

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil 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 Defendants
Mr H. Nagin for the Second and Third Defendant

Date of Hearing : 16 July 2018

Date of Decision : 19 July 2018

DECISION

1. This is the Plaintiffs' Summons where they are applying for the following Orders that:
 - (1) The Plaintiffs be allowed to sell the land held under Certificate of Title No 6684 known as Block 1 Deuba, Serua, Viti Levu being Lot 1 on DP No 1277.
 - (2) The Plaintiffs be permitted to sell the land as they think fit.
 - (3) All the proceeds of sale be paid to the First and Second Plaintiffs for the purpose of payment of the money judgments against the First Defendants, which were sealed as an order of the High Court on 31 March 2009.
2. The application is made pursuant to Order 31 and Order 32 rule 1 of the High Court Rules.
3. At the commencement of the hearing of the Summons, Mr Nagan stood up to raise a preliminary objection. He said the registration of the order on the title was only till 1 May 2017. It has since expired and the Plaintiffs cannot now ask for an order for sale. He referred to my Decision delivered on 1 November 2016 and to para 22 thereof, which he said is crystal clear. The Plaintiffs should have filed this application before 1 May 2017.
4. Ms Shameen supported Mr Nagan and said that the Plaintiffs cannot file this application as they are out of time.

5. Ms Low in her response to Mr Nagin said Counsel's submission was irrelevant as the order of 1 November 2016 only registered the money order of 31 March 2009 against the second named First Defendants (Larry). The judgment of this Court on 27 October 2016 at para 19 stated only one property fell within the ambit of the injunction and this is what the Plaintiffs are seeking to sell today.
6. Ms Low in her response to Ms Shameem said that the Plaintiffs were seeking to rely on the money judgment of 2009 which is still valid and this is the first application for sale.
7. At the conclusion of the arguments I said I would take time for consideration. Having done so I now proceed to deliver my decision.
8. There is only one issue for me to decide at this juncture. Is Ms Low correct to submit that in the summons, they are relying on the money judgment of 2009 which is still valid, by which I think she means enforceable, and not on the Decision of 1 November 2016 which, according to Ms Low, is irrelevant.
9. Section 4 (4) of the Limitation Act 1971 states an action shall not be brought upon any judgment after the expiration of 12 years from the date it became enforceable.
10. If, I may say so with respect that is not what the preliminary objection is all about. It is about the provisions of section 104 (1) of the Land Transfer Act 1971 (LTA). This I paraphrase as laying down that no judgment, decree or order for the payment of money or the sale of land shall bind or affect any estate or interest in land unless and until the (Registrar of Titles) has been served with a copy of such judgment.
11. It is instructive to note that s.105(2) LTA provides that every judgment shall cease to bind or affect any estate or interest in land in respect of which it is registered unless a transfer upon a sale under such a judgment is presented for registration within 6 months or such extended period as the Court determines.

12. Indeed, Ms Low's principal Mr W. Clarke had at the hearing before me on 27 October 2016 applied for an order under s.105 (2) of the LTA after informing me that the judgment had been registered on the title concerned which is the same title that we are concerned with here.
13. On 1 November 2016, I had extended the period by 6 months to end on 1 May 2017, which is now more than 14 months ago.
14. Consequently the preliminary objection has succeeded, and the Summons has failed.
15. The Summons filed on 29 March 2018 is hereby dismissed with costs summarily assessed to be paid by the First and Second Plaintiffs in the sum of \$500 to the Second named First Defendants and in the sum of \$1,250 to the Second and Third Defendants.

Delivered at Suva this 19th day of July 2018.



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David Alfred

JUDGE

High Court of Fiji.