IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No: HBM 116 of 2013

BETWEEN: **AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED** a duly constituted banking corporation having its registered office in Melbourne Australia and carrying on business in Suva and having branches through Fiji.

PLAINTIFF

AND: **THE ACTING REGISTRAR OF TITLES** having its registered office in Suva.

1ST DEFENDANT

AND: **THE ATTORNEY GENERAL OF FIJI**

2ND DEFENDANT

BEFORE : **Acting Master of the High Court Mr. Rajasinghe**

COUNSEL : **Ms. B. Narayan** for the Plaintiff
Mr. J. Jitoko for 1st and 2nd Defendant

Date of Hearing : **27th September, 2013**

Date of Ruling : **4th October 2013**

R U L I N G

1. The plaintiff by its originating summons dated 28th of August 2012 instituted this proceedings seeking following orders inter alia,

    i. That the 1st defendant remove forthwith Caveat number 744921 and 744922 lodged on 3/05/11 and 3/05/11 by Chandrika Prasad and Saleshni Sangeeta Prasad respectively on Certificate of Title Number 10153,

ii.   Such further relief of Orders as this honourable Court may deem just in the circumstances,

2. The plaintiff stated in the summons that this application was made pursuant to Order 5 rule 3, Order 7 rule 2 of the High Court Rules 1988 and Section 164 of the Land Transfer Act.

3. Upon receiving the notice, the first and second defendant filed their acknowledgement of service and affidavit in reply to this summons.

4. Having perused the affidavit in reply of the defendants, I invited them to file a supplementary affidavit which they filed accordingly. Subsequently the matter was set down for the hearing on the 27th of September 2013 where the learned counsels for the plaintiff and the two defendants made their oral submissions to support their contentions.

5. Having considered the respective affidavits and oral submissions of the plaintiff and the two defendants, I now proceed to pronounce the order as follows.

6. The plaintiff stated in their affidavit in support that the plaintiff as the mortgagee pursuant to its registered Mortgage Number 577277 dated 18/11/05 over the land contained and described in Certificate of Title number 10153 had made applications in Suva High Court Civil Action No HBC 21 of 2011S and Suva High Court Civil Action No 24 of 2011S against Saleshni Sangeeta Prasad and Chandrika Prasas respectively seeking removal of Caveats lodged by them against dealings on the said title.

7. Hon Justice Amaratunga ruled that the two caveators do not have any caveatable interest, wherefore ordered the removal of caveat No 737424 that was lodged by Saleshni Sangeeta Prasad and caveat No 737425 that was lodged by Chandirka Prasad in the high court civil actions HBC 21 of 2011 and HBC 24 of 2011 respectively.

8. However, the plaintiff subsequently found through their correspondence with the Registrar of Titles that the two caveat Numbers 737424 and 737425 were not properly endorsed on the title. Instead of that Saleshni Sangeeta Prasad and Chandrika Prasad have placed another two caveat numbers 744792 and 744791 respectively.

9. The plaintiff contended that the two caveat numbers 737424 and 737425 were returned for correction requiring the two caveators to provide evidence justifying their interest claimed on the property and were not signed by the Registrar of titles when these abovementioned two civil actions were pending in the high court for the removal of them. The two caveators then re lodged these two caveats on 03/05/2011, but the Registrar of Titles gave them new numbers as 744921 and 744292 respectively instead of endorsed them on the title with the original numbers.

10. The learned counsel for the plaintiff submitted in her oral submission that the Registrar of Titles has no power to change and erase the numbers of those two caveats and insert new numbers pursuant to section 131 (1) and (2) of the Land Transfer Act. The plaintiff submitted that the Registrar of Titles refused the removal of two caveats 744921 and 7444922 although they are actually the same two caveats which were ordered for removal by Justice Amaratunga in High Court Civil Actions of HBC 22 of 2011 and HBC 24 of 2011 respectively.

11. The Defendants do not dispute the contention of the plaintiff and tendered the two copies of the two caveat numbers 7444921 and 744922 for my perusal and consideration.

12. Having briefly considered the back ground of this instance case, I find that the main issue to be determined is that whether the two caveat numbers 744921 and 744922 are actually the same caveat numbers 737424 and 737425 dated 6/10/2010 which were ordered for removal by Justice Amaratunga in aforementioned two high court civil actions.

13. It is precisely evidenced that the two caveat numbers 737424 and 737425 were returned for correction requiring the two caveators to provide evidence justifying their interest claimed on the property. However, these two caveats were given two new numbers when they were re-lodged on 03/05/2011 as 744921 and 744922 instead of the original numbers. I notice and find on the copies of these two caveats that the previous numbers of 737424 and 737425 have been erased and removed and new numbers of 744921 and 744922 were inserted upon their re-lodgment on 03/05/2011.

14. In view of these findings, I am satisfied that the two caveat numbers 744921 and 744922 are actually the same caveats dated 6th of October 2010 which were ordered for removal by Justice Amartunga in the aforementioned two high court civil actions. Having found such, I further find that the refusal of the Registrar of Titles to remove these two caveats is not justifiable. I accordingly order the Registrar of Titles to remove forthwith caveat numbers 744921 and 744922 lodged on 03/05/2011 by Chandirka Prasad and Saleshni Sangeeta Prasad respectively on the Certificate of Title number 10153 pursuant to section 164 (1) and (2) of the Land Transfer Act.

Dated at **Suva** this **4th** day of October**, 2013**.

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R.D.R Thushara Rajasinghe
Acting Master of High Court
High Court, Suva