

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 85 of 2018

BETWEEN: **SIGATOKA CLUB** a duly registered club under the Registration of Clubs Act with their office situated at Lot 3 and 4 Queens Road, Sigatoka, Fiji.
1st PLAINTIFF

A N D: **KRISHNA RATTAN BHAN** of Sigatoka, President of Sigatoka Club, Businessman.
2nd PLAINTIFF

A N D: **VIJAY SINGH, MADAN SEN** and **NIUMAI TOGAKAI**, Trustees of Sigatoka Club, first being a businessman, the latter two being retired.
3rd PLAINTIFFS

A N D: **DEV ANAND SHARMA** of Sigatoka, Businessman.
1st DEFENDANT

A N D: **MARK FROST** of Korotogo, Sigatoka, Occupation unknown
2nd DEFENDANT

A N D: **BIRAN KUMAR** of Sigatoka, Businessman.
3rd DEFENDANT

A N D: **SANJAY MAKANJEE** of Sigatoka, Businessman.
4th DEFENDANT

Counsel : Plaintiff: Mr. Nandan. S
 : Defendant: Mr. Sharma. N
Date of Hearing : 20.3.2020
Date of Judgment : 31.3.2020

JUDGMENT

INTRODUCTION

1. Plaintiffs and Defendants are office bearers and trustees of a private club (the Club). They are disputing each other's appointment to respective positions in the said club. There were previous injunctive orders made by the court, but it seems that the parties are still engaged in hostilities. Plaintiffs had not diligently proceeded to hearing of their claim though two years have passed from first application for interim injunction. In the statement of claim filed on 27.3.2018 Plaintiffs sought a declaration, restraining order against Defendants from holding themselves out as office bearers, return of property to first Plaintiff including trustees' seal. The statement of claim is not complex and issues relating to conduct of meetings and appointment was to be determined. In the statement of defence there is a counterclaim hence, while seeking dismissal of Plaintiffs' claims, Defendants sought an order for audited accounts from second and third Plaintiffs and also income and expenditure statements for past three years. These are not difficult to provide even without an order of the court if activities of the Club is conducted in transparent manner. It is strange that this action had not come to the stage of hearing for two years. This had resulted the interim orders which were made for a limited time not been sufficient and incidental issues arising and there was breach of peace between the parties where at least one Plaintiff was charged for criminal offences of for assault and damage to property. The latest of such rift between, the parties occurred on 12.2.2020 when first and second Defendants along with a carpenter entered premises of the Club for alleged maintenance of the premises and for assessment of the repairs to properties belonging to Club. On this occasion Police were called by first named third Plaintiff and the said Defendants along with others who were with them were removed from the premises. Plaintiffs state that they were enjoying themselves in the Club premises and had entered it forcefully. First and second Defendants are presently registered trustees of the Club, and all the properties of the Club are vested with trustees for the benefit of members, in terms of clause 43 of the constitution of the Club. So there was no issue as to forcible entry to the property by first and second Defendants, and use of Police to evict the trustees from the property they were vested with was contrary to status quo that prevailed.

ANALYSIS

2. Defendants in the *inter partes* motion seeking following orders:

- (i) *"An interim injunction restraining the 2nd and 3rd Plaintiffs especially the said Vijay Singh, Businessman, whether by themselves or through their servants and/or agents or otherwise howsoever from hindering or interfering in any way with the management, running, control and operations of the Sigatoka Club including the dealing of the Defendants with the Tenants on the property*

contained in Certificate of Title No. 24715 being Lots 4 & 4 on DP No. 6271 until determination of the within action or until further Orders or determination by this Honourable Court.

- (ii) *An interim injunction restraining the 2nd and 3rd Plaintiffs especially the said Vijay Singh, Businessman, whether by themselves or through their servants and/or agents or otherwise howsoever from entering and/or remaining on the premises of the Sigatoka Club contained in Certificate of Title No. 24715 being Lots 4 & 4 on DP No. 6271 until determination of the within action or until further Orders or determination by this Honourable Court.*
 - (iii) *An Order that the 2nd and 3rd Plaintiffs especially the said Vijay Singh, Businessman of Sigatoka return the keys of the Sigatoka Club House to the Defendants.*
 - (iv) *That the Sigatoka Police Officers do act and render all assistance required by the Defendants if necessary in the enforcement of the Orders.*
 - (v) *The costs of this application be paid by the 2nd and 3rd Plaintiffs on a full indemnity basis.*
 - (vi) *Such further and /or other Orders as this Honourable Court deem expedient.”*
3. *Brown & Anor v MML Capital Europe VI Equity II SA & Ors* [2020] EWHC 23 (Ch) (decided 22 January 2020)¹ held,

“It seems to me that the Respondents' approach is, with respect, overcomplicating the robust and practical procedural tool that is the interim injunction. An application for an interim injunction takes place within underlying proceedings – it is a battle within a war. Its purpose is to regulate the position until the trial or other final determination of those underlying proceedings. At the interim injunction stage, the court will not be in a position to know whether the party applying for that interim relief will ultimately win or lose at trial – and it will rarely, if ever, be appropriate for a court to undertake at this interim stage a mini-trial. It is for this reason that the battleground for most interim injunction applications will be the issues of the adequacy (or otherwise) of damages and the balance of convenience. Having said that, it is plain that there would be little justice in granting an interim injunction where the applicant did not even have a serious issue to be tried. It is for this reason that in the case law the courts have set the threshold as they have. While an applicant for an interim injunction does

¹ URL: <http://www.bailii.org/ew/cases/EWHC/Ch/2020/23.html> (31.3.2020)

*not have to satisfy the court of the merits of the underlying claim in the same way as would be required at trial, he/she **must at least show that in relation to the underlying claim there is a serious issue to be tried.***

In my judgment, therefore, the question I have to ask in relation to this first stage is whether there is a serious issue to be tried in relation to the underlying unfair prejudice petition. Quite clearly, there is – the petition is long and complex and undoubtedly raises serious issues which can only be properly determined at trial. In my judgment, the issue of the extent to which the conduct which the Browns now seek to restrain would violate their legal rights is more a matter for the remaining stages of the test and/or the form of any order if granted.”(emphasis added)

4. When orders are sought as interim measures they should relate to the final determination where serious question to be tried. There may not be a final relief in relating to interim measure, depending on the circumstances of the case. There need not be permanent injunction, in order to grant an interim injunction, but the interim orders should have necessary nexus to the final orders or determination and these should be serious issue to be tried.
5. As regards to serious issue to be tried there is no dispute as both parties to action have claims against each other, and the orders are sought due to friction between the parties where even Police were called to the premises as late as 12.2.2020. This incident was the immediate cause for this application for interim injunction. The issue before court and orders sought in the interim, have sufficient nexus.
6. Interim injunction is a discretionary remedy and there is no need to grant exact orders stated in the motion. Court can always use its discretion to vary the same in order to confine them to the necessity. This should be done with due regard to the rights of the other party who will be restrained from such varied orders.
7. Court can in the exercise of its discretion, to narrow down any order sought in the interim injunction when they are too broad and confine only to the legal rights of the applicant.
8. Damages being an adequate remedy is not an issue, as there are serious breaches of peace where first named Third Plaintiff was criminally charged by Police on a complaint of assault and damage to property by second Defendant. While this criminal trial was pending, again on 12.2.2020 Police was called to the premises, in relating to dispute between the same parties, and some others also participated on this occasion.
9. The dispute between the parties to this action had to some extent got spillover benefits to tenants, who are defaulting or neglecting payment of rentals. Without such a permanent

income it would be difficult to maintain properties of the Club and also settle other obligations including taxes and payments of loans, utilities etc. If the dispute is not resolved without inordinate delay there will be irreparable damage to the Club through loss of revenue and also deterioration of properties belonging to the Club.

10. So, damages are not an adequate remedy in this instance where Plaintiffs and Defendants are at loggerheads, even after two years of litigation in this action.
11. From the first look at the orders sought it is clear that orders (i) and (ii) are extensive and they are seeking broader application of their rights as trustees of the Club.
12. The basis of the orders sought are to maintain status quo of the parties till final determination of this action. What is the basis of Defendants' interim injunction? Do the orders sought confine to their rights recognized as an interim measure? Order (ii) of *inter partes* motion is seeking restraining order preventing entry of second and third Plaintiffs to the property of the Club which cannot be granted. On what basis trustee can prevent members of the Club and or Plaintiffs from entering their property where public entertainment business was conducted by third parties is not explained. Hence order (ii) of *inter partes* motion is struck off.
13. First and second Defendants are trustees of the Club but their appointment is disputed by the Plaintiffs. The restraining order sought by the Plaintiffs was to restrain Defendants until hearing of this matter and it was refused in my earlier decision delivered on 28.6.2018.
14. This order of refusal of the Plaintiffs' motion filed on 27.3.2018 was clear that officials appointed 28.01.2018 should continue till further order of the court.
15. So, first and second Defendants, should function as trustees of the Club until their status is determined through this action filed by Plaintiffs, two years ago. This was clear to Plaintiffs and they should have taken steps to proceed to hearing of this matter as more than two years have lapsed from the said refusal of their motion seeking interim injection. Instead of taking steps to proceed to hearing, Plaintiffs are disputing and obstructing trustees, in their work in the Club.
16. So the orders of *inter partes* motion should be confined to rights and obligations of the trustees. First and or second Defendants cannot prevent any member of the Club from entering property belonging to the Club this includes all the members of the Club.
17. In terms of the constitution of the Club clause 43 deals with the trustees and state;

'The property of the club subject to the liabilities thereof shall be vested in the Trustees upon trust for the Members for the time being subject however, to any

resolution of any convened or special general meeting of the club. (emphasis is mine)

18. From the above mentioned clause of the constitution of the Club, and refusal of the interim injunction sought by the Plaintiffs, first and second Defendants is recognized as trustees until their appointment is determined by court. This is specifically stated in the decision of 28.6.2018 at paragraph 37.
19. It is the duty of the trustees to maintain the properties belonging to the Club. Plaintiffs in the affidavit in opposition stated 'there is no significant maintenance to be done on the property' but in their annexed VJ4 indicated that there is 'immediate repairs' were needed to septic tank and there was no evidence as to when this was done and or who did it or whether it was an outstanding issue.
20. The evidence produced by Plaintiffs contradicts their own position that there was no need for any significant renovation needed. The Club owns a fixed property where a hotel and night club operated by tenants. Any such permanent structure where public have access needs proper maintenance and trustees cannot allow such property to deteriorate for over two years without maintenance.
21. As the public is having access to this property it is the duty of the trustees to maintain it properly irrespective of the dispute between officials of the Club. So maintenance and or repair of the essential items needs urgent attention.
22. There are already tenants on the property and one tenant was operating a hotel whereas other was operating a nightclub and it is alleged that Plaintiffs are also interfering with their payment of rent. These are all facts that needs to be established at hearing, but in the consideration of balance of convenience they are facts that favour granting orders to trustees to renovate the property. Balance of convenience favours to the first and second Defendants as registered trustees of the Club, to grant orders suggested, until determination of their status in this hearing.
23. Defendants are alleging that the key to Club House in the said property was obtained by the Police officer who came to the property on 12.2.2020, and it was handed over to first named third Plaintiff by said Police officer in the presence of first Defendant. In the affidavit in opposition, first named third Plaintiff had denied this and stated that said Keys were with him.
24. These are again facts that need proof at hearing. Irrespective of truth of this fact as to who had the keys to Club House, in terms of the Constitution, all the properties of the Club are vested with the trustees. The Club owns valuable movable properties as well and their safe keeping is for the benefit of the Club. Plaintiffs in this action claiming properties from

Defendants in the final relief. So in a time of dispute between parties there should be some accountability as to the safety of the movable properties, and in my judgment considering the circumstances of this case balance of probability favours the keys to Club House, retained by the trustees who are first and second Defendants. So Plaintiffs are ordered to hand over the keys to the premises to first and second Defendants.

25. Before the keys are handed over items in the Club House needs to be entered in an inventory of the Club in the presence of the parties and or their representatives before they are taken over by trustees in terms of this order. Copies of such inventory be given to Plaintiffs and or Defendants upon request.
26. Trustees had given usual undertaking as to the damages and there is no need to go beyond that in a matter of this nature, where there is no significant loss to the Plaintiffs from the orders I have granted below. The position in *American Cyanamid*² where adequate undertaking was sought from two rival multinational pharmaceutical companies to restrain a novel product which had an impact on the global market share of sutures, cannot be insisted to Defendants who are trustees of a private club. The trustees are granted orders in terms of clause 43 of the constitution of the Club and they are somewhat similar to public officials seeking injunctive orders in the exercise of their duties. (see *The Financial Services Authority v Sinaloa Gold Plc (t/a PH Capital Invest Glen & Ors* [2011] EWCA Civ 1158 (18 October 2011)). In the circumstances, in my judgment the undertaking given by trustees are sufficient for the interim orders granted.

CONCLUSION

27. There is no issue as to having serious question to be tried in this action. Plaintiffs who instituted action could not complete pleadings and pre trial steps for over two years. There were two previous applications for interim orders. First application was struck off, but the second application by the Defendants were granted in their status as the registered trustees of the Club. Defendants allege partiality of Sigatoka Police. Plaintiffs as the registered trustees should function in their capacity in order to preserve the property of the Club. So the keys to club house should be with the trustee whether it was taken from them or not by the Police and handed over to first named third Defendant, by Police. No costs ordered considering circumstances of the case.

FINAL ORDERS

- a. An interim injunction restraining the 2nd and 3rd Plaintiffs including first named third Plaintiff Vijay Singh, whether by themselves or through their servants and/or agents or otherwise howsoever from hindering or interfering in any way with the functions of the registered trustees of Sigatoka Club, (including first and second Defendants), *inter alia* from,

² [1975] AC 396

- i. with their dealing with the Tenants on the property contained in Certificate of Title No. 24715 being Lots 4 & 4 on DP No. 6271 until determination of the within action or until further Orders or determination by this Court. This includes collection of rents and taking necessary actions in that regard to the properties belonging to Club, to recover any income or rent.
 - ii. Entering the property during usual hours of business without any form of hindrance for proper assessment of the properties of the Club.
 - iii. With their actions regarding maintenance of the properties of the Club including any urgent renovations until final determination of this action.
 - iv. The above will be not limiting the functions of the trustees to said orders but to supplement and clarify the said duties of trustees.
- b. An Order that the 2nd and 3rd Plaintiffs including Vijay Singh, return the keys of the Sigatoka Club House to the first and or second Defendants as trustees of the Club, immediately. (this to be done with proper inventory taken in the presence of both parties or agents)
 - c. That the Police do act and render all assistance required for the enforcement of the Orders.
 - d. No costs ordered.

Dated at Suva this 31st day of March, 2020.



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Justice Deepthi Amaratunga
High Court, Suva