

In the High Court of Fiji

At Suva

Civil Jurisdiction

Civil Action No. HBC 20 of 2018

M Y Group Fiji Limited

First plaintiff

Mohammed Yaseen Investments Limited

Second plaintiff

v

Natural Gift Carrier Limited

Defendant

Counsel: Ms M. Conivavalagi for the plaintiffs

Mr Ashneel Nand for the defendant

Date of hearing: 3rd September, 2020

Date of Ruling: 4th September, 2020

Ruling

1. By notice of motion filed on 13th July, 2020, the plaintiffs seeks an Order to restrain the defendant from using the following equipment for its benefit:

- a. *Make* : *Crusher*
- Model* : *C10*
- Serial No.* : *8811*
- Year of Manufacture* : *2002*
- b. *Complete Stone Crusher including Screen Plant, Hammer Mill, Conveyors Jaw, Motors, Gear Box, All Frames, All Electric Wiring Components.*
- c. *Sand Screw Screening Plant.*

The plaintiffs also seek an Order for the defendant to return the equipment.


2. Rajendra Madhawan the General Manager of the plaintiff states that the plaintiff and the defendant entered into a Sale and Purchase Agreement. In terms of the Agreement, the defendant agreed to purchase the equipment from the first plaintiff for a sum of \$220,000.00 and make payments according to a schedule and transfer the "*Agreement for lease*". The payment has not been honoured by the defendant and the plaintiff continues to suffer loss and damages and loss of income. The injunction will benefit the plaintiffs "*in a way that the equipment will not be damaged*".
3. On 8th, 16th and 24th July,2020, counsel for the plaintiffs moved Court for time to serve the notice of motion on the defendants. On 14th August,2018, I gave directions to the parties to file affidavits in opposition and reply. The matter was fixed for hearing on 3rd September,2020.
4. The affidavit in opposition filed on behalf of the defendant states that the plaintiffs have sold the equipment to the defendant. The plaintiffs can only claim the balance amount due and specific performance of the consequential agreement for transfer of the land.

The determination

5. Ms Conivalagi, counsel for the plaintiffs submitted that the plaintiffs have been seriously prejudiced, as they have been deprived of the balance of the proceeds of the sale. The Sale and Purchase Agreement has been breached. The defendants are unjustly enriching themselves. Damages is not an adequate remedy. She concluded that the balance of convenience favours the plaintiff, as the defendant is benefitting from the purchase of the equipment.
6. Mr Nand, counsel for the defendant submitted that the application has been filed by notice of motion under Or 29, r 1 and not under Or 29, r 2, which provides for the detention, custody or prevention of property. The plaintiffs have not shown the urgency for the interim relief sought. Finally, he submitted that the plaintiffs have not given an undertaking as to damages has been given.

7. The grievance of the plaintiffs is that the defendant enjoys the benefit of the equipment, although it has not paid for it.
8. The defendant's riposte is that the plaintiff has transferred the equipment to the defendant.
9. Lord Diplock in *Siskina v Distos SA*, (1979) AC 210 at page 256 stated that a right to obtain an interlocutory injunction is "*ancillary and incidental to the pre-existing cause of action..(and) dependent upon there being a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff.*"(emphasis added)
10. In *Strategic Nominations Limited v Gulf Investments Fiji Ltd & Others*, (Civil Appeal No. ABU0039 of 2009) Marshall JA said that Lord Diplock in the *American Cyanamide* was concerned with a case where "*there was a threatened continuing breach of a proprietary right of the Plaintiff by the Defendant*". He concluded that in "*law there is no basis.. for invoking the interim injunction jurisdiction*", where there is no such threat.
11. In my view, the plaintiffs have not any demonstrated that there is any threat of its legal or equitable rights. I find no urgency nor basis for the interim relief sought.
12. The application is misconceived.
13. **Orders**
 - a. The notice of motion filed by the plaintiffs is declined.
 - b. The plaintiffs shall pay the defendant costs summarily assessed in a sum of \$ 1500 within 14 days of this ruling




A.L.B. Brito-Mutunayagam
JUDGE
4th September, 2020