

BETWEEN : *MARCO VERONESI* - **Plaintiff;**

AND : *OASIS CO. LIMITED* - **Defendant.**

BEFORE THE HON. CHIEF JUSTICE WARD

Counsel: Mr Garrett for the Plaintiff
 Mr S. Tu'utafaiva for the Defendant

Date of Hearing: 17th November 1999

Date of Ruling: 19th November 1999

RULING

This case concerns a restaurant, The Love Boat, which is run by the plaintiff under an agreement with the defendant company.

In late October, following disputes over the terms and effect of the agreement between the parties, the defendant closed the restaurant, denied the plaintiff access and removed much of the furniture of the restaurant.

On 5 November 1999 the plaintiff sought and was granted an interim injunction against the defendant ordering it to return the furniture and restore possession of the premises to the plaintiff.

That order was ignored by the defendant for a short time and an application was filed to have the officers of the company committed for contempt. As a result of that hearing, the furniture has been returned sufficiently for the restaurant to be reopened.

I must now consider an application from the defendant to discharge the interim order and one by the plaintiff to make it permanent but which clearly is intended to be an application for it to continue.

Both sides have filed affidavits as a result largely of the allegation of contempt. Those affidavits reveal a number of stark disputes relating to the original agreement and to the actions of the parties both before and after the events that led to the application for the interim injunction. I cannot resolve those issues at this stage and neither should I in an interlocutory hearing of this nature although both counsel have raised arguments as part of their respective cases requiring, to a greater or lesser extent, a determination of the truth of the affidavits.

The test at this stage is, in part, the same as that applied by the court when deciding whether to grant an interim injunction *ex parte*. However the matter is now *inter partes* and I must look at it in a broader context. The test applied in *Tonga* is that set out in the *American Cyanamid* case.

I have already found there is a serious question to be tried revealed in the statement of claim and that is not disputed by either side.

I have looked afresh at the whole question of whether damages would be an adequate remedy if the injunction were to be discharged. Whichever way the case is finally resolved, damages will be the only likely remedy but the assessment of those damages will be a complex part of the trial. However, the plaintiff is likely to be establishing a new business when, as will undoubtedly be the case, he has to stop using the present premises. I accept that much of his future business will depend on his reputation established whilst working in the present restaurant. If he is not able to run any restaurant for a few months as would be the case if the injunction were discharged, he may suffer harm that could not be adequately remedied by an award of damages. On the other hand, the defendants have already made plans to employ a new chef and will have to put those arrangements off. They are being kept out of their own premises. Both may cost them a considerable sum but I am satisfied it could be assessed accurately in a determination of damages. The plaintiff has given an undertaking in respect of such damages and I consider that the injunction should continue on that ground.

The court must finally consider the balance of convenience. That largely depends in this case on the same considerations. Mr Tu'utafaiva points out with some force that the defendant is always at a disadvantage once an interim injunction has been granted. I accept that contention and bear it in mind. However, I am satisfied that the balance of convenience falls in favour of maintaining the status quo and allowing the plaintiff to continue running the restaurant.

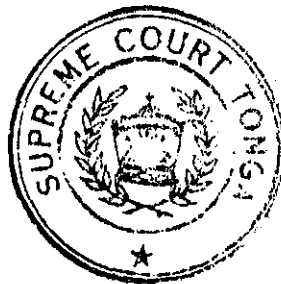
That leaves only one other aspect of the case that causes me concern. The foundation of this dispute lies in the rent paid or payable. I do not intend to make an order that leaves that as a basis of further dispute in the interim. However, I make it clear that I am not determining that issue at this stage

which is clearly for the trial. I am adding an order to set the frame within which the injunctive relief must be contained.

I shall order that the plaintiff pay the full rent under the original agreement for the month of October as he offered to do previously. He shall not pay any rent for the month of November and the amount that should be paid for that month shall be determined at the trial. He shall then pay the full rent under the original agreement for all subsequent months. That rent may only be varied by order of this court upon application by either party. I appreciate that this may be a heavy burden on the plaintiff during the period in which he is re-establishing the business. However, he has given an undertaking to pay damages arising from the injunction he sought and the court can only assume he has the ability to pay them. In those circumstances I do not consider that the order I have just made is too onerous.

Thus the order of the court is that the injunction ordered on 5 November and the terms of the further order made on 12 November shall continue until trial or future order of the court.

As the contentious matters in the affidavits of both sides will have a bearing on the question of the costs of these interlocutory proceedings and will be determined at the trial, I shall order that the costs to date shall be determined by the court at the conclusion of the trial.



[Handwritten signature]

DATED: 19th November 1999.

CHIEF JUSTICE