

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

CIVIL ACTION NO.: HBC 286 OF 2014

BETWEEN : ARON ADARSH JIBARATNAM and PREMINA SINGH
PLAINTIFFS

AND : GAYA PRASAD aka GAYA PRASAD CHOTU
DEFENDANT

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr S Singh [Shelvin Singh Lawyers]
DEFENDANT : Mr S Kumar [Sunil Kumar Esquires]
RULING OF : Acting Master Ms Vandhana Lal
DELIVERED ON : 29 May 2019

JUDGMENT

[Variation of the Caveat Extension Order]

Application

1. Application on 26 April 2018 the Plaintiff's solicitors filed a summons seeking following orders:
 - a. *That Caveat No. 802558 extended by the High Court of Fiji be removed by the Registrar of Titles on the day of presentation of a form of transfer of the property being Certificate of title No. 8412 to the Plaintiffs in terms of the orders made by the Master of the High Court on 27 July 2015 and 19 July 2016.*

In support of the application an Affidavit by Aron Adarsh Jivaratnam was filed.

2. Said application is opposed and the Defendant via its solicitors filed an Affidavit by Pratima Devi.

The Plaintiff chose not to file a reply to the said affidavit. Counsel informed the Court of this on 31 July 2018.

Order of 27 July 2015 and 19 July 2016

3. My Predecessor on 27 July 2015 heard Mr Singh Counsel for the Plaintiff on their application dated 22 July 2015. This was an ex-parte Motion for leave to enter a Default Judgment.
4. The Plaintiff earlier on 13 October 2014 filed a Writ of Summons seeking order for:
 - a. *Specific Performance of a written agreement between the Plaintiffs and the Defendant made on 22 April 2014, for the sale by the Defendant to the Plaintiffs of the Defendant's freehold property comprised and described in Certificate of Title No. 8412 being Lot 3 on DP 1995;*
 - b. *Further or alternatively, an injunction restraining the Defendant whether by his servants, agents or howsoever from dealing with the property comprised and described in Certificate of Title No. 8413 being Lot 3 on DP No. 1995 until further orders of this Court;*
 - c. *Further or alternatively, damage for breach of contract;*
 - d. *Such further or other relief as to this Honourable Court seems fit and proper;*
 - e. *Costs of and incidental to this action.*

The writ was served [via a Court's order for substitute serve through advertisement] and an Affidavit of Service filed on 01 June 2015.

5. Upon hearing Mr Singh on the Plaintiffs' application filed on 22 July 2015, My Predecessor made following orders:
 - a. *Specific Performance of a written agreement between the Plaintiffs and the Defendant made on 22 April 2014, for the sale by the Defendant to the Plaintiffs of the Defendant's freehold property comprised and described in Certificate of Title No. 8412 being Lot 3 on DP 1995;*
 - b. *Further or alternatively, damage for breach of contract;*
 - c. *Costs of and incidental to this action.*
6. Later the Plaintiff on 23 September 2015 made an application seeking further directions:
 - a. *Within 14 days of service of this Order, the Defendant make an application to Fiji Islands Revenue and Customs Authority for a Capital Gains Tax Clearance Certificate as required under the Capital Gain Decree 2011 and provide such clearance to the Plaintiff's solicitors;*

- b. *If the Defendant fails to procure a Capital Gain Tax Clearance Certificate, the Chief Registrar do make such application on behalf of the Defendant and provide a copy of the certificate to the Plaintiffs solicitors;*
- c. *Within 21 days of service of this Order, the Registrar of Titles cancel duplicate Certificate of Title No. 8413 being Lot 3 On Deposited Plan No. 1995 in the possession of the Defendant and issue a new duplicate for Certificate of Title No. 8413 being Lot 3 on Deposited Plan No. 1995 and deliver the same to the Plaintiffs' solicitors Messrs Shelvin Singh Lawyers to be held by them in trust pending settlement of the transfer of the said property;*
- d. *Upon the Instrument of Transfer, the original Capital Gains Tax clearance certificate and the duplicate Certificate of Title No. 8413 being issued to the Plaintiff under paragraph 3 of this Order being lodged at the Registrar of Titles office for registration with the Westpac Banking Corporation Limited Mortgage, the full sale proceeds of \$360, 000 be deposited into Court by the Plaintiffs;*
- e. *Any capital gains tax payable to Fiji Islands Revenue and Customs Authority to be paid by the Chief Registrar of the High Court;*
- f. *The Plaintiffs costs of this action be paid by the Chief Registrar from the funds held by him assessed on a full indemnity basis;*
- g. *The Defendant be at liberty to make an application to the Chief Registrar to retrieve the net sale proceeds.*

Said application was made under Section 168 of the Land Transfer Act.

- 7. The Defendant on 8 April 2016 filed an application seeking orders:
 - a. That the orders made on 27 July 2015 be set aside and/or stayed.
- 8. These two applications were heard by my predecessor and later determined on 19 July 2016.

Following orders were made:

- i. *The Defendants application seeking an order to set aside the orders of 27 July 2015 is hereby dismissed;*
- ii. *The Plaintiffs' summons filed on 23 September 2015 seeking further directions is hereby granted in terms of prayers numbered 1 to 7 inclusive.*

- iii. *The Defendant must comply with all the direction therein within the next 21 days to allow for the property transfer to be effected without any hindrance and obstruction;*
- iv. *I order costs against the Defendant summarily assessed at \$750 to be paid within 21 days.*

Caveat No. 802558.

9. On 18 March 2016 the Plaintiff's Counsel filed a Summon seeking orders that:
- a. *That Caveat No. 802558 dated lodged by the Plaintiffs against the title to the land comprised in Certificate of Title No. 8413 being Lot 3 on Deposited Plan No. 1995 with the Registrar of Titles, the land of Defendant be extended beyond the 21 day period mentioned in the Notice dated 02 March 2015 issued by the Registrar of Titles for the removal of the said Caveat and received by the Plaintiffs on 11 March 2016;*
 - b. *Further or alternatively, for an interim injunction restraining the Defendants whether by their servants, agents or howsoever from dealing with the property comprised and described in Certificate of Title No. 8413 being Lot 3 on Deposited Plan No. 1995 until further orders of this Court;*
10. My Predecessor on 31 March 2016 by Consent of the Defendant's solicitor made orders that:
- a. *That Caveat No. 802558 dated lodged by the Plaintiffs against the title to the land comprised in Certificate of Title No. 8413 being Lot 3 on Deposited Plan No. 1995 with the Registrar of Titles, the land of the Defendant be extended beyond the 21 day period mentioned in the Notice dated 02 March 2015 issued by the Plaintiffs on 11 March 2016 until 6 April 2016.*

Basis of the Current Application.

11. According to the Plaintiff, My Predecessor had on 26 April 2016 extended Caveat No. 802558 until further orders of the court.

There is no stay granted by the High Court on the Judgment by Default obtained by the Plaintiff on 21 July 2015 or of the orders of 19 July 2016.

The Plaintiff has now enforced the orders of 19 July 2016 and has obtained a fresh (provisional) title from the Registrar of Titles Office.

His lawyers are working on obtaining a Capital Gains Tax Clearance Certificate. Further his bankers have renewed his loan offer letters and he is in a position to settle the transfer in terms of the orders of 19 July 2016 immediately.

Caveat No. 802558 was lodged by the Plaintiffs to protect their interest as purchasers under the sale and purchase agreement to purchase the property from the Defendant.

The First Plaintiff has made enquiries with the Registrar of Titles and has been informed that the caveat needs to be removed prior to or at the time of settlement so that the property transfer can be registered in the name of the Plaintiffs.

The Plaintiffs pray that until the property is settled and monies paid to the Chief Registrar, the caveat be maintained in its present form. Once transfer is ready to be lodged and is lodged with all the documents required by the Registrar of Titles, the Caveat be discharged and removed so that the transfer can be effected.

Opposition by Defendant.

12. According to the Defendant, there is an application for stay of the Judgment of Brito J. delivered on 14 October 2016 and judgment of the Learned Master dated 19 July 2016 be stayed pending hearing of the appeal. This was scheduled for hearing on 5 June 2018.
13. If the Plaintiff is allowed to proceed, the Defendants appeal will be nugatory and there will be denial of natural justice.

Determination

14. Caveat No. 802558 was lodged by the Plaintiffs to protect their interest as purchasers under the sale and purchase agreement to purchase the property from the Defendant. It was never placed to protect the interest of the Defendant.
15. There is no caveat by the Defendant or any order for stay on the orders pending appeal by the Court of Appeal on the Defendant's appeal.
16. In the circumstances I find that orders should be granted on the Plaintiffs application dated 26 April 2018 that is:
 - a. *That Caveat No. 802558 extended by the High Court of Fiji be removed by the Registrar of Titles on the day of presentation of a form of transfer of the property being Certificate of title No. 8412 to the Plaintiffs in terms of the orders made by the Master of the High Court on 27 July 2015 and 19 July 2016.*

Orders are made to the effect.

17. Parties are to bear own costs for this application.



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 Vandhana Lal [Ms]
 Acting Master
 At Suva.