

IN THE HIGH COURT OF FIJI
CIVIL JURISDICTION
AT LAUTOKA

Civil Action No. HBC 112 OF 2016L

BETWEEN : **HARISH CHAND** trading as **iTAUKEI FOOD INDUSTRIES** of
Level 1 Unit 1/9 Lot 9 Bila Street, Carreras Road,
Votualevu, Nadi

PLAINTIFF/RESPONDENT

A N D : **RAJSAMI INVESTMENTS LIMITED** is a limited liability
company having its registered office at Stage 2, Baadal Place,
Makoi Nasinu, Fiji

1ST DEFENDANT/APPLICANT

A N D : **RAM SAMI & SONS [FIJI] LTD** having its registered office at
37 Badal Place Makoi, Nakasi

2ND DEFENDANT/APPLICANT

A N D : **RAJENDRA SAMI** of 8 Miles, Makoi, Nasinu, Director

3RD DEFENDANT/APPLICANT

Counsel : Ms N Devon for defendants/applicants

Mr I Tikoca for plaintiff/respondent

Date of Hearing : 30 June 2016

Date of Ruling : 30 June 2016

R U L I N G

1. This is an application filed by the defendants/applicants (*the applicants*) to dissolve the injunctive orders obtained by the plaintiff/respondent (*the respondent*) on 21.6.16 on *ex parte* basis.
2. The application is supported by an affidavit of R. Sami, a Director of the 1st named defendant. The affidavit annexes some 17 documents.

3. The respondent did not file any affidavit in response though the application was served on him. Mr Tikoca appearing for the respondent sought sometimes to respond. But this was objected to by the applicants on the basis that the application is an urgent one.
4. When granting the *ex parte* orders on 21.6.2016, the court considered the allegation made by the plaintiff that he was forcefully ejected from the property he was renting and operating a business of agricultural produce from Fiji for export into the Australian market.
5. The applicants' affidavit explains how the plaintiff moved out of the property. It states that the plaintiff voluntarily left the property upon the service of the quit notice. There is no responding affidavit denying this.
6. The applicants claim that they are not privy to the lease agreement and they are bona fide purchaser of the property.
7. The respondent had one year lease agreement with the previous owner, Bula Island Food Suppliers Ltd subject to automatic renewal between one (1) to three (3) years if required by the respondent.
8. The respondent has filed another action against the previous owner for breach of the lease agreement. That action is still pending.
9. In this action the respondent claims damages for forceful eviction and loss of business.
10. The court granted a mandatory injunction on the *ex parte* application that the respondent be placed back into possession of the property. It has now been brought to the notice of the court that the respondent had the lease agreement with the previous owner and not with the applicants.

11. It appears to me that the respondent has no strong prima facie case as against the applicants. The court should not have granted the ex parte injunction orders.
12. The undertaking given by the respondent is insufficient. It is just \$15,000. The bank statement shows that he has a credit balance around \$8,000.00 as at 27 May 2016.
13. The applicants have shown sufficient cross-undertaking. The 1st named applicant is a company and has property owner \$2 million and has at bank in the sum of \$200,000.00. They have provided their statements of financial position (RS-15).
14. The respondent seeks damages against the applicants. It appears damages, if any, would be adequate remedy if he succeeded in his claim.
15. In *American Cyanamid Co v Ethicon Ltd* [1975] AC 396; [1975] 2 WLR 316; [1975] 1 All ER 503, Lord Diplock (supra) stated that:

'The court should go on to consider whether ... if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of trial. If damages ... would be an adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appear to be at that stage' (at 408B-C).

16. In my view damages would be adequate remedy for the respondent as he claims and the applicants would be in a position to pay them. In the circumstances the court will not grant interlocutory injunction.

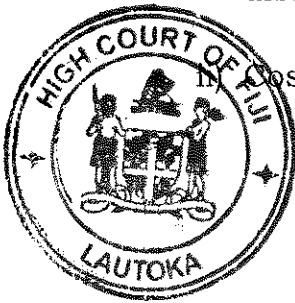
17. I therefore, having considered the affidavit, the documents and the submissions made by counsels, dissolve the injunction orders granted on 21.6.2016.

18. Costs shall be in the cause.

Outcome

- i) The ex parte injunction orders granted on 21 day of June 2016 dissolved with immediate effect.

ii) Costs shall be in the cause.



30 June 2016
At Lautoka

M H Mohamed Ajmeer
30/6/16
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M H Mohamed Ajmeer
JUDGE