

**IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION
CIVIL ACTION NO.: HBC 73 of 2019**

IN THE MATTER of an application
Under Section 169 of the Land Transfer
Act for the order for immediate vacant
possession.

**BETWEEN : WONDER INVESTMENT PTE LIMITED
PLAINTIFF**

**AND : INTERNATIONAL EMBROIDERY COMPANY
LIMITED
DEFENDANT**

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr N Lajendra [Lajendra Lawyers]

DEFENDANT : Mr N Prasad [Mitchell Keil]

JUDGMENT OF : Acting Master Ms Vandhana Lal

DELIVERED ON : 02 June 2020

JUDGMENT

The Application

1. This is an application for eviction proceedings pursuant to Section 169 of the Land Transfer Act, whereby the Defendant is asked to show cause why it should not give up immediate vacant possession to the Plaintiff of all property being all land legally described in Certificate of Title Number 7088 being lots 1 & 2 on Deposited Plan Number 1472 containing an area of 32.7 perches situated in the town of Suva of which the Plaintiff is said to be the registered owner.

An Affidavit sworn by Ravikash Rajneel Deo on 13 March 2019 is filed in support of the said application.

2. The Defendant is opposing the application filed its affidavit sworn by one Akeshwar Reddy on 22 May 2019.
3. The Plaintiff filed a reply on 4 June 2019.

Plaintiff's Contention

4. The Plaintiff is the registered proprietor since 26 June 2018 of the subject land. It has annexed to the affidavit in support a certified copy of the title [annexure B] registered with Registrar of Titles.
5. There is a commercial structure constructed on the subject property occupied by various tenants who are running businesses or having a bulk or storage.
6. The Defendant is occupying part of the property and is operating a printery business.
7. The Plaintiff upon becoming the owner issued to all its tenants a notice for increase in rent.
8. Should the rental increase was not acceptable, the tenants were given alternative to vacate the property within three months.
9. The Defendant was served with a notice on 13 July 2018.
10. The Defendant has not accepted the rental increment nor did it vacate the premises.
11. The Plaintiff has been accepting the old rental in sum of \$2,180 on a without prejudice basis.

12. On or about 30 January 2019, the Plaintiff gave the Defendant a one month notice to give vacant possession. The said notice was served on 01 February 2019. However the Defendant is said to be still in occupation of the premises. It continues to deposit in the bank account of the Plaintiff's property manager [Jokhan Realtors Limited] old rent in the sum of \$2,180.
13. The said rental is received on without prejudice basis.
14. The Defendant's Solicitors wrote to the Plaintiff's Solicitors informing that the Defendant had executed a rental agreement dated 01 May 2017 to lease the property for 3 years ending 30 April 2020 at a monthly rental of \$2,180. Hence the Defendant has a right to occupy the property.
15. The Plaintiff's solicitors replied informing that the rental agreement did not bind the Plaintiff as it was between the Defendant and the previous owner's agent.
16. With no agreement with the Plaintiff, the Defendant was a month to month tenant.

Defendant's Argument

17. The Defendant does not dispute that the Plaintiff is the registered proprietor of the subject land.
18. On or about 1 May 2017, Ramesh Narsi as registered proprietor of property on CT Number 7088 being Lot 1 and 2 on DP Number 1472 through his authorised managing agent Jokhan Realtors Limited entered into a rental agreement as landlord and owner with the Defendant as the tenant.
19. The rental payment was for \$2,000 plus VAT per month and for a period of 3 years lapsing on 30 April 2020.
20. The Plaintiff had entered into a Sale and Purchase agreement with Ramesh Narsi.

21. The Plaintiff knew the Defendant was an ongoing tenant and the sale was subject to such tenancy. By not seeking vacant possession at the time of settlement the Plaintiff agreed on the Defendant to continue the agreement.
22. The Defendant has continued to pay the rent pursuant to the agreement.
23. There has been no notice served to terminate the Agreement.
24. The Defendant claims it had undertaken substantial repairs and maintenance of the property amounting to \$9, 425.95.

Plaintiff's Reply

25. The rental agreement of 01 May 2017 was entered into when the Plaintiff was not a registered proprietor. Upon becoming a registered proprietor the Plaintiff issued notice of increment of rent. As the Defendant did not accept this it was to give possession within 3 month from date of the notice.
26. The notices dated 13 July 2018 and 30 January 2019 puts the Defendant on notice that any rental paid by the Defendant will be without prejudice to the said notices and will not operate as a waiver of Plaintiff's right to enforce the notice or create or revive a tenancy.

Determination

Does the Plaintiff have locus to bring the proceedings under Section 169 of the Land Transfer Act?

27. Section 169 of the Land Transfer Act outlines who may institute proceeding under the said provision and they are:
 - a. *the last registered proprietor of the land;*
 - b. *a lessor with the power to re-enter where the lessee or tenant is in arrear for such period as may be provided in the lease and, in the absence of any such provision therein, when the lessee or tenant is in arrear for one month, whether there be or be no sufficient*

distress found on the premises to countervail such rent and whether or not any previous demand has been made for the rent;

- c. a lessor against a lessee or tenant where a legal notice to quit has been given or the term of the lease has expired.”*

28. There is no dispute that the Plaintiff is registered as the last proprietor of the subject land.

29. Hence it can apply for possession of land under Section 169 of the Land Transfer Act.

Description of the land and service of the summon

30. Section 170 of the Act reads:

The summons shall contain a description of the land and shall require the person summoned to appear at the court on a day not earlier than sixteen days after the service of the summons.

31. The property is described as follows:

“Certificate of Title Number 7088 being Lots 1 and 2 on DP Number 1472 containing an area of 32.7 perches and situated in the town of Suva and Island of Viti Levu”.

32. The copy of Certificate of Title annexed to the affidavit in support is for CT No. 7088 being Lots 1 and 2 on DP No. 1472 containing 32 perches and 17th of a perch situated at Suva on Viti Levu.

33. The date for call on the summon is for 02 May 2019. As per the affidavit of service filed on 01 April 2019, the originating summon with the affidavit in support was served on 25 March 2019.

There is clear 16 days of service.

34. Hence the Plaintiff is in compliance with section 170 of the Act.

Has the Defendant established a right or title to remain in possession?

35. Section 172 of the Act reads:

“The person summoned may show cause why he or she refuses to give possession of such land and, if he or she proves to the satisfaction of the Judge a right to the possession of the land.”

36. The Supreme Court in **Morris Hedstrom Limited –v- Liaquat Ali a Supreme Court of Fiji, Action No. 153 of 1987** has stated:

*“Under Section 172 the person summoned may show cause why he refused to give possession of the land and if he proves to the satisfaction of the judge a right to possession or can establish an arguable defence the application will be dismissed with costs in his favour. The Defendants must show on affidavit evidence some right to possession which would preclude the granting of an order for possession under **Section 169** procedure. That is not to say that final or incontrovertible proof of a right to remain in possession must be adduced. What is required is that some tangible evidence establishing a right or supporting an arguable case for such a right, must be adduced.”*

37. According to the Plaintiff, upon becoming the owner it had issued to all its commercial tenants with a notice for increase of rent. In the alternative they were to vacate the premises within 3 months.

A notice was served on the Defendant on 13 July 2018. The Defendant did not agree to the increased rent and continued to occupy the property.

On 30 January 2019 the Plaintiff served the Defendant a notice to quit.

38. The Defendant states it is entitled to occupy the property as per the terms on the agreement of 01 May 2017 which was executed with the previous owner, since the Plaintiff failed to ask for vacant possession at time of purchasing the property.

39. When the Plaintiff had purchased the property it became the registered proprietor of the property subject to the rental agreement of the Defendant.

There is no evidence that the Plaintiff or the previous owner had terminated the said agreement at the time of purchasing the property.

40. As per the rental agreement, the rental rate was \$2,180 per month (\$2,000 plus VAT).
41. After becoming the registered owner, the Plaintiff via notice dated 13 July 2018 informed the Defendant of the increase in rent, which is disputed by the Defendant.
42. Clause 5(e) of the rental agreement allows both parties in case of dispute, difference or question arising to refer such dispute, difference or question to two arbitrators one to be appointed by each party or their umpire.

This was not done.

43. The Plaintiff insisting on the increment proceeded to issue an eviction notice.
44. There is no provision for in the rental agreement for time period to notify the other party of their intention of terminating the agreement.
45. Section 89 of the Property Law Act states:
- (2) *in absence of express agreement between the parties a tenancy of no fixed duration in respect of which next is payable weekly, monthly, yearly or for any other recurring period may be terminated by either party giving the other written notice as follows:*
- a) *Where the rent is payable yearly or for any recurring period exceeding one year, at least 6 months' notice expiring at the end of the year of the tenancy or;*

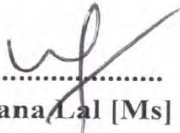
- b) *Where the rent is payable for any recurring period of less than one year, notice for at least a period equal to one rent period under the tenancy and expiring at any time, whether at the end of the rent period or not.*

46. The rental is paid on monthly basis hence the notice so served by the Plaintiff suffices for purpose of terminating the tenancy.
47. In regards to the claim for renovations done and monies spent on maintenance of the property, clause 2(h)(i)(iii) if the agreement states that consent of the Owner/the authorised Managing Agent/Agency is required. Furthermore such alteration and renovation is at the expense of the tenant and the owner is not required to pay for such expense and is not liable to compensate the tenant.
48. Considering the above, I do not find the Defendant has established a right to remain on the property.

Final Orders

49. The Defendant to give immediate possession of the premises occupied by it on *Certificate of Title Number 7088 being Lots 1 and 2 on DP Number 1472 containing an area of 32.7 perches and situated in the town of Suva and Island of Viti Levu.*
50. The Defendant to pay Plaintiff cost summarily assessed at \$1,000. Said cost to be paid in 14 days.




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Vandhana Lal [Ms]
Acting Master
At Suva.