

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 109 of 2015 (Ltk)

BETWEEN : **B L NAIDU PROPERTIES LIMITED** a limited liability company duly incorporated in the Fiji and having its registered office at Main Street, Queens Highway, Solevu, Sigatoka.

PLAINTIFF

AND : **RAVINDRA'S NADRO FOOD MART LIMITED** a limited liability company having its registered office at Provident Plaza 1, Level 3, Module 2, 33 Ellery Street, Suva, Fiji.

DEFENDANT

BEFORE: Master Vishwa Datt Sharma

COUNSELS: Mr. Shelvin Singh for the Plaintiff
Ms. Devan for the Defendant

DATE OF RULING: 1st August, 2017

RULING

[Summons by the Plaintiff for payment of rental monies into Court pursuant to Order 22 Rule 8 of the High Court Rules, 1988 and the Inherent Jurisdiction of the High Court]

APPLICATION

1. This is **Plaintiff's Summons** seeking the following orders:
 - (i) That Rental monies in respect of the lease agreement dated 29th October, 2012 over shop Nos. 3 and 4 of the property comprised in Certificate of Title No. 17614 being Lots 3 and 4 on Deposit Plan No. 4556 be paid into Court pending the determination of this matter;
 - (ii) The time for service of this application be abridged;
 - (iii) The Costs of this application be paid by the Defendant. an order for payment of rental monies into Court by the Defendant.
2. This application is made pursuant to **order 22 Rule 8 of the High Court Rules 1988 and under the inherent jurisdiction of the High Court.**

BACKGROUND

3. The Defendant is the registered owner of a commercial property legally described as lots 3 and 4 on Deposit Plan No. 4556 being the Certificate of Title No. 17614 situated in Sigatoka town.
4. The Defendant acquired the said commercial property on or about 04th July, 2013.
5. The Plaintiff was a Tenant/Lessee of part of the said commercial premises and was specifically in occupation of shops 3 and 4 and a car park under a lease agreement dated 29th October, 2012.
6. The Defendant acquired the shareholding in Prabhu Brothers Limited which was the previous registered owner/lessor of the said commercial property.
7. Under the terms and conditions of the said agreement, the Plaintiff had lease of shops 3 and 4 for a period of 3 years commencing on 01st July, 2012 and such period/term expiring on 30th June, 2015.
8. The said lease was subject to a right for further 2x three years terms.
9. Clause 7 of the lease expressly provides for the renewal of the lease.

THE LAW

10. *Order 22 Rule 8 of the High Court Rules, 1988* provides for as follows-

8.-(1) Subject to paragraph (2) money paid into Court under an order of the Court or a certificate of the Registrar shall not be paid out except in pursuance of an order of the Court.

(2) Unless the Court otherwise orders, a party who has paid money into Court in pursuance of an order made under Order 14-

(a) may by notice to the other party appropriate the whole or any part of the money and any additional payment, if necessary, to any particular claim made in the writ or counterclaim, as the case may be, and specified in the notice, or

(b) if he pleads a tender, may by his pleading appropriate the whole or any part of the money as payment into Court of the money alleged to have been tendered;

and money appropriated in accordance with this rule shall be deemed to be money paid into Court in accordance with rule 1 or money paid into Court with a plea of tender, as the case may be, and this Order shall apply accordingly.

Plaintiff's Case

11. In summary the Plaintiff stated as follows-

- (a) *Since 10th July, 2015, the Defendant has refused to accept payment of rental monies either in its bank account or through its lawyers.*
- (b) *That he relied on the Defendant's assurance that I was not required to give it a notice of renewal of lease and I did not give one in good faith.*
- (c) *The Defendant and its directors have abused my trust and not only have they obtained more monies from me than what was legally due as rent from 01st May, 2013 but they also now want to remove me from the said premises.*
- (d) *Seek an order that the rental payments be accepted into Court pending the determination of this case.*

Defendant's Case

12. In summary, the Defendant stated as follows-

- (a) *The lease agreement between the parties has expired and lapsed therefore payment of rental is no longer required. The Plaintiff has failed to vacate the demised premises having fully been informed that the lease has expired.*

- (b) *That he verily believes that the Plaintiff has no intentions of vacating the premises immediately and is merely delaying the whole process to frustrate the attempts of the Defendant to recover his property.*
- (c) *The application is opposed to pay rental into Court. The Plaintiff has no lease agreement with the Defendant and they do not recognise the Plaintiff as a lessee.*

ISSUES for DETERMINATION

13. There is only one issue which require determination by this honourable court-
- "Whether there should be an order for the rental monies to be paid into the Court pending the determination of this matter?"**

ANALYSIS and DETERMINATION

14. The Parties to this proceedings agreed and by consent decided that the current case be given precedence over the vacant possession case HBC No. 135 of 2015
15. I will now proceed to deliberate on the pending issue of **"Whether there should be an order for the rental monies to be paid into the Court pending the determination of this matter?"**
16. It is not in dispute that the **Plaintiff** continues to occupy the **Defendant's** commercial property legally described as Lots 3 and 4 on Deposit Plan No. 4556 being the certificate of Title No. 17614 situated Sigatoka town.
17. The **Plaintiff's** contention is that the **Defendant** during a meeting orally entered into a mutual agreement and arrangement with the Plaintiff to extend the tenancy agreement until 01st July, 2021 with agreed rental of \$4,200 plus vat. Further, no notice of renewal was to be given by the Plaintiff to the Defendant in lieu of the increased rent agreed to by the Plaintiff to the Defendant.
18. The Defendant subsequently issued a notice to vacate on 08th April, 2015 and that the Plaintiff is now refusing to accept the rent from the Plaintiff.
19. The **Defendant** is opposing the Plaintiff's application to pay the rental into Court.
20. The **Defendant's** contention is that the Plaintiff's Tenancy Agreement had expired and the Defendant had no intentions whatsoever to renew the Plaintiff's lease as the Defendant's

plans have been to demolish the existing building and construct a new shopping/commercial complex for which architectural designs and the Defendant Company is expected to invest a sum of \$25 million on this project.


21. The **Defendant** also stated that if the **Plaintiff** claims to have obtained an **extension of the lease** for further 6 years in return for increased rental then it should have ensured that such an extension was recorded and noted between the parties. No such understanding or agreement has been reached between the parties for any extension of lease.
22. I also note that there is another **Civil Action HBC No. 135 of 2015** filed by the Defendant B. L .Naidu Properties Limited. The Defendant in the current action is seeking for **S.169** order for **vacant possession** against the Plaintiff, Ravendra's Nadro Food Mart. That matter is awaiting the substantive outcome of **HBC 109 of 2015**.
23. The pleadings in **HBC 109 of 2015** is yet to be completed since this Court will deliver a Ruling in an Interlocutory Summary Application for striking out on 02nd August, 2017. This means that until the **Substantive issue** in **HBC 109 of 2015** is determined, the parties would not proceed to finalize the determination of the vacant possession order sought in **HBC 135 of 2015**. Further, it would be obvious that the Plaintiff B. L. Naidu will continue to be in occupation and utilization of the Defendant's property, shop 3 and 4 until the final determination of both these impending cases, HBC 109 and 135 of 2015.
24. The Question then arises, should the Plaintiff be ordered by this court in the aforementioned circumstances to continue payment of the monthly rental and any arrears of rent into this court until the final determination of both pending cases?
25. Well, it is not in dispute that the Plaintiff continues to be in occupation of the Defendant's property operating business and he cannot just be in occupation free of charge. It doesn't mean that if this Court orders the Plaintiff to pay all rental due and payable into the Court that it would tantamount to the fact that the Plaintiff's occupation is due to the fact that the lease term was already extended. That will not be so because this Court is yet to hear and determine the impending substantive issue regarding any extension of the lease agreement and/or breach of contract.
26. Accordingly, I make the following orders:

ORDERS

- (i) Plaintiff's application succeeds.
- (ii) That all monthly rental monies together with any arrears of rental due and payable to the Defendant over shop Nos. 3 and 4 of the property comprised in Certificate of Title No. 17614 being Lots 3 and 4 on Deposit Plan No. 4556 be paid into the Chief Registrar's interest bearing account pending the determination of this matter.
- (iii) The Defendant to pay to the Plaintiff summarily assessed cost of \$750 within 14 days.
- (iv) Orders accordingly.

Dated at Suva this 1st day of August, 2017




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MR VISHWA DATT SHARMA
Master of High Court, Suva

cc: *Shelvin Singh Lawyers, Suva*
Neel Shivam Lawyers, Suva.