

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

CIVIL ACTION NO. HBC 50 OF 2021.

BETWEEN : **BLUE VIEWS LLC** a limited liability corporation incorporated in USA and registered as a foreign company in Fiji.
PLAINTIFF

AND : **VUNABAKA BAY FIJI LIMITED** a limited liability company incorporated in New Zealand and registered as a foreign company in Fiji.
1ST DEFENDANT

AND : **VUNABAKA BODY CORPORATE (FIJI) LIMITED** a company limited by guarantee and not having share capital.
2ND DEFENDANT

BEFORE : Hon. Mr. Justice Mohamed Mackie

APPEARANCES : Ms. Tabuadua, for the Plaintiff
Ms. Choo, for the Defendants

DATE OF HEARING : 14th March, 2023

DATE OF RULING : On 14th March, 2023

RULING

1. This is the written form of my extempore Ruling, with the reasons for it, pronounce today, the 14th March, 2023, after hearing the learned Counsel for both the parties on the summons filed by the Plaintiff, seeking to file a supplementary Affidavit, to be considered for the pending ruling before me on the Application for interim Injunction.
2. This is an action filed on 19th February, 2021 and my predecessor, on 23rd February, 2021, had granted 3 injunctive orders, after considering an ex-parte Application by the Plaintiff.
3. Subsequent to an inter-partes hearing held before me on 10th November, 2022 in relation to the said Application for injunctive Orders and while the Ruling on it was due on 27th February, 2023, the learned Counsel for the Plaintiff moved to support a SUMMONS filed on the same day, seeking to file a supplementary Affidavit to be considered in preparation of the said ruling.

4. As the Defendants were absent and unrepresented on 27th February 2023, having reserved the Ruling for today the 14th March, 2023, this Court directed the Summons to be served on the Defendants returnable today.
5. Accordingly, when the matter came up today, the said summons being supported by the Counsel for the Plaintiff, and after hearing the Counsel for the Defendants as well, this Court by its extempore Ruling dismissed the said Summons.
6. Now I shall give the reasons for the dismissal of the said summons as follows.
7. The Ex-parte interim injunction Orders in this matter have been granted by my predecessor on 21st February, 2021, by totally relying on the facts and circumstances that prevailed at that point of time.
8. Parties have already had a full-scale hearing before me on 10th November, 2022 with the appearance of their respective Counsel, to decide whether the Ex-parte interim Injunction Orders granted on 23rd February, 2021 should be in force or not till the final determination of the substantive action.
9. On perusal of the contents of the intended Supplementary Affidavit, I find that the matters averred therein are on a different dispute that claimed to have cropped up between the Plaintiff and the defendant on or around 13th November, 2022 and thereafter.
10. The question whether the ex-parte injunctive Orders granted on 21st February, 2021, should be in force or not till the determination of the substantive action, has to be decided on the facts and circumstances that prevailed during the time material for the commencement of the action and issuing of the ex-parte injunction Orders.
11. Matters averred in the intended supplementary Affidavits are on a different dispute that seems to have cropped up recently, very long after issuing of the ex-parte injunctive Orders on 23rd February, 2021.
12. The Plaintiff cannot rely on or make use of the ex-parte injunctive Orders dated 23rd February, 2021, which were issued in relation to a different dispute, as a panacea to address or face each and every subsequent dispute/s that arose or may arise between the Plaintiff and the Defendant.
13. The Court cannot delay its Ruling, by keeping the gate open for any new evidence to come in, which is not directly connected to the issue at hand.
14. Reasons for not extending the injunction Orders that currently in force, are clearly given in my Ruling to be delivered today. Even, if the intended supplementary Affidavits is admitted as evidence, it will not assist this Court in determination of the matter at hand favourable to the plaintiff, owing to reasons stated in my ruling.

15. Accordingly, for the reasons given above, I decide to disallow the summons dated 27th February, 2023 filed by the plaintiff seeking to file a Supplementary Affidavit.
16. No cost ordered in respect of this Summons.



A.M. Mohamed Mackie
Judge

At High Court Lautoka this 14th day of March, 2023.

SOLICITORS:

For the Plaintiff:

Lowing Lawyers

For the Defendants:

R. Patel Lawyers

