

IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION

HBC No: 405 of 2008

BETWEEN : TOM WYNYARD

1<sup>ST</sup> PLAINTIFF

AND : GULF PACIFIC (FIJI) LIMITED

2<sup>ND</sup> PLAINTIFF

AND : THE TRUSTEES FOR THE COLONY OF FIJI OF THE METHODIST CHURCH  
IN FIJI

1<sup>ST</sup> DEFENDANT

AND : MCF HOLDINGS TRUST

2<sup>ND</sup> DEFENDANT

BEFORE: Master Vishwa Datt Sharma

COUNSELS: Mr. Peter Knight for the Plaintiff/Respondent  
Mr. Valenitabua for the 2<sup>nd</sup> Defendant/Applicant

Date of Hearing: 27<sup>th</sup> January, 2017

Date of Decision: 14<sup>th</sup> March, 2017

**RULING**

*[Summons to Remove the Caveat pursuant to  
Section 109 (2) of the Land Transfer Act Cap 131]*

## BACKGROUND

1. The **Second Defendant** filed a Summons together with an Affidavit in Support and sought for the following orders-
  - (a) *A Declaration that the Plaintiffs do not have any entitlement or beneficial interest in the freehold land and therefore no legal right to lodge the caveat;*
  - (b) *An order that the Registrar of Titles remove the Caveat;*
  - (c) *An order that the Plaintiffs pay the 2<sup>nd</sup> Defendant such compensation under Section 114 of the Land Transfer Act, Cap 131 as the Court may deem just (and that the Court forthwith make such procedural orders as it shall consider fit to inquire into and ascertain the amount of compensation;*
  - (d) *An order that the Plaintiffs pay the 2<sup>nd</sup> Defendant's costs of this Application on an indemnity basis; and*
  - (e) *Such further or other relief as the Court deems just.*
2. The application was made pursuant to *Section 109 (2) and 114 of the Land Transfer Act, Cap 131 and inherent jurisdiction of this Court of the Land Transfer Act Cap 131 and under the Inherent Jurisdiction of this Court.*
3. The application was scheduled for hearing on 26<sup>th</sup> January, 2017 when the Plaintiffs and the 2<sup>nd</sup> Defendant Counsels came to an agreement that the Court to hear and determine prayer No. 2 only-seeking an order that the Registrar of Titles remove the Caveat No. 598040 lodged against the Certificate of Title No. 14/1245.
4. Other prayers seeking various orders were withdrawn on a piece meal basis by consent and dismissed respectively.

## THE LAW

5. **Section 109 (2) of the Land Transfer Act, Cap 131** provides for as follows-

Any such applicant or registered proprietor, or any other person having any registered estate or interest in the estate or interest protected by the caveat, may, by summons, call upon the caveator to attend before the court to show cause why the caveat should not be removed, and the court on proof of service of the summons on the caveator or upon the person on whose behalf the caveat has been lodged and upon such evidence as the court may require, may make such order in the premises, either *ex parte* or otherwise as to the court seems just, and, where any question of right or title requires to be determined, the proceedings shall be followed as nearly as may be in conformity with the rules of court in relation to civil causes.

SECOND DEFENDANT'S/APPLICANT'S CASE

6. That the 1<sup>st</sup> Plaintiff no longer possesses any caveatable interest in the 2<sup>nd</sup> Defendant's freehold;
7. Damage would be an adequate remedy for the Plaintiffs in respect of any claim which he might have arising out of the freehold;
8. That the balance of convenience and/or justice favour the removal of the Caveat; and
9. That the 1<sup>st</sup> Plaintiff lodged the Caveat without reasonable cause and the Defendants will sustain loss and damage as a result of the Caveat;
10. That the Plaintiffs pray for an order in terms of the Summons with costs.

PLAINTIFFS'/RESPONDENTS' CASE

11. That the Plaintiffs have lodged a Notice of Appeal against the judgment of the Court delivered on 31<sup>st</sup> March, 2016 to the Fiji Court of Appeal and the Appeal has been assigned number ABU 45 of 2016.
12. That the 1<sup>st</sup> Plaintiff seeks an extension of Caveat No. 598040 which he has registered against CT No. 14/1245 until the final disposal by the Fiji Court of Appeal of Civil Appeal No. ABU 45 of 2016 as, if the said Caveat is removed, it could render a successful Appeal, which he believes has a reasonable chance of success, nugatory and of no effect and will allow the 2<sup>nd</sup> Defendant MCF Holdings Trust, the registered proprietor of the land comprised in CT 12/1245 known as Kaba Island to sell or otherwise deal in the said property.

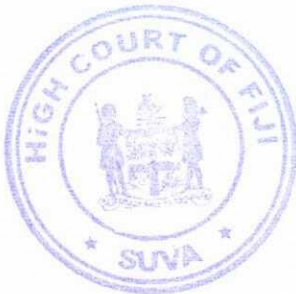
ANALYSIS AND DETERMINATION

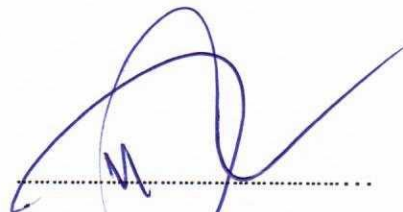
13. The only **issue** left for this Court to determine on the **Summons** filed on 26<sup>th</sup> April, 2016 by the **2<sup>nd</sup> Defendant** is **whether the Registrar of Titles should remove the Caveat No. 598040 registered against the Certificate of Title No. 14/1245?**
14. The Plaintiffs by their Writ of Summons and the Statement of Claim filed on 12<sup>th</sup> November, 2008, sought orders, inter-alia, for Specific Performance of an option agreement dated 20<sup>th</sup> May, 2005 whereby the 1<sup>st</sup> Plaintiff or his nominees on option to lease the Land Comprised in the Certificate of Title No. 14/1245 for an initial period of 5 years from the exercise of the option which was allegedly exercised by the 1<sup>st</sup> Plaintiff on the 17<sup>th</sup> November, 2006.

15. On 19<sup>th</sup> June, 2014, an order was made by consent of both Counsels representing the parties to this proceeding extending the Caveat No. 598040 registered on the Certificate of Title No. 14/1245 until the hearing and determination of the substantive action.
16. The Substantive Issue was heard and determined by the Court on 31<sup>st</sup> March, 2016 in favour of the 1<sup>st</sup> Defendant, The Trustees for the Colony of Fiji of the Methodist Church in Fiji, the registered proprietor of the Certificate of Title No. 14/1245.
17. In terms of Section 106 (a) of the Lands Transfer Act Cap 131, a person claiming interest can lodge a Caveat and immediately thereafter lodge his/her claim in Court.
18. There is no doubt that the 1<sup>st</sup> Plaintiff had the right to register a Caveat that he did on 03<sup>rd</sup> November, 2016 presumably to protect his interest, if any.
19. The Plaintiff's Substantive claim was struck out and dismissed on 31<sup>st</sup> March, 2016. On the dismissal of the Plaintiffs substantive claim on 31<sup>st</sup> March, 2016, the Plaintiffs had no further interest if any under the option agreement to protect. In other words, the caveatable interest altogether was extinguished.
20. Subsequently, the Plaintiffs appealed the decision of the High Court dated 31<sup>st</sup> March, 2016 and is impending determination by the Fiji Court of Court.
21. Whilst the Appeal was still impending before the Fiji Court of Appeal, the Plaintiffs filed a Summons seeking stay of execution in terms of Order 45 Rule 10 of the High Court Rules, 1988. The High Court upon hearing the application for stay of execution made the following orders on 21<sup>st</sup> June, 2016-
  - (a) *The Application for stay of judgment is refused;*
  - (b) *The Summons for stay is dismissed and struck off; and*
  - (c) *The Cost of this application is summarily assessed at \$500 to be paid to the Plaintiff.*
22. It is appropriate that I stress the point that the impending Appeal of the Plaintiffs (Appellants) of the Court's decision of 31<sup>st</sup> March, 2016 does not automatically operate as a stay of execution.
23. I find that there are no orders for stay of any Court Orders or further proceedings in the matter. In the absence of any orders of this nature, stay or otherwise, this Court has the jurisdiction to deliberate on the present application of the 2<sup>nd</sup> Defendant with regards to **'Seeking an order to remove the Caveat by the Registrar of Titles'**.
24. I note from the Court Records that on 19<sup>th</sup> June, 2016, both parties to the proceedings consented to the extension of the Caveat until the final hearing and determination of the substantive matter.

25. This consent order has now lapsed since the decision on the substantive matter was delivered by the Court on 31<sup>st</sup> March, 2016.
26. For the aforesaid rational, I make the following final orders-
- (a) That the 2<sup>nd</sup> Defendant's Summons seeking an order for the removal of the Caveat No. 598040 registered on 03<sup>rd</sup> November, 2006 on the Certificate of Title No. 14/1245 succeeds.
  - (b) That the Caveat No. 598040 to be removed with immediate effect.
  - (c) That the Registrar of Title to be informed forthwith of the Court's finding.
  - (d) That a sealed copy of the order to be served onto the Registrar of Titles forthwith.
  - (e) That there will be an order for costs against the Plaintiffs summarily assessed at \$1,000 and to be paid to the 2<sup>nd</sup> Defendant within 14 days.

Dated at Suva this 14<sup>th</sup> Day of March, 2017



  
VISHWA DATT SHARMA  
Master of High Court, Suva

cc. Mr. Peter Knight, Suva  
Mr. Valenitabua, Suva