

IN THE RESIDENT MAGISTRATE'S COURT
WESTERN DIVISION
NADI

Civil Action No. 117 Of 2020

BETWEEN : **MOON JIE WEN CHEN**
PLAINTIFF

AND

BAL RAM
DEFENDANT

Before : **NILMINI FERDINANDEZ**
RESIDENT MAGISTRATE

Date of Judgment: 22nd day of February, 2022

Mr. Maopa for Plaintiff

Ms. Devi for Defendant

RULING

1.0 History of the Proceedings

1.1 The history of the proceedings is stated as follows:

- The Plaintiff filed a Statement of Claim through Babu Singh & Associates against the Defendant in respect of the breach of contract by the defendant.

- **According to the Statement of Claim**, the plaintiff and the defendant have entered into an agreement on the 2nd February 2020 that the defendant will complete plaintiff's existing partly built building situated at Waimalia, Nadi for a sum of \$10,000. The specific works to be done is mentioned in the agreement.
- The parties have agreed that the work to be completed within one month and the plaintiff to pay the defendant a weekly wage that varies from \$800 to \$2000 per week.
- The defendant has commenced work around the second week of February 2020 but has failed to complete the work as agreed in the 2nd week of March. Therefore, the defendant has breached the agreement between the parties.
- The defendant has borrowed the plaintiff's vehicle with Registration number EN 388 as well as plaintiff's tools such as Cement mixer, Wheelbarrow, Drills, Spades, Extension codes and generators for the use in the completion of the building.
- On 17th July 2020 the plaintiff has paid the defendant his last wages of \$1,200 at the Tappoo City, Lautoka and verbally informed him that his service was no longer required. The plaintiff has also told the defendant to return all his tools and equipment together with his vehicle with registration no. EN388.
- The defendant has refused to return the plaintiff's tools and therefore, the plaintiff has reported the matter at Namaka Police Station.
- Since the defendant has not returned the property belonging to the plaintiff, the plaintiff had to suffer substantial loss financially in hiring taxis and carriers, and has continued to suffer loss by not having the use of his vehicle bearing registration number EN388 and his tools and equipment.

- Therefore, the plaintiff has claimed;
 - a) An order that the defendant return all the plaintiff's tools and the vehicle,
 - b) General damages for breach of contract,
 - c) Injunction that the defendant does not interfere whatsoever with the plaintiff.
 - d) Cost.

1.2 After hearing the counsel for the plaintiff in support of the application for interim injunction in open court on the 31st of July 2020, being satisfied of the facts stated by the counsel, this court has issued an interim injunction against the defendant restricting the defendant from entering the plaintiff's premises and ordering him to return the vehicle to the plaintiff..

1.3 When the case was mentioned in open court on the 25th August 2020, the Notice of Intention to Defend has been filed and the counsel for the defendant moved for further time to file response.

1.4 Thereafter, the defendant has filed his Statement of Defence together with a cross claim, to which the plaintiff has later replied.

1.5 Thereafter, both the parties have agreed to dispose the hearing of this matter by way of written submissions and accordingly have filed their submissions in writing, to which I have paid attention.

2.0 Law relating to Injunction

2.1 the principles relating to Injunctions are set down in the famous **American Cyanamid Co. v. Ethicon Limited (1975) A.C.396** that need to be accepted by this Court too as governing the determination whether or not

to grant an injunction. (**Mataqali Namatua v. NLFC and 3 Others**, No. **ABU0020 of 2004S**, 4 March 2005)

2.2 In **American Cyanamid**, Lord Diplock laid down guidelines on how the court's discretion to grant interim injunctions should be exercised. These are known as the *American Cyanamid guidelines*. The underlying principle is to enable the court to make an order that will do justice between the parties. Main guidelines are:

- Whether there is a serious question to be tried.
- Whether damages would be an adequate remedy.
- What would be the balance of convenience of each of the parties should an order be granted.
- Whether there are any special factors.

2.3 It was decided in **Mataqali Namatua v. NLFC and 3 Others** that the **American Cyanamid** principles for granting interlocutory injunctions have been applied in Fiji and are the law. As set out in **American Cyanamid Co v. Ethicon Ltd [1975] AC 396**, the principles for granting interlocutory injunctions in Fiji are:

- (a) The Plaintiff must establish that there is a serious question to be tried.
- (b) The inadequacy of damages to compensate the Plaintiff by the Defendant
- (c) If the Plaintiff satisfies the tests, the grant or refusal of an injunction is a matter for the exercise of the Court's discretion on the balance of convenience.

3.0 Serious Issue to be Tried

- 3.1** The plaintiff claims that the defendant has breached the contract the parties have entered into, by not completing the work within the agreed time and in good workmanship and therefore, on the 17th July 2020 the plaintiff has paid the last wages of \$1,200 due to the defendant at Tappoo City, Lautoka and has verbally informed him that his service was no longer required and requested him to return all his tools and equipment including his vehicle bearing registration no. EN388.
- 3.2** However, the defendant has refused to return the plaintiff's tools causing the plaintiff to report the matter to Namaka Police.
- 3.3** Court has already considered the documentary evidence placed before this court in proof of the existence of a contract and the breach of the contract which is claimed to be between the plaintiff and the defendant, when the Interim injunction was granted.
- 3.4** The defendant has not entirely denied in his Statement of Defence, the document tendered by the plaintiff as the contract, but has only stated that the said contract has become null and void since there is a verbal agreement that has been entered into by the parties later, which changed the terms of the original agreement.
- 3.5** Accordingly, it is evident that both the parties accept the original contract although the defendant claims the existence of a secondary contract, which he has to prove at the trial through acceptable evidence.
- 3.6** Therefore, until the defendant manage to prove the same at the trial this court would have to believe the validity of the contract dated 2nd February 2020. As such, on the face of the record the plaintiff has a prima facie winnable case.

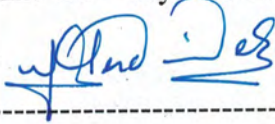
4.0 Damages and Balance of Convenience

- 4.1 The plaintiff has moved for the return of his tools, equipment and the vehicle described in the Statement of Claim, which the defendant has borrowed from him solely for the purpose of using for the completion of the building.
- 4.2 The defendant has claimed in the Statement of Defence that the agreed work has been **successfully completed** and therefore, there is no necessity or any rights for the defendant to hold on to the loaned tools, equipment and the vehicle.
- 4.3 The plaintiff has explained to court the hardship he has to go through due to the non-return of the items and the danger he would be facing in case the defendant might use his vehicle for illegal purposes. Even the defendant has not explained to court whether he has any necessity or right to hold on to them and his reasons for keeping them without returning. In fact, the defendant has informed court that despite the court order only to return the vehicle, the plaintiff has repossessed some of the tools too leaving the defendant only with a ladder and a generator. However, he has not informed court whether he has any objections about the plaintiff repossessing the rest of the equipment from his custody.
- 4.4 The plaintiff has explained to court the hardship and the dangers he would have to endure due to the non-return of his tools, equipment and the vehicle by the defendant and it is evident that awarding damages to the plaintiff would not be practical and an adequate remedy in this regard.
- 4.5 The defendant has claimed \$16,770.15 as the amount due to him from the plaintiff which he would be able to recover at the end of the proceedings if he is successful in proving his case at the trial.
- 4.6 Accordingly, this court is satisfied that the balance of convenience lies with the plaintiff and not with the defendant.

5.0 **CONCLUSION**

- 5.1 Accordingly, the Interim Injunction that was granted on the 31st July 2020 is extended herewith until the end of this case.
- 5.2 28 days to appeal.

DATED 22nd day of February, 2022.



Nilmini Fernandez
Resident Magistrate

