

BETWEEN : DEAN VETE - *Plaintiff*

AND : LIOU JIN CHUAN  
aka LYNATH LIOU - *Defendant*

T. Fakahua for the Plaintiff

S. Tu'utafaiva for the Defendant

### DECISION

1. The Writ and Statement of Claim were issued on 22 August 2012. The Plaintiff is the registered owner of a town allotment situated at Fatafehi Road, Kolofu'ou (the land).
2. The Defendant has occupied part of the premises erected on the land since about 1997. In 1999 the Plaintiff and the Defendant entered into a written agreement, stated to be a "tenancy agreement" which permitted the Defendant to operate a motel, restaurant, bar and store on the premises.
3. According to paragraph 6 of the Statement of Claim, when the five year tenancy agreement expired it was succeeded by an oral agreement between the parties that restricted the

Defendant's operations to a two storey building on the northern side of the land.

4. The Plaintiff complains that the Defendant has breached the terms of the oral agreement between them by sub-letting part of the premises, by failing to insure the premises and by destroying useful trees which used to grow on the land.
5. The Statement of Claim seeks an order for vacant possession of the premises occupied and sub-let by the Defendant, damages and costs.
6. On the same day the writ was issued, the Plaintiff filed an application for an injunction expelling the Defendant from the land. In the affidavit filed in support of the application, the Plaintiff rehearsed the allegations contained in the Statement of Claim and exhibited a copy of the 1999 agreement together with other correspondence.
7. On 31 August the application was mentioned; the Defendant was given leave to file an affidavit in answer and the hearing of the application was adjourned to 5 September.
8. On 5 September the Defendant filed his defence. The Defendant admitted occupying parts of the premises. He claimed that following the expiry of the 1999 agreement the parties orally agreed that the Defendant would be permitted to continue his occupation of a room in the motel "for life" and that he would be permitted to continue the occupation and control of

the restaurant, shop "and other rooms at the main building of the motel". The Defendant claimed that it was expressly agreed that he would pay no rent for the parts of the premises occupied and controlled by him. The Defendant also claimed that it was an implied term of the agreement that he would be permitted to "sublet those parts of the premises that he continues to occupy and control".

9. In paragraph 3(d) of the Statement of Defence the Defendant claims that in reliance on the oral agreement reached between the parties he has expended about \$200,000 on renovating those parts of the premises that he occupies and controls. In paragraph 11 the Defendant states that in all the circumstances the Plaintiff is estopped from seeking vacant possession of the disputed premises.
10. No affidavit was filed by the Defendant in support of his Statement of Defence and he was not called to testify.
11. Applications for injunctive relief in the Land Court are governed by the procedures set out in Order 22 of the Supreme Court Rules which are applied by Order 2 Rule 2 of the Land Court Rules. The principles governing the exercise of the discretion to grant or refuse injunctive relief are conveniently set out and explained in the commentary to Order 29 of the English Supreme Court Practice (the White Book) 1988 Edition.
12. The usual purpose of an interlocutory injunction is to preserve

the *status quo* until the rights of the parties have been determined in the action. Injunctions are most usually in negative form, to restrain the Defendant from doing some act. Very exceptionally (see *Canadian Pacific Railway Ry v Gaud* [1949] 2 KB 239) a mandatory injunction will be granted but only if the principles governing such grants are satisfied. These principles are fully explained in *Redland Bricks Ltd v Morris & Anor* [1969] 2 All ER 576. In the words of Lord Upjohn (at page 579) :

“A mandatory injunction can only be granted where the Plaintiff shows a very strong probability on the facts that grave damage will accrue to him in the future” if the injunction is not granted.

Secondly :

“Damages will not be a sufficient or adequate remedy if such damage does happen”.

13. As already pointed out, the Defendant has been in occupation of part of the premises on the land since about 1997. In my view there is nothing on the papers before me to show that the circumstances have suddenly and recently altered so as to present a “strong probability that grave damage will accrue” to the Plaintiff if the Defendant is not now summarily removed from the land. If it is correct that the Defendant is operating a business from the premises then I can see no advantages to

him resulting from causing any damage to the premises which he is occupying.

14. In all these circumstances I am not satisfied that the Plaintiff has shown that the mandatory injunction sought should be granted. The application fails and is dismissed.
15. I will hear counsel before giving directions for the further conduct of the action.

**NUKU'ALOFA: 6 September 2012.**



**PRESIDENT**

**N.Tu'uholoaki  
6/09/2012.**