

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 349 of 2019

BETWEEN

RAVI NAND of 9 Miles, Nasinu, Bus Driver.

PLAINTIFF

AND

ANIL KUMAR of Nasinu, Bus Driver.

FIRST DEFENDANT

AND

REGISTRAR OF TITLES

SECOND DEFENDANT

Counsel

: Mr. Sharma T. for the Plaintiff
Mr. Nandan S. for the 1st Defendant
Ms. Singh P. for the 2nd Defendant

Date of Hearing : 24th February 2020

Date of Ruling : 04th March 2020

RULING

(On the Application for Interim Injunction)

- [1] The plaintiff filed the writ of summons seeking an order for specific performance of the sale and purchase agreement entered into with the 1st defendant on 12th January 2005.
- [2] The plaintiff on 07th October 2019 filed a summons seeking the following orders:
1. That the 1st defendant; Anil Kumar be restrained from dealing with, transferring, selling, alienating or otherwise disposing of Certificate of Title No. 31305 until further orders of the Honourable Court.
 2. That the 2nd Defendant: Registrar of Titles of Civic Towers, Suva forthwith accept and endorse the orders of the Honourable High Court herein onto Certificate of Title No. 31305 and that the Registrar of Titles do not accept approve endorse any further orders of the Honourable Court.
 3. That Certificate of Title No. 31305 be transferred to the plaintiff as per the agreement dated 12th January 2005.
 4. That the costs of this action on an indemnity basis.
- [3] The 1st defendant denies having entered into a sale and purchase agreement with the plaintiff. However, the sale and purchase agreement tendered annexed to the affidavit in support shows that there was a sale and purchase agreement between the parties.
- [4] The plaintiff does not say anything about the settling of the loan in the affidavit in support. However, in the statement of claim he has averred that the 1st defendant's loan was settled which is denied by the 1st defendant. To establish that he has complied with his part of the agreement he could have easily tendered the payment receipt. The plaintiff has only tendered in evidence the demand notice issued by the Housing Authority in December 2004.

- [5] The 1st defendant's contention is that he has already transferred this property to one Aman Amitesh Kumar. From the Lodgment Slip it appears that this transfer has been effected on 05th September 2019 before these proceedings were instituted.
- [6] In granting or refusing interim injunctions the courts are generally guided by the principles laid down in **American Cyanamid Co. v Ethicon Ltd** [1975] 2 W.L.R. 316, [1975] A.C. 396, they are;
- (i) Whether there is a serious question to be tried at the hearing of the substantive matter;
 - (ii) 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 damages as a result of the defendant continuing to do what was sought to be enjoined; and
 - (iii) In whose favour the balance of convenience lie if the injunction is granted or refused.

- [7] However, these guidelines cannot be considered as the substantive law of injunctions. Lord Diplock in his judgment also said:

I would reiterate that, in addition to those to which I have referred, there may be many other special factors to be taken into consideration in the particular circumstances of individual cases.

Kerr LJ in Cambridge Nutrition Ltd v BBC [1990] 3 All ER 523 at 534 said:

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 straitjacket 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.


- [8] The learned counsel for the defendant conceded that there is a serious question to be tried at the hearing of the substantive matter.
- [9] The 1st defendant has already executed the transfer document and lodged it for registration. Until the Registrar of Lands register the transfer document the purchaser will not become the registered owner of the property. Since the act sought to be restrained has already been done there is no purpose of issuing an interim injunction.
- [10] The 2nd defendant, Registrar of Titles has been made a party only for the purpose of obtaining the interim injunction. There is no cause of action disclosed against the 2nd defendant only order sought against the 2nd defendant is the interim injunction. Therefore, no injunction will lie against the 2nd defendant.
- [11] For the above reasons the court makes the following orders.

ORDERS

1. Summons filed on 07th October 2019 is struck out and the orders sought therein are refused.
2. The Court makes no order for costs of this application.



04th March 2020.


Lyone Seneviratne

JUDGE