

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Appeal No: ABU 131 of 2018

Civil Action No: HBC 358 of 2017

BETWEEN : SUSHIL PRASAD SHARMA

APPELLANT

AND : PAULA LAGOIA SILI and SALOME NAMATA SILI

FIRST RESPONDENT

AND : REGISTRAR OF TITLES

SECOND RESPONDENT

AND : ATTORNEY GENERAL OF FIJI

THIRD RESPONDENT

CORAM : The Hon. Mr. Justice David Alfred

COUNSEL : Mr. S. Kumar for the Appellant.
Mr. M. Nand for the First Respondent

Date of Hearing : 6 February 2019

Date of Decision : 8 February 2019

DECISION

1. This is the Appellant's Summons for Stay of my judgment until the determination of the appeal.
2. It is supported by the affidavit of the Appellant who deposes, inter-alia, as follows:
 - (1) He is "the registered owner and **disputed** owner with full vested interest in the property described as CT 19761" (the property).
 - (2) He "entered into Sale and Purchase Agreement alone with the 1st Respondents".
 - (3) He is advised by his Counsel and believes that the "Judge has made serious errors of law which need to be determined by the Judges of the Fiji Court of Appeal when no money is paid to the Vendor by the Purchaser or the Order (sic) is lacking consideration to be paid....."
3. The First Respondent in her affidavit of response deposes, inter-alia, as follows:
 - (1) She does not agree that the Appellant is the disputed owner and says that the Appellant is the sole registered proprietor of the property.
 - (2) She says the Appellant did not raise anything before entering the consent orders in court before Kumar J on 29 October 2014.
 - (3) She says the Appellant engaged Titus Real Estate (Titus) to sell his property and hence the deposit was paid to Titus.
 - (4) She says it is unjust to keep her running around and incurring legal fees since 2011 when the Appellant is residing on the property.
4. In his affidavit in answer, the Appellant says in para 3 "That given my illiteracy I am duly guided by my Solicitor in the reading and preparation of this Affidavit". Then in para 12 he refers to "proper legal advice been given by an efficient and a prominent solicitor".
5. The court considers it is significant that "my solicitor", "an efficient (solicitor)" and "a prominent Solicitor" have all not been named. This is because any Solicitor in Fiji would be aware that the Appellant cannot be a disputed owner since he is the sole registered owner on the certificate of the title.
6. In any event, the contents of that affidavit should be stated with both precision and particularity. It will not suffice to make general allegations.

Consequently any court in Fiji would consider it inexpedient to take cognizance of the prolixity in this affidavit.

7. The hearing commenced with Mr Kumar submitting, based on the authorities cited in his written submission, that a stay will be only be granted if there are special circumstances as a party is entitled to enjoy the fruits of his Judgment. He referred to the "Natural Waters" case.
8. Mr Nand then submitted. Relying on the authorities cited in his written submission, he said the deposit was paid to the Appellant's agent. There were no errors of law made by the court. The First Respondent was injuriously deprived of her Judgment. There was no novelty nor a point of importance here. The appeal will not be nugatory. Here is a case of the execution of an agreement and if a stay is not granted there is no prejudice to the Appellant because he will be paid the purchase price. No objection was raised by the Appellant until 2017 and so his motive is he will get a higher price if the sale and purchase agreement (SPA) is set aside. The balance of convenience favors not granting a stay as there are no other exceptional circumstances except saying the SPA is invalid.
9. Mr Prakash said he is not making any submission.
10. At the conclusion of the arguments I said I would take time for consideration. Having done so, I shall now deliver my decision.
11. I start by referring to the leading case of Natural Waters of Viti Limited AND Crystal Clear Mineral Water (Fiji) Limited: Fiji Court of Appeal Civil Appeal No ABU001 of 2004S - 18 March 2005 - where the judgment of the court in para [7] stated "The principles to be applied on an application for stay pending appeal are conveniently summarized in the New Zealand text, McGechan on Procedure (2005): "On a stay application the Court's task is "carefully to weigh all of the factors in the balance between the right of a successful litigant to have the fruits of a judgment and the need to preserve the position in case the appeal is successful": Duncan v Osborne Building Ltd (1992) 6 PRNZ 85 (CA), at p 87. The following non-comprehensive list of factors conventionally taken into account by a Court in considering a stay emerge from Dymocks Franchise Systems (NSW) Pty Ltd v Bilgola Enterprises Ltd (1999) 13 PRNZ 48, at p 50 and Area One Consortium Ltd v Treaty of Waitangi Fisheries Commission (1993) 7 PRNZ 200:

- (a) Whether, if no stay is granted, the applicant's right of appeal will be rendered nugatory (this is not determinative). See Philip Morris (NZ) Ltd v Liggett & Myers Tobacco Co (NZ) Ltd [1977] 2 NZLR 41 (CA).
 - (b) Whether the successful party will be injuriously affected by the stay.
 - (c) The bona fides of the applicants as to the prosecution of the appeal.
 - (d) The effect on third parties.
 - (e) The novelty and importance of questions involved.
 - (f) The public interest in the proceeding.
 - (g) The overall balance of convenience and the status quo."
12. The first thing the Appellant has to satisfy this Court is that there are merits in the appeal and the appeal will be considered nugatory if a stay were not granted.
13. It appears to the Court that the contention that there are merits in the appeal falls to the ground when it is considered that the Appellant, in his affidavit in reply in Suva High Court Action No HBC 441 of 1999 which he swore in the presence of a commissioner of oaths after the contents were explained to him in English and which he appeared fully to understand the meaning and effect of, stated in para 19 in i "That my property is on the verge of being sold for a substantial sum" and in ii "That I have, as a legal proprietor, entered into sale and purchase agreement with other parties and could be sued for specific performance and damages."
14. And Mr Kumar in his reply confirmed the above mentioned SPA is the SPA in this stay application.
15. If I may say so with respect there is nothing to be determined by the Court of Appeal regarding the suppositious issue of non-payment of consideration, because in para 20 (2) of my Judgment it is stated that the Plaintiffs (First Respondent) are to pay the First Defendant (Appellant) the balance purchase price of \$270,000 less utilities bills.
16. The Appellant seeks to run away from his responsibility by placing all blame on his previous solicitors and counsel. This is clearly unproven and the Appellant has not attempted to prove his serious allegations.
17. I am fortified in my conclusion by the Court of Appeal decision in: Vimal Construction and Joinery Works Limited and Bimal Prakash AND Vinod Patel and Company Limited: Civil Appeals Nos ABU 0093 of 2006S and ABU 0051 of 2006S. The Court of Appeal said in para [15] of its Judgment that "A contention as to

incompetence of legal advisers will rarely be sufficient and, where it is, evidence” in the nature of flagrant or serious incompetence is required”.

18. At the end of the day, I shall return to the Court of Appeal Judgment and quote para [15] that “Many of the factors to which we have referred relate to the overall balance of convenience and the status quo. When regard is had to all of these factors, we are satisfied that the interests of justice are against the grant of a stay. This is particularly so in view of our comment above that the application for leave to appeal is unlikely to succeed. We can find no factors that come anywhere near outweighing this consideration - indeed most of the factors are to the contrary”.
19. I adopt and apply this finding by stating there are no novelty and importance of questions involved, there is no public interest in this proceeding, and the balance of convenience militates a stay.
20. In the result, the Appellant’s Summons for Stay filed on 21 November 2018 is hereby dismissed with costs summarily assessed at \$500 to be paid by the Appellant to the First Respondent.

Delivered at Suva this 8th day of February 2019.



David Alfred
JUDGE
High Court of Fiji