IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

CIVIL ACTION NO. HBC 239 of 2023

BETWEEN	:	**CORAL COAST CENTRAL APARTMENT HOTEL GROUP PTE LTD** a limited liability company having its registered office at C/- Millbrook Hills Law Partners, Level 1, Office 4 Dimond Complex, Marine Drive, Lautoka.
		PLAINTIFF
AND	:	**NARAYANGANJ PTE LTD** C/- Sitar Restaurant, Seafront Apartments, Queens Highway, Korotogo.
		FIRST DEFENDANT
AND	:	**NAZRUL ISLAM** C/- Sitar Restaurant, Queens Highway Korotogo.
		SECOND DEFENDANT

BEFORE	:	**Master P. Prasad**
Counsels	:	Mr. M. Arun for Plaintiff Ms. G. Fatima for Defendant
Date of Hearing	:	7 April 2025
Date of Decision:		9 May 2025

RULING

1. The Plaintiff had filed an *Ex-Parte* Notice of Motion pursuant to Order 29 Rules 1 and 2 of the High Court Rules 1988 (**Application**). The Court, upon hearing the Plaintiff, granted an interim injunction against the Defendants on 17 July 2024 restraining the Defendants from charging or encumbering or pledging the property in CT 31201 (**Property**) and from alienating the Property or taking any steps to diminish the value of the Property until further orders of the Court. The Application was then made *Inter-Partes*.

2. The Defendants opposed the Application and have filed their Affidavit in Opposition. At the hearing both parties made oral submissions and filed written submissions as well.

3. The brief facts of this matter are that the parties allegedly held discussions in 2013 about a joint venture - the scope of which was for the 1st Defendant to develop a serviced strata style apartment complex of 24 apartments (**Hotel**) with a commercial floor, a restaurant, reception, travel agent and car hire office and management of the strata complex. The parties then entered into a Heads of Agreement on 31 May 2019 to lease "*the whole of the premises at Queens Rd, Sigatoka, including the House, and common property, but excluding other commercial tenancies, being Lot 1 on Deposited Plan 2388 in the District of Serua, Island of Viti Levu*" (**Premises**).

4. Pursuant to the said Heads of Agreement, various other agreements were entered into between the Plaintiff and 1st Defendant, including:

    a. Letting Services Agreement subject to formation of Body Corporate.
    b. Caretaking Agreement subject to formation of Body Corporate.
    c. Leases of each apartment lot in the Hotel.
    d. Lease of CT 31201 from the 1st Defendant to the Plaintiff for term of 5 years with effect from 1 August 2019 with an option of renewal (**Lease**).

5. According to the Plaintiff, on or about 20 March 2020, COVID-19 was declared a global pandemic and affected the progress of the works for the above development. Due to this there was no effective communications between the parties until March 2022. On 14 March 2022, the Plaintiff corresponded with the 2nd Defendant on its intention to proceed with the development.

6. The Plaintiff then filed a Statement of Claim alleging that it had incurred expenses in the anticipation of commencement of the Hotel operations from the Premises and that the 2nd Defendant had interfered with the contracts entered between the Plaintiff and the 1st Defendant. The Plaintiff thus claims:

    a. *"An order for specific performance for the transfer of the Lot comprising the reception to the Plaintiff in accordance with the Heads of Agreement dated 17 May 2019.*
    b. *An order restraining the Defendants, their servants, agents and assigns from interfering with the Plaintiff's use of the Hotel.*
    c. *An order for damages against both Defendants jointly and severally in lieu of or in addition to specific performance.*
    d. *Interest in accordance with Agreement and or statute.*
    e. *Damages against 2nd Defendant for tortious interference and 1st Defendant for breach of contract, together with interest in an unliquidated sum, in an amount to be assessed for:*
        i. *Loss of profits;*
        ii. *Loss of opportunity;*
        iii. *Costs on a solicitor/client indemnity basis; and*
        iv. *Punitive or exemplary damages.*
    f. *Any further or other relief this Honourable Court deems fairs and just in all the circumstances."*

7. The Defendants in their Statement of Defence while confirming that a Heads of Agreement was signed, allege *inter alia* that the Plaintiff failed to make monetary contribution and failed to comply with the basic terms of the said agreements. The Defendants also allege that all agreements were subject to performance and the Plaintiff did not comply with the same. The Defendants further claim that in January 2020 everything was completed and ready for the Hotel operation but the intended takeover and payments from the Plaintiff did not materialise, and also that the Plaintiff failed to honour its lease payment obligations plus failed to pay necessary deposits.

8. The Plaintiff's Application is made on the premise that 'Ramada Suits' have now started operations from the Property and Plaintiff's searches have revealed that there is no lease agreements registered between the Defendants and Ramada Suits. The Plaintiff claims that the Application was necessary to secure its interest over the Property.

9. At the commencement of the hearing, the Defendants counsel raised a preliminary issue on whether the Plaintiff was a duly registered entity.

10. The Plaintiff in the intitule is referred to as "*Coral Coast Central Apartment Hotel Group Pte Limited a limited liability company having its registered office at C/- Millbrook Hills Law Partners, Level 1 Office 4 Dimond Complex, Marine Drive, Lautoka*".

11. In the 2nd Defendant's Affidavit in Opposition to the Application, he states that the Certificate of incorporation provided by the Plaintiff refers to a company registered as 'Coral Coast Central Apartment Pte Limited', which is not the Plaintiff in this case. Further, the Heads of Agreement is between the 2nd Defendant and 'Coral Coast Central Apartment Hotel Ltd (Fiji)'. Coral Coast Central Apartment Hotel Ltd (Fiji) is also not the Plaintiff in this case.

12. The Defendants' counsel submitted that instead of filing an application to amend the name of the Plaintiff, the Plaintiff just changed the name of the Plaintiff to reflect 'Coral Coast Central Apartment Pte Limited' in the subsequent documents filed. The Defendants contention is that the interim injunction has been obtained by 'Coral Coast Central Apartment Hotel Group Pte', an entity which does not exist.

13. The Plaintiff claims that this was a typographical error which can be corrected and has now filed an application for leave to amend the name of the Plaintiff. The said application was filed on 23 April 2025. The Defendants have opposed the application and have moved this Court to deliver its ruling on this current Application while they respond to the Affidavit filed in support of the Plaintiff's application to amend the Plaintiff's name.

14. Although not fatal to this Application, this is a substantive error on behalf of the Plaintiff wherein they should have moved the Court to rectify the same

immediately after being made aware of the same. Given that the Plaintiff has now made the necessary application for leave to amend the name of the Plaintiff, the Court shall now consider this Application, the Affidavits, the written and oral submissions made by the parties, and the relevant legal provisions and case authorities regarding an application made pursuant to Order 29 Rule 1 and 2 of the High Court Rules 1988.

15. The granting of an interlocutory injunction is a matter of discretion. Its main purpose is to safeguard a plaintiff from harm caused by a breach of rights that cannot be adequately remedied through damages if the plaintiff ultimately wins the case. However, this protection must be balanced against the potential harm to the defendant, who may be unjustly restricted from exercising their own rights if they are later found to be in the right. The court must carefully assess where the balance of convenience lies. As stated by Lord Diplock in ***American Cyanamid Co. v. Ethicon Ltd*** [1975] AC 396 at 406, the court must evaluate: (i) whether there is a serious question to be tried; (ii) whether damages would be an adequate remedy; and (iii) whether the balance of convenience favours granting or refusing interlocutory injunction.

16. The Plaintiff's counsel submits that there is a serious question to be tried in this matter and that damages is not an adequate remedy. In this regard the Plaintiff's submissions are that the serious questions to be tried are; whether the agreements entered between the parties are valid, and if so then whether the Plaintiff is entitled to the benefit of the same.

17. In regard to whether damages are an adequate remedy, the Plaintiff's counsel submitted that it would be impossible to adequately quantify any measure of damages and that the Plaintiff's financial and operational stakes in the joint venture go beyond mere monetary loss as they involve significant business interest and potential long-term impacts on the Plaintiff's market position and reputation in Fiji. No evidence was provided in the Plaintiff's affidavits to this effect. In any event, the test is whether damages would be an **adequate** remedy and not whether it would be a perfect remedy.[1]

18. Defendants dispute the facts in the Plaintiff's Statement of Claim. The Defendants' counsel submitted that there is no serious question to be tried in this matter and in any event, damages would be an adequate remedy. The Defendants rely on the relief sought by the Plaintiff in its own claim where the Plaintiff seeks "*An order for damages against both Defendants jointly and severally in lieu of or in addition to specific performance"* and *Damages against 2nd Defendant for tortious interference and 1st Defendant for breach of contract, together with interest in an unliquidated sum, in an amount to be assessed for"* loss of profits, loss of opportunity, costs and punitive or exemplary damages. The Defendants' counsel submit that since the Plaintiff's claim

[1] D. Bean, I. Parry, A. Burns, *Injunctions* (Thomson Rueters, London, 2022) page 41.

primarily seeks damages, it has not met the ***American Cyanamid*** threshold to sustain the injunction.

19. The Defendants' counsel argued that the Plaintiff failed to disclose key facts when obtaining the interim orders *ex-parte*. The undisclosed key facts specified were that: the Plaintiff had abandoned the Hotel project for two years; it had not made any rental payments to date; it falsely claimed that the Hotel building was incomplete before COVID-19; and it failed to provide proper invoices to substantiate its alleged losses. As a result, the Defendants contend that the interim injunction should be set aside.

20. Justice Laddie, having considered number of cases including ***American Cyanamid*** (supra), concluded in ***Series 5 Software v. Clarke*** [1996] 1 All ER 853 at page 865 as follows:

> *"...it appears to me that, in deciding whether to grant interlocutory relief, the court should bear the following matters in mind. (1) The grant of an interim injunction is a matter of discretion and depends on all the facts of the case. (2) There are no fixed rules as to when an injunction should or should not be granted. The relief must be kept flexible. (3) Because of the practice adopted on the hearing of applications for interim relief, the court should rarely attempt to resolve complex issues of fact or law. (4) Major factors the court can bear in mind are (a) the extent to which damages are likely to be an adequate remedy for each party and the ability of the other party to pay, (b) the balance of convenience, (c) the maintenance of the status quo, and (d) any clear view the court may reach as to the relative strength of the parties' cases."*

21. Justice Prematilaka JA in ***Sea Pilots (Fiji) Ltd v Peckham*** [2025] FJCA 12; ABU055.2024 (17 February 2025) discussed in detail the considerations for granting an interim injunction and the order in which these factors should be assessed. Prematilaka J held as follows:

> *[8] The three considerations for granting an interim injunction - serious question to be tried, irreparable harm, and balance of convenience - are well established in common law jurisdictions, following the principles in **American Cyanamid Co v Ethicon Ltd** [1975] UKHL 1; [1975] AC 396 (HL).*
>
> *[9] The order in which these factors are considered is crucial, and generally, courts will only proceed to the second and third steps if the first requirement is satisfied. The order of considerations are:*

1. ***Serious Question to Be Tried***
The threshold inquiry is whether the claim is neither frivolous nor vexatious and that there is a real prospect of success. If there is no serious question to be tried, the application for an injunction fails outright, and the court does not need to proceed to the next steps. In ***ABC v O'Neill*** [2006] HCA 46; (2006) 227 CLR 57, *the High Court of Australia confirmed that the requirement of a serious question to be tried is not a high bar but must be met before considering other factors.*

2. ***Irreparable Harm/adequacy of damages***
If there is a serious question to be tried, the court then assesses whether the applicant would suffer irreparable harm if the injunction is refused. This means that damages must not be an adequate remedy. In ***Siskina (Cargo Owners) v Distos Cia Naviera SA*** *[1979] AC 210, Lord Diplock emphasized that interim relief should only be granted where there is a real risk of harm that cannot be remedied by damages. Under irreparable harm, the judge should also consider whether the party sought to be restrained (the defendant) would be unable to satisfy an order for damages if the applicant ultimately succeeds at trial*[13] *because even if damages in theory would be an adequate remedy, they are not practically adequate if the defendant lacks the financial means to pay them and this also ensures that an applicant is not left with a hollow judgment—a damages award that is unrecoverable. Lord Diplock in American Cyanamid emphasized that damages must be an adequate and practical remedy. If damages are theoretically adequate but cannot be enforced against the defendant, this may justify an injunction. The House of Lords in* ***F Hoffman-La Roche & Co AG v Secretary of State for Trade and Industry*** *[1975] AC 295 held that an injunction may be appropriate where there is uncertainty about the defendant's ability to meet a damages award. The Privy Council in* ***National Commercial Bank Jamaica Ltd v Olint Corp Ltd*** *[2009] UKPC 16 reinforced that courts should consider not only whether damages are an adequate remedy but also whether they are realistically recoverable.*

3. ***Balance of Convenience***
If irreparable harm is established, the court then considers the balance of convenience—whether the harm caused by granting or refusing the injunction would be greater on

either party. In ***American Cyanamid****, Lord Diplock explained that where damages are not an adequate remedy, the court must weigh the relative hardship to each party.*

[10] If there is no serious question to be tried, the court should not proceed to consider irreparable harm or balance of convenience. In ***Eng Mee Yong v Letchumanan*** *[1980] AC 331, the Privy Council confirmed that a case with no reasonable cause of action cannot justify injunctive relief and In* ***Ladbroke (Football) Ltd v William Hill (Football) Ltd*** *[1964] 1 WLR 273, it was held that if a claim is groundless, the court need not go further. The test for an interim injunction is sequential. If a party fails to establish a serious question to be tried, the court must dismiss the application without considering the second and third steps. Courts will only evaluate irreparable harm and balance of convenience after the first criterion is met. This approach ensures that the injunction process remains fair, efficient, and consistent with established legal principles.*

[11] However, even if (1) – serious question to be tried – is answered in the affirmative, the judge must still consider (2) – irreparable harm and (3) – balance of convenience before granting an injunction. The three-stage test is sequential, and satisfying (1) alone is not sufficient for an injunction to be granted because the purpose of an interim injunction is to prevent injustice pending the final determination of the case. However, simply having a serious question to be tried does not automatically justify injunctive relief. The courts must also ensure that the applicant will suffer irreparable harm that cannot be compensated by damages if the injunction is refused and the balance of convenience favors granting the injunction (i.e., the inconvenience to the defendant does not outweigh the benefit to the plaintiff). Lord Diplock in American Cyanamid emphasized that all three factors must be considered. Even if a serious question to be tried exists, the court must move to the second and third steps before granting an injunction. The Privy Council in ***National Commercial Bank Jamaica Ltd v Olint Corp Ltd*** *[2009] UKPC 16 reaffirmed that an injunction should only be granted if irreparable harm is proven and the balance of convenience favors the applicant. The High Court of Australia in* ***Australian Broadcasting Corporation v O'Neill*** *[2006] HCA 46; (2006) 227 CLR 57 reiterated that the three-stage test is cumulative and each step must be satisfied and mere existence of a serious question to be tried does not justify an injunction unless the other two criteria are met. If damages are an adequate remedy, the injunction should be refused. If the balance of*

convenience favors the defendant, the injunction should be refused. If both (2) and (3) are satisfied, the injunction should be granted. Even after answering (1) in the affirmative, a judge must still consider (2) and (3) and an injunction can only be granted if all three conditions are met.

[12] However, if a judge cannot determine whether there is a serious question to be tried because it involves disputed facts, the established position is that the judge should proceed to consider the second and third factors—irreparable harm and balance of convenience. This principle is derived from ***American Cyanamid*** *where Lord Diplock emphasized that courts should not conduct a "mini-trial" at the interlocutory stage but rather assess whether the claim is frivolous or vexatious. If the case is not frivolous and presents arguable issues, the court should assume that there is a serious question to be tried and move to the next steps.*

[13] The House of Lords in ***American Cyanamid*** *held that where the existence of a serious question to be tried is uncertain due to disputed facts, the court should assume that there is a serious question and proceed to assess irreparable harm and balance of convenience. The High Court of Australia in* ***Australian Broadcasting Corporation v O'Neill*** *[2006] HCA 46; (2006) 227 CLR 57 (HCA) reaffirmed American Cyanamid, stating that at the interlocutory stage, courts should not attempt to resolve disputed factual issues but instead focus on the adequacy of damages and balance of convenience. The Privy Council in* ***National Commercial Bank Jamaica Ltd v Olint Corp Ltd*** *[2009] UKPC 16 emphasized that an injunction should not be refused solely because resolving the serious question to be tried involves factual disputes but move on to the second and third considerations i.e. where factual disputes prevent a clear resolution of the first limb, courts should move to the second and third limbs rather than engage in premature fact-finding. This ensures that interlocutory injunctions remain a protective rather than a determinative measure, preserving the status quo until a full trial resolves the factual disputes."*

22. I note that there are disputed facts in this matter and while there may been some non-disclosure of facts, I find that the Plaintiff's case is not frivolous and presents arguable issues. Therefore, the Court should assume that there is a serious question to be tried and move to consider whether damages will be an adequate remedy.

23. The Plaintiff has itself claimed for 'damages' as part of the relief sought in its Statement of Claim, either as an alternative to or in addition to an order for

specific performance of the agreements. Such a pleading not only demonstrates that damages is an adequate remedy, but it also suggests that quantification of damages is not impossible at least by the Plaintiff's own assessment.

24. Therefore, there is no merit in the Plaintiff's submission that damages is not an adequate remedy and that it is impossible to quantify damages in this matter. If the Plaintiff were to succeed at trial, it would be adequately compensated for by an award of damages for any loss it would have suffered.

25. Moreover, another issue raised by the Defendants' counsel at the hearing was that the Plaintiff has not sought a permanent injunction in its Writ of Summons. The Defendants relied on ***Manning v Yadua Island (Fiji) Pte Limited*** HBC 50 of 2025, wherein His Lordship Banuve J referred to His Lordship Amaratunga JA's comments from ***Goundar v Fiesty Ltd*** [2014] FJCA 20; ABU0001.2013 (5 March 2014) as follows:

> *"32. The application for injunction needs to be refused in limine, as there is no permanent injunctive relief sought in the claim. The only claim is for damages for trespass and negligence against the 1st and 2nd Defendants respectively. In **American Cyanamid Co v Ethicon Ltd [1975] UKHL 1; [1975] 1 All ER 504** at 510 Lord Diplock held;*
>
> > *'...So unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any **real prospect of succeeding in his claim for a permanent injunction at the trial,** the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.*
> >
> > *As to that, 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 the application and the time of the trial' (emphasis is mine)*
>
> *33. How can a Plaintiff seek interlocutory injunctive relief without seeking a permanent injunction is a fundamental issue that had been overlooked in the court below, but this was central to the application for any injunction and since there was no permanent*

injunction sought this application for interim injunction should have been rejected in limine." [emphasis mine]

26. In rebuttal, the Plaintiff's counsel relied on the following comments by the Supreme Court in ***Wakaya Ltd v Chambers*** [2012] FJSC 9; CBV0008.2011 (9 May 2012):

> *"it is in the ordinary course of events for a party to seek an interim injunction where the final relief prayed for is a permanent injunction or a declaration of rights regarding matters in issue between the parties. But in the present case, the Petitioner has sought injunctive relief while praying for damages as his substantive relief as set out in the statement of claim filed by the petitioner." [emphasis mine]*

27. Unfortunately, ***Wakaya Ltd v Chambers*** (supra) does not assist the Plaintiff's rebuttal much rather it rehashes the Defendants' point regarding the need to specifically plead for permanent injunction as a final relief.

28. Whether one applies the principles/comments of His Lordship Amaratunga JA's comments from ***Goundar v Fiesty Ltd*** (supra) or the Supreme Court in ***Wakaya Ltd v Chambers*** (supra), the Plaintiff in the present case has neither pleaded permanent injunction as a final relief nor has it sought for any declaration of rights as final orders in its Statement of Claim.

29. Since damages can be an adequate remedy in this matter in lieu of specific performance, and there being no permanent injunction/declaration of rights sought as a final relief, I find that in this matter it is not necessary to maintain the interim injunction until determination of the substantive matter.

30. Accordingly, I make the following orders:

    a. The interim injunction granted on 17 July 2024 is set aside forthwith; and
    b. Costs summarily assessed at $1000.00 to be paid by the Plaintiff to the Defendant within 28 days from today.

HIGH COURT OF FIJI

P. Prasad
Master of the High Court

At Lautoka
9 May 2025