

IN THE HIGH COURT OF THE HIGH COURT
HELD AT RAROTONGA
(CIVIL DIVISION)

PLAINT NO. 20/2002
MISC NO. 76/2002

BETWEEN **MAUI PEARLS LIMITED** a
duly incorporated company
having its registered office
at Rarotonga, Cook Islands
Plaintiff

AND **MICHAEL BAKER** of
Rarotonga
First Defendant

AND **MICHAEL W BAKER & CO**
GOLDSMITH LIMITED a
duly incorporated company
having its registered office
at Rarotonga, Cook Islands
Second Defendant

Mr T Arnold for Plaintiff

Mr M Mitchell for First and Second Defendants

Date of hearing: 27 November 2002

Date of Decision: 27 November 2002

DECISION OF GREIG CJ

These proceedings were commenced in July this year. They are proceedings to maintain the integrity of what is claimed to be an agreement in restraint of trade as between the Plaintiff and the Defendants. The Plaintiff has sought

damages but in particular a restraining order and permanent injunction in accordance with the terms of what is alleged to be the contractual arrangements between the parties.

The matter came before me first on an application for an interim injunction and I granted an interim injunction on 16 August 2002. An interim injunction is made without coming to any final decision as to the rights of the parties. It is intended to be an interim injunction and it is perhaps surprising that there has not been further steps taken to bring these proceedings to a full substantive hearing to decide finally what are the rights between the parties.

My decision of August has been made public in this matter. I think the kernel of my decision is in paragraph 24 when I said that "at this stage I judge that on the balance of convenience and on the overall justice of the case that he Mr Baker should be required to desist from that trade. The trade outside the islands is in a different category, either because of the doubts as to the ambit of the arrangement or contract between the parties or because it extends beyond what may at first sight be reasonable under the agreement."

The essence of the interim order that I made was that the Defendant should not carry on a jewelry business with or trade as a jeweler with any person, company, partnership or business entity which is trading in the Cook Islands in any part of the jewelry trade. I did not mention the export trade in that form of words but clearly that was intended to be excluded.

In furtherance of that I made an amendment to the injunction on 6 September 2002 to allow the Second Defendant to purchase black pearls and black pearl products, for manufacture for the export trade. Now there is an application for a further amendment to the injunction. It is an amendment which will extend the rights of Mr Baker to trade with a company

in the Cook Islands but which is limited to export trade in the sense that all the products will be exported out of the Cook Islands.

The company which is operated by Mr Graham Whitfield, who has made an affidavit in this matter, carries on an internet business under the name of wholesaleblackpearls.com. It trades, I am told exclusively, through the internet, through a website, although it is accepted that there is some isolated, what is described as "off the street trade", in the Cook Islands because of persons perhaps who have found the internet and have realised where it is.

The Plaintiff opposes this further extension on a number of grounds but basically on the ground that the interim order was granted to prevent Mr Baker from carrying on business in the Cook Islands and that he should be so limited without any further extension to the trade which he is permitted to do.

I observe that it is correctly acknowledged that the trade with Mr Whitfield or his company would be in breach of the interim injunction as it now stands. It seems that there is no real objection to Mr Baker continuing to export trade that he has been permitted under the injunction as it stands. What is opposed is the extension to that business.

This is a matter which now affects a third party. Mr Whitfield in his affidavit which is unchallenged says that he had dealings with the defendant before the interim injunction was granted. He wishes to continue or to take up that trade again. He says that his business will continue to be seriously affected by the interim injunction, as he says, as the company can no longer provide the black pearl jewelry designs created by the First Defendant if trading through the website is interpreted to offend against the injunction.

As I observed it is the fact the Plaintiff has no right to enjoin Mr Whitfield's business. Mr Whitfield is one of the Plaintiff's competitors in the Cook Islands or elsewhere and competition is free. At the same time the Plaintiff is entitled to the benefit of the injunction which has been granted. It is not suggested that the defendant or either of them will be unduly affected if they are unable to carry on business with Mr Whitfield.

If the extension was granted, it could not be taken as a precedent to open a gate for general expansion of Mr Baker's business with others in the Cook Islands who could claim to have an export business. Mr Baker must not deal with people who are carrying on business in the Cook Islands in the jewelry trade except as is allowed under the injunction.

Mr Whitfield's business is virtually wholly an export business so that it clearly comes within the intent of the permission that is available to Mr Baker under the injunction as amended. I regret that this matter is still in the interim injunction stage but having regard to all the circumstances I think that it is appropriate and in the interest of justice to extend the injunction in this limited way.

There are two principal reasons which move me in this, one is that the evidence is that the injunction will affect Mr Whitfield and his company and that is something that should not be the case if that is possible. The second the matter is that if this matter had been drawn to my attention in July or August when I considered the matter I am satisfied that I would have granted the injunction to allow the trade with Mr Whitfield as part of the overall export business.

In terms of the application then the interim injunction will be further amended so that the first defendant may be permitted to carry on business with Graham Whitfield of Rarotonga, Businessman, trading under the style of wholesaleblackpearl.com.ltd provided that the dealings, the trade and the

business is limited solely to servicing the export orders of Mr Whitfield and his company through the internet. Since Mr Whitfield is offering an undertaking in his affidavit I will make that a condition of the amended interim injunction that Mr Whitfield and or his company or both give the undertaking set out in paragraph 13 of his affidavit. Costs are reserved.



CHIEF JUSTICE