

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 259 of 2016

BETWEEN : CONSTRUCTION EQUIPMENT HIRE LIMITED

First Plaintiff

AND : WASTE MANAGEMENT SOLUTIONS (FIJI) LIMITED

Second Plaintiff

AND : ASHA INVESTMENTS LIMITED

Defendant

Coram : The Hon. Mr Justice David Alfred

Counsel : Mr J. Savou for the First and Second Plaintiffs
Mr Shelvin Singh for the Defendant

Date of Hearing : 24 April 2017
Date of Judgment : 2 August 2017

DECISION

1. This is an application by the Second Plaintiff (Plaintiff) for leave to appeal (Summons) against the decision of the Master made on 23 January 2017 (Ruling)

whereby he refused the Second Plaintiff's summons seeking an extension of the caveat.

2. The Summons is made pursuant to Order 59 rule 11 of the High Court Rules and is supported by the affidavit of Sophia Khan affirmed on 25 January 2017.
3. At the hearing before me, Counsel for the Plaintiff informed the Court that the sole issue was whether the Master had miscalculated the time within which to extend the caveat. He said the Application for the extension of the caveat was filed on 17 January 2017, 20 days after the 28 December 2016 when the notice of removal of the caveat from the Registrar of Titles (Registrar) was received.
4. Counsel for the Defendant then submitted. He said under s.110 (3) of the Land Transfer Act Cap 131 (LTA) the notice was served on 28 December 2017. By the time the Master heard the matter the caveat had already lapsed. There was nothing to extend and nothing exceptional here. The first caveat was still in force.
5. At the conclusion of the hearing I informed I would take time to consider my decision. Having done so, I now deliver my decision.
6. I find the following to be the factual situation here:-
 - (a) It is common ground between Counsel on both sides that the Registrar's notice was served on the Second Plaintiff on 28 December 2016.
 - (b) Section 51(a) of the Interpretation Act provides that in computing time, the period of time shall be deemed to be exclusive of the day (of service). Thus here the 21 days started on 29 December 2016 and expired on 18 January 2017.

- (c) The ex-parte Summons to extend the caveat (application) was filed on 17 January 2017 with a return date of 19 January 2017.
 - (d) The above summons, converted into an inter-partes summons, was heard on 19 January 2017.
 - (e) S.110-(1) of the LTA states the Registrar after the lapse of 21 days shall remove the caveat from the register unless he has previously been served with an order of the court extending the time as herein provided.
 - (f) S.110 (3) of the LTA provides that the caveator (the Second Plaintiff here) may apply to the court for an order to extend the time beyond the 21 days mentioned in the notice.
7. In my opinion it was critically important for the Second Plaintiff to have obtained an order from the Master to extend the caveat before it was removed by the Registrar (as it was mandatory for him to do 21 days after the service of the notice) on 18 January 2017. The words “shall remove” mean, to my mind, that the legislature intended the obligation on the Registrar to be mandatory and not just directory.
8. I am fortified in my above conclusion by the decision of Jiten Singh J in Raghwan Construction Company Limited .v. Endeavour Youth Investment Co-Operative Society and Registrar of Titles: Suva Civil Action No HBC 0322 of 2005 at page 4.
9. The application was heard on 19 January 2017 on which date even if the Master had granted an order for extension that would have futile or nugatory because the caveat would have been removed on 18 January 2017.

10. With great respect to the Master and Counsel on both sides, if I may say so, all been unable to see the wood for the trees. This is not a case of a lapse or an expiration of a caveat. This is purely and simply a case of a caveat being removed by operation of a statute because prior to that a court order had not been obtained and served on the Registrar preventing him from doing so.

11. I find the Second Plaintiff did not apply in time for the caveat to be extended before it was removed by the Registrar under s.110(1) of the LTA and that therefore the Master correctly refused to grant an order for its extension.

12. In the result:-

(1) I uphold the Master's orders dated 23 January 2017, although for different reasons.

(2) I hereby dismiss the summons for leave to appeal against the Ruling with costs which I summarily assess at \$750 to be paid by the Second Plaintiff to the Defendant.

Delivered at Suva this 2nd day of August 2017.



David Alfred
Judge
High Court of Fiji