

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

HBC No.: 206 of 2014

BETWEEN : **RAVNIL NARAYAN** of Nadera, Nasinu, Businessman trading as
FLOW VALVES & HOSE SUPPLIES
PLAINTIFFS

AND : **VICTOR ALVISH NARAYAN** of Nausori, Fiji, Unemployed.
1ST DEFENDANT

AND : **WESTPAC BANKING CORPORATION LIMITED** a body
corporate registered under the Banking Act, having its
registered office at 1 Thompson Street, Suva in the Republic of
Fiji Islands.
2ND DEFENDANT

Counsel : **Mr. S. Singh for the Plaintiff**
Mr. A. Nand for the 1st Defendant
Mr. A. Sokini for the 2nd Defendant

Dates of Hearing : **20th October, 2014**

Date of Judgment : **21st November, 2014**

JUDGMENT

INTRODUCTION

1. The Plaintiff filed *inter partes* summons seeking injunctive relief against the 2nd Defendant bank allowing the Plaintiff to operate Account No 9804175405. He also sought injunction restraining the 1st Defendant from interfering with the business of Flow Valves & Hose Supplies (FVHS) or inducing breach of contracts of Flow Valves & Hose Supplies. The dispute is between the Plaintiff and the 1st Defendant regarding the removal of name of the 1st Defendant from the registration of the business FVHS. The 1st Defendant alleges that said removal was effected through a forgery. There is no

allegation of forgery regarding the mandate given to the 2nd Defendant bank at the commencement of the business account of FVHS where either Plaintiff or the 1st Defendant could draw cheques from that account.

FACTS

2. The business FVHS was registered in the name of Plaintiff's mother and 1st Defendant, but the bank account of FVHS commenced, with the 2nd Defendant could be operated either by the Plaintiff or the 1st Defendant according to the mandate given to the 2nd Defendant bank.
3. According to the Plaintiff the name of the 1st Defendant was used at that time as the Plaintiff was employed in a similar type of business and could not engage himself while being employed. Later, he had resigned from his employment to engage in fulltime for FVHS.
4. The 1st Defendant states that he had also contributed to working capital of the FVHS. This is a disputed fact and according to the Plaintiff, the 1st Defendant was brought in to the business as he was unemployed at that time and also due to the longstanding friendship between the two.
5. The Plaintiff in the *inter partes* summons seeks following orders
 - a. *'An injunction requiring the second Defendant to allow the Plaintiff to solely operate Account no 9804175405.*
 - b. *An injunction restraining the first Defendant whether by himself, his servants, agents, or otherwise howsoever from interfering with the business of Flow Valves & Hose Supplies or inducing breach of contract of Flow Valves & Hose Supplies.*
 - c. *.....'*
6. The Defendants admit that the mandate given to 2nd Defendant Bank at the commencement of the account for FVHS granted either Plaintiff or the 1st Defendant to operate the account.

7. It is also admitted that at the commencement of the bank account the Plaintiff's name did not appear in the records as an owner of the FVHS, but his mother along with the 1st Defendant were the owners of the said business.
8. At the moment 1st Defendant is not working for the FVHS and dispute had arisen between Plaintiff and 1st Defendant. He was a sales agent for FVHS from the commencement of the business till the dispute regarding alleged transfer of ownership of FVHS to the Plaintiff.
9. The 1st Defendant does not object to the relief sought in order 'a' above but seeks further conditions and orders in the following manner
 - i. *Plaintiff not to take loan from any financial institution whereby the said company will be liable for its monthly repayments;*
 - ii. *Plaintiff not to change Bank Account*
 - iii. *Plaintiff not to do personal drawing out of the said company account.*
 - iv. *Plaintiff not to have access to Electronic Banking and only use the said company's cheque book for any payment made*
 - v. *Plaintiff to only use the said company's account to pay wages , rent for the said company , purchase of items for the use of the said company*
 - vi. *Plaintiff not to acquire any assets for which the said Company will be liable for its repayments.*
10. When the *inter partes* summons was called before the court 1st Defendant did not object to allowing the Plaintiff to operate the bank account with the 2nd Defendant belonging to FVHS provided that 1st Defendant's salary deposited with the trust account of the solicitor and this condition was readily consented till the final determination of the summons.

ANALYSIS

11. The principles relating to grant of injunction are well established.
12. In *American Cyanamid v Ethicon* [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. 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.’

13. In this action the permanent injunction sought by the Plaintiff is to solely operate Account no 9804175405. Admittedly when the mandate to the 2nd Defendant Bank was given either Plaintiff or 1st Defendant could operate the company account, and the Plaintiff could operate the said account irrespective of the disputed ownership of FVHS.
14. Since the 1st Defendant is no longer with the FVHS there is no purpose for him to operate the said account of FVHS. In the circumstances the order ‘A’ sought by the Plaintiff as a permanent injunction as a permanent injunction raises a serious question of law and such a claim cannot be considered as frivolous.
15. There is no written agreement for partnership or profit sharing but the 1st Defendant is alleging the existence of such arrangement. These are the disputed facts and should be saved for the hearing. At the time of this summons the 1st Defendant had already made a complaint to the police regarding his alleged signature on the document where the purported transfer of the business occurred from the 1st Defendant to the Plaintiff.
16. The business FVHS is relatively new as it started in 2012 and since commencement 1st Defendant was employed as a sales representative and he no longer wishes to work in the said entity. The Plaintiff had resigned from his earlier employment and commenced

working in FVHS as Operation Manager and at the moment he is managing FVHS. If the access to bank account is not granted it will be a hindrance to the business transactions.

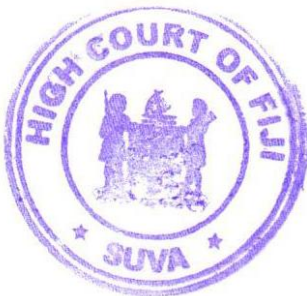
17. Even if the 1st Defendant were to succeed he is only seeking 50% of the share of the FVSH and for that business should continue without hindrance. If the business does not have access to funds it will face an inevitable death and there would not be a worthwhile stake in such a business for Defendant's claim.
18. There is an undertaking as to the damages from the Plaintiff and pledged business assets including 3 motor vehicles. Though it was not a personal undertaking of the Plaintiff he had also pledged his personal vehicle and I consider this as sufficient security considering the nature and short history of the business FVHS. If the injunction to operate the bank by the Plaintiff is not allowed it will be a serious impediment to the business and there will be irreparable loss. Any start up, badly needs cash and unnecessary hindrance might even end the business, where neither party would benefit.
19. The 1st Defendant in the affidavit in opposition sought certain conditions which I have referred earlier. His concern and fears should also be taken in to consideration. He alleges contributing to the set up of FVHS. This is through financial contribution as well as his time and effort to set up the business to its current position. According to the 1st Defendant he was one of the proprietors of the business and even outsiders including customers of the business, recognized him as an 'owner' of FVHS. He claims 50% share of the said business and denies transfer of business to Plaintiff. According to him the alleged transfer document was a forgery.
20. In the circumstances on the balance of convenience favours the Plaintiff. He is the Operation Manager of FVHS and 1st Defendant worked as sales representative of said business. At the moment the 1st Defendant is not working with FVHS. He is not desirous of work there even in future. If the Plaintiff is not allowed to operate the business account of FVHS it will be impossible to maintain good business relationship.

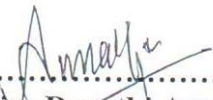
21. At the same time there should be some oversight on the operation of the said account till the conclusion of this action and determination of the allegation regarding forgery and the contribution of the 1st Defendant to the business. In the circumstances there should be a monitoring of the financial activities of the entity. Considering this I would like to have following conditions attached to my order
- a. The Plaintiff to provide monthly report of all cheques written out of the bank account with the 2nd Defendant including bank statements for said account to the court with a copy to the solicitors of the 1st Defendant.
 - b. If the Plaintiff desired to open any other Account for the business of FVHS, with 2nd Defendant or any other bank all such accounts should also be included in said monthly report stated in the above condition.
 - c. The salary and wages of the 1st Defendant to be paid to solicitor's trust account as agreed to continue till final determination of the action.
22. The condition 'a' above was proposed by the Plaintiff in the paragraph 49 of the affidavit in support of the summons, hence there could not be objection by the Plaintiff, and without 'b' the said condition could easily be a nugatory and I do not think any elaboration for necessity of such an order is needed. At the same time strict conditionalities proposed by the 1st Defendant may hinder the growth of FVHS.
23. Apart from the injunction regarding the bank account the Plaintiff also seeks injunctive relief as per order 'B' of the *inter partes* summons. As regards to 'B' in the summons there is no objection by the 1st Defendant in the affidavit in opposition. Hence order in terms of 'B' of the inter partes summons is granted. The cost of this application is cost in the cause.
24. Considering the nature of the action and the counter claim of the Defendant it is desirable to move this action expeditiously. For this both parties should take responsibility to have action ready early. Considering the circumstances I will direct the parties to appear before the Master for appropriate directions for an early hearing of this action.

FINAL ORDERS

- a. An injunction requiring the second Defendant to allow the Plaintiff to solely operate Account no 9804175405. Subject to following conditions
 - i. The Plaintiff to provide monthly report of all cheques written out of the bank account with the 2nd Defendant including bank statements of the said account to the court with a copy to the solicitors of the 1st Defendant.
 - ii. If the Plaintiff desired to open any other Account for the business of FVHS, with 2nd Defendant or any other bank all such details of accounts should also be included in said monthly report stated in the above condition.
 - iii. The salary and wages of the 1st Defendant to be paid to solicitor's trust account as agreed to continue till final determination of action.
- b. Order in terms of 'B' of inter partes summons.
- c. Cost of this application is cost in the cause.
- d. The parties are directed to appear before the Master and take appropriate directions for an early hearing.

Dated at Suva this 21st day of November, 2014.




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Justice Deepthi Amaratunga
High Court, Suva