

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

Civil Action No.: HBC 08 of 2023

**BETWEEN** : **RA CANE FARMS LIMITED** a duly incorporated company having its registered offices at Suva

**PLAINTIFF**

**AND:** **VADIVELLU PILLAY aka WELLA PILLAY** of lot 16, The Cove, Denarau, Nadi, Businessman

**DEFENDANT**

**Counsel** : **Plaintiff:** Mr. Jiaoji Savou

**Defendant:** Mr. Rattan.S

**Date of Hearing** : 17.03.2023

**Date of Judgment** : 12.05.2023

**JUDGMENT**

**Introduction**

1. Plaintiff instituted this matter in terms of Section 109(2) of Land Transfer Act 1971. Plaintiff is a legal entity and the proprietor of seven land parcels described more fully in the summons (i.e. CT40452, CT40453, CT40454, CT40455, CT40456, CT40457, and CT40458). According to caveat no 924676 the said caveat was lodged on the titles of the seven Land parcels 'claiming an estate as Beneficiary in the Estate of Gopal aka Gopal Pillay includes all the shares' of Plaintiff, by 'virtue of Terms of Distribution Agreement' (TODA). There was no agreement between Plaintiff and Defendant. There were shares belonging to the Estate of Gopal Pillay which required distribution in terms of Section 6 of Succession Probate and Administration Act. Beneficiaries of the estate Gopal Pillay, by TODA agreed to 'relinquish and forever renounce all their interest in Gopal's also known as Gopal Pillay shares in' Plaintiff to a Trust, called 'Gopal Pillay Family Trust'. It is trite law that shareholders of a legal entity do not own properties own by a legal entity.

Defendant will be a trustee to Gopal Pillay Family Trust' and a beneficiary from that but neither said trust was established nor any shares of Plaintiff transferred.

### Facts and Analysis

2. Section 106 of Land Transfer Act 1971 states who can lodge a caveat. This is a statutory right hence it limited to the circumstances stated in the act. It states

"106. Any person-

- (a) **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 expressed or implied, or otherwise howsoever; or
- (b) **transferring any land** subject to the provisions of this Act, or any estate or interest therein, to any other person to be held in trust,

may at any time lodge with the Registrar a caveat in the prescribed form, forbidding the registration of any person as transferee or proprietor of, and of any instrument affecting, such estate or interest either absolutely or unless such instrument be expressed to be subject to the claim of the caveator as may be required in such caveat." (emphasis added)

3. So, in this matter Defendant is required to establish that he is a person who can lodge a caveat in term of Section 106 of Land Transfer Act 1971.
4. Section 107 of Land Transfer Act 1971 makes it mandatory for caveat or to state the nature of the estate claimed with clarity and it reads;

"Particulars to be stated in and to accompany caveat

In New Zealand Mortgage Guarantee Co Ltd v Pye [1979] 2 NZLR 188 considering analogous provision to the above quoted section emphasized the importance of interest stated in the caveat with sufficient clarity, and held, at pp194-95

"It is as a starting point desirable to note that the procedure which the applicants have invoked is entirely the creation of statute. This aspect was stressed in the decision of the Court of Appeal delivered by Callan J in Guardian Trust and Executors Company of New Zealand Ltd v Hall [1938] NZLR 1020, 1025, where it was said:

"A caveat is the creature of statute and may be lodged only by a person upon whom a right to lodge it has been conferred by the statute. It is not enough to show that the lodging and continued existence of the caveat would be in some way advantageous to the caveator. He must bring himself within s 146 of the Land Transfer Act." [1979] 2 NZLR 188 at 195

A perusal of the Australian decisions to which I have referred shows that there are a substantial number to be found to support the view that a caveator who fails to comply fully with the statutory requirements and fails to state accurately the nature of the

interest which he claims by his caveat will not succeed in securing the assistance of the Court to maintain such a caveat. An early case of this kind is *Palmer v Wiley* (1906) 23 WN (NSW) 90. The Real Property Act 1900, s 72, required a caveator to state "the nature of the estate or interest claimed and the facts upon which the claim is founded".

5. In this action Defendant had failed to state his interest with sufficient clarity, he is neither a shareholder nor a trustee of shares. Defendant was not even a party to TODA, which he had relied on the purported interest relating to seven land parcels stated in Caveat 924676.
6. It is not disputed that 50% of the shares of the Plaintiff belonged to the estate of late Gopal Pillay, and upon death that devolved to widow /defacto partner and child of the deceased. Defendant is a beneficiary of 'Gopal Pillay Family Trust'.
7. According to the Caveat No 924676 the interest of the Defendant to the said seven land parcels were,

"Claiming an estate as **Beneficiary** in the Estate of Gopal aka Gopal Pillay includes all the shares' of Plaintiff, by 'virtue of Terms of Distribution Agreement'
8. All the beneficiaries of late Gopal Pillay had entered in to a TODA and in terms of that a trust needs to be established to transfer the shares inherited to be transferred to 'Gopal Pillay Family Trust'. The Defendant becomes beneficiary of the Trust and also benefices.
9. The creation of 'Gopal Pillay Family Trust' to deal with the shares held by estate of Gopal Pillay cannot create, Defendant as trustee for 'claiming **to be entitled or to be beneficially interested in any land**' owned by Plaintiff.
10. Clause 4.15.2 of TODA states,

"The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Beneficiary (sic) relinquish and forever renounce all their interest in GOPAL's also known as Gopal Pillay shares in Ra Cane Farms Limited to Vadivellu Pillay, the youngest brother of the late Gopal as the Trustee of a Trust which shall be called the "Gopal Pillay Family Trust" and whose beneficiaries shall include the living biological siblings of Gopal also known as Gopal Pillay"
11. According to Caveat No 924676, Defendant's purported interest to lodge a caveat for the seven land parcels described in the said Caveat was 'by virtue of Terms of Distribution Agreement' (i.e. TODA) , which only makes him a trustee and beneficiary of 'Gopal Pillay Family Trust', not for properties of Plaintiff.
12. In terms of TODA, there was no creation of 'Gopal Pillay Family Trust' for which Defendant will be the trustee of the proposed 'Gopal Pillay Family Trust'. Even if the said trust is created without the shares being transferred to it, Defendant has no right deriving from the shares of Plaintiff.
13. It is trite law that shareholders of a company are distinct from the company and its properties. Defendant is neither a shareholder nor a trustee of shares of Defendant. <sup>1</sup>

15. Defendant's position is that he is neither a shareholder nor a trustee of shares of Plaintiff. He will, only be a contingent trustee of shares of Plaintiff in terms of TODA and, has no beneficial right to any property of Plaintiff as claimed by him in the Caveat. Caveat No 924676 was filed on a misconceived right in terms of the said document.

**Conclusion**

Defendant is not beneficiary interested in any of seven land parcels belonged to Plaintiff.

Accordingly, Caveat No 924676 is removed forthwith.

The cost of this action is summarily assessed at \$4,000 considering the circumstances of the action.

**Final Order**

- a. Caveat No 924676 is removed forthwith.
- b. Cost of this action is summarily assessed at \$4,000 to be paid in 28 days.

**Dated at Suva this 12<sup>th</sup> day of May, 2023.**



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**Justice Deepthi Amaratunga**  
**High Court, Suva**

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<sup>1</sup> Halsbury's Laws of England (353. Shareholders in companies Vol 60 (2018))

'..Thus, a shareholder in a company is not a part owner of the property of the company, in as much as the property belongs to the company, which is a legal entity independent of its shareholders.'