

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

Civil Action No. **HBC 244** of 2020

**BETWEEN:**           **ANWAR & ANWAR PARADISE PROPERTIES PTE LIMITED** a duly registered limited liability company having its registered office at Nadi Back Road, Nadi.

**PLAINTIFF**

**AND:**               **A PLUS INVESTMENT PTE LIMITED** a limited company located at C/- Sherani & Co., Harifam Centre, Greig Street, Suva.

**DEFENDANT**

**BEFORE**        **:**       **Hon. Justice Vishwa Datt Sharma**

**COUNSEL:**       **Mr. Pal A. with Ms. Prasad E. for the Plaintiff**

**Mr. Faktaufon with Ms. Tosokiwai o/i of Vosorogo Lawyers for the Defendant**

**DATE OF JUDGMENT:**       **07<sup>th</sup> August, 2024**

**JUDGMENT**

*[Originating Summons seeking transfer of property, Removal of Caveat, Payment of a sum of money, Capital Gain Tax, Handing over of Duplicate Original Title, Issue of Duplicate Title and Payment of Interest]*

## **Introduction**

- (1) The Plaintiff filed an originating summons on 18<sup>th</sup> August 2020 and sought for the following orders:
1. An Order that the property comprised of Title No. 8048 being Lot 2 on DP 1820 be transferred from the Defendant to the Plaintiff at 12pm on the 21<sup>st</sup> day after this Order and the Registrar of Titles to register the transfer of the said Property upon the presentation of this Order onto the Registrar of Titles.
  2. An Order that the Caveat No. 888532 registered against the Property by the Plaintiff be removed at 12pm on the 21<sup>st</sup> day after this Order;
  3. An Order that the Plaintiff pay into the High Court the sum FJD 1,100,000.00 (One Million and one hundred thousand dollars) on the 21<sup>st</sup> day after this Order;
  4. An Order that the sum of FJD 1,100,000.00 (One million and one hundred thousand dollars) be released by the High Court to the Defendant upon the Defendant presenting to the High Court a Capital Gains Tax Clearance Certificate obtained from the Fiji Revenue and Customs Service obtained in relation to the Property;
  5. An Order that the Defendant handover to the Plaintiff the Duplicate Original Title of Certificate of Title No. 8048 being Lot 2 on DP 1820 at the office of the Registrar of Titles at 12pm on the 21<sup>st</sup> day after this Order;
  6. In the event that the Defendant fails to comply with the preceding Order, the Registrar of Titles issues to the Plaintiff a duplicate Title for Certificate of Titles No. 8048 being Lot 2 on DP 1820 pursuant to section 27 of the Land Transfer Act upon the registration of the transfer of the Property from the Defendant to the Plaintiff;
  7. An Order that the Defendant pay to the Plaintiff interest in the sum of FJD 1,150,000.00 (one million one hundred and fifty thousand dollars) at an interest rate of 15% per annum from 31 May 2020 to date on which the Plaintiff is registered as the proprietor of the Property with the Registrar of Titles;

### **Costs and Ancillary Orders**

8. An Order for costs against the Defendant in favour of the Plaintiff on a solicitor-client indemnity basis;

9. Any further orders that the Court deems just and fair.

- (2) The Plaintiff relies on the Affidavit in Support deposited by Shahbaaz Khan filed herein.
- (3) The Defendant filed the Affidavit in Opposition deposited by Xiaolong Hu in his capacity as the Director of the Defendant Company.
- (4) Both parties to the proceedings furnished Court with written submissions.

**Plaintiff Contention**

- (5) The Plaintiff is seeking two (2) specific sets of relief:
  - (i) Orders for transfer of the property from the Defendant to the Plaintiff; and
  - (ii) Award of interests where the Defendant is obliged to pay interest to the Plaintiff as a result of the breach or failure of the Defendant to effect settlement on time.
- (6) The Defendant did effect the settlement with the Plaintiff in regards to completing the transfer of the property.
- (7) The purposes of the hearing on the substantive originating summons is now limited to two (2) questions:
  - (i) Whether Defendant is obliged to pay interest to the Plaintiff as per the Sale and Purchase Agreement [SPA]?
  - (ii) If so, then how much?
- (8) The Sale Agreement has a sale price of FJD 1,150,000 and settlement date of 31<sup>st</sup> May 2020.
- (9) The Sales and Purchase Agreement was entered to properly by the parties.
- (10) There is no basis for the Defendant to deny the payment of the interest to the Plaintiff and costs of FJD 5,000. The Plaintiff seeks orders on interests and costs.

**The Defendant's Contention**

- (11) The Defendant claims that the sale was not authorized by the Defendants directors. A chain of events is set forth in his affidavit in opposition.

- (12) Xiaolong Hu is the Director and shareholder of the Defendant Company and opposes the Plaintiff's application for specific performance of a Land Sale contract.
- (13) He is unaware of the sale and purchase agreement [SPA] signed on 02<sup>nd</sup> December 2019 by the Plaintiff and the person purported to have the authority on behalf of the company.
- (14) Liang Ding had signed the Sale and Purchase Agreement of the said property with the Plaintiff unlawfully and without a resolution of the Board of Directors and or shareholder's meeting with the founding shareholders.
- (15) He was unaware of the facilitation of the settlement with the Plaintiff.
- (16) Our property was being sold by Liang Ding and Julian Yuen, Both these man had no legal standing nor authorized in any capacity to Act for on behalf of the Defendants capacity.
- (17) On 07<sup>th</sup> January 2021. He caused a caveat to be lodged on the property.
- (18) On 27<sup>th</sup> January 2021, the Deputy Registrar of Titles by letter informed the Defendant that the Company search reveals that the Directors of A Plus Investment Limited were Lin Xiao Yang and Janson Kailam Ng.
- (19) The Sale is a matter of a separate legal proceedings in Suva High Court Civil Action No. HBC 266 of 2023.

#### **Determination**

- (20) The Plaintiff's originating Summons is seeking for two (2) sets of relief of:
  - (i) Specific performance, for transfer of the property from the Defendant to the Plaintiff; and
  - (ii) Whether the Defendants is obliged to pay the Plaintiff interests as a result of the breach or failure of the Defendant to effect the settlement on time in terms of the Sales and Purchases Agreement?
- (21) It cannot be disputed by the Plaintiff that the Defendant was the registered owner of the Certificate of Title No. 8048 being Lot 2 on Deposited Plan No. 1820 located at Nasese in Suva.
- (22) On or about 2<sup>nd</sup> October 2019, it is alleged that one Liang Ding, a non-director of the Defendant company, signed a Sale and Purchase Agreement [SPA] with the Plaintiff for the Sale of the Defendant's said property pretending to do so as a Director of the Defendant, whilst the actual registered Directors were away in China.

- (23) The Defendant alleges and raises the Contention that the Sales and Purchase Agreement was signed and executed just two months after the property Directors left Fiji for China and also without convening a company meeting and/or resolutions to be passed by the shareholder and directors of the company.
- (24) The Defendant also alleges that the Sales and Purchase Agreement was signed and executed without the knowledge and/or consent of Mr. Hu and Ms. Zheng being the founding shareholders and directors of WG International.
- (25) The Courts attention has also been drawn to the fact that one Julian Song Kong, Yuen, a Non-shareholder and non-director of the Defendant orchestrated the sale of the Defendant's property and also signed the transfer document in their capacity as Directors and/or secretary whilst the actual registered directors were away in China from the time of the signing of Sales and Purchase Agreement on 02<sup>nd</sup> December 2019 until settlement date of 05<sup>th</sup> February 2021, the Registered directors of the Defendant company were still in China during the height of the COVID pandemic.
- (26) The Registered Directors are contending that they have not seen and/or received any monies from the settlement figure while included the deposit of \$50,000.
- (27) The Defendant's position is that and it contends that the Plaintiff's originating summons has been overtaken by events over the years.
- (28) This Court sets its mind back to the position of ascertaining what are the main issues for this Court to determine now after the parties to the proceedings have furnished Court with their respective written submissions and orally argued the impending issues giving rise to triable issues?
- (29) The main issues to determine are:
- (i) Whether the Sales and Purchase Agreement and transfer dealing were executed by the right parties authorized by the Defendants?
  - (ii) Whether the orders sought in the Plaintiff's originating summons still needs to be addressed?; and
  - (iii) Whether the Plaintiff followed the correct order of the High Court Rules to determine the actions?
- (30) The Plaintiff commenced these proceedings via originating summons which in fact is by summary proceedings and relied on the Affidavit in support and its submissions in order to seek the orders therein.
- (31) Whilst both parties to the proceedings orally argued the matter at the hearing, it then came to light that a lot of triable issues have been raised, which can easily be ascertained from the facts and evidence put before this court.

(32) The Court has a duty to hear *viva-voce* evidence on the triable issues that have been raised by the Defendant as paragraphs 22 to 26, and paragraphs 29 (i), (ii) and (iii) of my Judgment herein respectively.

(33) The Court questioned the Plaintiff's Counsel with regards to the Sales and Purchase Agreement, and whether the sale money is in Plaintiff's trust account or what has transpired?

**Whether the Plaintiff Counsel affirm that the Sales and Purchase was signed and executed by the Defendant Mr. Hu and Ms. A. Zheng?**

(34) The Answer given by the Plaintiff's counsel was that the Sales and Purchase Agreement was signed with Harcourts, then the Plaintiff engaged the services of Sherani & Company lawyers and finally engaged the current Plaintiff's counsel to represent the Plaintiff herein and that whatever transpired is well known by Harcourt's and Sherani & Company. He is currently seeking for two (2) orders with regards to:

- (i) specific performance and
  - (ii) Interest
- That is all.

(35) There has not been any affidavit evidence or otherwise of any written statement, documentation or letter of authorization of any sort from the actual registered directors of the Defendant till to date. However, it is only a presumption that one Mr. Ding signed the Sales and Purchase Agreement as authorized officer and a Mr. Julian Yuen who signed the transfer as Director/ Secretary were in fact legitimate authorized officers of the Defendant.

(36) Further, whether the actual registered directors of the Defendants company are in fact parties to this proceedings to the execution of both the Sales and Purchase Agreement and Transfer dealing.

(37) The triable issues raised here are services matters that ought to be determined at a substantive trial in a just and fair manner rather than proceeding to determine the same summarily within the originating summons.

(38) This Court will then be able to find if there is any cause or basis for the defendants to deny the payment of the interest to the Plaintiff.

(39) For the aforesaid rational, I have no alternative but proceed to dismiss the Plaintiff's Originating summons in its entirety.

**Costs**

- (40) The Plaintiff is ordered to pay a summarily assessed cost of \$2,000 within 14 days timeframe bearing in mind that the substantive action proceeded to full hearing and determination coupled with the fact that the parties to the proceedings furnished court with their respective written submissions and orally argued the case.

**Orders**

- (i) The Plaintiff's originating summons filed on 18<sup>th</sup> August, 2020 fails and is dismissed its entirety.
- (ii) The Plaintiff to pay the Defendant a summarily assessed costs of \$2,000 within 14 days timeframe.

Dated at **Suva** this **07<sup>th</sup>** day of **August** , 2024.



A handwritten signature in blue ink, appearing to be "V D Sharma", written over a horizontal dotted line.

Vishwa Datt Sharma  
PUISNE JUDGE

CC: A P LEGAL, SUVA  
VOSAROGO LAWYERS, SUVA