

**IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION**

CIVIL ACTION NO.: HBC 132 of 2019

IN THE MATTER of the Land
Transfer Act 1971 Section 109,

AND

IN THE MATTER of an application to
remove Caveat No. 873707 lodged by
**HOTEL & RESORT INVESTMENT
HOLDINGS PTE LIMITED** against
Certificate of Title No. 38013, the
property of **HOTEL EQUIPMENT
LIMITED**

BETWEEN : **BANK OF SOUTH PACIFIC LIMITED** **PLAINTIFF**

AND : **HOTEL & RESORT INVESTMENT HOLDINGS PTE LTD**
DEFENDANT

APPEARANCES/REPRESENTATION

PLAINTIFF : Ms. L. Prasad & Mr. S. Fatiaki [Sherani & Co]

DEFENDANT : Mr. S. Siga [Director of Defendant Company]

JUDGMENT OF : Acting Master Ms Vandhana Lal

DELIVERED ON : 27 June 2019

JUDGMENT

[Removal of Caveat]

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1. The Plaintiff seeks to have caveat number 873707 lodged against Certificate of Title No. 38013 be removed. Application is made pursuant to Section 109 of the Land Transfer Act.
 2. The Plaintiff claims to hold a registered mortgage dated 24 March 2015 over the land contained and described in Certificate of Title No. 38013 being mortgage no. 811708.

The said property is registered under Hotel Equipment Limited.

Hotel Equipment Limited has defaulted under the Mortgage, with Plaintiff serving a demand notice on the Mortgagor.

The Plaintiff proceeded to sell the said property by way of mortgagee sale with advertisement done and tender of Vision Properties Pte Limited accepted.

An agreement was entered with Vision Properties Pte Limited on 19 February 2019 with settlement to take effect in 60 days i.e. by 20 April 2019. Vision Properties Pte Limited has paid \$3,600 as stamp duty on the transfer.

On 6 March 2019 the Defendant lodged a caveat against the title. The caveat is signed by Savenaca Siga, who previously held himself out to be a Manager Legal/Operation of the Mortgagor.

The said caveat is said to be fraudulent and lodged to stop the mortgagee sale. It is based on a sale and purchase agreement dated 02 January 2019 with the Defendant.

According to the Plaintiff, the Defendant's shareholders are the same as that of the Mortgagor's.

Aloesi Begg (shadow Director of Defendant) had also executed Mortgage Number 811703 as a Director of the Mortgagor.

The annual return up to 4 December 2015 filed with Registrar of Companies shows Aloesi Beggs as director and shareholder of the Mortgagor. The Plaintiff submits the Defendant is related to the Mortgagor and is not a genuine purchaser.

The Directors of the Defendant, Savenaca Siga and Aloesi Begg are acting fraudulently. There is no evidence that the Defendant is ready with \$4,990,000 to effect settlement under the said Agreement.

A demand Notice dated 21 February 2018 Mortgager and duly received by the Mortgagor.

On 30 August 2018 the Solicitors of the Mortgagor wrote to the Plaintiff for further time for repayment and suspend the mortgagee sale.

Mortgagee sale was advertised in daily newspapers and Mortgagor had also contacted the Plaintiff regarding this.

Despite being served with a notice to remove the caveat the Defendant has failed to do so.

3. According to the Defendant, they have a valid existing sales and purchase agreement dated 2 January 2019.

The Mortgagor did not receive or accept any demand notice dated 21 February 2018.

There were negotiation between Mortgagor and the Plaintiff for repayment and no agreement was reached for Mortgagee Sale.

The Mortgagor was never aware of the Mortgagee Sale.

The Defendant Company in consultation with its investors and overseas finances, lodged a caveat on the property to note the interest on the property.

Mr. Savenaca Siga holds position of Manager Legal/Operation of the Manager with Mortgagor and is a Director of the Defendant Company.

The Plaintiff have not provided any evidence to show the sales and purchase agreement between the Defendant and Mortgagor is an act of fraud.

The Defendant was registered on 9 June 2019 and has been in operation since then. The Defendant is also a tenant of the Mortgagor since then.

4. The Defendant should bring itself within the provisions of Section 106 of the Land Transfer Act to seek protection of the caveat. The requirement to fulfil are:
 - a. *Person claiming to be entitled or to be beneficially interested in any land subject to the provisions of this Act, or any estate or interest therein, by virtue of any unregistered agreement or other instrument or transmission, or of any trust express or implied, or otherwise howsoever; or*
 - b. *Person transferring any land subject to the provision of this Act, or any estate or interest therein to any other person to be held in trust.*
5. Pursuant to Section 109 (2) of the Land Transfer Act when called, to the caveator should show cause why the caveat should not be removed.
6. Campbell JA in **Bayblu Holdings Pty Limited v Capital Finance Australia Limited [2011] NSWCA 39** at 20 described the principles governing application for removal of caveat:

"The primary judge correctly proceeded on the basis that on an application for an order to remove a caveat it is not necessary for the court to make a final determination as to the interest claimed by the caveator or a final determination as to the priority that the caveator may or may not have over competing interest. Rather the court should enquire whether the caveator would have been granted an interlocutory injunction to protect the interests that the caveator claimed in the caveat. If no such interlocutory injunction would have been granted the caveat should be ordered to be withdrawn".

7. According to the Defendants the fact that they have entered into sale and purchase agreement with the mortgagor gives them a right to interest in the land.

8. The Mortgagor Hotel Equipment Limited is a limited liability company.

The Mortgage document was signed by two directors; one of the first signature is not recognisable however the second signature is of Aloesi Begg under the common seal of Hotel Equipment Limited (Annexure B to the Affidavit in Support).

9. The caveat is lodged by Hotel and Resort Investment Holdings Pte Limited and signature of Caveator under the Company's seal is of Savenaca Siga is Director/Company Secretary (Annexure E of the Affidavit in Support).

10. The sale and purchase agreement between the Mortgagor Hotel Equipment Limited and the Defendant Hotel and Resort Investment Holding Pte Limited contain signatures of Begg for both companies under the common seal of respective company (Annexure F of the Affidavit in Support).

11. Mr Siga is Manager Legal/Operation for Hotel Equipment Limited wrote to the Bank on 31 January 2019 (Annexure G to the Affidavit in Support).

12. The records with Registrar of Companies shows that sometimes on 13 February 2019 a change to companies details was filed concerning appointment of Company Office holder for Hotel and Resort Investments Holding Pte Limited.

Aloesi Begg had signed the form as current officeholder being director of the company.

Mr Savenaca Siga was appointed as Director and Company Secretary (Annexure K to the Affidavit of Support).

13. The purported tenancy agreement which is not daily stamped states the same is signed by Aloesi Begg under the seal of Hotel Equipment Limited.

14. Furthermore the purported sales and purchase agreement between the Mortgagor and the Defendant is in contravention of Clause 6.5 of the Mortgage document.

The Mortgagor was not to sell the property without the Plaintiff first agreeing to in writing.

15. The above observation only brings me to the conclusion that the office holders/bearers of the Mortgagor Hotel Equipment Limited and the Defendant Hotel and Resort Investment Holdings Pte Limited are the same persons.

16. I can only agree with the Plaintiffs that the purported sale and purchase agreement between the two companies is to defeat the Plaintiff of its right to exercise powers under the Mortgage document for mortgagee sale.

17. Hence I do not think there is a serious question to be tried or there is a prima facie case that the Defendant may have an interest in the property by virtue of the purported sale and purchase agreement. The balance of convenience favours the removal of caveat
18. Orders are that Caveat No. 873707 lodged against certificated of title no. 38013 to be removed forthwith by the Registrar of Titles.

The Defendants are further ordered to pay cost summarily assessed at \$1,500. Said cost is to be paid to the Plaintiff in 14 days.




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Vandhana Lal [Ms]
Acting Master
At Suva.