

IN THE HIGH COURT OF THE HIGH COURT OF FIJI
AT SUVA

Action No: HBC 458 of 1993

BETWEEN : RESOLUTION TRUST CORPORATION

FIRST PLAINTIFF

AND : THE CADLE COMPANY

SECOND PLAINTIFF

AND : LEINANI K BORTLES and LARRY LYNEL BORTLES

FIRST DEFENDANTS

AND : A. MITCHELL GAY

SECOND DEFENDANT

AND : ALAN C. BEALL

THIRD DEFENDANT

Coram : The Hon. Mr Justice David Alfred

Counsel : Ms. P Low for the First and Second Plaintiffs.
Ms. S Shameem, Ms D. Gandhi with her, for the Second
named First Defendant.

Date of Hearing : 24 April, 2017

Date of Decision : 1 May, 2017

DECISION

1. This is a Summons filed by the second named First Defendant (Bortles) for a stay of Decision delivered by me on 1 November 2016 (Order) and all proceedings thereunder until the determination of the Appeal to the Court of Appeal.
2. It is supported by the affidavit of Bortles and is made pursuant to 0.45 r10 of the Rules of the High Court. Bortles in his affidavit sworn on 15 December 2016 deposed that he was applying for a stay because if his appeal is granted by the Court of Appeal, it will be moot and useless if no stay had been granted.
3. The affidavit in response of Denise Harkless sworn on 17 March 2017 deposed she is an account officer of the Second Plaintiff, that the Order entitles the Plaintiffs to extend registration of the summary Judgment, entered against the First Defendants on 31 March 2009, for a period of 6 months from 1 November 2016 until 1 May 2017. This registration had been done on 30 November 2016. This does not however give any rights to the Plaintiffs to sell the property concerned.
4. The hearing commenced with Counsel for Bortles submitting that an exception to the Torrens system is that equitable ownership is not recorded on the title. Her case is beneficial ownership does not have to be shown on the title. She concluded by stating there was no allegation of fraud, nor of mistake, nor of limitation and that real harm would be done if a stay were not granted.
5. Counsel for the Plaintiffs in her submission stated the Order had been executed on 30 November 2016 by registration with the Registrar of Titles. No harm had been done to Bortles nor to the Second and Third Defendants. This was not a novel situation under 0.45 r.10 and Bortles had no arguable case. Bortles is the registered proprietor on the title in question since 13 September 1984, even before the Plaintiffs obtained summary judgment in 2009. The Plaintiffs' only chance to get the fruits of judgment is by placing its interest on the title.
6. At the conclusions of the arguments I said I would deliver my decision in early course and I do so now.
7. It is trite law that an Appellant seeking a stay of a Judgment needs to satisfy the Court that he has good grounds of appeal and there are special circumstances which override

the Plaintiff's entitlement to have the fruits of his successful litigation. There is also a principle that a stay should be granted if otherwise the Appellant, if successful, will find his appeal has been nugatory. However none of the foregoing avails Bortles in his application because of the determinant issue.

8. The determinant issue here is the fact that the Plaintiffs have registered the Order with the Registrar of Titles on 30 November 2016. This was a FULL ONE MONTH BEFORE Bortle's solicitors filed their Summons, for a stay, on 30 December 2016. This is accepted by Bortles' Counsel in para 2.8 of her skeleton submission. This means beyond any doubt that the decision sought to be stayed has already been put into effect. It is a *fait accompli*. There is nothing to be stayed. It will be an exercise in futility for the Court to grant a stay. No Court makes an order if it lacks practical effect.
9. In the result, the Summons for stay pending appeal is hereby dismissed with costs which I summarily assess at \$1,000 to be paid by the Second named First Defendant to the First and Second Plaintiffs.

Delivered at Suva this 1st day of May 2017.



David Alfred

JUDGE

High Court of Fiji.