

**IN THE HIGH COURT OF FIJI**

**(WESTERN DIVISION)**

**AT LAUTOKA**

**Civil Action No. HBC 212 OF 2016**

**BETWEEN** : **BULA BARGAINS LIMITED** a limited liability company  
having its registered office at 115 Vitogo Parade, Lautoka.

**PLAINTIFF**

**AND** : **NAREND PRASAD** aka **NARENDRA PRASAD, SAILESH PRASAD AND VIMLESH PRASAD** all of Lautoka and  
Businessman respectively.

**DEFENDANTS**

**Appearances** : Mr M. Anthony for Plaintiff  
Non-appearance for Defendant

**Date of Hearing** : 5.10.2016

**Date of Ruling** : 5.10.2016

**R U L I N G**

1. This is an ex parte application filed today in conjunction with an affidavit of Pravina Devi, Company Director to support. The application is made pursuant to Order 29, rule 1 of the High Court Rules, which provides:

*"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 in one of urgency and the delay caused by proceeding in the ordinary way would entail irreparable or serious mischief such application may be made ex parte on affidavit but except as aforesaid such application must be made by Notice of 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 cause 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. The orders the applicant seeks include:

1. *That the defendants do release the premises described in the Commercial Lease Agreement dated 1<sup>st</sup> September 2016 being all that portion of the building leased to the Plaintiff and that is currently being held by the Defendant under distress of rent to the Plaintiff forthwith.*
  2. *That the Defendants and/or its servants and/or its agents be restrained from interfering with the Plaintiff's daily business and operation.*
3. Mr Anthony, counsel appearing for the applicant submits that there is urgency in the application because the second hand outlet the plaintiff was operating from 2010 has been locked as a result of the distress warrant issued by the defendant. He admits that the only arrears that is to be paid is the rental for this month, being \$9,810.00.
4. The plaintiff deposes that she had been operating the outlet at the premises since 2010 with an oral rent agreement till August 2016. The plaintiff and the defendant have now entered into a formal Tenancy Agreement dated 1 September 2016. The plaintiff states that it had updated all the rental arrears prior to the new rent agreement as per cl.17 of the Tenancy Agreement.

5. The plaintiff has been the defendants' tenant since 2010. However, the tenancy agreement has been formalised in September this year by a written agreement. If the defendants wanted to issue a distress warrant, they should have issued for the recovery of arrears of rent, which is \$9,810.00 due for October 2016.
6. However, the distress warrant has been taken to recover a sum of \$54,118.50, which includes bailiff fees. The distress warrant does not provide a breakdown why the same is issued for the sum particularly since when the plaintiff fell into arrears in the payment of rent.
7. The defendants have locked the premises on the strength of the distress warrant that the plaintiff is unable to carry out the business, which it had been doing since 2010. Therefore I am satisfied that there is urgency in this application.
8. When asked whether the plaintiff is intending to file writ of summons, counsel for the plaintiff replied that he undertakes to file the writ of summons in 7 days. The court may grant injunction on such conditions before the issue of the writ of summons if the case is one of urgency (See O.29, r. 1 (3) above).
9. Therefore, being satisfied with the application, the affidavit and the submission made in court this afternoon, I grant orders number 1 and 2 as prayed for in the Ex-parte Notice of Motion filed 5 October 2016. However, these orders are granted subject to the condition that the plaintiff must deposit a sum of \$10,000.00 in court as security and file the writ of summons and statement of claims by 6 October 2016.
10. This application together with all documents is to be served to the defendants in 7 days.

11. The matter is adjourned to 12.10.2016 at 2.30 pm for mention only.

*M H M Ajmeer*  
*5/10/16*

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**M H M Ajmeer**  
**JUDGE**

**At Lautoka**  
**5.10.2016**

