

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

**Civil Action HBC 257 of 2012**

**BETWEEN** : **BAL SUNDRAM** of Lomolomo, Vuda, Businessman. **PLAINTIFF**

**AND** : **GORDON WILSON SPEAKMAN** of Queensland, Australia, Retired.  
**DEFENDANT**

Appearances : Mr. E. Maopa for the Plaintiff  
No Appearance for the Defendant  
Mr. S. Krishna for the Interested Party

Date of Ruling : 07 June 2013.

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**R U L I N G**

**INTRODUCTION**

1. The plaintiff (“**Sundram**”) entered into an agreement with the defendant (“**Speakman**”) on 02 November 2011 for the sale and purchase of a parcel of freehold land described in Certificate of Title No. X1/05 Folio 218 (“**property**”). This property is 137 acres in size.
2. The agreed sale and purchase price is FJD\$1,500,000.00 (One Million Five Hundred Thousand Dollars). Sundram filed a Writ of Summons and Statement of Claim on 06 December 2012 claiming specific performance and general damages for breach of contract.
3. By summons dated 13 December 2012 filed pursuant to Order 86 Rule (1) of the High Court Rules 1988, Sundram seeks:
  - (i) an Order for specific performance of the agreement dated 02 November 2011 against Speakman.
  - (ii) an Order directing the Deputy Registrar of the High Court at Lautoka to sign the necessary transfer and other related documents to consummate the transfer.

### **THE AGREEMENT & PAYMENTS MADE**

4. Pursuant to Clause 4 of the agreement, Sundram has duly paid the deposit of \$100,000-00 (one hundred thousand dollars). That payment was made vide a Bank of the South Pacific cheque dated 07 November 2011 into the trust account of Messrs Cromptons Solicitors of Suva.
5. Sundram had also paid the sum of FJD\$1.4 million being the balance of the purchase price into the trust account of his lawyers, namely Messrs Babu Singh & Associates, which firm is based in Nadi. This sum has since been paid by Babu Singh & Associates into Court yesterday, 06 June 2013 by Order of this Court on the application of the interested parties.

### **INTERESTED PARTIES**

6. The interested parties are Alexander Gordon Speakman and Clive William Speakman. They are the sons of the defendant Speakman. They (interested parties) appear to have no qualms about the Orders that Sundram seeks from this Court. What they require though is that all purchase monies paid by Sundram be secured by payment into this Court pending the determination of a related Suva matter between them and their father, the defendant Speakman. Mr. Krishna, who appeared for the interested parties on instruction, advised the court that if the related Suva matter is decided in favour of the interested parties against the defendant Speakman, the interested parties will then apply to this Court for the purchase price to be paid out to them.

### **TRUST FUND RECEIPT**

7. A copy of Trust Fund Receipt No. 675446 issued by the Revenue Collector of the Lautoka High Court has been placed before me which confirms that Babu Singh & Associates has paid the sum of FJD\$1.4 million into Court.

## **WHY SPEAKMAN IS NOT COMPLETING THE AGREEMENT**

8. It appears that, after entering into the sale and purchase agreement with Sundram, Speakman had then had a “*change in plan*” as explained by Cromptons in a letter dated 10 January 2012 to Babu Singh as follows:

Thank you for your letter of 30<sup>th</sup> December last.

We are instructed that there has been a change in plan and that Mr. Clive Speakman, the son of Gordon Speakman will now transfer the property to his sons Clive and Alex Speakman by way of gift and that Clive and Alex will then transfer the property to your client.

We are advised that your client has agreed in principle to this proposal. Are you able to confirm this?”

9. On 12 January 2012, Babu Singh & Associates wrote to Cromptons as follows:

1. A new sale and purchase agreement should be entered with our client as soon as the transfer from Gordon Speakman to his son is lodged for registration.
2. The sum of \$100,000 held in your trust account to be treated as deposit under the new sale and purchase agreement.
3. The sale price shall be \$1.5 m less the incurred costs of approximately \$350.00 per day by our client from 19<sup>th</sup> December, 2011 to the date of settlement. This has been agreed between Mr. Clive Speakman and our client for not proceeding under the present sale and purchase agreement.
4. The date of settlement in the new agreement should be agreed between the parties.
5. A document to be drawn assuring the sale of the property to our client once the transfer from the father to the son are lodged for registration. This is to protect our client until the signing of new sale and purchase agreement. On this understanding our client will withdraw the caveat lodged on the title at present to facilitate registration of the transfer from father to sons.
6. Your client to pay the Purchaser’s solicitor’s costs for the document mentioned in 5 above, sale and purchase agreement and lodgement of caveat upon execution of the new sale and purchase agreement, and lodgement of caveat upon execution of the new sale and purchase agreement. The amount agreed by our client is \$2,500-00.

Please confirm in writing that your client is agreeable to the above. Also advise us the present position regarding obtaining of Ministerial Consent for dealings between father and sons.

10. Vide a letter dated 17 February 2012, Speakman wrote to Sundram confirming the above as follows:

As you may be aware, I am former owner of the “Bala” Estate in Nasinu in Fiji, which you have recently made a successful offer to purchase (sic).

I am now retired and have appointed my sons, Alex and Clive to manage my affairs in Fiji with my consultation and approval. My sons have arranged a contract of sale with you and I regret that due to my poor health, periodic hospitalisation and treatment, progress in processing the sale of “Bala” has been delayed at times. I hope this has not been a problem for you, and I have made every effort to cooperate speedily with my sons whenever possible.

I hope I shall have the pleasure of meeting soon and I trust that your plans to develop “Bala” successfully proceed as you wish

11. On 04 April 2012, Speakman again sent a handwritten letter to Sundram which I reproduce in full below:

This is to confirm advice given to you per telephone, when you recently spoke with my representative (son) Alex Speakman regarding your purchase of property "Bala" in Viti Levu in that a caveat has been filed on the subject estate which has prevented (temporarily) documents being transferred to your name.

The caveator is a gentleman who earlier made an unsuccessful offer to purchase "Bala", which I formally rejected. It would seem that someone does not want you to assume ownership of Bala, but I have lodged complaint with the Registrar of Titles in Suva that the subject caveat is unlawful and invalid and must rightly be rejected by the Registrar.

My complaint to the Registrar has still to be responded to and I am persuing (sic) this matter currently.

I can understand that this impediment may be irksome for you and to maintain goodwill, I am ready to have my solicitor return your deposit, if this is your desire/instruction.

Please advise me ASAP regarding this.

Instruct (sic) in the past may have been somewhat slow moving in "Bala" matters due to my various absences to undergo medical consultations and treatments, but you may have my assurance that I am – and shall make every effort to expedite conclusions henceforth to your satisfaction.

I await your further response and instructions.

I remain yours faithfully.

Sgd. Gordon W. Speakman

12. On May 3 2012, Babu Singh & Associates wrote a letter to Cromptons Solicitors seeking advise on the progress on the matter. And on 30 May 2012, Babu Singh & Solicitors sent a Notice to Complete to Gordon Wilson Speakman vide Cromptons.

The Notice states as follows:

1. The Purchaser was and is ready and willing to complete the purchase of the property situated at Nadawa, Suva as comprised in Certificate of title No. X1/05 Folio 218 in the District of Naitasiri in the Island of Viti having an area of 137 acres which you are interested to sell.
2. You have defaulted on your part by not complying with the terms of agreement hence not selling the property.
3. You are hereby to make good such default by completing the sale and Transfer of said property to the Purchaser within seven (7) days from the date of service of this Notice on you.
4. If you fail to comply with this Notice within the time aforesaid, the Purchaser will proceed to enforce the rights, powers and remedies conferred on him in accordance with the provision of clause 14 of the sale and purchase agreement.

13. On 18 July 2012, Speakman wrote a letter to Sundram as follows:

It appears you have issued a notice demanding transfer of my property in Viti Levu ("Bala") to you forthwith. Such transfer has been agreed to and I have applied to the registrar of titles to affect (sic) the title transfer to you. However, as you are well aware, a caveat has been placed on the title "Bala". I have advised the caveat is unlawful and in discussions with my representative, Alex Speakman, in early March 2012, you admitted you were aware that a caveat existed, so preventing title transfer being affected. You said you had obtained a copy of the title from the registrar of titles office, displaying the caveat notice. The above, coupled with the fact that I formally confirmed details in my letter to you dated 4 April 2012 (copy attached), makes nonsense of your complaint that transfer of title be effected forthwith, and if you desired, I was – and still am – ready to refund your deposit of purchase without delay. I have decided to respond to you by personal letter, rather than seek involvement of my solicitor at this point in time. I can do no more than prevail upon the registrar to affect title transfer and your notice of demand now is questionable. If such Notice has been mischievously contrived, you should be aware that the Courts have little tolerance for such an issue severe penalty for offenders.

## **CONCLUSIONS**

14. To succeed in obtaining a summary judgement under **Order 86 Rule 1**, Sundram must be able to show that Speakman has no defence to the action. Speakman however may yet avoid a summary judgement if he is able to convince the court that there is an issue to be tried or that there ought for some other reason, be a trial of the action.
15. There is nothing whatsoever in the chain of correspondence above to indicate that Speakman had considered his deal with Sundram "aborted" for one reason or another. All he did was use to the fact of the existence of a certain caveat as his excuse for not being able to complete the transfer of the property from him to the interested parties and from the interested parties to Sundram. And all the while, there is no indication in any of the documents before me that Speakman had taken an active step to remove the caveat.
16. There was clearly a binding agreement in this case and for one reason or another, Speakman has been dragging his feet in taking it to completion. Sundram has duly paid the purchase price of \$1.5 million (\$1.4 million deposited into Court and \$100,000 paid into the trust account of Cromptons). Sundram has also paid stamp duty on the Sale and Purchase Agreement exhibited in his affidavit.

17. After considering all that, I grant the following Orders:

- (i) an Order for specific performance of the agreement dated 02 November 2011 against Speakman.
- (ii) an Order directing the Deputy Registrar of the High Court at Lautoka to sign the necessary transfer and other related documents to consummate the transfer.
- (iii) that the sum of \$1.4 million dollars paid into court on 06 June 2013 is to remain in the Trust Fund of the High Court until further Orders.
- (iv) that Sundram perfects and seals these Orders and serves a copy of the same to Speakman and files an affidavit of service of the same to Court within two months time.
- (v) a copy of the sealed Orders is to be filed in the related Suva High Court matter by the interested parties.
- (vi) no order as to costs.

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**Master Tuilevuka  
07 June 2013.**