

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 122 of 2016

BETWEEN : **FREDDY'S REAL ESTATE COMPANY LIMITED** a limited liability Company having its registered office at Waqadra, Nadi.

Plaintiff

AND : **AJJUNISSA HUSSEIN SAHIB** as Executrix and Trustee of the Estate of **MOHAMMED HUSSEIN SAHIB** of Bountiful Estate, Namaka, Nadi.

First Defendant

AND : **MOHAMMED FARHAAN ABIDE SAHIB** of Bountiful Estate, Namaka, Nadi,

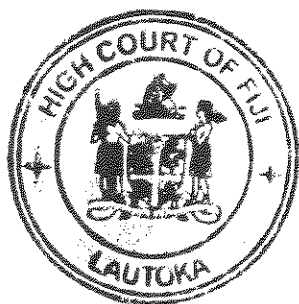
Second Defendant

Counsel : Messrs KLaw for the Plaintiff
Pillai Naidu & Associates for the Defendant

R U L I N G

1. On 28 January 2004, the plaintiff and the first defendant entered into an agreement for the sale and purchase of a particular plot of land which is to be carved out of Crown Lease No. 12627 being LD Ref No. 4/10/1399.
2. The said plot of land, following the completion of formal subdivision, has since become known as State Lease No. 19358 being Lot 5 on SO5786, situated at Waqadra in Nadi ("**Lot 90**") according to a scheme plan approved by the Director of Town & Country Planning.
3. Apparently, the 1st defendant has since transferred Lot 90 to her grandson, the first defendant. That transfer was done out of "natural love and affection". This is not disputed by the parties. Out of that transfer, the second defendant had to pay stamp duties and the first defendant still had Capital Gains Tax assessed against her.

4. I gather that the dealing between the plaintiff and the 1st defendant was not consented to by the Director of Lands. In response to such an assertion by the 1st defendant in her affidavit sworn on 14 October 2016, the plaintiff company's Managing Director, Mr. Abdul Rahiman Ali swore as follows in his reply sworn on 23 November 2016:
- I deny and dispute the contents of paragraph 8C of the said Affidavit as the Sale and Purchase Agreement was noted with the Director of Lands Department that the ground rent would have been told to the 1st Defendant upon the issuance of the Lease over the subject lot which the 1st defendant failed to disclose to the Plaintiff Company.
5. I do not think that addresses the issue of lack of consent.
6. Without the Director of Lands prior consent, the plaintiff company cannot derive any equitable interest in Lot 90.
7. As such, I cannot grant the interlocutory injunctive orders sought.
8. In any event, I am of the view that if the plaintiff company succeeds, it will be entitled to common law damages for breach of the agreement or to equitable damages in lieu of specific performance.
9. Application dismissed.
10. I see that there is already a default judgement entered against the defendants. The plaintiff may proceed to assessment of damages if the default judgement is set aside.
11. Parties to bear their own costs.



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Anare Tuilevuka
JUDGE
02 March 2018.