

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No.169 of 2023**

**BETWEEN:**           **SOQULU PROPERTIES PTE LTD** having its registered office at Pamesitoni Farm, Tabua Place, Soqulu, Taveuni in the Republic of Fiji.

**PLAINTIFF**

**AND:**                   **COLLINS (FIJI) PTE LTD** having its registered office at Garden Island Resort, Coastal Road, Waiyevo, Taveuni in the Republic of Fiji.

**DEFENDANT**

**Before:**               Honourable Mr. Justice Deepthi Amartunga

**Counsel:**             Mr. Solanki B. for the Plaintiff  
Mr. Prasad N. and Ms. Verma P. for the Defendant

**Date of Hearing:**    19 February 2024(9.30 am)

**Date of Judgment:** 19 February 2024 (4.00pm)

**JUDGMENT**

## INTRODUCTION

- [1] Plaintiff filed originating summons in terms of section 109(2) of Land Transfer Act 1971 seeking removal of Caveat No 910117. Defendant filed an affidavit in opposition by Lebaa Lili Tagici as Director or General Manager of Defendant.
- [2] It is also an admitted fact that Defendant had already filed a writ of summons in relation to alleged interest stated in the Caveat, and this action is also pending in this court.
- [3] This matter was fixed for hearing today. Plaintiff within action filed summons on 29 .1. 2024 seeking the following orders:
- a) pursuant to Order 28 Rule 5(4) of the Rules of the High Court 1988 (HCR), an order that Leba Pareti, also known as Leba Lili Tagici, attend the hearing of this proceeding fixed for 19 February 2024 at 9:30am for the purpose of being cross-examined on the evidence adduced by her in the affidavit sworn by her on 1 August 2023 (***Ms Pareti's Affidavit***);
  - b) The Defendant produce to the Plaintiff the legal advice provided to it by its solicitors Mitchell Keil as referred to in paragraph 17 of Ms Pareti's Affidavit.
- [4] Defendant is objecting to this application. So both parties made oral submissions before the commencement of hearing of originating summons. Plaintiff also filed a written submissions.
- [5] In the written submission plaintiff had referred to paragraphs 7,8,10,13,14, and 17 in the affidavit in opposition. These paragraphs are yet to be replied by Plaintiff. They will be dealt in detail later. Plaintiff seeks to cross examine Leba Lili relating to said paragraphs.
- [6] Plaintiff had not adduced material to exercise discretion granted in terms of Order 28 rule 5(4) of HCR in their favour. Caveat is a statutory injunction and the removal of it also statutorily laid down, hence originating summons filed.

[7] So in reality this is originating summons in the nature of interlocutory relief seeking removal of a caveat. So it is not customary to allow 'mini trials' with viva voce evidence unless exceptional reasons are shown. Plaintiff had not shown such special reasons and the application is refused. As Plaintiff had not replied to the affidavit in opposition time granted to file an affidavit in reply before re-fixing for hearing. The request for legal advice is refused.

### **ANALYSIS**

[8] Section 28 rule 5(4) of HCR states

*“Without prejudice to the generality of paragraph (2), and subject to paragraph (3), the Court may give directions as to the filing of evidence and as to the attendance of deponents for cross-examination and any directions which it could give under order 25 if the cause or matter had been begun by writ and the summons were a summons for directions under that order.”*

[9] Plaintiff wishes to test in cross-examination the following paragraphs and reasons are also given along with said paragraphs.

(a) the nature and terms of the agreement referred to in paragraph 7 of her affidavit.

According to said paragraph ownership of titles covered in caveat were to be held in short term by Plaintiff till Defendant was duly incorporated to sell land in Fiji under Land Sale Act 1974. This is a matter that can be replied by Plaintiff without further cross examination.

(b) the payment of the purchase price as referred to in paragraph 8 of her affidavit;

Again this is a matter that can be replied by Plaintiff without further evidence being adduced by Defendant.

(c) the nature and terms of the agreement referred in paragraph 10 of her affidavit;

This paragraph had referred some verbal communications and also annexed number of email communications to support. These are sufficient to reply if needs to do so. Without replying Plaintiff cannot speculate and seek order to cross examine.

(d) the payment of "all of the litigation costs of the" Court Actions as referred to in paragraph 13 of her affidavit.

Defendant in said paragraph stated the payment of litigation cost. What is the relevancy of said payment for this application? Why it needs cross examination? Without some cogent reason cross examination on an affidavit is not allowed in interlocutory matters such as removal or extension of caveats.

(e) the consequences of the Loan Agreement (as that capitalised term is defined in her affidavit) as referred to in paragraph 14 of her affidavit. The Loan agreement is annexed to the affidavit in opposition and what is meant by 'consequences' not clear and how it is relevant is also vague.

(f) the nature of the "beneficial interest" referred to in paragraph 17 of her affidavit.

Defendant had already filed writ of summons regarding titles covered under the Caveat and there is no need to cross examine the Defendant in this aspect for Plaintiff. It is the Defendant who needs to establish a caveatable interest. So the burden is with Defendant.

[10] The hearing fixed for today in this proceeding to hear the application made by the Plaintiff in the originating process in this proceeding, namely the Originating Summons filed on 5 6. 2023. Though originating process applied in terms of statutory provisions the nature of the application is interlocutory and final rights cannot be determined in this originating summons seeking removal of caveat. The process adopted is originating summons but that is not determinant of the final rights of the parties relating to lands contained in the caveat. This will be done in due course by way of writ of summons filed by Plaintiff through oral evidence.

[11] The procedure under Land Transfer Act 1971 states that 'summons' be issued for removal of caveat in order to show cause caveator. This is not a final relief as final relief should be determination of unregistered interest claimed in the caveat.

[12] Caveator gives third parties a notice to an interest in the land and it also acts as statutory injunction to restrain registrations of free title. So the burden is with the caveator to show a caveatable interest in the lands covered in the Caveat. Plaintiff is seeking removal of the caveat and unless there are special circumstances no viva voce evidence adduced at hearing of the 'summons' seeking removal in terms of Section 109(2) of Land Transfer Act 1971.

[13] Defendant acknowledged that Courts, do not generally allow the cross-examination of a deponent of an affidavit filed in support of an interlocutory application. According to Plaintiff this is not an interlocutory application as it is filed by way of originating summons. This cannot be accepted for reasons given earlier. Removal of caveat in terms of Section 109(2) of Land Transfer Act is analogous to removal of injunction as Caveat is a statutory injunction. Hence it needs to be treated as 'interlocutory' for adducing evidence. If not its utility will be lost.

[14] So there is no right to cross examine deponent of affidavit in opposition. In the exercise of discretion there are no special grounds to allow such a method.

#### **Application for order in relation to disclosure of legal advice**

[15] Plaintiff has not shown how it can seek a privilege communication. It is triable law and needs no elaboration see **Three River District Council and others V Governor and Capital of Bank of England** (2005) 4 ALL ER 948.

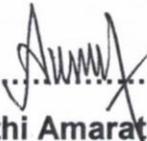
#### **CONCLUSION**

[16] Application for cross examine the deponent of affidavit in opposition is refused. Request for legal advice opposing party cannot be obtained as they are privileged communications.

**FINAL ORDERS**

- a. Summons filed on 29.01.2024 struck off.
- b. No order as to cost.



  
.....  
**Deepthi Amaratunga**  
**Judge**

**At Suva** this 19<sup>th</sup> day of February, 2024.

**Solicitors:**

**Solanki Lawyers**

**Mitchell Keil**