

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

Civil Action No. HBC No. 392 of 2025

**BETWEEN:**           **SEA KEEPER (FIJI) PTE LIMITED** a limited liability company having its registered office at Roaya Suva Yacht Club building, Foster Street, Walubay Suva in the Republic of Fiji.

**APPLICANT**

**AND:**               **DAVID VAUGHAN AIDNEY, ROGER HAVIE PROBERT and GREGORY ROBERT LAWLOR** as the Trustees of **ROYAL SUVA YACHT CLUB** a club founded in 1932 and duly Registered at Royal Suva Yacht Club, Club House, Korovou, GPO Box 335 Suva, Fiji.

**RESPONDENT**

**BEFORE**        **:**       **Hon. Justice Vishwa Datt Sharma**

**COUNSEL:**       **Mr. Saneem M.** for the Plaintiff/Applicant  
                  **Mr. Prasad D.** for the Defendant/ Respondent

**DATE OF DECISION:** 17<sup>th</sup> March, 2026

**DECISION**

***[Injunction]***

### **Introduction**

1. The Plaintiff is seeking for an interim interlocutory injunctive relief to preserve the Status Quo pending the determination of the substantive proceedings, to restraint the Defendant from evicting or otherwise interfering with the Plaintiff's occupation in business operations at the premises.
2. This application is grounded in the principles governing interim injunctions and the equitable doctrine of proprietary estoppel.
3. The Plaintiff continued in occupation, carried on its business, and made payments which were accepted by the Defendant without objection.
4. According to the Plaintiff, this matter arises from a Commercial dispute between the Plaintiff and Defendant concerning the Plaintiff's continued occupation and use the Defendant's premises and related facilities.
5. However, the Defendants' submitted that the Plaintiff is not a Tenant of the Defendants; the Plaintiff's Tenancy Agreement expired by effluxion of time on 31<sup>st</sup> August 2025. Any renewal was expressly subject to a condition precedent, namely the clearance of outstanding hardstands charges, which the Plaintiff failed and/or refused to satisfy.
6. The Defendant's Contention is that the Plaintiff is a Trespasser holding over with no legal or equitable right to remain in possession.
7. The Defendant submitted that the current application is an attempt to use the Court's equitable jurisdiction to manufacture a Tenancy when none exists.
8. The Defendants oppose the application on the basis that the Plaintiff has failed to satisfy the well-established principles governing the interlocutory injunctions.

### **Brief facts**

9. The Plaintiff, a commercial entity, occupied an office and Wharf area within the Royal Yacht Club premises under a fixed term lease. The lease expired on 31<sup>st</sup> August 2025.
10. The Defendants informed the Plaintiff that in order to proceed with any renewal of lease, the Plaintiff had to clear his outstanding debt of \$7,320. The Plaintiff failed and/or refused to satisfy this condition.
11. Under clause 24.1 of the Club's Rule, the Plaintiff was required to give three (03) months' written notice of its intention to renew the lease, however, no such notice was given.

12. Despite being served with multiple notices to remove all its items, the Plaintiff has refused and/or failed in its bid.
13. In December 2025, an informal agreement was reached via solicitors for the Plaintiff to remove all its items by 31<sup>st</sup> December 2025. The Plaintiff breached this Agreement and this preventing the Defendant to lease the said premises. Again, on 30<sup>th</sup> January 2026, the Defendant issued a final seven (7) days notice for the Plaintiff to remove all its items by 4pm on 6<sup>th</sup> February 2026, however, the Plaintiff failed.
14. The Defendants clarify that the premises were secured for a period solely as a precautionary security measure to protect Industrial Assets left unattended.
15. According to the Defendants, they have not removed, disturbed or interfered with any of the Plaintiff's items and the Defendants do not have the keys to the office and have not entered the premises.
16. According to the Plaintiff, he does not owe any debt and pay its monthly rental.
17. Dispute arose regarding the hardstand hire rate.
18. On 18<sup>th</sup> September 2025 and 26<sup>th</sup> September 2025, the Defendant by expressively approved renewal of the Plaintiff's lease on the existing rent of \$2,000 a month. A condition was attached on the approval and this was that the Plaintiff settles all outstanding dues owed.
19. In the midst of resolving outstanding dues issues, the Defendant issued a notice on 29<sup>th</sup> September 2025 requiring the Plaintiff to vacate the premises by 31<sup>st</sup> October 2025, then by notice to vacate by 6<sup>th</sup> December 2025 and final notice 1<sup>st</sup> December 2025, to vacate the premises by 12 am on 6<sup>th</sup> December 2025.
20. According to the Defendant, by its actions and conducts has breached its contractual obligations to the Plaintiff including the implied duty to act in good faith and not frustrate the Plaintiff's lawful use and enjoyment of the leased premises.

#### **Analysis and Determination.**

21. An injunction is an equitable remedy granted at the discretion of the Court. The power which the Court possesses to grant an injunction should be cautiously exercised only on clear and satisfactory grounds. An application for the injunction is according to some, an appeal to an extraordinary power of the Court and the Applicant is bound to make out a case showing clearly a necessity of its exercise. **Hubbard & Anr v Vosper & Anr** [1972] 2QB 84 and **American Cyanamid Co v Ethicon Ltd (Supra)** where Lord Diplock laid down certain guidelines for the Courts to consider in deciding whether to grant or refuse an interim

injunctions which are still regarded as leading source of the law on interim injunctions. They are;

- Whether there is a serious question to be tried at the Hearing of the substantive matter;
  - Whether the party seeking an injunction will suffer irreparable harm if the injunction is denied, that is whether he could be adequately compensated by an award of damage as a result of the Defendant continuing to do what was sought to be enjoyed, and
  - In whose favour the balance of convenience lies if the injunction is granted or refused,
22. These principles have been adopted and applied in our Courts: **Pacific Timber Development Limited v Consolidated Agriculture Fiji Ltd**, and **Digicel (Fiji) v Fiji Rugby Union (Supra)** are examples and there are Numerous other cases that may be referenced.
23. Order 29 of the High Court Rules 1988 regulates applications for injunctions.
24. **Section 100 (3) of the Constitution** confers on the High Court an unlimited jurisdiction necessary for the administration of justice in Fiji.
25. **'In Siskina**, Lord Diplock set out that in order to grant an interlocutory injunction there needed to be the existence of a **Cause of Action** on which to found **'the action'**.

*'A right to obtain an interlocutory injunction is not a **Cause of Action**. It cannot stand on its own. It is dependent upon there being a pre-existing cause of action against the Defendant arising out of an invasion, actual or threatened, by him, of a legal equitable right of the Plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of this Court. The right to obtain an Interlocutory Injunction is merely ancillary and incidental to the pre-existing Cause of action. It is granted to preserve the Status Quo pending the ascertainment by the Court of the Rights of the parties and a grant to the Plaintiff of the relief to which his cause of action entitles him, which may or may not include a final injunction.*

*...The High Court has no power to grant an Interlocutory Injunction except in protection or assertion of some legal or equitable right which it has jurisdiction or enforced by final judgment....'*

(i) **Serious questions**

**Whether there is a serious question to be tried. This is a threshold tests or questions.**

**There are several substantial issues for Courts Determination**

- Whether there is a genuine dispute that the Plaintiff's occupation of the premises and Hardstand was authorized.
  - Whether the tenancy relationship continued after the expiry of the written lease?
  - Whether the ongoing communications between the parties demonstrated the renewal of lease discussions were in progress and that the Plaintiff was permitted to remain on the premises pending resolution of the disputed charges?
  - Lawfulness of the charges imposed by the Defendants onto the Plaintiff?
  - Matters involve questions of Contractual rights, regulatory control and the legality of the Defendant's conduct?
26. This Court is not required at this stage of the proceedings to determine the merits of the case but only to be satisfied that the claim raises a real and arguable dispute.
27. This matter arises from a Commercial dispute between the Plaintiff and the Defendants concerning the Plaintiff's continued occupation of the Defendant's premises and related facilities.
28. The Plaintiff asserts that the offer made by the Defendant to the Plaintiff to continue to rent the premises at the revised rental was duly accepted by the Defendants. It only reneged on the same after attempting to impose unlawful, exorbitant fees for the Hardstand hire.
29. Therefore, the Plaintiff submitted there is a serious dispute regarding the lawfulness of the charges imposed by the Defendants.
30. **The Digital (Fiji) Limited v Fiji Rugby Union** (2016) FJSC 40; CBV0004.2015 (26 August 2016), Keith J, referring to the principle set out by Lord Diplock in **Cyanamid (Supra)** stated,
- 'The Court first considers whether there is a serious question to be tried. That does not mean that the Court must be satisfied that there is a strong case for granting an injunction at the trial of the action. If an interlocutory injunction is to be granted, the Court only has to be satisfied that the claim is neither **frivolous nor vexatious.**'
- (i) **Serious question**
31. It is not disputed that the Plaintiff's lease expired on 31<sup>st</sup> August 2025. However, the Plaintiff submitted that the ongoing communication between the parties to the proceedings demonstrated the renewal of lease discussions were in progress and that the Plaintiff was permitted to remain on the premises impending resolutions of the disputes of Hardstand charges.

32. Under, Fiji law, and there are several authorities that determined, **once a fixed-term lease expires, the tenants' right to repossession automatically ceases.**

In **Handyman Limited v. Nazmeen Nisha** [2017] FJHC 618, the High Court held '*that once a lease expires, the Landlord's right to re-enter is immediate and the former tenant is a trespasser.*'

In **Newworld Limited v. Vanua Levu Hardware Fiji Limited** [2016] FJCA 147, the Court of Appeal upheld the refusal of injunctive relief where the underlying lease had expired, holding that the Court will not grant an injunction to protect a non-existent contractual right/ interest.

33. Any renewal of lease in this case was expressly conditional upon the Plaintiff clearing its outstanding hardstand charges. The Plaintiff failed to satisfy the condition, no renewal ever came into existence although the Plaintiff said he did not owe any debt or charges.
34. Refer to case of **Sudbrook Trading Estate Limited v. Eggleton** [1983] 1 AC 444, where an option or renewal is conditional, strict compliance is required. A party in default cannot invoke equity to bypass its own breach.

**(ii) Adequacy of Damages**

35. The Plaintiff is a Commercial entity.
36. The Plaintiff's pleading as per the Statement of Claim shows its complaint is about money and commercial operations.

**American Cyanamid** case as Lord Diplock state:

*'If damages in the measure recoverable at common law would be an adequate remedy...  
Therefore, no interlocutory injunction should normally be granted.'*

37. If the Plaintiff's alleged loss is commercial and financial in nature, it is a commercial dispute per se.
38. Should the Plaintiff succeed at trial in the substantive action, the loss claimed can be calculated in monetary value and compensated by an award of Damages.
39. Therefore, damages are an adequate remedy.
40. There is no irreparable harm.

(iii) **Balance of Convenience**

41. The Plaintiff was in a lawful occupation when he was initially given a lease by the Defendants. Under clause 24.1 of the Club's Rule, the Plaintiff was required to give 3 months written notice of its intention to renew the said lease. No such notice was given to the Defendants.
42. The current lease expired on 31<sup>st</sup> August 2025 and there was absence of subsisting lease.
43. Therefore, the true status-quo is that the current lease has expired and not the Plaintiff's continued unlawfully occupation as such.
44. Injunctions are an equitable remedy. Equity does not assist a party in default of its own obligations.
45. The Balance of Convenience favours the Defendants.
46. Lord Diplock in **American Cyanamid** [1975] UKHL 1; [1975] 1 ALL ER 504, 510 (d) HL:-

*"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 claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature consideration. These are matters to be dealt with at the trial.*

47. In the case of **Cambridge Nutrition Ltd v BBC** [1990] 3 All ER 523 at 534j Kerr L.J. made the following observations;

*"It is important to bear in mind that the American Cyanamid case contains no principle of universal application. The only such principle is the statutory power of the court to grant injunctions when it is just and convenient to do so. The American Cyanamid case is no more than a set of useful guidelines which apply in many cases. It must never be used as a rule of thumb, let alone as a straightjacket....The American Cyanamid case provides an authoritative and most helpful approach to cases where the function of the court in relation to the grant or refusal of interim injunctions is to hold the balance as justly as possible in situations where the substantial issues between the parties can only be resolved by a trial."*

48. In **Hubbard & Another v Vosper & Another** [ 1972] 2 Q.B. 84 Lord Denning said:

*"In considering whether to grant an interlocutory injunction, the right course for a judge is to look at the whole case. He must have regard not only to the strength of the claim but also the strength of the defence, and then decide what is best to be done. Sometimes it is best to grant an injunction so as to maintain the status quo until the trial. At other times it is best not to impose a restraint upon the defendant but leave him free to go ahead. ....The remedy by interlocutory*

*injunction is so useful that it should be kept flexible and discretionary. It must not be made the subject of strict rules."*

### **In Conclusion**

49. The Plaintiff's prayers at A and B of the Statement of Claim seeks and order to restrain the Defendants from exercising property rights after lease expiry [It was rejected in the **Newworld Ltd v. Vanua Levu Hardware Fiji Ltd**].
50. Prayer C seeks a final determination of lease renewal. That is a matter for trial and not for Interlocutory determination by the Court.
51. Prayer D seeks a final determination of disputed rates and debts. This is an issue for trial.
52. Prayer F seeks a declaration that the Defendants acted in bad faith and in an unethical and discriminatory manner. This depends on disputed facts, credibility and evidence *viva voce* to be tested at the trial and not within the Interlocutory Injunction.
53. Prayer C seeks an order that they be allowed to continue occupying the Defendants premises and pay agreed rent of \$2,000 per month pending final determination. This prayer is legally misconceived.
54. This substantive matter arises from a Commercial dispute between the Plaintiff and the Defendants concerning the Plaintiff's continued occupation and use of the Defendants' premises and related facilities. The Interlocutory Application is seeking for Injunction Relief.
55. The primary question is whether the Plaintiff possesses a subsisting legal or equitable right that warrant the protection of this Honourable Court?
56. The current lease has expired and there is no subsisting lease issued or renewed.
57. The issues the Plaintiff has raised will be collectively and holistically determined at the trial in the Plaintiff's Writ and Statement of Claim on *viva voce* evidence including all tribal issues accordingly.
58. For the aforesaid rational, I have no alternative but at this stage of the hearing the Plaintiff's application for interim and Interlocutory injunction is dismissed in its entirety.

### **Costs**

59. The Plaintiff to pay the Defendant summarily assessed costs of \$1,500 within 14 days timeframe.

**Orders**

- (i) The Plaintiff's Inter-Parte Notice of Motion filed on 3<sup>rd</sup> December 2025 is dismissed in its entirety.
- (ii) The Plaintiff to pay the Defendant summarily assessed costs of \$1,500 within 14 days timeframe.
- (iii) The substantive matter will take its normal course.

Dated at **Suva** this 17<sup>th</sup> day of **March** , 2026.



  
VISHWA DATT SHARMA  
PUISNE JUDGE

CC: Saneem Lawyers, Suva  
Diven Prasad Lawyers, Suva