

N6668

PAPUA NEW GUINEA
[IN THE NATIONAL COURT OF JUSTICE]

WS 18 of 2016

BETWEEN:

INNOVEST LIMITED

Plaintiff

AND:

CAKARA ALAM (PNG) LIMITED

First Defendant

AND:

TZEN PACIFIC LIMITED

Second Defendant

Waigani: Hartshorn J

2017: 31st January

Application for interlocutory injunctive relief

Cases:

American Cyanamid Company v. Ethicon Limited (1975) AC 396

Airlines of PNG v. Air Niugini Ltd (2010) N4047

Craftworks Niugini Pty Ltd v. Allan Mott (1997) SC 525

Chief Collector of Taxes v. Bougainville Copper Ltd (2007) SC853

PNG Deep Sea Fishing Ltd v. Luke Critten (2010) SC1126

PAC LNG International Ltd v. SPI (208) Ltd (2014) N5681

Ramu Nico Management (MCC) Ltd v. Tarsie (2010) SC1075

Counsel:

Mr. I.R. Shepherd, for the Plaintiff

Mr. T. Tape, for the Defendants

31st January, 2017

1. **HARTSHORN J:** This is a decision on a contested application for interlocutory injunctive relief.

Background

2. The plaintiff is claiming damages against the defendants and permanent injunctions to restrain them from interfering with their logging operations in the Aria Vanu Timber Area (**TRP area**).

3. The plaintiff claims that it holds a valid licence issued by the Papua New Guinea Forest Authority and that it is a party to a logging and marketing agreement (**LMA**) with the permit holder, Aria-Vanu Timber Company Ltd. It is entitled therefore, to carry out logging activities within the TRP area.

4. The plaintiff alleges that the defendants are related companies within the meaning of the *Companies Act* and that the second defendant was previously a contractor within the same area.

5. The plaintiff alleges that the defendants' continue to try to interfere with its operations with a view to replacing the plaintiff with either the first or second defendant as the contractor.

This application

6. The interlocutory injunctive relief sought by the plaintiff seeks to restrain the defendants amongst others, from interfering or dealing with Aria-Vanu Timber Company Ltd, or the TRP area, or the plaintiff's logging activities conducted pursuant to the LMA, pending the hearing and final determination of this proceeding.

7. The plaintiff submits that the interlocutory injunctive relief should be granted as amongst others:

- a) there is sufficient prima facie evidence to establish an arguable case and the plaintiff has reasonable prospects of succeeding at trial;
- b) an undertaking as to damages has been filed;
- c) the balance of convenience favours the plaintiff;
- d) if the defendants are not harassing or interfering with the plaintiff's logging activities as it is alleged on their behalf, then they will not be affected by the interim orders if granted;
- e) although damages may be an adequate remedy, it is in the interests of justice to preserve the status quo.

8. The defendants' submit that the interlocutory injunctive relief should not be granted as amongst others:

- a) the plaintiff has not demonstrated an arguable case and does not come to court with clean hands;
- b) damages are an adequate remedy;
- c) the second defendant has an LMA with Aria-Vanu Timber Co Ltd after the plaintiff's LMA expired;
- d) the issues concerning the validity of all LMA's concerning the parties and Aria-Vanu Timber Co Ltd are before the court in other proceedings and if the defendants are restrained, they will be prejudiced;
- e) the balance of convenience favours the relief sought not being granted.

Consideration

9. At the outset, the notice of motion of the plaintiff does not contain any reference to the court's jurisdiction to grant the orders sought, and so Order 4 Rule 49(8) *National Court Rules* has not been complied with. The notice of motion should be struck out for being incompetent and for lack of form.

10. As however, counsel for the defendants did not take issue with the competency or form of the motion, I will proceed on the basis that the motion is competent and does not lack form.

11. The principles upon which the court can grant an interlocutory injunction are well settled. The leading authority is a decision of the House of Lords in *American Cyanamid Company v. Ethicon Limited* (1975) AC 396. This case has been followed on many occasions in this jurisdiction and cited with approval by the Supreme Court in *Craftworks Nuigini Pty Ltd v. Allan Mott* (1997) SC 525. These principles have been reaffirmed by the Supreme Court in *Chief Collector of Taxes v. Bougainville Copper Ltd* (2007) SC853.

12. In *Chief Collector of Taxes v. Bougainville Copper Limited* [2007] SC 853, the Supreme Court said at 31:

“In our jurisdiction the principles relevant to injunctive reliefs (sic) are well settled. In Golobadana No. 35 v. Bank of South Pacific, Kandakasi J. ... concluded as follows:

“A reading of these authorities shows consistency or agreement in all of the authorities that the grant of an injunctive relief is an equitable remedy and it is a discretionary matter. The authorities also agree that before there can be a grant of such a relief, the Court must be satisfied that there is a serious question to be determined on the substantive proceedings. This is to ensure that such a relief is granted only in cases where the Court is satisfied that there is a serious question of law or fact raised in the substantive claim. The authorities also agree that the balance of convenience must favour a grant or continuity of such a relief to maintain the status quo. Further, the authorities agree that, if damages could adequately compensate the applicant then an injunctive order should not be granted”.”

13. Similarly, in *Ramu Nico Management (MCC) Limited and Ors v Tarsie and Ors* [2010] SC 1075 at [53], in a decision in which I dissented on matters not currently relevant, I said:

“The law on injunctions is settled in this jurisdiction. Injunction is an equitable remedy. It is a matter for the discretion of the Court to refuse or

grant the relief sought. In order for an injunction to be granted, the applicant must demonstrate to the Court that there is a serious case to be tried on the substantive proceedings. The leading authority is a decision of the House of Lords in “American Cyanamid Company v Ethicon Limited (1975) 1 All ER 594. This case has been followed on many occasions in this jurisdiction and cited with approval by the Supreme Court in Craftworks Niugini Pty Ltd v Allan Mott (1997) SC525 and Chief Collector of Taxes v Bougainville Copper Ltd (2007) SC853.”

14. As I did in *PAC LNG International Ltd v. SPI (208) Ltd* (2014) N5681, I will presume for present purposes only, that the plaintiff has established that it has a serious question to be tried. This is not in any way to be taken that I have formed a view either way on this issue. On the presumption that the plaintiff has a serious question to be tried, the next consideration is whether it would be adequately compensated in damages.

15. If damages would be an adequate remedy then even if there is a serious question to be tried interlocutory injunctive relief should be refused: *Airlines of PNG v. Air Niugini Ltd* (2010) N4047 at 22 and 23 and *PNG Deep Sea Fishing Ltd v. Luke Critten* (2010) SC1126 at 30, *PAC v. SPI (supra)* [24], *Ramu Nico Management (MCC) Ltd v. Tarsie* (2010) SC1075 [53].

16. In this instance, it was submitted on behalf of the plaintiff that amongst others, it is considered that it is arguable that damages are always an adequate remedy in cases involving competing logging contractors. Further, it was submitted that if the status quo was not preserved until the substantive hearing, there is the possibility that the defendants’ efforts will continue and the plaintiff’s legal rights pursuant to the licence and LMA would be in jeopardy.

17. If the plaintiff’s legal rights pursuant to the licence and the LMA are adversely affected by the actions of the defendants, and the plaintiff is successful substantively against the defendants, then in my view, any loss suffered by the plaintiff would be capable of quantification. Consequently, damages would be an adequate remedy. Pursuant to the authority to which I have made reference, this application for interlocutory injunctive relief should be refused. Given this it is not necessary to consider the other

submissions of counsel.

Orders

18.

- a) The relief sought in the notice of motion of the plaintiff filed 27th January 2016 is refused;
- b) The plaintiff shall pay the defendants' costs of and incidental to the said notice of motion;
- c) Time is abridged.

Ashurst Lawyers : *Lawyers for the Plaintiff*
Kandawalyn Lawyers : *Lawyers for the Defendants*