

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 207 OF 2019

BETWEEN : **PROMEX CONSULTING PTE LTD** a limited liability company
incorporated in Fiji and having its registered office at Level 3, New
Star Building, Westfield Subdivision, Nadi.

PLAINTIFF

AND : **NANDS PRATAPS JOINT VENTURE PTE LIMITED** a limited
liability company incorporated in Fiji and having its registered
address in Nadi.

DEFENDANT

Appearances : Mr A. Dayal for the plaintiff
No appearance for the defendant

Date of Hearing : 9 August 2019

Date of Ruling : 9 August 2019

R U L I N G

[on *ex parte* injunction]

[01] This is an application for *ex parte* interim injunction.

[02] The application is supported by an affidavit of Lawrence Kumar, Director of the plaintiff company. It is made under O 29, R 1 of the High Court Rules 1988, as amended ('HCR'). That rule provides:

Application for injunction (O 29, R 1)

"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 or matter, whether or not a claim for the injunction was included in that 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." [Emphasis supplied]

[03] The plaintiff has made this application before issuing the writ of summons. Under Rule 1 (3), the plaintiff may make such an application if the case is one of urgency, and in that case, the court may grant urgent injunction before issuing the writ of summons on terms providing for the issue of the writ.

[04] Mr Dayal counsel for the plaintiff supporting this application submits that the defendant has taken all the preparation for the publication of the termination of the Contract Manager's Agreement, the plaintiff had with the defendant. He also submits that the termination is unlawful. He undertakes that the plaintiff will file its substantive claim within 14 days.

[05] The evidence on affidavit suggests the termination of the agreement appears to be unlawful. The plaintiff states that irreparable mischief would be caused to the plaintiff's other contract with the main contractor, Fiji Roads Authority if the termination is published in the newspapers.

[06] On affidavit, the plaintiff states that the defendant intends to advertise a notice in the daily newspapers that Promex Consulting Pte Ltd, the plaintiff has been terminated by the defendant from their agreement, and that if such notice is published in the daily newspapers that would tarnish the plaintiff's image with the FRA and also with other Civil Contractors.

[07] Having considered the application, the affidavit together with its annexures and submissions advanced in Court, I am satisfied that the case is one of urgency and the delay would cause irreparable mischief to the plaintiff, and that I should grant an interim *ex parte* injunction. Accordingly, I grant the interim injunction as sought to be valid until 23 August 2019, on the condition that the plaintiff files its writ within 14 days. The plaintiff must serve this order together with all the documents on the defendant forthwith.

[08] The matter is now adjourned to 23 August 2019, for *inter partes* hearing at 9.30 am.

The result

1. *Ex parte* interim injunction granted as prayed for in relief of the application to be valid until 23 August 2019.
2. The plaintiff shall file the writ of summons within 14 days.
3. The plaintiff shall serve this order together with all documents on the defendant forthwith.
4. The matter is now adjourned for *inter partes* hearing at 9.30 am on 23 August 2019.

M.H. Mohamed Ajmeer
9/8/19

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M.H. Mohamed Ajmeer
JUDGE



At Lautoka
9 August 2019

Solicitors:

Dayal Lawyers, Barristers & Solicitors for the plaintiff