

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 15 of 2023

Deven Magan

Suresh Chandra

Rishi Ram

Ishwarlal Champak

Plaintiffs

v.

Mahendra Lal

Desmukh Bhindi

Rajeshwar Prasad

Salesh Goundar

Francis Ram

Defendants

Counsel: Mr A. Patel for the plaintiffs

Mr A. Reddy for the defendants

Date of hearing: 3rd February, 2023

Date of Ruling: 4th May, 2023

Ruling

1. By inter-parte notice of motion, the plaintiffs seek an interim injunction:
 - a. *that the decisions made in the purported Special General Meeting of the Merchants Club held on 11th January 2023 as called by the Defendant be stayed and the status quo of the Merchants Club remain whereby the Plaintiffs as Trustees of the Merchants Club manage the day-to-day affairs of the Merchants Club up to the next Annual General Meeting in accordance with the Constitution of the Merchants Club.*
 - b. *restraining the defendants from:*
 - i. *registering themselves as Management Committee of the Merchants Club until determination...*
 - ii. *registering Ravindra Kumar Swamy, Jagdish Bali and Sanjay Kirpal as purported new Trustees of the Merchants Club.*
 - iii. *hindering or interfering in anyway with the management, running control and operations of the Merchants Club.*
 - iv. *entering and/or remaining on the premises of the Merchants Club.*
 - c. *the defendants return the keys of the Merchant Club house property to the Plaintiffs.*

The affidavit in support

2. The affidavit in support filed by the fourth plaintiff states that on 28th May,2022, at the 66th AGM of the Merchants Club,(Club) the plaintiffs were appointed as trustees; the first defendant as President; Praneel Singh as Vice President; and, Deshmukh Bhindi, Ravinesh Naidu and Rajen Kumar and Francis Ram as Committee members. The first defendant, “*Former President*” of the Club removed three Office bearers: Praneel Singh, Ravinesh Naidu and Rajen Kumar (deceased) without a Special General Meeting, (SGM) and lawful reason. The removal is unconstitutional.
3. On 17 June, 2022, the plaintiffs, as trustees called a meeting with the “*former Defendants Management Committee*”. The first defendant failed to give the financial reports requested and misbehaved with patrons, staff and guest while intoxicated.
4. On 27 September,2022, the plaintiffs, by a majority dissolved the defendant’s committee in terms of Rule 33 (b) of the Constitution of the Club.

5. On receiving reports from a tenant of the Club regarding the first defendant, the plaintiffs on 3 December, 2022, convened a trustees' meeting and suspended the first defendant as a member and prohibited him from entering the premises pending investigation. The first defendant refused to leave the Club and wrongfully continued to act as President.
6. On 11 January, 2023, the defendants called a SGM and re-appointed new trustees. The members were not notified of the SGM. The defendants had no authority to call the meeting. The meeting was unconstitutional, in terms of Rule 50(b) and (c) of the Constitution. The plaintiffs were removed as trustees and three new trustees were appointed. The affidavit states that trustees shall be appointed by existing trustees and confirmed at an AGM or SGM.
7. The affidavit concludes that unless the defendants are restrained, they will continue to act without authority, in a manner that brings disrepute to the Club and engage in activities and transactions contrary to the Constitution.

The affidavit in reply

8. The first plaintiff, in his affidavit in reply states that he is the elected President of the Club. The attempted dismissal of him as President is illegal, as there was no genuine reason for his dismissal. There were no complaints against him. The allegations are unfounded and untrue.
9. Only properly endorsed trustees can remove the Committee for specific cause. The plaintiffs have not been registered as trustees Deven Magan and Suresh Patel were not endorsed at the AGM as required under 29(a) of the Constitution.
10. At the SGM held on 11 January 2023, 43 out of 97 members attended and voted in favour of the trustees appointed.
11. The Club issued a distress of rent on the tenant who made a complaint against the first defendant.

12. The plaintiffs cannot rely on the Club's assets for an undertaking as to damages. The plaintiffs seek final orders.

The fourth plaintiff's affidavit in his reply

13. The fourth plaintiff states that Deven Magan and Suresh Chandra have been appointed trustees for the last several years. Appointed trustees need not to be endorsed at every AGM. Trustees are appointed for life by Rule 29(a) of the Constitution. Rishi Ram and Ishwarlal Champak were endorsed, unopposed and appointed as trustees. Appointed trustees shall continue to office until death, resignation or removal at a General Meeting. The appointment of the plaintiff as trustees is lawful and in compliance with Rule 29(a). The Constitution does not require trustees to be registered. A trustee may be removed at a General Meeting if found guilty of misconduct or any other behavior that brings disrepute to the Club.
14. The plaintiffs notified the first defendant of the complaints received against him for abusing staff and verbally terminating their employment without any lawful reason. The plaintiffs rightfully asked him for financial reports. The defendants failed to meet on a monthly basis for transaction of ordinary business of the Club in terms of Rule 35 of the Constitution. The dismissed management committee failed to keep proper records of the day-to-day affairs of the Club and the plaintiffs had no knowledge whether its finances were properly managed or not.
15. The validity of the SGM held on 11 January, 2023, and decisions made thereto is disputed. The Constitution requires 10 days prior notice of any meeting which was not complied with.

The determination

16. The plaintiffs complain that they were removed as trustees at the SGM on 11 January 2023. They contend that they were appointed as trustees at an AGM of 28 May, 2022. The Constitution does not require trustees to be registered.
17. The defendants dispute the appointment of the plaintiffs as trustees, as they were not confirmed subsequently, neither at an AGM or SGM, as required by Rule 29(a) of the Constitution.
18. The affidavit in support filed on behalf of the plaintiffs at paragraph 35 a) confirms that the appointment of trustees has to be confirmed at an AGM or SGM.
19. Next, the plaintiffs contend that the first defendant unlawfully removed three Office bearers: Praneel Singh, Ravinesh Naidu and Rajen Kumar (deceased) .
20. The response of the defendants is that Ravinesh Naidu resigned on his own accord. Rajen Kumar was not removed. Praneel Singh was suspended for making racist comments and not wanting iTaukei to be members.
21. The plaintiffs deny that Praneel Singh was suspended for allegedly making racial comments.
22. The plaintiffs state that they dissolved the defendants' Management Committee, due to the failure of the first defendant to provide financial reports and as he continued to misbehave with patrons, staff and guests. On receiving reports from a tenant of the Club regarding the first defendant, they convened a trustees' meeting on 3 December, 2022, and passed a resolution that the affairs of the Club were improperly managed by the first defendant.
23. The first defendant states that the Club issued distress of rent on the tenant. The plaintiffs cannot deal with the day to day running of the Club. The Committee would be redundant.

24. In my view, the issue whether the plaintiffs were lawfully removed as trustees cannot be determined at the interlocutory stage. Their appointment is disputed. The defendants state that at the SGM, 43 out of 97 members attended and voted in favour of the removal and appointment of trustees.
25. On evaluating facts at the interlocutory stage, Lord Diplock in the *American Cyanamid*, [1975]1All E.R.504 stated :

It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claim of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial.
26. The plaintiffs seek a stay of the decisions made at the SGM of 11th January,2023, and they manage the day-to-day affairs of the Club up to the next AGM.
27. In my view, the plaintiffs have not shown valid reasons for them to manage the day-to-day affairs of the Club till the next AGM, as against the defendant's Management Committee. Trustees do not manage day-to-day affairs of a Club.
28. I have considered the consequences for the Club if the injunctive orders sought are granted vis a vis the consequences to the plaintiff s and the Club.
29. In my view, the balance of convenience lies with the defendant.
30. The plaintiffs have not filed an undertaking as to damages. In my view, the plaintiffs cannot rely on the assets of the Club in that regard
31. In the exercise of my discretion, I decline the application for interim relief.

32. **Orders**

- (a) I decline the application for interim relief.
- (b) Costs in the cause.



A.L.B. Brito-Mutunayagam

A.L.B. Brito-Mutunayagam
JUDGE
4th May, 2023