

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

HBC No: 259 of 2016

BETWEEN : **CONSTRUCTION EQUIPMENT HIRE LIMITED** a limited liability company having its registered office at Suva, Fiji.

1ST PLAINTIFF

AND : **WASTE MANAGEMENT SOLUTIONS (FIJI) LIMITED** a limited liability company having its registered office at Suva, Fiji.

2ND PLAINTIFF

AND : **ASHA INVESTMENTS LIMITED** a limited liability company having its registered office at Ravouvou Street, Lautoka, Fiji.

DEFENDANT

BEFORE: Master Vishwa Datt Sharma

COUNSELS: Mr. Jiaoji Savou for the Plaintiff
Mr. Shelvin Singh for the Defendant

Date of Hearing: 19th January, 2017

Date of Decision: 23rd January, 2017

RULING

[Summons to Extend the Caveat beyond 21 days pursuant to Section 110 (3) of the Land Transfer Act Cap 131]

APPLICATION

1. The **Second Plaintiff** filed an Ex-Parte Summons together with an Affidavit in Support and sought for the following orders-

(a) *That the Caveat No. 830391 lodged by the Second Plaintiff against the Certificate of Title NL 12906 be extended beyond the 21 days and to remain in force until the final hearing and determination of these proceedings.*

2. The application was made pursuant to *section 110 (3) of the Land Transfer Act Cap 131 and under the Inherent Jurisdiction of this Court.*

BACKGROUND:

3. The Plaintiffs are alleging that they have a valid and binding Sale and Agreement with the Defendant.
4. The Second Plaintiff states that he has a valid stamped Transfer for NL 12906 from the Defendant to the Second Plaintiff.
5. The Itaukei Land Trust Board had granted Consent to the dealing at all material times.
6. The Defendant unilaterally and illegally sought to rescind the Sale and Purchase.
7. The Second Plaintiff has a legal right to acquire the land from the Defendant and believes the legal documentation supporting that right are the Sale and Purchase Agreement, the stamped Transfer and the ILTB Consent.

THE LAW

8. *Section 110 (3) of the Land Transfer Act, Cap 131* provides for as follows-

(3) The caveator may either before or after receiving notice from the Registrar apply by summons to the court for an order to extend the time beyond the twenty-one days mentioned in such notice, and the summons may be served at the address given in the application of the caveatee, and the court, upon proof that the caveatee has been duly served and upon such evidence as the court may require, may make such order in the premises either ex parte or otherwise as the court thinks fit.

SECOND PLAINTIFF'S CASE

9. The Plaintiff seeks an order for the extension of the Caveat until the Plaintiffs Originating Summons application for Specific Performance filed on 12th October, 2016 is determined.
10. The **Second Plaintiff** is able to give an undertaking and does give an undertaking in support of the extension of Caveat.
11. The Notice for cancellation of Caveat was sent by the Registered Post by the Registrar of Titles on 19th December, 2016 and received by the Plaintiff on 28th December, 2016.

12. The Plaintiff's contention is that the Caveat should be extended to safeguard his interest.

DEFENDANT'S CASE

13. Period of 21 days' Notice for cancellation of Caveat received by the Plaintiff on 28th December, 2016 had expired on the 18th January, 2016 if calculated from the 28th December, 2016.
14. The Caveat had lapsed and cannot be renewed and or extended.
15. Further, the Consent given by the TLTB on the subject property has also now expired on 19th July, 2016.

ANALYSIS AND DETERMINATION

16. The Counsel representing the Second Plaintiff filed an **Ex-Parte Summons** and sought for the Caveat No. 830391 lodged by the Second Plaintiff against the Certificate of Title NL 12906 be extended beyond the 21 days and to remain in force until the final hearing and determination of these proceedings. The Counsel insisted that this Court exceeds to his application in granting the order for the extension of Caveat on the ex-Parte basis and there was no need to serve the other party to the proceedings. He added the application was rather urgent.
17. The Court upon perusing the Court record discovered that the Plaintiff's had already commenced a substantive court action wherein the Defendant was represented by a Counsel. Certain directions were made by this Court in terms of the impending substantive Originating Summons and the matter was then adjourned for mention to the 30th January to see compliance by the parties to the proceedings.
18. This Court then ruled that the Plaintiff's **Ex-Parte Summons** needs to be made **Inter-Parte** immediately and abridged the time of service onto the Defendant/Counsel on or before 11.30 am and had the matter stood down for hearing and determination, bearing in mind the urgency of the application as submitted to the Court by the Plaintiffs' Counsel.
19. The provisions of *Section 110 of the Land Transfer Act Cap 131* sets out the procedure which is mandatory and must be complied. Reference is also made to the Case Authority *HBC 0629 of 1993 Mahendra Vijay Anganu -v- Daya Wanti*, wherein the view was expressed that '*the application for extension ...must come by way of inter partes summons and be supported with proof that the Caveatee has been duly served.....The use of the term 'ex parte' in the last sentence of Section 110 (3) refers to the order of the Court and NOT to the nature of the Caveator's application.*'

20. It has become appropriate that I summarise the provisions of **Section 110 of the Land Transfer Act Cap 131** and set out the steps that need to be undertaken for ease of application accordingly-
- (a) Registrar sends notice of removal, to the Caveator;
 - (b) He/she can remove the Caveat after 21 days of service of the notice;
 - (c) Caveator can apply for extension at any time either before or after service of such notice;
 - (d) The application must be by summons inter parte and not ex parte;
 - (e) The summons must be served either personally or sent by post to the address shown;
 - (f) There should be proof of service of summons by affidavit.
21. In the current case, the Plaintiff confirms in his correspondence written to the Senior Court Officer, Suva dated 17th January, 2017 **'that the Registrar of Titles had sent the Notice for the Cancellation of Caveat by the Post on the 19th December, 2016 and received by my client on the 28th December, 2016, during the legal vacation.'** The date of the receipt of the notice is also deposed at paragraph 7 of the affidavit in support of Sophia Khan.
22. Therefore, there is no dispute that the Plaintiff received the notice for cancellation of the Caveat on the 28th December, 2016 by the Registered Post.
23. What actually matters and rather important herein is, **when did the Second Plaintiff lodge and file an application in terms of the requirements of Section 110 (3) of the Land Transfer Act Cap 131 in order to seek and obtain an order for the extension of the Caveat before the expiration of 21 days accordingly?**
24. It is not in dispute that the Plaintiff's Counsel filed the Summons into the High Court Civil Registry on the 17th January, 2017. He stated to Court that he was still within the time frame of 21 days from the time of the receipt of the notification and should be granted the Court order.
25. He did agree with the Court when put to him **'that according to him if the lapse of 21 days' time frame is calculated from the 28th December, 2016, (the actual date his client received the notice for the cancellation of the Caveat), to the 17th January, 2017 (the date of the filing of the application seeking an extension), then the actual 21 days period expired on the 18th January, 2017. That is he should have then successfully obtained an order for the extension of the Caveat within the 21 days' time frame from the receipt or service date of 28th December, 2016. Section 110 (1) of the Land Transfer Act Cap 131 refers which states as follows-**

110.-(1) Except in the case of a caveat lodged by the Registrar the caveatee or his agent may make application in writing to the Registrar to remove the caveat, and thereupon the Registrar shall give twenty-one days' notice in writing to the caveator requiring that the caveat be withdrawn and, after the lapse of twenty-one days from the date of the service of such notice at the address mentioned in the caveat, the Registrar shall remove the caveat from the register by entering a memorandum that the same is discharged unless he has been previously served with an order of the court extending the time as herein provided.
(Underline is mine)

26. In terms of **Section 110 (1) of the Land Transfer Act**, it is clear that the Registrar can only remove a caveat on expiry of twenty-one (21) days after service of the notice and not from the date of notice.
27. The usage of the words '**service of the notice**' refers to the personal service and not the postal service through the registered article.
28. The legal definition of *Postal Rule* is A rule of contract law that makes an exception to the general rule that an acceptance is only created when communicated ...
29. In this instance, the Second Plaintiff admits that the Registrar of Titles sent the Notice for the cancellation of the Caveat by Post on the **19th December, 2016**. Administratively, the Registrar would have allowed reasonable time or number of days grace period for the Notice to reach the Second Plaintiff. Hence, the application was sent by post to the address of the Plaintiff and adequate time had passed by and the Notice was duly served. The Plaintiff confirmed to the Court that the Notice was received on the **28th December, 2016**. There is no dispute as to service.
30. For the purposes of calculating the twenty-one days, **Section 51(a) of the Interpretation Act** is also relevant. It reads:
- "In computing time for the purpose of any written law, unless a contrary intention appears -
- (a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;"
31. Taking into consideration the aforementioned law, even if this Court accepts the submission of the Plaintiff that the Notice was received on the **28th day of December, 2016**, and upon a proper calculation of **21 days** is done even if you exclude the **28th December, 2016** to the point of filing the Summons for extension of the Caveat on the **17th January, 2017**, still the 21 days expired on the **18th January, 2016**, one day prior to the returnable date of **19th January, 2017** assigned on the Summons seeking extension of Caveat.
32. Therefore, the life of the Caveat expired on the **18th January, 2017**, if 21 days' time frame is calculated from **28th December, 2016**, the date the Second Plaintiff **received** the actual Notice from the Registrar of Titles.

33. On the other hand, taking into consideration the provisions of **Section 110 (3)**, the notice was sent to the Second Plaintiff by the **Registered Post on the 19th December, 2016**. Calculating the 21 days' time frame from the 19th December, 2016, and or after administratively allowing an extra 3 days' time and then calculate the 21 days' time frame the 22nd December, 2016, still, the 21 days' time frame will expire on the 11th January, 2017.
34. The Second Plaintiff's application seeking an order for the extension of the Caveat cannot succeed either way since the 21 days' time frame allocated within the provisions of **Section 110 (3) of the Land Transfer Act, Cap 131** had already expired after the Notice was effectively served on to the Second Plaintiff by the Registered Post.
35. I now proceed to make the following final orders-

ORDERS

- (i) The Second Plaintiff's Summons seeking an order for the extension of the Caveat fails and therefore the application is refused accordingly.
- (ii) The Second Plaintiff to pay costs to the Defendant summarily assessed at \$500 within the next 14 days.
- (iii) The Registrar of Titles to be served with a sealed order of this Court immediately by the Plaintiff/ Defendant.

Dated at Suva this 23rd Day of January, 2017



cc. Jiaoji Savou Lawyers, Suva
Shelvin Singh Lawyers, Suva


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VISHWA DATT SHARMA
Master of High Court, Suva