IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

CIVIL ACTION NO. HBC 206 OF 2020

BETWEEN : **TASWIK MOHAMMED** of Raviravi, Ba, Cultivator.

PLAINTIFF

AND : **MOHAMMED YUNUS** formerly of Raviravi, Ba now residing In Sydney, Australia.

DEFENDANT

Before : Master P. Prasad

Counsels : Ms. T. Tuitoga for Plaintiff
Defendant in Person

RULING

1. The Plaintiff filed a Writ of Summons and a Statement of Claim on 21 October 2020 (**SOC**) alleging the following:

    a) The Plaintiff entered into a Sale and Purchase Agreement with the Defendant to purchase the property comprised in State Lease No. 16668 being Lot 6 on plan BA 2046 Raviravi (part of) in the Island of Viti Levu, in the District of Vuda containing an area of 5.6999 hectares, situated at Raviravi, Ba (**Lease**).
    b) The Plaintiff paid the Defendant more than the agreed purchase price.
    c) The Defendant failed to transfer the Lease to the Plaintiff.
    d) The Plaintiff seeks orders for the Defendant to transfer the Lease to the Plaintiff; to refund the excess amount paid; and to pay damages with costs on solicitor/client indemnity basis.

2. The Plaintiff filed a motion on 04 September 2020 seeking certain injunctive orders against the Defendant. The said motion was dismissed on 28 October 2022. The reason for the said dismissal was due to the fact that there was a material non-disclosure from the Plaintiff.

3. Thereafter, the Plaintiff filed another motion on 02 November 2022 (**Application**) seeking the following interim reliefs:

1) *An injunction restraining the Defendant by himself, his servants, agents, nominee whomsoever and whatsoever from entering into and purchase agreement, transferring, mortgaging and/or disposing of the property comprised in Crown Lease No. 16668 being Lot 6 on Plan BA 2046 Raviravi (part of) in the island of Vitilevu in the District of Vuda containing an area of 5.6999 hectares (subject to the partial surrender number 591763A) situated at Raviravi, Ba to anyone until final determination of this action herein.*

2) *An injunction restraining the Defendant by himself, his servants, agents, nominee whomsoever and whatsoever from interfering in any manner whatsoever the cultivating and harvesting sugar cane over farm number 18871, Drasa Sector until final determination of this action.*

3) *An injunction restraining the Defendant by himself, his servants, agents, nominee whomsoever and whatsoever from receiving the sugar cane proceeds over farm number 18871, Drasa Sector until final determination of this action.*

4) *An injunction restraining the Defendant by himself, his servants, agents, nominee whomsoever and whatsoever from liaising with the Fiji Sugar Corporation and stopping the fertilizer, sugar, rice or in any manner whatsoever over farm number 18871, Drasa Sector until final determination of this action.*

5) *An order that the Defendant do execute all papers, notes, and the necessary transfer documents over the property comprised in Crown Lease No. 16668 being Lot 6 on Plan BA 2046 Raviravi (part of) in the island of Vitilevu in the District of Vuda containing an area of 5.6999 hectares (subject to the partial surrender number 591763A) situated at Raviravi, Ba unto the Plaintiff's interest pursuant to the Sales and Purchase Agreement dated 14 May 2010 and/or the Register of Titles execute the above transfer.*

6) *Specific performance of the Sales and Purchase Agreement dated 14 May 2010 made between the Plaintiff and the Defendant herein.*

7) *An order that the Defendant pay the Plaintiff general damages and punitive and exemplary damages.*

8) *Any other order(s) and other reliefs that may be just and proper to this Honourable Court.*

4. The Defendant opposed the Application and has filed an Affidavit in Opposition. The Plaintiff also filed an Affidavit in Reply.

5. During the Hearing of the Application, the Plaintiff's counsel submitted that the Plaintiff was withdrawing prayers 5, 6, 7 and 8 and only proceeding with prayers 1 to 4 of the Application.

6. The Plaintiff's grounds for filing the Application are that: Plaintiff has already paid the Defendant the purchase price stated in the Sale and Purchase Agreement (**S&P**) and paid an excess amount yet the Defendant still refuses to transfer the Lease to the Plaintiff; the Defendant has interfered with the Plaintiff's cultivation of the farm over the Lease; all cane proceeds are going to the Defendant's bank account and it will be difficult to get reimbursement; and the Plaintiff needs to restrain the Defendant from liaising with Fiji Sugar Corporation so that the Plaintiff can harvest the sugarcane.

7. 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.

8. 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."*

9. 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).*
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> *[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:*
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> 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.*
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> 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."

10. The Defendant's ground for objecting the Application is that the Plaintiff had previously filed an earlier application for injunction which was dismissed by this Court, and the Plaintiff cannot file the same application again. The Defendant also contends that he has not been paid the full consideration price inclusive of interest as required under the S&P, and that the S&P has already expired.

11. The previous application filed by the Plaintiff had sought orders as follows: "*An injunction restraining the Defendant by himself, his servants, agents, nominee whomsoever and whatsoever from entering into and purchase agreement, transferring, mortgaging and/or disposing of the property comprised in Crown Lease No. 16668 being Lot 6 on Plan BA 2046 Raviravi (part of) in the island of Vitilevu in the District of Vuda containing an area of 5.6999 hectares situated at Raviravi, Ba to anyone until final determination of this action herein.*"

12. This Court had rightfully dismissed the previous application on the grounds that there had been material non-disclosure on the part of the Plaintiff. The Plaintiff had failed to disclose to the Court a material fact that there was a partial surrender of the Lease and that an area of 6725m² had been separated and subdivided into 7 lots. As such, the merits of the application were never considered.

13. In this current Application the Plaintiff now seeks "*an injunction restraining the Defendant by himself, his servants, agents, nominee whomsoever and whatsoever from entering into and purchase agreement, transferring, mortgaging and/or disposing of the property comprised in Crown Lease No. 16668 being Lot 6 on Plan BA 2046 Raviravi (part of) in the island of Vitilevu in the District of Vuda containing an area of 5.6999 hectares* ***(subject to the partial surrender number 591763A)*** *situated at Raviravi, Ba to anyone until final determination of this action herein.*"

14. This Application is clearly made pertaining to the Lease after factoring in the partial surrender already done. Therefore, there is a difference between the land area of this Application as opposed to the previous application. Hence, this Court can proceed to consider this Application.

15. The Plaintiff's counsel submitted that there are serious questions to be tried in this matter and that damages is not an adequate remedy. The Plaintiff's counsel identified the serious questions to be tried as: whether there was a breach of the S&P by the Defendant; whether the Defendant received more than the

agreed consideration amount; and whether the Defendant could cancel the S&P after receiving at least the full purchase price.

16. There are certain disputed facts in this matter between the Plaintiff's version and the Defendant's version, especially in relation to the S&P and whether or not the Plaintiff has paid the full consideration price for the Lease.

17. I therefore find that the Plaintiff's claim, as per his SOC, is neither frivolous nor vexatious. The said claim does present arguable issues hence meets the threshold for a serious question to be tried. The determination of whether the Plaintiff has paid the full purchase price under the S&P and whether the S&P is still valid are issues which cannot be conclusively decided solely on submissions and affidavits. These issues need to be determined at trial.

18. In regard to whether damages is an adequate remedy, the Plaintiff's counsel submitted that the Plaintiff had already paid the Defendant $85,000.00, and since the Defendant resided abroad, it would be difficult for the Plaintiff to recover any damages should he have a successful claim.

19. On the issue of balance of convenience, the Plaintiff's counsel submitted that it lies in the favour of the Plaintiff as he has paid more than the agreed purchase price for the Lease and has also lost out on the sugar cane harvest proceeds from the farm on the Lease.

20. In regard to undertaking as to damages, the Plaintiff's counsel reiterated that the Plaintiff has already paid $85,000.00 to the Defendant for the purchase of the Lease and in the event of an unsuccessful claim, the Defendant already has the benefit of the said sum to his credit. The Defendant agreed that he was paid a sum of almost $85,000.00 but disputed that this was the full consideration price as the Defendant was also entitled to interest for late payments.

21. It is undisputed that the Plaintiff has paid approximately $85,000.00 to the Defendant pursuant to the S&P. The Plaintiff now seeks an order for specific performance compelling the Defendant to effect the transfer of the Lease. In the circumstances, I am satisfied that an award of damages would not constitute an adequate remedy.

22. Furthermore, if the Plaintiff is successful in his claim, he would be entitled to the specific performance of the S&P, and the Defendant disposing of the Lease to a third party would cause more harm to the Plaintiff. The Defendant on the other hand is able to use the land and cultivate sugarcane without any restrain until the final determination of the matter. Therefore, I find that the balance of convenience lies in favour of maintaining the *status quo* of the Lease.

23. I also find that since the Plaintiff has already paid the Defendant a sum of approximately $85,000.00, there is no need for the Plaintiff to provide any

further undertaking as to damages. In the event the Plaintiff's claim is unsuccessful, the Defendant already has the benefit of the said sum.

24. The Plaintiff has also sought further injunctive orders such as: (i) the Defendant to not interfere with the Plaintiff's cultivation of the Lease; (ii) the Defendant not to receive cane proceeds; and (iii) the Defendant not to liaise with Fiji Sugar Corporation.

25. Both parties submitted at the time of the hearing of the Application that the Defendant was now in occupation of the Lease and also cultivating the same. In the event of a successful claim, the Plaintiff will be able to obtain damages for any loss of income from the harvest of the sugarcane. This would depend on the interpretation of the S&P at the time of the substantive trial.

26. Damages is an adequate remedy for these further orders. Hence, I do not find it necessary to grant an interim injunction for such further orders against the Defendant.

27. Accordingly, I make the following Orders:

a) The Defendant, his servants, agents or nominee is restrained from entering into any purchase agreement, transferring, mortgaging and/or disposing of the property comprised in Crown Lease No. 16668 being Lot 6 on Plan BA 2046 Raviravi (part of) in the island of Viti Levu in the District of Vuda containing an area of 5.6999 hectares (subject to the partial surrender number 591763A) situated at Raviravi, Ba until the final determination of this action herein;

b) Prayers 2, 3 and 4 of the Summons are refused;

c) Prayers 5, 6, 7, and 8 of the Summons are withdrawn and dismissed; and

d) No order as to costs.

P. Prasad
Master of the High Court

HIGH COURT OF FIJI
LAUTOKA

At Lautoka
28 November 2025