

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. 207 of 2014

BETWEEN : **EDWARD JENNINGS & TSUDA YOKO** PLAINTIFF
AND : **TATSUYA SAKURAI** 1ST DEFENDANT
AND : **REGISTRAR OF TITLES** 2ND DEFENDANT
AND : **THE ATTORNEY-GENERAL OF FIJI** 3RD DEFENDANT
AND : **D. C SINGH'S INVESTMENTS LIMITED** INTERESTED PARTY/INTERVENER
Counsel : Mr. Janend Sharma for the Plaintiffs
Mr. Eroni Maopa for the 1st Defendant
Mr. S. Pickering for the 2nd & Third Defendants
Mr. Shelvin Singh for the Interested Party/Intervener

EX TEMPORE RULING

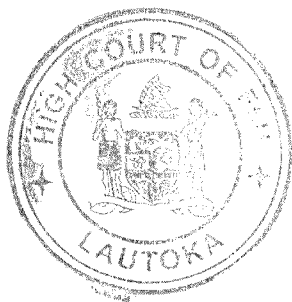
1. On 15 December 2014, I granted some injunctive orders on the *ex-parte* application of the plaintiffs. Before me today is an application to dissolve the said Orders.
2. In effect, those Orders granted *ex-parte* restrained the 1st defendant from selling or disposing a certain piece of land situated in Nadi. The said land is comprised in Certificate of Title Number 27878 and described as Lot 7 on DP 5865.
3. The plaintiffs also have a writ action pending against the first defendant in which they are claiming specific performance *inter alia*.
4. This piece of land is at the heart of all the dispute between the plaintiffs and the 1st defendant. The first defendant is the registered proprietor of the land. He is a Japanese national.
5. The plaintiffs, who are now estranged, did enter into a Sale and Purchase Agreement with the 1st Defendant. The second plaintiff is also originally from Japan.
6. There are a lot of issues between the plaintiffs and the first defendant regarding their agreement. Amongst the issues raised are:
 - (i) what portion of the FJD\$221,000-plus that the plaintiffs paid the defendant is made up of rental payments and how much of it was actually

payment towards the agreed sale and purchase price of FJD\$260,000? On this point, Mr. Maopa submits that a major portion of this sum was payment towards rental. Mr. Sharma does not appear to refute that the plaintiffs were renting on the said property prior to the sale and purchase agreement, although, he maintains that the entire sum of FJD\$221,000 was payment towards the sale and purchase price.

- (ii) whether the 2nd plaintiff was a citizen and resident of Japan at all material times and if so, whether the agreement in question is therefore null and void by virtue of the old section 6 of the Land Sales Act, given that the prior consent of the Minister of Lands had not been sought, let alone, obtained, as required under section 6.
7. Meanwhile, the interested party in this case has also entered into a sale and purchase agreement with the first defendant. Their agreement is nearing settlement. The agreed purchase price between the interested party and the first defendant over the same piece of property is \$350,000. This is some \$100,000 more than the price agreed between the plaintiffs and the first defendant. The necessary CGT clearance has been obtained and the only thing holding the parties from settling is the interim injunction restraining the first defendant.
 8. There are indeed serious issues to be tried between the plaintiffs and the first defendant – principal amongst which is whether or not their agreement is null and void for non-compliance with section 6 (if section 6 which is now repealed) is to apply. But even if section 6 no longer applies, their agreement may still be caught under the new provisions of the Land Sales (Amendment) Act 2014 which, except in certain situations set out in section 7A, restricts the sale of any state land or freehold land for residential purposes to a non-resident (the definition of “resident” now being such under the 2014 Act to cover the 2nd plaintiff in this case who is a citizen of Japan and now resides in Japan).
 9. I have taken into account the fact that the interested party has a clear equitable interest over the subject land which arises from their sale and purchase agreement with the first defendant (pursuant to which they have paid a deposit and which agreement they are ready willing and able to settle as soon as possible). I have also considered that the interested party’s equitable interest

can only be defeated by any prior equitable claim of the plaintiffs, which, from where I sit is in doubt because of the various issues raised by Mr. Maopa (which are triable) and also the regulatory compliance issues (raised by Mr. Singh).

10. A purchaser under a contract of sale for land has an equitable interest. That equitable interest entitles her to call for the conveyance of the land to her. However, that interest is strictly commensurate with her ability to obtain specific performance or other equitable protection (see Legione v Hateley [1983] HCA 11; (1993) 152 CLR 406; Stern v McArthur [1998] HCA 51; (1988) 165 CLR 489; see also Sale of Land (2000) 2nd ed by DW McMorland at page 299).
11. What this all boils down to is this - while there are indeed serious issues to be tried between the plaintiff and the first defendant, at the end of the day, in this case, the only obstacle to the interested party's ability to obtain specific performance is the injunction in place here. For the plaintiffs on the other hand, there are serious factual and legal issues as to whether they have a valid agreement at all in light of the issues raised above.
12. I am of the view that the balance of convenience favours the dissolving of the injunction to allow the first defendant and the interested party to proceed to settlement. The plaintiffs can be compensated in damages in the event they win their case against the first defendant.
13. For security, I will direct that on settlement between the first defendant and the interested party, the balance of the purchase price in the sum of \$350,000 less CGT be paid to an interest bearing account of the Lautoka High Court and that the Interested Party is to notify Mr. Sharma of counsel for the plaintiffs of the said settlement date at least a day prior to the event.
14. The case is adjourned to **09 July 2015** for review.



Anare Tuilevuka
JUDGE
25 June 2015