

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

Civil Action No. HBC 267 of 2022

IN THE MATTER of an Application
for Extension of Caveat under Section
110 (3) of the Land Transfer Act 1971.

BETWEEN: **LOU XUFENG** of 69 Princes Road, Suva, Fiji.

PLAINTIFF

AND: **GREAT – HAN INTERNATIONAL COMPANY PTE LIMITED**
a locally incorporated company having its registered address at 69
Princes Road, Suva, Fiji.

1st DEFENDANT

ZHANG WEI of 69 Princes Road. Suva, Fiji.

2nd DEFENDANT

Representation : Ms. A. Sharma (O’Driscoll & Co) for the Plaintiff.

Date of Hearing : 31st October 2023.

RULING

[1] On 29th September 2023 an ex parte summons for the extension of caveat was filed on behalf of the Plaintiff. It was accompanied by an affidavit of Kun Qian of even date. The summons sought that caveat no. 823145 lodged by the Plaintiff against certificate of title o. 17798 be extended and remain in force until the final hearing and determination of the within action or further order of the court.

- [2] The application was made pursuant to Section 110 (3) of the Land Transfer Act 1971. Section 110 (3) of the Land Transfer Act 1971 provides that “*the caveator may either before or after receiving notice from the Registrar apply by summons to the court for an order to extend the time beyond the 21 days mentioned in such notice, and the summons may be served at the address given in the application of the caveatee, and the court, upon proof that the caveatee has been duly served upon such evidence as the court may require, may make such order in the premises either ex parte or otherwise as the court thinks fit.*” I will come back to this section of the Land Transfer Act.
- [3] The affidavit in support accompanying the summons, which is of Kun Qian states in Paragraph 2 that a certified true copy of the Certificate of Title is annexed as “B”. Annexure “B” is not a certified true copy of the Certificate of Title. The applicant needed to file a certified copy of the Title. According to Section 18 of the Land Transfer Act 1971 that production of a certified copy of the certificate of title shall be received in all courts as evidence of the particulars contained in or endorsed upon such instrument and of such particulars being entered in the register. Certain portions of the copy that is annexed are not legibly. Especially the endorsements/memorials on the Title. The dates on the endorsements/memorials are not legible. Similarly annexure “C” a memorandum of agreement is not a legible copy. Lawyers need to ensure that the documents that they copy and annex in affidavits are legible. The document should be properly photocopied. A certified copy should be annexed if the affidavit states a certified copy is annexed. A certified copy of the Certificate of Title by the Registrar of Titles would have been appropriate in this matter. A court should not be expected to make a determination on illegible and uncertain documents.
- [4] The lawyer for the Plaintiff informed the court that the caveat had been removed. So the application fails *in limine (preliminary)*, as no extension of caveat can be granted on a caveat that is removed. I have noted that in **Raghwan Construction Company Ltd v Endeavour Youth Investment Co-operative Society [2005] FJHC 233; HBC0322.2005 (18 August 2005)**, Justice Jiten Singh stated:

“Section 110(3) requires the caveator to apply by summons to the court. The summons may be served at the address shown on the notice of removal. The

court can only make an order “upon proof of service” – see ANZ Banking Group Ltd. v. Oline Maya Maharaj – ABU0049 of 1983 (judgment delivered 26th March 1984) where the Court of Appeal dissolved an injunction where respondent had obtained on an ex parte application in her divorce proceedings an order that the caveat should not be withdrawn. At page 7 of the report the court went on to say “the procedure following a notice pursuant to Section 110(1) is prescribed, step by step, by the subsection, and such steps not having been taken, we are compelled to conclude that the Judge in making the order as to the caveat exceeded his jurisdiction”. Later his Lordship set out the procedure in section 110 of the Land Transfer Act and stated that “[t]he procedure therefore set out in Section 110 is mandatory. Failure to comply with the requirements of such procedure is fatal for the applicant. I am further fortified in my conclusions by the decision of Justice Fatiaki (now the Chief Justice) who in Mahendra Vijay Anganu v. Daya Wanti – HBC0629 of 1993 expressed the view that “the application for extension ... must come by way of inter partes summons and be supported with proof that the caveatee has been duly served ... The use of the term “ex parte” in the last sentence of Section 110(3) refers to the order of the court and NOT to the nature of the caveator’s application.”

[5] The application for extension of caveat cannot be entertained as it is not compliant with the procedures. The failure to comply with the requirements of the Land Transfer Act is fatal. The application is struck out. No other parties were involved therefore there will be no orders as to costs.

[6] **Court Orders**

(a) The Summons seeking extension of caveat is struck out. .

(b) No orders as to costs.

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Chaitanya Lakshman
Acting Puisne Judge
16th November 2023

