

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 108 of 2017

BETWEEN: **HONEYDEW FARMS LIMITED** having its registered office in
Messrs Shekinah Law, Suite 1B, Fijian Holdings Properties
Building, Suva.

PLAINTIFF

AND: **FUN WORLD CENTRE (FIJI) LIMITED** having its registered office in a
limited liability company having its registered office at Floor 1 Lautoka
Chambers, Lot 1 Valetia Street, Lautoka.

DEFENDANT

Appearances: Shekinah Law for the Plaintiff
 Siddiq Koya Lawyers for the Defendant
Date of Hearing: 15 April 2019
Date of Ruling: 11 February 2020

RULING

1. He plaintiff filed its Writ of Summons and statement of claim on 07 June 2017 together with a Summons seeking various injunctive Orders against the defendant.
2. The plaintiff company is in the business of collecting and recycling waste. Because of the nature of its business, it required a massive area to store its waste.
3. The defendant is the registered proprietor of State Lease No. 1783. On this lease, is constructed a ware house. The defendant also runs a hotel on some land immediately adjacent to the warehouse site.

4. The hotel sits on Crown Lease 1783 and the warehouse sit on the Crown Lease 1782.
5. At some point in time, there was a verbal agreement between the plaintiff and the defendant by which the plaintiff was allowed to enter into occupation of the said warehouse to use as a storage facility for its plastic waste material.
6. Furthermore, by the same agreement, the plaintiff was allowed to use four rooms in the defendant's hotel site to use as office.
7. Pursuant to that arrangement, the plaintiff paid rental for the four rooms and also rental "of about" \$5,000-00 per month for the use of the ware house.
8. By their arrangement, the plaintiff was allowed to install its own electrical wirings and fittings on the warehouse to suit its custom needs.
9. As part of their verbal arrangement, according to an affidavit sworn by Steven Buksh on 07 June 2017, the defendant had promised the plaintiff that it (the defendant) would regularize their dealing by later obtaining the consent to sub-lease the warehouse from the Director of Lands.
10. Buksh deposes that after a year of occupation of the warehouse, the defendant had not pursued the consent of the Director of Lands with a view to formalizing their arrangement with a sub-lease.
11. The plaintiff thereupon began to make persistent inquiries with the defendant.
12. This resulted in the souring of their relationship and the defendant would serve various Notices To Vacate the warehouse and the hotel rooms.
13. The plaintiff did vacate the rooms immediately. However, it could not clear the massive heap of plastic waste material and heavy machinery that it had accumulated in the warehouse.
14. Part of the delay was that the defendant had disconnected the power supply to the warehouse.

15. At some point, the defendant even filed section 169 Land Transfer Eviction proceedings in the High Court but this was dismissed on technical grounds.
16. The defendant even lodged various complaints with the Police against Buksh, alleging Criminal Trespass. The ensuing charges and criminal prosecution case was dismissed on the ground that there was no case to answer.
17. The relationship between the plaintiffs' and the defendants' respective agents had soured to such an extent that, as far as Buksh was concerned, the defendant was doing everything in its powers to prevent the plaintiff from accessing the warehouse to remove its stock and heavy machinery.
18. The Notice of Motion which the plaintiff filed on 07 June 2017 sought various injunctive Orders which, if granted, would allow the plaintiff access to the warehouse without interference from the defendant.
19. I did grant Order in Terms on 03 August 2017.
20. On 14 August 2017, the defendant filed a Notice of Motion to Dissolve the Injunctions granted on 03 August 2017.
21. On 17 August 2017, the plaintiff filed an Amended Writ of Summons. The only amendment therein is in a change in the description of the plaintiff to "FUN WORLD CENTRE (FIJI) LIMITED" to replace the original "FUNWORLD FIJI LIMITED".
22. Curiously, on 21 August 2017, the defendant through Siddiq Lawyers, filed a Notice of Motion pursuant to Order 15 Rule 4 to join Fun World Centre (Fiji) Limited as second defendant.
23. On 18 December 2017, the defendant filed its statement of defence. Reply was filed on 23 October 2017.
24. On 03 August 2017, the plaintiff filed a Summons seeking to dissolve the injunctive orders made earlier on the ground that the plaintiff has had ample time

to remove its stock and machineries from the warehouse and alternatively that the statement of claim be struck out.

25. Summons For Directions was filed on 23 February 2018 and Order in Terms granted on 29 March 2018.
26. The injunctive orders continued over some time as the plaintiff was representing in court that it was in the process of removing its stock and machinery
27. However, on 10 May 2018, I did Order that the injunctions be dissolved and that the plaintiff do vacate and remove all its assets, goods and wastes from the warehouse within two months from 10 May 2018.
28. It appears that the plaintiff had difficulty complying with these orders, mainly for logistical reasons including the selection of a suitable contractor to remove the stock and the machineries.
29. At some point, quotations were obtained from various contractors for the job of removing the stock and machineries.
30. On 10 August 2018, I ordered that the plaintiff be permitted to engage Westcorp Recyclers Pte Limited based on Westcorp's quotation, to carry out the operation.
31. On 18 September 2018, the plaintiff said in court on callover that 99% of the clearance had been completed. After hearing submissions, the parties agreed to adjourn the matter to 25 September 2018 for mention and that the plaintiff was to continue with the clearance operation. I also recorded that Buksh gave an undertaking in Court that he will remove all material by Monday 24 September 2018. The defendant was not to interfere with the removal process and that a site inspection was to be conducted on 21 September 2018.
32. On 25 September 2018, the plaintiff's counsel advised in Court that the plaintiff had removed all its stock from the warehouse and that the matter can take its normal course. However, the defendant insisted that not all waste material had been removed.

33. After that, the matter was again called on 28 September 2018, 12 October 2018, 15 October 2018, 29 October 2018, 23 November 2018, 07 December 2018.
34. On 05 December 2018, the defendant filed a Summons seeking leave to amend its counter-claim.
35. I have read the proposed amendments to the counter-claim and I see no new cause of action being pleaded. All that the defendant seeks by way of amendment is to improve its pleadings on the consequential losses suffered as a result of the fire. For this part, I have no problem granting leave.
36. However, the defendant also proposes to plead breaches of the injunctive orders and claim damages as a result and also breach of undertaking given by Buksh on 18 September 2018 and claim damages therefrom.
37. I will not go over the principle applicable in the amendment of pleadings. Suffice it to say that it is in the best interest of justice that parties are allowed to bring all their case in Court.
38. I am of the view that the proposed amendments, though very poorly pleaded, is based on an allegation that the plaintiff's delay in removing its stock and clearing the warehouse caused the defendant losses during the period of delay.
39. I do not think that the plaintiff will suffer any major prejudice if the proposed amendments are allowed. The proposed amendments are all to do with the continuing state of affairs in the situation between the plaintiff and the defendant.
40. Having said all that, I keep in mind that, ultimately, the consequential losses suffered by both parties emanated from their illegal dealing regarding the Crown Leases in question, which dealing all happened without the prior consent of the Director of Lands.
41. Furthermore, and I keep an open mind, the facts so far, suggest that the defendant itself was responsible for a major part of the delay, for which the plaintiff itself suffered tremendous prejudice.

42. I say all this, while keeping an open mind, with a view to encouraging the parties to revisit their respective causes of action and, perhaps, settle this matter out of court.
43. As for now, I will grant leave to the defendant to amend its statement of defence.
44. The defendant is to file and serve its amended counterclaim in 7 days. 14 days thereafter to the plaintiff to file and serve defence. 7 days thereafter for a reply.
45. Case adjourned to Wednesday 11 March 2020 at 10.30 a.m. for mention.



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Anare Tuilevuka
JUDGE
Lautoka