in application for interlocutory injunctions have been authoritatively explained by Lord Diplock in American Cyanamid Co –

v- Ethicon Ltd [1975] A.C 396; [1975] 1 All ER 504 H.L. They may be summarized as follows:

- (1) The plaintiff must establish he had a good arguable claim to the right he seeks to protect;*
- (2) The court must not attempt to decide this claim on the affidavits, it is enough if the plaintiff shows there is a serious question to be tried;*
- (3) If the plaintiff satisfies these tests, the grant or refusal of an injunction is a matter for the exercise of the Court's discretion on the balance of convenience – whether damages is an adequate remedy'.*

15. I am cautioned also by his Lordship Lord Justice Diplock's stern warning in American Cyanamid (Supra) p. 407 when he stated:

'... no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial.'

16. As stated in my earlier ruling in Ashneel Chand Maharaj -v- Pramesh Chand Maharaj and BSP HBC 203 of 2023, I cited the principles elucidated from the American Cyanamid (Supra) as follows –

"The key principles identified in case of American Cyanamid (Supra) summaries in the 'Supreme Court Practice 1999' (Sweet and Maxwell, London, 1998) pg 565 para 29/L/3 states –

(i) evidences have not been tested by oral examination are only tendered on Affidavit;

(ii) the grant of the remedy is discretionary and temporary;

(iii) it is not the courts function to resolve conflicts of evidence on affidavit as to facts on which claims of either party may ultimately depend upon nor to determine serious questions of law for detailed argument;

(iv) where an application for injunction is to restrain a defendant from doing acts alleged to be in violation of the plaintiffs legal rights contested on facts the granting of the injunction tis to be taken when the existence of the right or violation of the right is uncertain and will remain until final judgement;

(v) To mitigate injustice during uncertainty when granting interlocutory injunction

(vi) subject to undertakings to pay damages to the defendant sustained by reason of the injunction if it is shown at trial that the Plaintiff was not entitled to injunction

(vii) the objective of seeking injunction is to protect the plaintiff from injury by violation of his right for which could not be adequately compensated in damages recoverable in the action of uncertainty where resolved in his favor at trial; the plaintiff's need for protection is weighed against the corresponding need of the defendant to be protected against injury

(viii) the claim is not frivolous or vexatious and there is a serious question to be tried;

(ix) On evidence satisfying the court by both parties at a hearing on the application of the Applicant, on a balance of probabilities that the act of the other party, may, on a balance of convenience, violate the Applicant's rights.

(x) there must be available on materials placed before the Court at hearing, that the plaintiff has a real prospect of succeeding in his claim for permanent injunction at trial, the court should then consider the balance of convenience to grant or refuse an interlocutory relief.'

17. Considering these principles, I observed what my sister, Her Ladyship Justice Scutt stated in the case of Druma -v- Nakete [2008] FJHC 94; HBC 214.2007 (14 April 2008) when preferring to apply the American Cyanamid (Supra) principles for injunctive relief rather than the *mareva* injunction:

*'1.9 I do not attribute to the NLTB a motive of seeking to render itself 'judgment proof' by dispersing monies as aforesaid. However, as will be clear from the setting out of the parties positions below, the monies will be (as noted) dispersed so that the Plaintiff's claim, if successful, will be undercut to the extent that monies received by the NLTB are so disbursed. It seems to me appropriate in all the circumstances to take this into account when considering whether or not injunctions in the nature of those requested by the Plaintiff should issue. I should, however, say at this point that although I was referred by the submissions to Sharma v. Akhil Holdings Ltd [2006] FJHC 82; HBC155.2002L (15 December 2006) which relates to *Mareva* injunctions, I am not convinced that it is necessary to meet the *Mareva* standards. This is not a case where assets have nothing to do with the claim before the court, so have to be 'seized' albeit disconnected from the issues which are the subject of the litigation: Mercedes Benz AG v. Leiduck [1996] AC 284, at 306D (PC) Rather, as noted, the assets in question are the assets arising directly in the Plaintiff's claim. They are at the centre of the dispute. Hence, the 'ordinary' principles of *American**

Cyanamid apply. If, however, I am wrong and the Mareva principles should be applied, then they have been and are being taken into account and addressed in this judgment' (underlining my emphasis)

18. I find this analysis as correct as there is no actual threat of disposal of the assets from the evidences on affidavit although there are risks of it happening nor a claim that contains an approximation of the sums with certainty. In this instance, the orders sort are to restrain the Defendant in order to enable the Applicant to remove the chattels which is contrary to that of the *mareva injunctive* orders. The mareva orders on the other hand, are to 'freeze' the Assets from being removed. For where –

“the claim is against an approximate or certain amount of sums and there are reasons to believe that the defendant has assets within the jurisdiction the judgment in whole or in part, but might deal with them to remove out of jurisdiction or dispose of them within jurisdiction so that they are not traceable and not available when judgment was given..” then a mareva injunction was an appropriate form (Supreme Court Practice 1988 Vol 1(Sweet and Maxwell, London 1987) Part 1 para 29/1/22 page 480).

Analysis

19. Therefore applying the American Cynamid principles, the Court considers each issue:

1. Is there a good and arguable right?

The question as to an arguable right goes to the heart of the application. The Applicant/Plaintiff has provided in their Affidavit, a list of the bills of ladings. 4 of the bill of ladings are directly written under the Applicant's name as consignee. The other 4 bills of lading are written under HIA Building Plus Pte Ltd, which is the second plaintiff.

So in fact, only 4 containers are arguably owned by the Applicant/Plaintiff therefore giving them a good and arguable right.

There is dispute as to the ownership of the containers under the consignment of the Second Plaintiff, the shareholding which is in dispute.

There is no claim against the Applicant for rent or lease to have the containers located in the Respondents property and thus no lien of the Respondent existing apart from the fact that the 4 containers are located in his premises by virtue of the shareholding arrangements.

However the Respondent disputes the ownership of the said containers and therefore this matter will be dealt with in evidence at trial.

The Court hence finds although there is an arguable right, this right will be determined at trial and cannot, on an affidavit application be considered outright.

2. *Is there a serious question to be tried?*

The issue in contention is the ownership of the assets which are now being disputed. The Applicant is unaware of quantum whilst kept in the possession of the Respondent. He does however have bill of lading that expresses the identity of the items in the containers located in the piece of property owned by the Respondent.

4 of the bill of lading are listed under the Applicants' company's name. The issue though is regarding the other 4 bills of lading. The Applicant contests that all of the bills of lading are owned by them as they had purchased it.

The Defendant argues otherwise that the bills of lading are owned by his company and that shareholding is totally under his control by virtue of the transfer of shares.

The manner in which the shares were transferred is being argued in another proceedings different from this.

There is a serious question to be tried.

3. *On a balance of convenience should injunction be granted?*

The Applicant has argued that on a balance of convenience they should be granted injunction. Defendant argues otherwise stating the risk of harm is greater if injunction was granted as the essence of the claim is about the containers.

The Applicant has offered an undertaking for damages, properties as they are residing in Fiji.

The court will rarely grant an injunction where the matters can be dealt with at trial.

The ownership of the bills of lading by virtue of the company shareholding and makeup is in dispute.

The issues can best be dealt with at full trial where the parties evidences will be considered by the Court.

The Applicants have already shown their ownership of 4 of the containers. However the other 4 containers are still in dispute.

Furthermore, the granting of the injunction will enable the Applicant to remove the chattels thereby defeating the purpose of the Writ, the basis for which evidence must be tested at trial.

There is some merit in examining the contents of the properties. This can be arranged at the consent of both parties.

At this juncture, the Court finds that to determine and grant an injunction for removal of the chattels without hearing and determining the evidences of both parties will have circumvented the taking of proper oral evidences and pre-determined the matter.

4. Undertakings

The Court however will require parties to undergo an undertaking to enable both parties to examine the content of the containers at a time and date suitable as well as to undertake not to sell or remove the containers or contents during this period of legal proceedings.

Costs

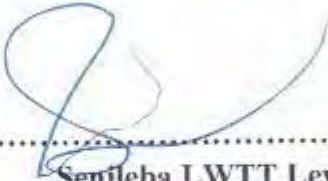
20. The Court will award costs to the Defendants.

Orders of the Court

21. The Court orders as follows:

- (i) That the Application for interim injunctive reliefs dismissed;*
- (ii) That costs be awarded to the Defendant to the sum of \$500;*
- (iii) Parties to enter into an undertaking:*
 - (a) not to remove, sell or assign to their agents or representatives the contents in the containers as well as the container;*
 - (b) Parties to undertake to view all the containers and their contents in the respondents' premises within the next 60 days and during the viewing, the Respondent will not restrain the Applicant from doing so.*




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Senileba LWTT Levaci
Acting Puisne Judge, High Court - Suva
1st November, 2023