

IN THE HIGH COURT OF FIJI

CIVIL JURISDICTION

Civil Action No. HBC 217 of 2025

BETWEEN: **FRESH CHOICE PTE LIMITED** a Limited liability company incorporated in Fiji under the Companies Act 2025 having its registered office at P. Meghji Trading Building, 177-179 Vitogo Parade, Lautoka, Fiji

PLAINTIFF

AND: **PACIFIC ENERGY (SOUTH WEST PACIFIC) PTE LIMITED** a private company incorporated in Fiji under the Companies Act 2025, having its offices at Level 7, Vanua House, Victoria Parade, Suva, Fiji

DEFENDANT

For the Plaintiff: Mr. Padarath

For the Defendant: Mr. Singh and Mr. Liganivai

Date of Hearing: 25th June 2025

Date of Ruling: 30th June 2025

RULING ON REVIEW OF INTERIM INJUNCTION

1. These proceedings were instituted by the Plaintiff on the 20th of June 2025 by Writ of Summons. In addition, the Plaintiff filed an Ex Parte Summons on the same date seeking the following orders: -
 - i. That an interim injunction be granted restraining the Defendant and/or its servant and/or its agents and/or its employees until final determination of these proceedings from

- a) Giving effect to or otherwise acting upon the termination notice dated 25th March 2025.
 - b) Interfering or disrupting the Plaintiff's possession, occupation, and operations of the service station and convenience store located at Kinoya, Suva.
 - c) Removing or attempting to remove the Plaintiff or its agents or its servants or its employees from the premises the subject of the operating and supply agreement which commenced on 15th March 2023.
 - d) Disconnecting or threatening to disconnect the supply of fuel, electricity or water to the premises.
 - e) Installing engaging or permitting any other operator or third party to take over the operation of the service station currently operated by the Plaintiff under the operating and supply agreement dated 15th March 2023.
- ii) That the status quo under the operating and supply agreement which commenced on the 15th of March 2023 be maintained and preserved pending the final determination of these proceedings.
 - iii) That the time for service of this application be abridged.
 - iv) That the costs of this application be paid for by the Defendant or in the alternative that the costs of this application be in the cause.
 - v) Such further and other order as the Court deems just.
2. The application was filed pursuant to Order 29 of the High Court Rules and the inherent jurisdiction of the Court.

3. The Summons is supported by the affidavit of Eremasi Matanatabu a.k.a Eremasi Rova deposed on the 19th of June 2025 and filed on the 20th of June 2025.
4. After an Ex Parte Hearing on the 20th of June, the Court granted an interim injunction, and the Court gave directions for the Defendant to be served and directed that the injunction be reviewed on the 25th of June 2025.
5. The Defendant has filed the affidavit of Avinesh Sharma, deposed on the 24th of June 2025 and filed on the same date.
6. The injunction was then reviewed on the 25th of June 2025 and both parties made submissions on the same. The Defendant prepared written submissions and filed the same, along with a list of authorities.

The grounds for continuing the Injunction

7. The parties had entered into an agreement wherein the Defendant let out their premises at Ratu Dovi Road comprising a service station and an attached convenience store, to the Plaintiff to operate.
8. The agreement has a termination clause at clause 19, which gave both parties a right to terminate the agreement without cause, subject to three months' notice in writing.
9. On the 25th of March 2025, the Defendant gave the Plaintiff the Notice of Termination of the Agreement, to take effect from 25th June 2025.
10. The Plaintiff disputes this Notice and submits that the Defendant had acted in bad faith in entering into arrangements with third parties while this agreement was still subsisting.

11. The Plaintiff submits that, notwithstanding the fact that there is no specific provision requiring good faith by both parties, it is implied into the agreement that both parties will act in good faith and undertake fair dealing.
12. The Plaintiff relies on the authority of Optimares Spa vs Qatar Airways Group QSCS [2022] EWHC 2461; Kellogg Brown & Root Pty Ltd vs Australia Aerospace Ltd [2007] SC 200; and Burger King Corporation vs Hungry Jacks Pty Ltd [2001] 69 NSWLR 558.
13. The Plaintiff therefore submits that the Defendant has breached this implied condition to act in good faith therefore the injunction ought to remain in place while the substantive matter is heard by the Court.

The submissions for the Defendant

14. The Defendant submits that the injunction must not last a day longer as it ought not to have been granted in the first place.
15. The Defendant submits that this is a commercial agreement entered into by two competent parties who agreed to be bound by its provisions. Clause 19.1 grants the Plaintiff the right to terminate the agreement without cause, subject to 3 months' notice being given.
16. The Plaintiff also has a similar right at Clause 19.3, to terminate the agreement without cause, also subject to 3 months' notice.
17. The Plaintiff had notice as early as 25th March 2025 of the Defendant's intention to invoke clause 19.1 and sat on its rights until the final hour. The Defendant submits that the notice expired on the day of the hearing (25th June) and the Court ought to enforce the specific provisions of the agreement rather than on any implied terms, which the Defendant denies.

18. The Defendant submits that the Court must have regard to what the parties have specifically covenanted to, rather than on some implied terms which the Defendant denies being present in this agreement.
19. The Defendant submits that the contents of the affidavit in support, in particular paragraphs 9, 10 and 11 contain speculation and attributed views where the deponent of the affidavit has failed to identify his sources of information.
20. The Defendant also submits that the financial documents that the Plaintiff has provided is out of date and does not accurately reflect their current financial position. The Defendant therefore doubts that the Plaintiff is in any position to meet any damages award by this Court.
21. The Defendant contends that there is no serious question to be tried because the Defendant is relying on a specific termination clause. The agreement was entered into by two commercial parties who agreed to be bound by all of its provisions. The parties have agreed that they are each entitled to terminate this agreement without cause. The Defendant further states that there are no implied terms in the agreement and this can be canvassed at the trial of this matter without the injunction.
22. The Defendant further submits that damages are an adequate remedy if the Court ultimately finds that there is an implied duty to act in good faith and undertake fair dealings. The Defendant's position is that there are no such implied terms and the parties fully understand what they have agreed to.
23. The Defendant therefore submits that the balance of convenience is in favour of the injunction being lifted and the parties to terminate the agreement as specifically provide in the agreement. The Court will then have the opportunity to consider proper evidence and adjudicate on the remaining issues, whether this agreement also included implied terms.
24. The Defendant submits that the injunction should be dissolved and the matter should thereafter take its normal course.

Analysis

25. This application for interim injunction was made pursuant to Order 29 rules 1 and 2 of the high Court Rules 1988, which provides as follows: -

“Application for injunction (O.29, r.1)

1.-(1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party’s writ, originating summons, counterclaim or third party notice, as the case may be.

(2) Where the applicant is the Plaintiff and the case is one of urgency and the delay caused by proceeding in the ordinary way would entail irreparable or serious mischief such application may be made *ex parte* on affidavit but except as aforesaid such application must be made by Notice of Motion or Summons.”

The leading authority on such applications is the case of American Cyanamid Ethicon Ltd [1975] AC 398 and Lord Diplock’s pronouncement of the law at pages 4 and 409 of the judgment as follows:

“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. 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 hypothesis 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 the 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 financial position to pay them, there would be no reason upon this ground to refuse an interlocutory injunction.

It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises. It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case.

Where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo. If the defendant is

enjoined temporarily from doing something that he has not done before, the only effect of the interlocutory injunction in the event of his succeeding at the trial is to postpone the date at which he is able to embark upon a course of action which he has not previously found it necessary to undertake; whereas to interrupt him in the conduct of an established enterprise would cause much greater inconvenience to him since he would have to start again to establish it in the event of his succeeding at the trial.

Save in the simplest cases, the decision to grant or to refuse an interlocutory injunction will cause to whichever party is unsuccessful on the application some disadvantages which his ultimate success at the trial may show he ought to have been spared and the disadvantages may be such that the recovery of damages to which he would then be entitled either in the action or under the plaintiff's undertaking would not be sufficient to compensate him fully for all of them. The extent to which the disadvantages to each party would be incapable of being compensated damages in the event of his succeeding at the trial is always a significant factor in assessing where the balance of each party would not differ widely. It may not be improper to take into account in tipping the balance the relative strength of each party's case as revealed by the affidavit evidence adduced on the hearing of the application. This, however, should be done only where it is apparent upon the facts disclosed by evidence as to which there is no credible dispute that the strength of one party's case is disproportionate to that of the other party. The court is not justified in embarking upon anything resembling a trial of the action upon conflicting affidavits in order to evaluate the strength of either party's case."

26. The principles that have been distilled from the above authority is as follows: -
 - Is there a serious question to be tried?
 - Are damages an adequate remedy?
 - Where does the balance of convenience lie?

27. In addition to the above, the authorities are also clear that there is a corresponding obligation on applicants for such Ex Parte orders to disclose all the relevant facts frankly and fully (Sequitur Hotels Pty Ltd vs Satori Holdings Pte Ltd [2021] FJHC 276; HBC 270 of 2019 (3rd April 2020).

28. It is common ground between the parties that on the 22nd of February 2022, they executed an Operating and Supply Agreement where the Defendant, Pacific Energy gave their premises at Ratu Dovi Road for the Plaintiff, Fresh Choice Pte Ltd, to run the convenience store and also operate the service station.

29. The parties agree that Clause 19.1 (a) of the Agreement gives the Defendant the right to terminate the agreement without cause, subject to at least 3 months' written notice.

30. The Plaintiff also has the right to terminate the agreement without cause by giving the Defendant 3 months' written notice, at clause 19.3
31. The Plaintiff concedes that the Defendant has a right to terminate this Agreement without cause and the requisite 3-month termination notice has been sent to the Plaintiff. The Plaintiff submits that the Defendant did not act in good faith in purporting to terminate this agreement.
32. The Agreement is commercial in nature and was entered into by two parties who, undoubtedly were assisted by legal counsel and were well aware of their duties and obligations under the agreement.
33. The Defendant has invoked the termination clause as expressly provided and has also given the requisite 3-month termination notice.
34. The Plaintiff submits that this was not done in good faith as the Defendant had been colluding with one of their competitors to take over at the premises at Ratu Dovi Road. This will require proof and no doubt this will emerge as the substantive matter takes its course through discovery and other pre-trial steps. The Court is not in a position to make such a determination from affidavit evidence alone.
35. The issue is whether the Court should intervene and stop a party from invoking the specific provisions of a commercial agreement on the basis of an assertion that these specific provisions are trumped by implied provisions which the Court ought to apply to this agreement.
36. The Court will not do so without proper evidence, so for the moment, the Court finds that it will allow the parties to proceed with what they have specifically covenanted to do.
37. The Plaintiff will bear the evidentiary burden of establishing that there are implied terms that must be applied to this agreement, that these implied terms have been breached by the Defendant and the Plaintiff has suffered loss which must be remedied.

38. The Court therefore makes the following findings with respect to the injunction before the Court: -

(a) **Is there a serious question to be tried?** The parties have expressly provided for how they terminate this agreement for Operating and Supply without cause and the Court will not intervene at this stage without any specific evidence. There is no serious question to be tried.

(b) **Are damages an adequate remedy?** This matter will now take its own course and the Court will make a full determination of the issues in dispute after the trial of the substantive matter. Damages are an adequate remedy.


(c) **Where does the balance of convenience lie?** The balance of convenience lies in favour of the Defendant and the termination of this agreement as expressly provided in the Agreement.

39. The Defendant has been put to costs to defend this action and protect their interests therefore they are entitled to cost which shall be assessed summarily.

This is the Court's ruling on this matter: -

1. **The interim injunction issued by this Court on the 20th of June 2025 is hereby discharged.**
2. **The Plaintiff will pay the Defendant costs, summarily assessed at \$1,000, costs to be paid in one month.**
3. **The substantive matter will hereafter take its own course.**





Mr. Justice U. Ratuville
Puisne Judge

cc: **Samuel Ram Lawyers**
Munro Leys