

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. 147 of 2010

BETWEEN : **MATRIX INVESTMENTS LIMITED** a limited liability company having its registered office at HLB Crosbie & Associates, Top Floor, HLB House, Cruickshank Road, Nadi Airport and **WILLIAM ERNEST JAMES CROSBIE** of Nadi, Company Director.

Plaintiffs

AND : **BRETT LLOYD CONNOLLY** of 190 Oraha Road, Kumeu, Auckland 0810, New Zealand.

Defendant

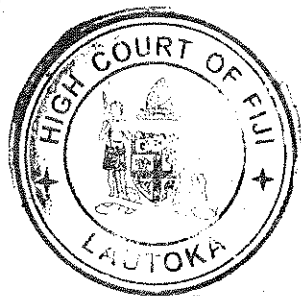
Counsel : K Law Chambers for the Plaintiff
AK Lawyers for the Defendant

DIRECTIONS

1. William Ernst James Crosbie and Brett Lloyd Connolly are co-owners of a property which is legally described as Certificate of Title No. 35990 being Lot 37 on DP 9034 situated at Denarau Island. They each hold one undivided half share in the said property.
2. Crosbie allegedly holds his undivided half interest on trust for the first plaintiff, namely, Matrix Investments Limited (“MIL”). Connolly claims that he does not know of that arrangement but this is neither here nor there as far as the application which is before me now.
3. The Summons which is before me now is the one filed by the defendant on 15 March 2012 seeking the following Orders:
 - (i) that there be an order directing the 2nd plaintiff to sign the necessary Authority from Professional Real Estate Agent at Denarau Island to commence the sale process of the property.
 - (ii) alternatively, that the Deputy Registrar be directed to sign the authority form for and on behalf of the 2nd plaintiff with the Professional Real Estate Agent at Denarau Island.

4. Both plaintiffs also want the property to be sold. However, they do not agree with the idea of engaging Professional Real Estate Agent to be involved in marketing the property.
5. Mohammed Harun, the Managing Director of MIL deposes at paragraphs 10 and 11 of his affidavit sworn on 08 June 2012 that a listing agreement with Professionals Real Estate Agent will allow the Agent to market the said property and supervise any purchase thereafter for a real estate commission fee at 4% of the sale price which is a substantial unnecessary expense. Harun asserts that the property could be sold by private tender.
6. It appears that a sale by private tender had been attempted before but which only attracted one response. That lone response was by none other than the first plaintiff itself who had tendered to purchase the said property at \$831,000, which, understandably, the defendant had problems with.
7. The property, it would appear, has potential to fetch a market price between \$1 million to \$1.5 million dollars or even more. I say that based on the fact that the parties had, in November 2001, entered into an agreement for the sale and purchase of the said property with a Phillip Duncan for a consideration of \$1,150,000. The sale however did not go through because Crosbie's former wife had placed a caveat on the property.
8. The defendant bemoans that loss. He says that, had that sale gotten through, he and the plaintiff would have earned a substantial profit considering that, as at the proposed settlement date with Duncan, the net loan with ANZ stood at a meagre \$556,551.08 compared to the \$1.15 million dollars sale and purchase price.

9. The parties both want out of this arrangement that saw them purchasing the said property as co-owners with equal shares. They had purchased the said property and had built on it in order to rent out the residential unit for investment purposes.
10. However, the commercial aspect of their arrangement has not worked out purely because they have not been able to see eye to eye on a lot of things in terms of the management and accounting of the business expenses and rental income.
11. Perhaps, this is because the Accounting Firm of HLB Crosbie, of which Crosbie is a major partner, has been managing and maintaining the said property and also administers and services the ANZ loan account from the rental income it receives.
12. At the end of the day, both parties want the property to be sold. The only issue is by what mechanism?
13. I think the defendant's application is not unreasonable. The best option in this case is to let a real estate agent who is not conflicted be the agent to market the said property and supervise any purchase thereafter.
14. In that regard, considering the plaintiffs' concerns, I will allow the parties a fortnight to scour the real estate market for an agent who will offer the best competitive commission rate. The parties may liaise with each other in this regard. I will call this case again on **05 December 2016 at 10.30 a.m.** for mention. If the parties are not able to find a competitive real estate agent, I will grant Order in Terms of the defendant's application.



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Anare Tuilevuka
JUDGE
18 November 2016.