

IN THE HIGH COURT OF FIJI AT LAUTOKA

CIVIL JURISDICTION

Civil Action No. HBC 101 of 2020

BETWEEN

YATISH YOGENDRA NATH of Sabeto, Nadi, Supervisor.

PLAINTIFF

AND

VISHWA PILLAY as Administrator of the Estate of Muttusami Pillay of  
Sabeto, Nadi.

FIRST DEFENDANT

AND

NAVINESH CHETTY and VIKASHNI REDDY both of Nacovi, Nadi,  
Carpenter and Housekeeper respectively.

SECOND DEFENDANTS

Counsel

: Ms. Prasad P for the Plaintiff  
Mr. Charan P. for the 1<sup>st</sup> defendant

Date of Hearing : 22<sup>nd</sup> March 2024

Date of Ruling : 09<sup>th</sup> April 2024

## **RULING**

*(On an Application for Injunctions)*

[1] The plaintiff instituted these proceedings against the defendants seeking the following reliefs.

- (a) That the 2<sup>nd</sup> defendants' title be impeached on the ground of fraud and the Registrar of Titles be ordered to transfer the said lot to the plaintiff.
- (b) That the Registrar of Titles cancels registration dated 11<sup>th</sup> February 2020 and substitute the plaintiff's name on the title as registered proprietor.
- (c) Such other orders as the court deems just.

In the alternative the plaintiff claims as follows;

- i. Sum of \$20,200.00 paid to the 1<sup>st</sup> defendant being paid purchase price plus \$2,000.00 paid for the crown land rental together with interest from the date of payment to the date of judgment and/or execution.
- ii. Sum of \$55,000.00 being the value and price of the plaintiff's property as the date of sale to the 2<sup>nd</sup> defendants together with interest from the date of writ.
- iii. Costs of this action on solicitor client indemnity basis.
- iv. General damages for breach of contract.
- v. Such further and other orders as the Honourable Court deems just and equitable.

[2] The subject matter of this action is a part of Crown Lease being Lot 7 ND 5080 LD Ref. 4/7/2091 consisting 1007 square meters.

[3] The plaintiff on 08<sup>th</sup> January 2024 filed an Ex-parte Notice of Motion which was made inter-partes by the court seeking the following injunctive orders:

1. An interim injunction order restraining the defendants either jointly or severally by themselves, their servants, agents or attorneys from dealing with, developing, constructing, leasing, transferring, selling, alienating or otherwise disposing of land comprised in Crown Lease No. 21609 being Lot 2 on SO 7550, Nakorokoro (part of) formally on Lot 7 ND 5080 pending the hearing of this injunction application;
2. An interim injunction order restraining the defendants either jointly or severally by themselves, their servants, agents or attorneys from damaging the dwelling comprised in Crown Lease No. 21609 being Lot 2 on SO 7550, Nakorokoro (part of) formally on Lot 7 ND 5080 and further restraining from constructing and/or renovating on the dwelling pending the hearing of the substantive action;
3. Costs of this action on a solicitor/client basis; and
4. Such further and other order(s) that this Honourable Court may deem fit, just, expedient and necessary in the circumstances.

[4] The 1<sup>st</sup> defendant as the trustee of Crown Lease No. 20293, Lot 7 ND 5080 obtained the consent from the Director of Lands to subdivide it to 9 separate residential allotments for sale. The plaintiff entered into a sale and purchase agreement with the 1<sup>st</sup> defendant to purchase State Lease No. 21609, Lot 2 on SO 7550, Nakorokoro (part of) formally on Lot 7 ND 5080 having an area of 1007 sqm. The sale and purchase agreement was varied twice by reducing the land area from 1007sqm to 850 sqm and the price from \$20,000.00 to \$18,200.00 which the plaintiff had paid in full.

[5] On 20<sup>th</sup> April 2019 the plaintiff instituted the civil action No. 213 of 2019 seeking specific performance of the sale and purchase agreement, however, on 04<sup>th</sup> November 2019 the 1<sup>st</sup> defendant had executed a transfer to the 2<sup>nd</sup> named defendant. On 10<sup>th</sup> December 2023 the plaintiff had discovered that the 2<sup>nd</sup> named defendant started to demolish the two-bedroom dwelling the plaintiff constructed on the property.

[6] Injunction is an equitable remedy granted at the discretion of the court. The power which the court possesses to grant injunctions should be cautiously exercised only on clear and satisfactory grounds. An application for injunction is an appeal to an extraordinary power of the court and the applicant is bound to make out a case showing clearly a necessity of its exercise.

[7] In **Hubbard & Another v Vosper & Another** [1972] 2 Q.B. 84 Lord Denning said:

In considering whether to grant an interlocutory injunction, the right course for a judge is to look at the whole case. He must have regard not only to the strength of the claim but also the strength of the defence, and then decide what is best to be done. Sometimes it is best to grant an injunction so as to maintain the status quo until the trial. At other times it is best not to impose a restraint upon the defendant but leave him free to go ahead. .... The remedy by interlocutory injunction is so useful that it should be kept flexible and discretionary. It must not be made the subject of strict rules.

[8] Interim injunction is a relief that cannot be granted solely or independently without any final or substantive relief. A party who has not sought any substantive relief has no right in law to seek an interim injunction, as it cannot be a relief by itself but is only a mechanism to assist and protect final relief.

[9] **American Cyanamid Co. v Ethicon Ltd** [1975] 2 W.L.R. 316, [1975] A.C. 396

In this case Lord Diplock laid down certain guidelines for the courts to consider in deciding whether to grant or refuse an interim injunction which are still regarded as the leading source of the law on interim injunctions. They are:

- (i) Whether there is a **serious question to be tried** at the hearing of the substantive matter;
- (ii) Whether the party seeking an injunction will suffer irreparable harm if the injunction is denied, that is whether he could be **adequately compensated by an award of damages** as a result of the defendant continuing to do what was sought to be enjoined; and
- (iii) In whose favour the **balance of convenience** lie if the injunction is granted or refused.

[10] The plaintiff's claim is based on a constructive trust created between him and the 1<sup>st</sup> defendant pursuant to the sale and purchase agreement entered into between them.

[11] In paragraph 4 of the sale and purchase agreement it has been agreed:

Possession of the property is given to the Purchaser upon execution hereof. The Vendor allows the purchaser to construct a dwelling house on the said lot for occupation by the purchaser. The parties are aware that the consent of the Director of Lands has not been obtained to such development and the parties understand that this agreement is not enforceable in court of law. The parties are entering into this agreement on their own free will and have been explained their legal rights by the solicitor.

[12] It is therefore clear that the plaintiff was aware that there was no legally enforceable agreement to create a constructive trust between him and the 1<sup>st</sup>

defendant. However, he instituted these proceedings seeking orders based on a constructive trust.


[13] The plaintiff also claims damages and for the refund of the amount he paid to the 1<sup>st</sup> defendant for the purchase of the land. Considering the illegality of the sale and purchase agreement this court is of the view that the only remedy available for the plaintiff is damages. If the damages are an adequate remedy interim injunctions are generally not granted.

[14] For the above reasons the court makes the following orders.

### ORDERS

1. Orders sought in the Amended inter-partes notice of motion filed on 19.03.2024 are refused.
2. There will be no order for costs.



  
Lyone Seneviratne  
JUDGE