

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HPP 12 of 2023

BETWEEN: **SHEBA DEBORAH BULMAN** of Lot 3 Koroitamana Road, Votualevu,
Nadi, Company Director.

PLAINTIFF

AND: **DEBORAH JOY WOOD** of Sydney, Australia.

1st DEFENDANT

AND: **CHARLOTTE WOOD** and **TAYLOR WOOD** both of Sydney, Australia.

2nd DEFENDANT

AND: **REGISTRAR OF BIRTHS, DEATH, AND MARRIAGES**

3rd DEFENDANT

AND: **THE ATTORNEY GENERAL OF FIJI**

4TH DEFENDANT

Before: Mr. Justice Deepthi Amaratunga

Counsel: Ms. Nettles V S for the Plaintiff

Mr. Sharma V. V. for the 1st and 2nd Defendants

Mr. Manueli J. for the 3rd and 4th Defendants

Date of Hearing: 28.02.2024

Date of Judgment: 7.3.2024

JUDGMENT

INTRODUCTION

- [1] Plaintiff by way of originating summons sought a declaration that she was the *de facto* partner of late Geoffrey John Wood,(Deceased) in terms of Section 7 of Succession Probate and Administration Act 1970. First and second Defendants are late Geoffrey John Wood's widow and children. Both Plaintiff and deceased are foreign nationals and they had met for the first time in early 2019 and had lived together for over three years. On 3.9.2019 first Defendant and Deceased had obtained orders in the Family Court of Australia at Sydney in terms of Section 81 Family Law Act 1975 of Australia, read with Part 10.4 of the Family Law Rules regarding finance of parties. There was no divorce hence first Defendant is the widow of the Deceased at the time of death.
- [2] According to Plaintiff since late 2019, Deceased and she had lived in *de facto* relationship and their relationship was known to first and second Defendants who had called her as 'girlfriend' in email correspondences
- [3] Deceased had allowed even his personal credit card to be used by Plaintiff and from the evidence presented they were in a *de facto* relationship for over three years. They had also started their respective business investment in one location and they had also lived together in the same location indicating interdependence and financial support. When the deceased was in hospital Plaintiff had taken care of the Deceased. Only first named second Defendant had visited the Deceased for three years he was in Fiji and first Defendant had not visited even once.
- [4] Deceased had even stated Plaintiff as '*de facto*' partner for an official purpose to a statutory body indicating Plaintiff and Deceased were in a *de facto* relationship according to deceased prior to his demise. Since the Deceased had considered Plaintiff as *de facto* partner and both of them had worked together for that purpose sharing financial and other obligations.

FACTS AND ANALYSIS

- [5] Deceased had arrived to Fiji in 2019 as an investor and Plaintiff had also arrived as an investor had they had met each other in Fiji and then started a relationship. According to Plaintiff even daughter of the Deceased had visited while she was living with the Deceased as *de facto* partner for three months.

- [6] The daughter of the Deceased had not provided an affidavit denying this fact and there were correspondence through electronic messages between Plaintiff and first named second Defendant, who is the daughter of the Deceased. From the correspondences it is proved that they had good relationship. This is in contrast to the communications with first Defendant.
- [7] First Defendant who was the wife of Deceased had also filed proceedings in Family Court of Australia an application in terms of Section 81 of Family Law Act of Australia, and consent orders were entered.
- [8] Plaintiff in her amended affidavit at paragraph 38 stated that the Deceased and first Defendant were separated on or around 2018. This fact was denied by first Defendant and according to her she and Deceased were neither separated nor divorced. The burden of proof of such a fact was with the party who was alleging as it benefits her. There was no evidence to support separation and or divorce of the marriage between the Deceased and first Defendant.
- [9] According to Plaintiff she had lived with the Deceased as *de facto* partner since 2019 till his demise on 22.11.2022. This is a considerable time period and if there were any orders as to separation or divorce such facts must have been available with the Plaintiff and or the Deceased.
- [10] Plaintiff was able to produce consent orders obtained in Australia regarding some properties. This was presumably given by the Deceased to Plaintiff before his death. If so why she could not produce more important decree of divorce or an order for separation in order to support her allegation was not explained. This only proves absence of such orders on the balance of probability. So there is no proof of the allegation of a divorce or separation between the Deceased and first Defendant. First Defendant was the legally married to the Deceased at the time of death on 22.11.2022, when he died.
- [11] Plaintiff also relied on Clause 15 of consent orders terms of the Family Law Act of Australia which reads;
- ‘15.The except as specifically provided for by any paragraph comprising these orders to the contrary, as against the wife, the husband is declared the sole legal and beneficial owner of and wife has no interest in ;

- (a) The husband's self-managed superannuation;
- (b) The husband's bank account;
- (c) The husband's personal belongings, furnishings and motor vehicles; and
- (d) All other property and financial resources of any nature and kind in the possession or control of the husband at the date of making these orders and in the future.'

[12] In terms of said consent orders clause 22 stated that the consent orders were made in terms of Section 81 of Family Law Act. Said provision comes under 'Part VIII—Property, spousal maintenance and maintenance agreements' in terms of Australian, Family Law Act 1975. Section 81 of the same Act deals with 'Duty of the Court to end financial relations'. So the above clause 15 cannot be taken out of its context to prove a non-existent divorce or separation. It is confined to end financial relations and not the end of civil union between them.

[13] So the consent orders made by the Registrar of Family Court Australia at Sydney in terms of Family Law Act 1975 of Australia, cannot be applied to inheritance in terms of Succession Probate and Administration Act 1970 of Fiji.

[14] This application is made in terms of Section 7 of Succession Probate and Administration Act 1970, which reads,

“7. The court may grant administration of the estate of a person dying intestate to the following persons (separately or **conjointly**) being not less than 18 years of age-

- (a) The wife or husband of de facto partner of the deceased ;
- (b)

[15] Section 6 and 7 of Succession Probate and Administration Act 1970 allows a *de facto* partner to make an application for a grant to administer the estate of the Deceased.

[16] Plaintiff seeks a declaration that she is *de facto* partner of the Deceased in the light of the above provisions.

[17] “*De facto* partner means a person in a *de facto* relationship” in terms of Section 2 of Succession Probate and Administration Act 1970.

[18] According to the same provision “*De facto* relationship means a relationship between a man and a woman who are at least 18 years of age and , although not legally married to each other , have lived with each other as **spouse on a genuine domestic basis** for

- a. A period of more than 3 years ; or
- b. A period of less than 3 years; provided
 - i. The relationship has resulted the birth or adoption of a child ;
or
 - ii. The court , having regard in the birth or adoption of a child ;
or the Family Law Act 2003, **considers it just to treat the relationship as a de facto relationship;**”(emphasis added)

[19] So having considered all the circumstances court can determine that it is ‘just to treat the relationship as a *de facto* relationship’.

[20] Family Law Act 2003 in Section 154 A states the factors for determination of *de facto* relationship. It reads;

“154A In determining whether 2 persons are in a de facto relationship, all the circumstances of the relationship are to be taken into account, including but not limited to the following as may be relevant in a particular case—

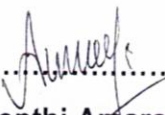
- (a) the duration of the relationship;*
- (b) the nature and extent of common residence;*
- (c) whether or not a sexual relationship exists;*
- (d) the degree of financial dependence or interdependence and arrangements for financial support between the parties;*
- (e) the ownership, use and acquisition of property;*
- (f) the degree of mutual commitment to a shared life;*
- (g) the care and support of children, if any;*
- (h) the performance of household duties; and*
- (i) the reputation and public aspects of the relationship”*

- [21] According to Plaintiff she was living with the Deceased and first and second Defendants were aware of the relationship. She had produced electronic communications including messages from first and second Defendants.
- [22] Though the deceased was setting up a business in Fiji, neither his wife nor children were involved in the said investment. They were aware of the Plaintiff and had referred to her as 'girlfriend' of the Deceased. First Defendant had now changed this position in her affidavit and state that Plaintiff was an accountant for the business venture of the Deceased but there was no such evidence hence cannot be accepted.
- [23] Both Plaintiff and first Defendant had attended the funeral service that was held in Fiji and even both had portions of ash of the Deceased.
- [24] First Defendant never visited Fiji for three years until the demise of her husband and their communications submitted show that she did not want to come to Fiji or be a part of his business either here or in Australia.
- [25] First Defendant was able to come to Fiji after death of her husband within a short period of time after she was informed about the death by Plaintiff.
- [26] Plaintiff had a very close relationship with the Deceased and this is evidenced from numerous photographic as well as other evidence produced in her affidavit in support.
- [27] The Deceased had even allowed his personal credit card to be used by Plaintiff and had supported each other in their domestic as well as in business relations.
- [28] The Deceased had even allowed his personal vehicle to be registered by Plaintiff as 'de facto wife' and communicated to the authority that deals with vehicle registration.
- [29] All the evidence supports that Plaintiff and the Deceased had a de facto relationship at the time of death.
- [30] Plaintiff in this action seeks an order to third Defendant to release death certificate of the Deceased to her. According to Registrar of Birth, Death and Marriages there is an administrative prohibition for that. I do not wish to state

anything on that prohibition in the exercise of probate jurisdiction. In order to work a pragmatic solution an order is made to issue the certificate of death to Deputy Registrar upon payment of fees for the use by Probate Registry for the grant of letters of administration.

FINAL ORDERS

- a. A declaration is made that Plaintiff was the *de facto* partner of late Geoffrey John Wood.
- b. Plaintiff along with widow of late Geoffrey John Wood (First Defendant) are entitled to obtain letters of administration in terms of Section 7 of Succession Probate and Administration Act 1970 upon making applications to Probate Registry.
- c. If first Defendant fails to make an application to Probate registry within two months (i.e. 6.5.2024) to obtain a grant, Deputy Registrar of High Court, Suva is directed to make an application for a copy of death certificate from Registrar of Birth Death and Marriages for death certificate of late Geoffrey John Wood. Plaintiff to provide necessary details and or fees for that.
- d. The death certificate of late Geoffrey John Wood obtained above is to be used for application for grant of letters of administration by Plaintiff.
- e. No order as to costs.


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Deepthi Amaratunga
Judge



At Suva this 07th day of March, 2024.

Solicitors:
ALPHA Legal
Vijay Naidu & Associates
Attorney-General Chambers