

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

CIVIL JURISDICTION

CIVIL ACTION NO. HBC 218 of 2015

BETWEEN : **FUN WORLD CENTRE (FIJI) LIMITED** a limited liability company having its registered office at Messers Vijay Naidu & Associates, 1 Valetia Street, Lautoka.

PLAINTIFF

AND : **BASIC INDUSTRIES LIMITED** a limited liability Company having its registered office at Lot 1, Jai Hanuman Road, Vatuwaqa.

DEFENDANT

Mr. Wasu Sivanesh Pillay for the Plaintiff
(Ms). Bhavna Geeta Narayan for the Defendant

Date of Hearing: - 03rd May 2016
Date of Ruling : - 16th June 2016

RULING

- (1) The matter before me stems from the Plaintiff's Summons dated 02nd December 2015, made pursuant to Section 169 of the Land Transfer Act, Cap 131.
- (2) The Defendant is summoned to appear before the Court to show cause why it should not give up vacant possession of the Plaintiff's property being 20.0317 hectares comprised in Crown Lease No: 17832, Part of Nasau, situated at Nadi.
- (3) The application for eviction is supported by an Affidavit sworn by one "Mohammed Iqbal", the General Manager of the Plaintiff Company.

- (4) The application for eviction is strongly resisted by the Defendant.
- (5) The Defendant filed an 'Affidavit in Opposition' sworn by one "Mosese Volavola", the General Manager of the Defendant Company.
- (6) The Plaintiff relies upon an 'Affidavit in Reply' of "Mohammed Iqbal" sworn on 23rd March 2016.
- (7) At the commencement of the hearing of the Plaintiff's Originating Summons, the Defendant objected to the Plaintiff's Summons for ejection on the basis that this Court has no jurisdiction because the written consent of the Director of Lands was not obtained by the Plaintiff before it filed Summons for ejection.
- (8) It is not in dispute that the Lease in question is a 'Protected Lease' under the provisions of the Crown Lands Act, Cap 132 and the consent of the Director of Lands was not obtained before the Plaintiff filed an application in this Court for an Order for eviction.
- (9) It was contended by the Defendant that;
- ❖ *"Any dealing" with regards to State Land requires consent from the Director of Lands which includes instituting proceedings before any Court. There is no consent to lease the land nor to institute any proceedings shown by the Plaintiff in its affidavit.*
 - ❖ *THE Court therefore does not have jurisdiction to hear this matter as there is no evidence of any consent to proceed to litigate as is mandatorily required pursuant to Section 13 of the State Lands Act.*
 - ❖ *THAT there being no such consent to lease or to institute these proceedings the Plaintiff's action is void abinitio and should be dismissed forthwith.*
- (10) Counsel for the Defendant took me through several reported cases from High Court case, *Civil Aviation Authority of Fiji Islands v Trustees of Nadi Airport Club*, (2004) FJHC 387 to Court of Appeal case "*Ram Manohar v Lallu Chaudary*" (1967) 13 FLR 33.
- In those cases it was held that the consent of the Director of Lands as required by Section 13 (1) of the Crown Lands Act to commence the proceedings is mandatory and without compliance with the requirement the proceedings cannot succeed.
- (11) In *adverso*, for the Plaintiff it was contended that the Plaintiff is not required to obtain the consent of the Director of Lands to eject the Defendant who is in possession without the Plaintiff's consent. The Counsel for the Plaintiff heavily relied on a passage in the reported High Court decision, "*Chand v Prakash*" (2011) FJHC 640. The passage is this;
- "As noted earlier, the grounds of appeal that concern the Master's jurisdiction have been abandoned. There are two aspects to the issue of jurisdiction. The first relates*

to the requirement in Section 13 of the State Lands Act that the consent of the Director of Lands is required for the sub-lease to be dealt with under the process of any court of law. The Court in Indar Prasad (supra) stated at page 166:

“The court is asked to make an order of ejectment against a person in whose favour the Director either, has never considered granting a lease, or has never granted a lease. The ejectment of an occupier who holds no lease is therefore not a dealing with a lease. Such occupier has no title. There is no lease to him to be dealt with. The order is for his ejectment from the land.

In the circumstances, there was no requirement for the Director’s consent in respect of the proceedings under Section 169 of the LTA.”

- (12) Let me now move to consider the preliminary objection raised by the Defendant. As I understand, the preliminary objection is based on Section 13 (1) of the Crown Lands Act.

Let me have a closer look at Section 13 (1).

Section 13 (1) provides;

“13. (1) whenever in any lease under this Ordinance there had been inserted the following clause:-

“This lease is a protected lease under the provisions of the Crown Lands Ordinance”

(hereinafter called a protected lease) it shall not be lawful for the lessee thereof to alienate or deal with the land comprised in the lease or any part thereof, whether by sale, transfer or sublease or in any other manner whatsoever, nor to mortgage charge or pledge the same, without the written consent of the Director of Lands first had and obtained, nor, except at the suit or with the written consent of the Director of Lands, shall any such lease be dealt with by any court of law or under the process of any court of law, nor without such consent as aforesaid, shall the Registrar of Titles register any caveat affecting such lease.

Any sale, transfer, sublease, assignment, mortgage or other alienation or dealing affected without such consent shall be null and void.”

In January, 1964, the **Supreme Court** of Fiji in first instance, in the case of **Mohammed Rasul v Jeet Singh and Hazra Singh**, (1964) 10 FLR 16, held ;

“There is nothing in the express wording of Section 15 (1) which makes it necessary to obtain the consent of the Director of Lands before an action concerning a Protected Lease is initiated. All Section 15 (1) provides, in this connection, is that no Court of Law may deal with any such lease without the consent of the Director of Lands. It appears to me that the consent of the Director can therefore be obtained up to any time before the land is actually “dealt with” by the Court, which in my view is certainly not the case at any time before an order has been made by the Court or a Judgment of the Court has been delivered. I can also see no reason why a Judgment of the Court dealing with the land could not properly be

made "subject to the consent of the Director of Lands, with liberty to apply for further orders should that consent not be granted."

(Emphasis added)

The wording of the above judicial decision is perfectly clear to me. *"There is nothing in the express wording of Section 15 (1) which makes it necessary to obtain the consent of the Director of Lands before an action concerning a Protected Lease is initiated....."*

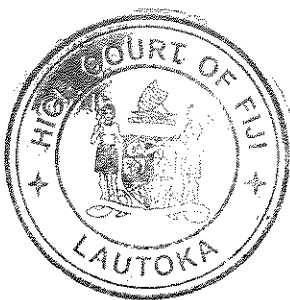
I can also see no reason why a Judgment of the Court dealing with the land could not properly be made "subject to the consent of the Director of Lands" with liberty to apply for further orders should that consent not be granted."

I have no hesitation whatsoever in relying on the above judicial decision in the instant matter before me.


Therefore, I cannot uphold the 'preliminary objection' raised by the Defendant.

(13) **FINAL ORDERS**

- (1) The 'preliminary objection' is overruled.
- (2) I make no order as to costs.



At Lautoka
16th June 2016


16/06/2016.
Jude Nanayakkara
Master