

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Case No.HBC 540 of 2007

BETWEEN : DIANA GIESBRECHT

Applicant

AND : ROWENA GRACE CROSS (also known as Roweena Grace
Ravencreek) and Douglas Bamlett

Respondents

Coram : The Hon. Mr Justice David Alfred

Counsel : Mr A Rayawa for the Applicant

: Mr. I. Fa for the Respondents

Date of Hearing : 22 October 2018

Date of Decision : 25 October 2018

DECISION

1. This is the Applicant's Summons seeking the following Orders:
 - (1) That leave be granted for the Applicant to file an appeal against the Interlocutory Judgment (sic, Decision) delivered by me on 30 August 2018 (Decision).
 - (2) A stay of execution and enforcement proceedings arising from the Decision pending the hearing of the Appeal by the Court of Appeal.

2. The Summons is supported by the affidavit of the Applicant who deposes as follows:
 - (1) She has filed an appeal against my judgment delivered on 24 August 2017.
 - (2) The Respondents are attempting to remove caveats which are the subject of the appeal.
 - (3) The application for removal of the caveats should be made in the Court of Appeal as the High Court is functus officio.

3. The 1st named Respondent who deposed the affidavit on behalf of herself and the 2nd named Respondent says as follows:
 - (1) The Applicant has no caveatable interest in law and there is no basis for her to lodge caveats against the properties of the 1st and 2nd Respondents.
 - (2) The High Court is not functus officio in dismissing (sic, removing) the caveats.
 - (3) The Applicant will suffer no prejudice by the decision of the High Court to remove the caveats. In fact it is the Respondents who have suffered loss as a result of the Applicant's unlawful action of lodging the caveats against their properties.

4. The Applicant filed an affidavit in reply which requires no further consideration.

5. The hearing commenced with Mr Rayawa submitting that the only issue was whether this Court was functus officio. He said the interest in the investment scheme is a caveatable interest.
6. Mr Fa submitted that what is before this Court is an application for leave to appeal against an interlocutory judgment of the 30th August 2018. It only relates to the 3 caveats. The caveat and the investment scheme are different issues. The Applicant admits she had no caveatable interest and cannot claim now. She is acting in bad faith and there are no merits in the grounds of appeal.
7. Mr Rayawa replied
8. At the conclusion of the arguments I said I would take time for consideration. Having done so I now deliver my decision.
9. I shall start with the decision of the Fiji Court of Appeal delivered on 18 July 1995 in *Kelton Investments Ltd v Civil Aviation Authority of Fiji* [1995] FJCA 15. Sir Moti Tikaram P said "I am mindful that Courts have repeatedly emphasized that appeals against interlocutory orders and decisions will only rarely succeed. As far as the lower courts are concerned granting of leave to appeal against interlocutory orders would be seen to be encouraging appeals...Even where leave is not required the policy of appellate courts has been to uphold interlocutory decisions and orders of the trial Judge".
10. Sir Moti further said "In my view the intended appeal against the interlocutory order of 10 May 1995 does not raise any point of law of any general importance.
11. Sir Moti finally said "The Courts have thrown their weight against appeals from interlocutory orders or decisions for very good reasons and hence leave to appeal are not readily given. In my view the intended appeal would have minimal or no prospect of success if leave were granted. I am also of the view that the Applicant will not suffer an irreparable harm if stay is not granted".

12. I adopt and apply Sir Moti's reasoning to this application. The Applicant has only one ground of appeal which is that this Court was functus officio.

13. I must now turn to the issue of "functus officio" which is defined by Osborn's Concise Law Dictionary as "having discharged his duty". My judgment of 24 August 2017 was given in an action for the recovery of monies paid under an investment scheme. The appeal against that judgment to the Court of Appeal is for orders that that Court grant the Plaintiff's prayers for punitive and general damages and restitution for loss. Nowhere from start to finish was there any mention of any caveat against any title to any land.

14. Consequently it cannot be said that I have discharged my duty for the simple reason I have not there given any decision nor made any order relating to the 3 caveats here, and thus my authority has not been spent. In any event that action had no connection to nor relation with the 3 caveats here.

15. With this firmly in view I shall dismiss the Summons filed on 12 September 2018 and make the following orders:
 - (1) Leave to the Applicant to appeal against the interlocutory Decision on 30 August 2018 is refused.
 - (2) The application for stay of the Decision and resulting proceedings and other applications is dismissed.
 - (3) The Applicant shall pay the Respondents the costs of this Summons summarily assessed at \$500.

Delivered at Suva this 25th day of October 2018.



David Alfred

JUDGE

High Court of Fiji