

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 241 of 2016

BETWEEN : NAZMEEN NISHA trading as POTLUCK SIGATOKA

Appellant

AND : HANDYMAN'S LIMITED

Respondent

Coram : The Hon. Mr Justice David Alfred

Counsel : Mr A. Singh for the Appellant
Mr N Prasad for the Respondent

Date of Hearing : 29 November 2017
Date of Judgment : 15 December 2017

JUDGMENT

1. This is the Appellant's Notice of Appeal against the order of the Master delivered on 10 August 2017 (Ruling) on the following grounds :
 - (1) The Master failed to consider s.172 of the Land Transfer Act.

- (2) He failed to consider the grant of consent granted by the Director of Lands (Director) to initiate proceedings.
 - (3) He failed to consider that the Appellant had shown cause why he refused to give up possession of the property.
 - (4) He failed to order the cause to be converted into a writ of summons.
2. The Master's Ruling at para 56 stated he found that the Deed of Lease was executed without the prior consent of the Director of Lands and that the Defendant (Appellant) did not have a valid tenancy and even if there were a tenancy it was illegal as it did not have the consent of the Head Lessor, the Director. This failure to comply with s.13 of the State Lands Act (SLA) nullifies the whole Deed ab initio.
 3. At the hearing before me, Counsel for the Appellant submitted that this case was different from the decided cases because here the Director had given the Appellant consent to commence proceedings. This had the effect of taking away the lack of consent. The Master had erred in not taking this into consideration. The matter ought to have been argued and that took it out of the summary proceedings under s.169 of the Land Transfer Act (LTA). The decision in the New World case was not applicable as here the consent to proceed had been given.
 4. Counsel for the Respondent submitted that the requirement under s.13 of the SLA is mandatory. The consent to institute proceedings is not a consent to the lease.
 5. At the conclusion of the arguments I informed I would take time for consideration. I now proceed to deliver my decision.
 6. The pivotal issue is the Director's consent. S.13 of the SLA is quite clear in its wording, and I shall paraphrase the relevant parts thereof as follows: It is not lawful for the lessee of any protected lease to alienate or deal with the land comprised in the lease whether by sale, transfer or sublease "without the written consent of the Director of Lands, first had and

obtained," nor except with the written consent of the Director shall any such lease be dealt with by any court of law.

7. The Lease No. 19425 states on its face that it is a protected lease. The words of s.13 SLA show 2 situations are contemplated by the legislature. The first is that the prior written consent of the Director was to be obtained before a sublease can be given. The second is the Director's written consent is required before any such lease can be dealt with by any court. In my opinion these are 2 separate and different situations.
8. The letter of the Director to the Appellant's solicitors dated 23 November 2016 quite unequivocally states that only consent to initiate legal proceedings was granted.
9. The requirement for the Director's written consent (under s.13) to a sublease is a prior requirement. In other words it is a sine qua non which the Oxford Advanced Dictionary of Current English defines as "condition or qualification that cannot be done without".
10. Consequently it can be seen with blinding clarity that a consent to initiate proceedings given on 23 November 2016 could never be tantamount to a prior consent to a Deed of Lease (Deed) dated 25 May 2015 (1½ years earlier) between the Respondent and the Appellant. It is further to be noted that clause 15 of the Deed states that "This lease agreement is subject to the prior consent of the Director of Lands". This makes it crystal clear that it was clearly in the contemplation and knowledge of the Appellant and the Respondent that the Director's prior consent was a condition precedent to the lease. The Appellant has from all the evidence before the Court, accepted that the Director's prior consent to the sub-lease was never obtained. On this ground alone the Appellant's appeal and case collapses and it is therefore not necessary for the Court to consider any other ground of appeal.
11. I am fortified in my decision by the decision of the Supreme Court in *New World Ltd and Vanualevu Hardware (Fiji) Ltd and Bashir Khan* : Civil Petition No : CBV 0004.2016.

12. In the result I uphold the Master's Ruling and dismiss this Appeal with costs summarily assessed at \$750 to be paid by the Appellant to the Respondent.

Delivered at Suva this 15th day of December 2017.



David Alfred
JUDGE
High Court of Fiji