

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Action No. HBC 151(A) of 2014

BETWEEN : **ROYAL LIMITED PARTNERSHIP and OTHERS**
PLAINTIFF

AND : **DONALD GENE STEELY**
DEFENDANT

BEFORE : **Hon. Justice Kamal Kumar**

COUNSEL : Mr N. Khatri for the Plaintiffs
: No Appearance for the Defendant

DATE OF JUDGMENT : 18 March 2016

JUDGMENT

Introduction

1. On 4 June 2014, Plaintiffs filed Ex-parte Originating Summons when this Court directed that the Originating Summons be heard inter-parte.
2. On 1st August 2014, being the returnable date of the Originating Summons, Plaintiffs were directed to file Submissions by 29 August 2014, and judgment was to be delivered on notice.

3. However it was subsequently discovered that the details of the properties being transferred were not mentioned in the Originating Summons and as such prayer 1 of the Originating Summons was incomplete.
4. This matter was called on 16 September 2014, when Plaintiffs were granted leave to amend Originating Summons and this matter was adjourned to 31 October 2014, for mention.
5. On 13 October 2014, Plaintiff filed Amended Originating Summons.
6. This matter was next called on 14 November 2014, when it was adjourned to 28 November 2014 and Plaintiffs were directed to serve Amended Originating Summons on Fiji Revenue and Customs Authority (FRCA).
7. On 25 November 2014, Plaintiffs served Amended Originating Summons on FRCA.
8. On 28 November 2014, Plaintiffs by their Counsel handed in submissions and this matter was adjourned for judgment on notice.

Background Facts

9. Pursuant to Declaration of Trust dated 10 March 2000, Defendant declared that he will become registered proprietor of property known as Lot 14 on DP 5321 containing an area of 3.490 ha comprised and described in Certificate of Title No. 21238 and situated at Savusavu (**“the property”**) as trustee for Delainacekoro Group LLC (**“DGL”**).
10. Defendant purchased the property with Minister of Lands consent as trustee for DGL.
11. The property was subsequently divided into nine (9) lots with lots 8 and 9 dedicated as Access Roads.
12. The Plaintiffs were partners in DGL.
13. By Dissolution Agreement between Owners dated 5 May 2014, the Plaintiffs being the partners in DGL agreed to dissolve the partnership on terms and conditions stated in the Agreement.

14. On the same day Plaintiffs entered into an agreement to divide Fiji Property between existing owners who were the Plaintiffs.

Whether Capital Gains Tax (CGT) is payable in respect to Transfer of Fiji Properties to the Plaintiff as Beneficiaries by Defendant as Trustee

15. The relevant provision of Capital Gains Tax Decree 2011 (**CGT Decree**) are sections 6(1) and 10(1) which provide as follows:-

“s6(1) Subject to this Decree, a tax to be known as “capital gains tax” is imposed on a person who has made a capital gain, other than an exempt capital gain, on the disposal of a capital asset.

s10(1) The capital gain made by a person on the disposal of a capital asset is the consideration received on the disposal reduced by the cost of the asset at the time of the disposal.”

16. In this instant it is abundantly clear that DGL which was owned by Plaintiffs as partners paid for purchase of the property and the Defendant held the property in Trust for the Plaintiffs.
17. It is obvious that Defendant as Trustee is required to act on the instruction of the beneficiaries.
18. A Trustee manages and controls trust property for the benefit of the beneficiaries to whom he/she owes fiduciary duty. The beneficiaries are the persons who benefit from the Trust and they have the power to direct trustees to act in a particular way or terminate the trusteeship.
19. Capital Asset as defined by CGT Decree includes “**land, a structural improvement to land, or an interest in land or including a lease**” and therefore the property falls within the definition of capital asset. (Section 2 of CGT Decree)
20. The question that needs to be answered is whether Trustee is making any gain on transfer of the capital asset.


21. For Transferor to pay CGT he or she must make Capital Gain by receiving consideration on disposal of the capital asset in excess of costs of the capital asset.
22. In this instance the Transferor did not and will not receive any consideration on disposal of the capital asset to the Plaintiffs who are the beneficial owners.
23. If no consideration is received by the Defendant, Transferor then it is obvious that no capital gain is made by him.
24. It goes without saying and common sense dictates that where capital asset is held by Trustee pursuant to valid Deed or Declaration of Trust and Trustee is required to transfer the capital asset to the beneficiaries under the Trust Deed or Declaration of Trust without any consideration then no capital gain is made by the Trustee. In fact Trustee is not the beneficial owner of the capital asset per se.
25. In such cases no capital gain is made and such no CGT is payable on such transaction.
26. In this instance I accept Affidavit evidence of Plaintiff that Defendant owned the capital asset subject to this proceeding as Trustee for Plaintiffs being equal parties in DGL and no consideration is being received by the Defendant as Trustee for transfer of capital asset to Plaintiffs.
27. I therefore have no option but to declare that no CGT is payable on transfer of properties comprised in Certificate of Title Nos. 40500, 40501, 40502, 40503, 40504, 40505 and 40506 by Defendant as Trustee to the Plaintiffs.

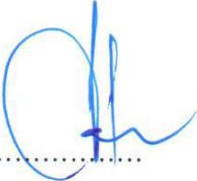
Declaration/Order

28. I make following declaration and Orders:-
 - (i) Declare that no Capital Gains is made in respect to following transfers and therefore no Capital Gains Tax is payable:-

Description of Land	Certificate of Title No.	Area (m ²)	Transferor	Transferee
Lot 1 on DP 10107	40500	4870	Donald Gene Steely as Trustee	Royal Limited Partnership
Lot 2 on DP 10107	40501	3921	Donald Gene Steely as Trustee	Frances Irene Goode
Lot 3 on DP 10107	40502	4103	Donald Gene Steely as Trustee	Douglas Carnine and Linda Carnine as Joint Tenants
Lot 4 of DP 10107	40503	2668	Donald Gene Steely as Trustee	Royal Limited Partnership Frances Irene Goode
Lot 5 on DP 10107	40504	1158		Douglas Carnine & Linda Carnine as Joint Tenants
Lot 6 on DP 10107	40505	1.1159 HA		John Noell and Barbara Ann Boyd Noell aka Barbara Ann Noell aka Barbara Britz Noell as Joint Tenants
Lot 7 on DP 10107	40506	4517	Donald Gene Steely as Trustee	John Noell and Barbara Ann Boyd Noell aka Barbara Ann Noell aka Barbara Britz Noell as Joint Tenants

- (ii) Chief Executive Officer of Fiji Revenue and Customs Authority (FRCA) issue a Certificate within seven (7) days from date of service of Order on FRCA to enable registration of Transfers in (i) above.
- (iii) There be no Order as to costs.




K. Kumar
JUDGE

At Suva
18 March 2016

Parshotam Lawyers for the Plaintiff
No Appearance for the Defendant