In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 83 of 2020

John Vaivao Fatiaki

Plaintiff

v

Mobil Oil Australia Pty Ltd

Defendant

Counsel: Mr D. Toganivalu for the plaintiff
Mr Z. Lateef with Ms S Saumatua for the defendant
Date of hearing: 30th March,2021
Date of Ruling : 30th September,2021

**Ruling**

1. By ex parte summons filed on 16th March,2021, the defendant sought injunctive orders to prohibit the plaintiff from interfering with the petroleum discharge pipelines on his land.

2. Adi Jaya Tamara, Lead Country Manager of the defendant company in his affidavit in support stated as follows. On 13th March,2021, he was advised by Carpenters Shipping,(their vessel agents) that the plaintiff had several times requested that he be paid a sum of $430,791.20 VIP immediately or his labourers will dig out the petroleum pipelines, when the next vessel arrived on 16th March,2021, at 4.30 pm. If the pipelines are dug out or damaged, the fuel will spill out before reaching the tanks and it is highly likely that it would cause an explosion resulting in loss of lives and substantial damage to the defendant's and neighboring properties. The defendant increased security as the plaintiff was in a position to carry out his threat. This matter is of national importance, as the pipelines supply the necessary fuel that Fiji depends on.

3. On 16th March,2021, I heard Ms Saumatua, counsel for the defendant and granted orders ex parte preventing and prohibiting the plaintiff from interfering with the petroleum discharge pipelines and the defendant's operations at Vuda Terminal until 22nd March,2021.

4. On 22nd March,2021, I granted the parties time to file affidavits in opposition and reply. and fixed the matter for Inquiry .

5. On 30th April,2021, I heard counsel and reserved my Ruling. I extended the orders granted on 16th March,2021, until delivery of this Ruling.

6. The plaintiff, in his affidavit in reply filed on 26th March,2021, states that he purchased Crown Lease 248965 in 1992 and leased it to the defendant the same year. The defendant has been using his land to pump in and out petroleum products for 13 years without giving him any rent**.** He is 73 year old, He wrote to Carpenters Shipping advising it to not to discharge any petroleum on his land until the defendant pays him $ 430,791.20. He had to resort to threaten them. The defendant has partly built new pipelines on top of the existing ones without his consent. He seeks an interim payment of $430,691.20 to be paid immediately by the defendant.

7. The affidavit in reply of Ad Jaya Tamara states that the plaintiff is the registered owner of the land. On 18th January, 1957, the defendant was granted a Special Licence by the Director of Lands to occupy the land and install and operate pipelines. The pipelines fall within the native land leased to the Director of Lands under Native Lease No. 9354 on 1st May, 1954. The subdivided plan in Head Lease SO1345 clearly depicts 4 pipelines on the land. The Director of Lands issued the land initially to CSW Holdings Limited, but failed to include the 4 pipelines. The pipelines are clearly visible. The defendant is currently replacing the pipelines. The defendant does not need to pay rent to the plaintiff. The defendant leased the land from the plaintiff for the purpose of training its staff on safe firefighting techniques from 1992 to 31 January 2008, not for the purposes of its pipelines. The plaintiff filed his claim in March, 2020, 12 years after the alleged claim

arose despite knowing the defendant's position for the past 12 years. The alleged claim is statute barred.

8. At the hearing, Ms Saumatua submitted that the Director of Lands on 18th January,1957, gave a license to Vacuum Oil Company Pty Ltd, (now known as Mobil Oil Australia Pty Ltd) to install and operate the pipelines on the land. The plaintiff acquired the land in 1992. She submitted further that there is a serious question to be tried. Damages will not be an adequate remedy if the pipelines are destroyed. The balance of convenience lies with the defendant.

9. Mr Toganivalu, counsel for the plaintiff said that he does not dispute that a license was given to the defendant in 1957, to install pipelines. He submitted that the licence only applied to a part of the plaintiff's land. The defendant has placed pipes outside the area leased to the plaintiff by the defendant in 1992.

10. The plaintiff, in his statement of claim states that he acquired Crown Lease 248965 on 14th August,1992. On 7th January,1992, he entered into an agreement with the defendant to lease the land to the defendant for a period of 5 years at a rental of $ 1295.00 per month. On 19th June,1998, he entered into a lease agreement with the defendant for a period of 5 years at a rental of $ 648.00 per month. The defendant built petroleum discharge pipelines on his land with his consent. The plaintiff claims loss of rental income in a sum of $ 105,543.00, unpaid lease rentals to the Ministry of Lands, unjust enrichment, pain and suffering and loss of business opportunities.

11. The defendant, in his statement of defence states that the pipelines were in existence prior to the plaintiff's acquisition of the land. The defendant's predecessor, Vacuum Oil Company Proprietary Ltd was granted a special licence to install and operate pipelines on the land by the Director of Lands.

12. It is not in dispute that the Director of Lands gave the defendant a license in 1957, to install pipelines on the land. The plaintiff became the registered owner of the land by

Crown Lease 248965 in 1992. It is also not in dispute that the plaintiff and the defendant entered into Lease Agreements in 1992 and 1998, as admitted in the statement of defence. The Lease Agreements are however, not before Court.

13. The plaintiff, in his affidavit in reply seeks immediate payment in a sum of $430,791.20 for the continued use of his land. The reliefs claimed in the statement of claim are set out above.

14. The defendant contends that it is not required to pay rent to the plaintiff in view of the license granted by the Director of Lands. The Head Lease depicts 4 pipe lines, but the Director of Lands failed to include these pipelines in the lease to CSW holdings. The defendant further contends that it leased the land from 1992 to January, 2008, for the purpose of training its staff and not for the installation and presence of pipelines. The plaintiff's claim is statute barred.

15. In my view, the aforesaid disputed questions of fact raise serious questions to be tried.

16. The principles governing the grant or refusal of an interlocutory injunction were laid down in the ***American Cyanamid,*** [1975]1All E.R.504 at 510. Lord Diplock stated that in granting an interim injunction " *the court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried.*"

17. Lord Diplock stated further:

> *It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claim of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial.*

18. On the question whether damages would be an adequate remedy, Lord Diplock in the ***American Cyanide*** case at page 509 to 510 stated:

> *The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff's*

> *need for such protection must be weighed against the corresponding need for the defendant to be protected against the injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favour at trial. The court must weigh one need against the other and determine where the balance of convenience lies.....*
>
> ***the governing principle is that the court should first 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 application and the time of the trial****. If damages in the measure recoverable at common law would be 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 appeared to be at that stage. If on the other hand damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether, on the contrary hypotheses that the defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the plaintiff's undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a position to pay them, there would be no reason on this ground to refuse an interlocutory injunction.*

19. In my view, there is a difficulty in attempting to determine the loss to the defendant if the pipelines are removed. I am satisfied that the difficulty indicates that damages would not be an adequate remedy to the defendant.

20. On the balance of convenience, Lord Diplock in ***NWL v Woods***,[1979] 3 All ER 514 at pg 625 said:

> *In assessing whether, what is compendiously called, the balance of convenience lies in granting or refusing interlocutory injunctions in actions between parties of undoubted solvency the judge is engaged in weighing the respective risks that injustice may result from his deciding on way rather than the other at a stage when the evidence is incomplete. On the one hand there is the risk that if the interlocutory*

*injunction is refused but the plaintiff succeeds in establishing at the trial his legal right for the protection of which the injunction had been sought he may in the meantime have suffered harm and sought he may in the meantime have suffered harm and inconvenience for which an award of money can provide no adequate recompense. On the other hand there is the risk that if the interlocutory injunction is granted but the Plaintiff fails at the trial the defendant may in the meantime have suffered harm and inconvenience which is simply irrecompensable. The nature and degree of harm and inconvenience that are likely to be sustained in these two events by the defendant and the plaintiff respectively in consequence of the grant or the refusal of the injunction are generally sufficiently disproportionate to bring down, by themselves, the balance on one side or the other; and this is what I understand to be the thrust of the decision of the House in American Cyanamid v Ethicon.*

21. In ***Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Ltd*** [1985] 2 NZLR 129 at page 142 Cooke J (he as then was) stated:

> *Whether there is serious question to be tried and the balance of convenience are two broad questions providing an accepted framework for approaching these applications. As the NWL (supra) speeches bring out the balance of convenience can have a very wide ambit. In any event the two heads are not exhaustive. Marshalling considerations under them is an aid to determining, as regards the grant or refusal of an interim injunction, where overall justice lies. In every case, the Judge has finally to stand back and ask himself that question. At this final stage, if he has found balance of convenience overwhelming or very clearly one way … it will usually be right to be guided accordingly. But if, the other, rival consideration are still fairly evenly poised, regard to the relative strengths of the cases of the parties will usually be appropriate.*

22. McCarthy P in ***Northern Drivers Union v. Kawau Island Ferries Ltd,*** (1974) 2 NZLR 617 at 620 and 621 stated:

> *The purpose of an interim injunction is to preserve the status quo until the dispute has been disposed of on a full hearing. That being the position, it is not necessary that the court should have to find a case which entitle the applicant to relief in all events: it is quite sufficient if it finds one which shows that there is a substantial question to be investigated and that matters ought to be preserved in status quo until the essential dispute can be fully resolved.....**It is always a matter of discretion, and as the citation from Lord Pearce endorses, the Court will take into consideration the balance of convenience to the parties***

> ***and the nature of injury which the defendant, on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right, and that which the plaintiff, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right.*** (emphasis added)

23. I have considered the consequences for the defendant if the injunctive orders are not continued vis a vis the consequences to the plaintiff.

24. In my view, the balance of convenience lies with the defendant.

25. The overall ends of justice of this case requires that the interim reliefs granted continue until the serious questions raised are determined at the substantive hearing.

26. I note that the defendant has not given an undertaking as to damages.

27. I make order that the defendant provides a sufficient undertaking as to damages, failing which the injunction orders will be discharged.

28. ***Orders***

    a. The injunction orders granted on 16th March,2021, shall continue to be in force until the final determination of this action.
    b. The defendant shall provide a sufficient undertaking as to damages on or before 14th October, 2021. If the defendant fails to provide a sufficient undertaking as to damages on or before 14th October, 2021, the orders granted in a) above will be discharged.
    c. The matter to be called before me on 14th October, 2021, at 10am.
    d. I make no order as to costs.


A.L.B. Brito-Mutunayagam
JUDGE
30th September,2021