

IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

CIVIL ACTION NO. 164 OF 2023

BETWEEN: **GURBACHAN SINGH'S STEEL MILLS LTD** a limited liability company having its registered office at Lot 1 Kauga Road, Laucala Beach Estate, Fiji.

1ST PLAINTIFF

AND : **SINGH STEEL ROLLING MILLS PTE LIMITED** a limited liability company having its registered office at Lot 1 Kauga Road, Laucala Beach Estate, Fiji.

2ND PLAINTIFF

AND : **NASESE BUS COMPANY PTE LIMITED** a limited liability company having its registered office at Lot 8 Carpenters Street, Raiwaqa, Suva, Fiji.

DEFENDANT

Before: Mr. Justice Deepthi Amaratunga

Counsel: Mr. Chand N for the Plaintiffs
 Mr. Haniff F for the Defendant

Dates of Hearing: 24.7.2023

Date of Judgment: 28.11.2024

JUDGMENT

INTRODUCTION

- [1] Plaintiffs filed writ of summons seeking release of Plaintiffs' assets which were on a Crown Lease which was purchased by Defendant.
- [2] Sale and purchase agreement defined the 'Property' in following manner

'Means the land and the warehouse structure comprised on Crown Lease Number 9650, excluding all machines, equipment, spare parts and all other movable items on the property'. (emphasis added)

- [3] Defendant had admittedly allowed plant and machinery fixed to floor of 'warehouse' on the Property to be removed, but preventing removal of a 1000 KVA Transformer that provided three phase electricity to said plant and machinery on the basis it was a 'fixture' to the land.
- [4] Sale and Purchase was between first Plaintiff and Defendant and plant and machinery including transformer belonged to second Plaintiff. Defendant is entitled only to 'warehouse **structure**' on the land and not to 1000 KVA Transformer and other equipment's irrespective of such items fixed to the land or not. The bargain stated in the sale and purchase agreement expressly only included 'warehouse structure' from the fixtures on the land.

FACTS

- [5] First Plaintiff was the registered lessee of Crown Lease Number 9650, being Lot 2 on SO 763, (the Land) . Second Plaintiff conducted steel products manufacturing factory on the said premises. So the plant and equipment on the land belonged to second Defendant.
- [6] In order to power heavy duty machines second Plaintiff was required to install 1,000 KVA transformer along with necessary equipment such as
 - i. 11KV SD Unit;
 - ii. 11 KV CFC Switchgear;
 - iii. 11KV Cables; and
 - iv. 11 KV Indoor Termination Kits.
- [7] The second Plaintiff operated the steel product manufacturing factory, and on or about 2019 operations on the factory was closed. Despite closure the equipment and machines, and vehicles remained on the Land.
- [8] First Plaintiff decided to sell the Land and Defendant had entered in to sale and purchase agreement (the Agreement) on 5.12.2022. . First Plaintiff entered in to Agreement with Defendant to sale of the Land and 'warehouse structure' on it.
- [9] The Defendant is a limited liability company that is in the business of providing public transportation.
- [10] The term of the Agreement that is material for this summons is
 - "The 1st Plaintiff had accepted the offer of the Defendant and had on the 5th of December, 2022 executed a Sale and Purchase Agreement for the

sale of the "land and the warehouse structure comprised on Crown Lease Number 9650, **excluding all machines, equipment, spare parts and all other moveable items on the property**". (emphasis added)

[11] Despite sale of the Property on the 31.3. 2023 upon the lodgment of the Transfer at the office of the Registrar of Titles , vacant possession was not delivered upon settlement and the Defendant had permitted the Plaintiffs to remove the items on the Land on or before the 22nd of April, 2023.

[12] On or around 20.4. 2023 Defendant had locked the premises and refused to permit the staff and/or employees and/or agents of the Plaintiffs from removing its assets.

[13] According to Plaintiffs, Defendant unlawfully holds the following items ("Assets") of the 2nd Plaintiff:

- i. 1 x 1,000 KVA transformer;
- ii. 1 x 11KV SD Unit;
- iii. 1 x 11KV CFC Switchgear;
- iv. 1 x 11KV Cables;
- v. 1 x 11KV Indoor Termination Kits;
- vi. 1 x Control Board for the melting furnace;
- vii. 1 x set of pipes and fittings for the furnace cooling system;
- viii. 1 x stand for furnace capacitor bank;
- ix. 1 x set of machine mounting base plate for the rolling Mill;
- x. Motor Vehicle registration number DM.685;
- xi. Motor Vehicle registration number DX.757;
- xii. Motor Vehicle registration number HB.411;
- xiii. Motor Vehicle registration number DD.569;
- xiv. Motor Vehicle — Mitsubishi L300 Panel Van;
- xv. Motor Vehicle — Mazda Panel Van;
- xvi. 2 x Oxygen Cylinder;
- xvii. 1 x CCTV DVR set;
- xviii. 1 x oil pump for reheating the furnace;
- xix. 1 x oil pump for oil tank;
- xx. 4 x oil tank;
- xxi. 2 x 8x4 Steel Plate;
- xxii. 1 x 8x2 Steel Plate;
- xxiii. 10 pieces roofing iron of various sizes; and
- xxiv. 2 x water pump.

[14] Plaintiffs are seeking the following relief:

1. Amongst other relief, 1st and 2nd Plaintiffs seek an order for the Defendant by itself and/or by its servant and/or agents or otherwise

howsoever do forthwith release to and deliver to the 1st and 2nd Plaintiffs the Assets as listed in paragraph 26 of this Statement of Claim.

2. The 1st and 2nd Plaintiffs seek an interim injunction restraining the Defendant by itself and/or by its servant and/or agents or otherwise howsoever from interfering and/or hindering the 1st and 2nd Plaintiffs in taking into its possession the Assets as listed in paragraph 26 of this Statement of Claim.
3. The 1st and 2nd Plaintiffs seeks an order to enter the premises of the Defendant comprised on Crown Lease 9650 and/or whosoever situated for the recovery of the assets of the 2nd Plaintiff as listed in paragraph 26 of this Statement of Claim.
4. The 1st and 2nd Plaintiff seek an order for the Police to assist the Plaintiffs in the execution of the orders.
5. An order of injunction to restrain the Defendant and their servants and agents against whomsoever and whatsoever from selling and/or disposing the assets listed which is detained on the property.

[15] Order Number 5 has been dealt with as the Counsel for the Defendant during the hearing of the application has consented for this to be extended until the finality of the substantive application. This restriction is applicable only to Defendant.

[16] The Summons have been instituted in accordance with Order 29 of the High Court Rules 1988, which states the following:

1 (1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.

(2) Where the applicant is the plaintiff and the case is one of urgency such application may be made ex parte on affidavit but, except as aforesaid, such application must be made by motion or summons.

(3) The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit.

2(1) On the application of any party to a cause or matter the Court may make an order for the detention, custody or preservation of any property

which is the subject matter of the cause or matter, or as to which any question may arise therein, or for the inspection of any such property in the possession of a party to the cause or matter.

(2) For the purpose of enabling any order under paragraph (1) to be carried out the Court may by the order authorize any person to enter upon any land or building in the possession of any party to the cause or matter.

(3) Where the right of any party to a specific fund is in dispute in a cause or matter, the Court may, on the application of a party to the cause or matter, order the fund to be paid into court or otherwise secured.

(4) An order under this rule may be made on such terms, if any, as the Court thinks just.

(5) An application for an order under this rule must be made by summons or by notice under - . Order 25, rule 7.

(6) Unless the Court otherwise directs, an application by a defendant for such an order may not be made before he acknowledges service of the writ or originating summons by which the cause or matter was begun.

[17] Despite having a list of 'Assets' the main dispute is regarding 1000 KVA Transformer and equipment's relating to its power supply with cables and this may be due to its value and utility for parties. Defendant's argument is that since such items were 'immovable' fixtures on the 'Property' they belonged to Defendant upon the completion of the sale.

[18] There are two key issues and they are

- a. What comprised 'Property' sold to Defendant.
- b. Ownership of Assets.

'Property' sold to Defendant

[19] First Plaintiff had entered in to sale of the 'Property' in terms of the Agreement 5.12.2022.

[20] The 'Property' as defined exclusively in the Agreement in following terms

'means the land and the warehouse **structure** comprised on Crown Lease Number 9650, **excluding** all **machines, equipment**, spare parts and all other movable items on the property'. (emphasis added)

- [21] So irrespective of whether an item is permanently fixed or otherwise to the Land Defendant is entitled only to land and 'warehouse **structure**'. The emphasis is on the word 'structure' and this is clear enough to exclude items that does not form part of 'warehouse structure' such as '1000 KVA Transformer.'
- [22] Plain meaning of 'structure' does not include 'Transformer' that supplied three phase power supply to heavy duty plants and machines, despite it being fixed due to its size and safety requirements.
- [23] Even if I am wrong on the above 'Property' is defined exclusively in the Agreement and meaning in the Agreement excluded 'all machines, equipment' and the 1000 KVA Transformer and equipment relating to it, are excluded.
- [24] It is clear that Defendant could only claim for 'warehouse structure' apart from the vacant land and nothing more nothing less. Plain meaning cannot be stretched to gain undue advantage to Defendant.
- [25] Defendant has no legal or other equitable right to claim second Defendant's Assets belonging to its factory including permanently fixed plant and machinery and other 'equipment's' that were part and parcel of such assets except 'warehouse structure'.
- [26] So the Defendant's contention that it is entitled to special purpose equipment such as 1000KVA that powered machines of the second Defendant which were already removed without dispute, is without merit.

Ownership of the Assets relating to Transformer and Equipment's

- [27] The Director of the 2nd Plaintiff deposed to the facts on the Affidavit that was filed in Support of the Summons.
- [28] Through the contents of Paragraph 10 of the Affidavit, the Director has confirmed that the second Plaintiff had purchased and imported the Transformer which were installed on the Property and receipts from FEA confirms this along with invoices annexed JS 6 and JS7.
- [29] Defendant had not addressed the relevant paragraph of the Plaintiffs' affidavit in support of this summons. So there is no dispute as to the ownership and possession of the said items stated in Assets of Transformer and Assets.

Permanent Fixtures

- [30] Without prejudice to above, Defendant's contention is considered. The Transformer and its peripherals, there were numerous heavy machinery and equipment also installed on the Land. These are excluded expressly and 1000

KVA Transformer and other equipment connected as essential parts and excluded from sale.

[31] Annexure JS16 in the Plaintiffs' Affidavit in Reply shows photographs of the items which was also fixed onto warehouse floor or factory floor of second Plaintiff, however the Defendant had allowed these items removed. As stated previously Defendant cannot blow hot and cold, when it had allowed other fixtures which were on the floor of 'warehouse structure' to be removed and prevent 1000 KVA Transformer which supplied electricity to heavy machinery to be removed only because it has some utility for Defendant.

[32] Justice Byrne(as his lordship then was) had considered the following factors in the case of Herbert Construction Company (Fiji) Ltd v Fiji National Provident Fund [2009] FJHC 176; HBC190.2009 (24 August 2009)

"[42] The question of whether any attachment to property becomes a fixture and as such cannot be removed has been considered in many cases down the years.

[43] In Sanwa Australia Leasing Ltd v. National Westminster Finance Australia Ltd (1988), NSW Lexis 8995 Powell, J considered this question at some length and he stated the law as being whether or not a chattel becomes a fixture placed or annexed to the land in question, depends on the intention of the person placing or annexing it to the land, that intention being determined by reference to objective facts, namely: "the degree and object of the annexation which is in itself apparent and thus manifested the intention".

[44] In Trust Bank Central Ltd v. Southdown Properties Ltd (1991) 1 NZ ConvC 190 851 Robertson, J quoted Wylie, J in the New Zealand case of Shattock v. Devlin who approved what was said in 27 Halsbury's Laws of England (4th Edition Vol 2 p 143): "that the test depends on the objective and purpose of the annexation, that is whether it was for the permanent and substantial improvement of the premises or merely for a temporary purpose or for the more complete enjoyment for the use of the chattel as a chattel".

[33] The objective of 1000 KVA transformer is to provide dedicated power supply to heavy machines and not part of 'warehouse structure' .Defendant is estopped from denying Plaintiffs of 1000KVA transformer which was required exclusively for the three phase power supply to heavy machines that were fixed to the factory floor and were fully removed.

[34] According to Plaintiffs, it was clearly not part of the bargain and only 'warehouse **structure**' was included. It is undisputed fact that 1000 KVA

transformer and its accessories stated in paragraph 11 of affidavit in support of this summons belonged to second Plaintiff and there is no evidence at this moment to show such items were part of the bargain and plain meaning of 'Property' only included 'warehouse structure' only from the permanent 'fixtures'. So this is what parties bargained for and acted accordingly. Defendant cannot deny Plaintiff

[35] So the contention of Defendant that 1000 KVA transformer and its necessities are 'fixtures' on the land is not a reason to refuse interim relief for Plaintiff to remove it.

[36] In the affidavit in opposition Defendant had only claimed 1000 KVA Transformer and its power supply equipment's. So the rest of the Assets in the list which include some vehicles which are obviously not fixtures must be released to Plaintiffs forthwith.

[37] Plaintiffs are entitled to mandatory injunction for the as Plaintiff had established strong probability required for such order.

CONCLUSION

[38] Plaintiffs are jointly and severally entitle to remove 1000KVA transformer and its necessary equipment including its 11 KV cables stated in paragraph 11 of affidavit in support from the Property. Defendant and its agents are restrained from interfering or preventing such removal and access to the premises of Crown Lease 9650, at reasonable time. Plaintiff is also provided with Police assistance for such removal of transformer and other equipment's upon such request to relevant authorities for execution of this order.

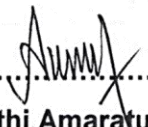
[39] There is no dispute as to rest of movable properties on the Asset list contained in paragraph 28 of affidavit in support. So they are released to Plaintiff.

[40] Cost of this action is summarily assessed at \$1,500 to be paid by Defendant to Plaintiff within one month.

FINAL ORDERS:

- a. Plaintiffs are granted access to Defendant's premises situated at Crown Lease 9650 for removal of 1000 KVA transformer and other equipment such as 11KV SD Unit, 11KV CFC Switchgear, 11KV Cables and Indoor termination Kits (stated in paragraph 11 of affidavit in support)
- b. Defendant by its agents or otherwise forthwith release the Assets including the above mentioned Transformer and other equipment's to Plaintiffs and or its representatives.
- c. Defendant is preventing from interfering with removal of all the 'Assets' stated in paragraph 13, including Transfer and its equipment's.
- d. Plaintiff to be assisted with Police protection for the execution of this orders during reasonable time of working days.
- e. Cost of this action is summarily assessed at \$1500.




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Deepthi Amaratunga
Judge

At Suva this 28th November, 2024.

Solicitors

Capital Legal Lawyers
Haniff Tuitoga Lawyers