

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action No. HBC 80 of 2025

BETWEEN : GRACE ROAD FOOD COMPANY PTE LIMITED

Plaintiff

AND : ITAUKEI LAND TRUST BOARD

Defendant

Counsel : Mr N Prasad & Ms P Verma for the Plaintiff

Mr. V Tuicolo for the Defendant

Hearing : 26 February 2025

Judgment : 26 February 2025

EX TEMPORE JUDGMENT

[1] This matter concerns an application by the Plaintiff to extend an interim injunction that I granted on the evening of Friday, 21 February 2025. It was granted temporarily because of the urgency of the application, but only until the matter could be properly heard. The onus remains on the Plaintiff to demonstrate that the injunction should be extended.

[2] In terms of the relationship of the parties, the Defendant is the administrator of Itaukei land in Fiji. The Plaintiff has an agricultural lease over itaukei land. The particular parcel in question is described at paragraph 7 of the affidavit of Mr. Eunjin Choi dated 20 February ‘as the land comprised in Instrument of Tenancy No 2014/12638, TLTB No. 4/12/2327, land known as Wainadova (part of) situated in the Tikina of Deuba and

Province of Serua, and having an area of approximately 33.9620 hectares'. The lease was granted on 9 July 2014 and granted for agricultural purposes only.

- [3] At some point in time thereafter, the Plaintiff constructed a processing plant on part of the land on which they have the agricultural lease. The Defendant learned of this and regarded this processing plant as a breach of the agricultural lease. In about 2018, the Defendant informed the Plaintiff that it needed to apply for an industrial lease for the land upon which the plant is situated. It does not appear that there was any meaningful progress obtaining an industrial lease until 2023.
- [4] On 19 July 2023, the Defendant issued a lease offer to the Plaintiff for an industrial lease over a parcel of land containing 3.1736 hectares. There were several conditions and amounts payable by the Plaintiff, the total amount being \$2,004,354.70, the premium being \$1,833,600. The Plaintiff made a counteroffer on 18 August 2024, agreeing to some of the conditions but looking to negotiate a better price in respect to the premium - the Plaintiff advising that it was prepared to pay \$50,000 per acre.
- [5] The counterclaim was declined by the Defendant on 9 January 2025. On the same day, the Defendant issued a breach notice to the Plaintiff in respect to the agricultural lease, the breaches including about \$7,788.75 in arrears, a failure to keep the land clear of all refuse, weeds and rubbish, and a breach in respect to the construction of the processing plant. The Defendant sought penalty fees of about \$17,718.72, payment of the arrears, remedying of the rubbish and partial surrender of the agricultural lease to the Defendant for the issuing of an industrial lease. The Defendant provided the Plaintiff one month to rectify these breaches.
- [6] The arrears payments and penalties were paid by the Plaintiff and the rubbish dealt with. The only matter between the parties that was not resolved was the continuation of the industrial activity and the lack of an industrial lease. That said, it is apparent from the affidavits filed that there continued to be communications and negotiations between the

parties over this period of time, culminating in a further revised offer by the Defendant on 13 February 2025 for a smaller parcel of land of 2.144 hectares. The amounts payable by the Plaintiff were considerably lower, the total amount being \$1,045,307.83 and the premium being \$872,150. The Defendant gave the plaintiff one week to consider this revised offer, the expiry of the offer ending on **20 February 2025**.

[7] One day later, however, on 14 February 2025, the Defendant issued a Stop Work Notice on the Plaintiff, requiring the Plaintiff to immediately cease all industrial activity at its plant that day. There followed, on 17 February 2025, a meeting between the parties to try and resolve the issue. On 20 February 2025, the Defendant issued a further revised offer to the Plaintiff for the same size parcel of land, but on this occasion the amount to be paid by the Plaintiff was a total of \$704,419.68 and a premium of \$572,490.88, considerably lower than the figures one week earlier.

[8] On 24 February 2025, the Plaintiff formally accepted the revised offer and, as I understand it, paid the monies. That same day, I am not sure whether before or after the Plaintiff's acceptance, the Defendant withdrew its offer. In a letter of that date, 24 February 2025, an officer of the Defendant advised:

Considering the Plaintiff's action decision to take the Board to litigation, the Board hereby withdraw its offer letter for the proposed Wainidova Industrial Lease until the completion of the litigation action.

[9] The litigation that is referred to in the letter is the present proceeding, which was commenced on 20 February 2025. A Writ of Summons was filed with an Indorsement of Claim seeking injunctions to maintain the status quo in respect to the present Agricultural Lease and to permit the Plaintiff to continue with its industrial activity as well as compel the Defendant to continue negotiations towards the execution of an Industrial Lease. The Plaintiff filed an Ex-Parte Notice of Motion on 20 February with a supporting affidavit from Mr. Choi, setting out the basis for an interim injunction. As

stated, I granted that injunction on 21 February on a temporary (and urgent) basis due to the likely damage that would be caused to the Plaintiff's produce if the Defendant shut down the Plaintiff's processing plant (as the Defendant was intending to do that day).

[10] Since making that Order, the Plaintiff filed a supplementary affidavit for Mr Choi on 24 February. The Defendant filed an affidavit in opposition on 25 February, and an affidavit in reply was filed for the Plaintiff later the same day.

Decision

[11] The power of the Court to provide injunctive relief is contained at O.29, r.1. The provision reads:

(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 or matter, whether or not a claim for the injunction was included in the party's writ, originating summons, counterclaim or third party notice, as the case may be.

(2) Where the applicant is the plaintiff and the case is one of urgency and the delay caused by proceeding in the ordinary way would entail irreparable or serious mischief such application may be made ex parte on affidavit but except as aforesaid such application must be made by notice of motion or summons.

(3) The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit.

[12] The law is settled on where the Court may make an order for an interim injunction. In *Korovulavula & Anor v Fiji Development Bank* [1997] FJHC 197, Pathik J stated:

The principles to be followed in considering the granting of injunctive relief are set out in the leading case of American Cyanamid Co v Ethicon Ltd (1975) A.C. 396. The House of Lords there decided that in all cases, the Court must determine the matter on a balance of convenience, there being no rule that an applicant must establish a prima facie case. The extent of the court's duty in considering an interlocutory injunction is to be satisfied that the claim is "not frivolous or vexatious", in other words, "that there is a serious question to be tried".

In Cyanamid (supra) at page 406 Lord Diplock stated the object of the interlocutory injunction thus:

"... to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial. The court must weigh one need against another and determine where "the balance of convenience" lies".

(emphasis mine)

A similar view was expressed by McCarthy P in Northern Drivers Union v Kuwau Island Ferries (1974) 2 NZLR 61 when he said:

"The purpose of an interim injunction is to preserve the status quo until the dispute has been disposed of on a full hearing. That being the position, it is not necessary that the Court should have to find a case which would entitle

the applicant to relief in all events: it is quite sufficient if it finds one which shows that there is a substantial question to be investigated and that matters ought to be preserved in status quo until the essential dispute can be finally resolved ... "

(ibid, 620)

"It is always a matter of discretion, and ... the Court will take into consideration the balance of convenience to the parties and the nature of the injury which the defendant, on the one hand, would suffer if the injunction was granted ... and that which the plaintiff, on the other hand, might sustain if the injunction was refused ..." (ibid, 621).

...

As to "balance of convenience" the court should first consider whether if the Plaintiffs succeed at the trial, they would be adequately compensated by damages for any loss caused by the refusal to grant an interlocutory injunction.

...

In HUBBARD v VOSPER (1972) 2 WLR 359, LORD DENNING at p.396 gave some guidance on the principles of granting an injunction which I think is pertinent to bear in mind in this case when he 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 to 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. For instance in Fraser v Evans [1969] 1 QB 349, although the plaintiff owned the copyright, we did not grant an injunction because the defendant might have a defence of fair dealing. 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."

[13] These principles have been applied up to the present time. In *Alizes Ltd v Commissioner of Police* [2013] FJHC 596, Tuilevuka J noted:

11. Interim injunctions are a powerful discretionary remedy. But they are not lightly granted. They are granted ex parte only if there is urgency. In other words, if to proceed normally (i.e. inter partes by Notice of Motion or Summons) would be a delay entailing irreparable or serious mischief, (see Order 29 Rule 1(2) as amended in 1991 in LN 61/91).

12. The applicant must show a strong enough case to justify the Court not hearing the other side's case. Usually, to show "urgency", the applicant must show that, unless the court intervenes with a restraining order, he has a legal right in the subject-matter of the case which is under an immediate threat of being violated. Apart from that, the applicant must convince the court that the balance of convenience favours the granting of the injunction ex-parte.

[14] Balapatabendi J succinctly identified the test as follows in *Vanualevu Muslim League v Hotel North Pole & Ors* [2013] NZHC 151, at 17.4:

What could be deduced from Lord Diplock's rulings in American Cyanamide Case are in fact tests to be adopted in dealing with an application for interim injunction. The tests could be summarized as follows:-

- 1. Is there a serious question to be tried?*
- 2. Is damages an adequate remedy?*
- 3. Where does the balance of convenience lie?*

[15] In order for the Plaintiff to be entitled to the relief sought it must satisfy each of the three tests. Even if it does so, the Court must still be satisfied that the orders sought are necessary to preserve the status quo.


- [16] Dealing with the first question, whether there is a serious question to be tried. From my perusal of the Indorsement of Claim, I could not glean a cause of action and enquired of Mr Prasad as to the proposed cause of action against the Defendant. He advised the Court that it was for breach of contract. I struggle to see how there has been a breach of contract given the conduct in question. It appears to me that there is instead a question over the Defendant's use and timing of the Stop Work Notice (one day after making an offer that was to run for 7 days) and whether it was lawful and reasonable in the circumstances – there may well be a case for the same being unlawful on the basis that it was (potentially) being used to pressure the Plaintiff to accede to the Plaintiff's revised offer.
- [17] Whatever the case may be, I accept that there is a serious question to be tried in respect to the conduct of the Defendant in relation to the Stop Work Notice.
- [18] The second question is whether damages is an adequate remedy for the Plaintiff. The consequence for the Plaintiff if an injunction is not granted is that its processing plant will be forced to stop operating which will lead to the destruction of its produce. Its employees will stay home and there will be a financial impact on the workers and the Plaintiff. In my view, damages is not be an adequate remedy in the present case.
- [19] There remains the question as to where the balance of convenience lies. What prejudice or inconvenience is caused to the Defendant with granting an injunction? I am unable to discern any at this point in time. The Defendant has not alluded to any particular damage or inconvenience or cost to it, and even if there was some, there is an undertaking as to damages from the Plaintiff.
- [20] Accordingly, I grant the extension of the injunction until further orders of this Court. The injunction granted is as per order 2 of the Plaintiff's Ex-parte Notice of Motion being:

A prohibitory injunction to maintain the status quo restraining the Defendant whether by itself or by its servants or agents including landowners or by whosoever from enforcing the Stop Work Notice dated 14 February 2025 in any manner whatsoever with respect to the Lease.

[21] There will be no order as to costs.

[22] A final point. I note that the basis for the Defendant purporting on 24 February to withdraw its offer to the Plaintiff is the fact of these proceedings. I find that to be of considerable concern. I would urge the Defendant to reconsider its position, for the sake of the landowners, and conclude its negotiations with the Plaintiff.




.....
D. K. L. Tuiqereqere
JUDGE

Solicitors:

Mitchell Keil for the Plaintiff