



- B. That the caveat registered by the Plaintiff against the Defendant's interest being one undivided fifth share in the property comprised in Certificate of Title No. 6626 being Lot 1 on Deposited Plan No. 1200 remain registered until the determination of this action and/or transfer of the said interest to the Plaintiff.
  - C. That the cost of this application be paid by the Defendant on an indemnity basis.
2. The Application is made pursuant to section 110 of the Land Transfer Act and pursuant to the inherent jurisdiction of the Court.

**PART B: AFFIDAVITS**

3. In their Affidavit, The Applicant deposes as follows –

“4. In or about February 2023 a fellow director and the Plaintiff, Satish Parshotam, and the Defendant's solicitor, Ashneel Nand of Kohli Singh Lawyers had discussions in relation to the Defendant's one undivided fifth share in the property comprised in Certificate of Title No. 6626 being Lot 1 on Deposited Plan No. 1200 (“the property”). A copy of the title to the property is annexed hereto and marked ‘A’.

5. The Property is currently held by the Defendant as the Executor and trustee of the Estate of **BHAN KARAN**, also known as **BHAN KARAN RATTAN**, also known as **BHAN KARAN** Lrw od 1070 Edge Water Blvd, Foster City, California 94404, Groundskeeper, Deceased, Testate (“the Deceased”).

6. The Defendant solicitors informed Satish Parshotam that the Defendant was the sole executor and trustee of the Deceased's estate and the sole beneficiary entitled to the Deceased's interest in the Property. The Deceased was also interested in selling the Property.

7. The Plaintiff is the owner of a substantial commercial building adjoining the Property known as “Flagstaff Plaza” which is tenanted to several commercial tenants, the prominent of which is Extra Supermarket. A Photograph of Flagstaff Plaza is annexed hereto and is marked “B”.

8. Following discussions between the Plaintiff and the Defendant it was agreed that the Defendant would sell and the Plaintiff would purchase the Defendant's interest in the Property at a price of \$380,000.00.

9. The parties entered into a Sale and Purchase Agreement dated 8 March 2023 (“the Agreement”). The salient terms of the Agreement are as follows:

- (a) The Defendant would transfer the Property to the Plaintiff.
- (b) The Plaintiff would pay \$380,000.00 to the Defendant.

(c) The Plaintiff would pay a deposit of \$20,000.00 to the Defendant upon signing of the Agreement.

A copy of the Agreement is annexed hereto and marked "C".

10. On 8 March 2023 the Plaintiff's Solicitors sent the signed Agreement to the Defendant's solicitors and requested a copy of the Agreement signed by the Defendant. A copy of the Plaintiff's solicitors' letter dated 8 March 2023 is annexed hereto marked "E".

11. On 9 March 2023 the Defendant emailed a signed copy of the Agreement that had been signed by the Defendant in the United States on 8 March 2023. A copy of the email from the Defendant dated 9 March 2023 is annexed hereto and marked "E".

12. On 9 March 2023 the Plaintiff paid a deposit for \$20,000.00 to the Defendants solicitors. A copy of the cover letter dated 9 March 2023 from the Plaintiff's Solicitors enclosing the cheque for the deposit is annexed hereto and marked "F". A copy of the receipt for the deposit from the Defendant's solicitors is annexed hereto and marked "G".

13. On 10 March 2023 Plaintiff's solicitors lodged a caveat against the title to the Property to protect the Plaintiff's interest as purchaser. A copy of the said Caveat is annexed hereto and marked "H".

14. On 10 March 2023 the Defendant's Solicitors emailed to the Plaintiff's solicitors on instrument of Transfer of the Deceased's interest in the Property to the Defendant. This instrument was emailed to the Plaintiff's solicitors for their comments and for them to provide in exchange an instrument of Transfer of the Property from the Defendant to the Plaintiff. A copy of the email dated 10 March 2023 is annexed hereto marked "I".

15. The Plaintiff's solicitors responded to the said email with their email of 10 March 2023 enclosing an instrument of Transfer of Property from the Defendant to the Plaintiff and their comments to the instrument of Transfer of the Deceased's interest to the Defendant. A copy of the email in reply dated 10 March 2023 is annexed hereto and marked "J". The subsequent response from the Defendant's solicitors by email dated 10 March 2023 is also annexed hereto and marked "K".

16. On 20 March 2023, the Defendant's solicitors, Ashneel Nand, informed the Plaintiff's director, Satish Parshotam, that the Defendant did not intend to complete his obligations under the Agreement.

17. On 24 March 2023 the Plaintiff's solicitors sent a letter to the Defendant's solicitors informing that the Defendant was in default of his obligations under the Agreement and unless the Defendant performed the obligations, the proceedings would be filed against the Defendant. A copy of this letter annexed hereto marked "M"

18. The Plaintiff’s solicitors have had no formal response to the said letter from the Defendant or his solicitors.”

### **PART C: SUBMISSIONS**

4. In their oral submissions, Counsel for Applicant submitted that this was an application for extension of caveat that had been registered. The first order in the Summons is for the Caveat registered against the title to be extended. A Sale and Purchase Agreement was prepared by Defendants and executed by the Plaintiff and a deposit of \$20,000 was sent over. Defendant refuses to perform the terms of the Agreement.
5. Counsel for the Defendant/Respondent opposes the application as it is misconceived i.e under section 110 of the Land Transfer Act, such applications must be made only if the removal of the caveat is on foot. Defendant has not filed any removal of Caveat. The Registrar of Title is not a party to the proceedings.
6. Counsel for the Plaintiff/Applicant argued that the Caveat remained on foot and in accordance with section 110 (3) of the Land Transfer Act allows for an application for extension of Caveat to be made before or after receiving notice of removal. It also requires service of Summons on Caveatee which has been complied with.

### **PART D: LAW ON CAVEATS**

7. To determine what a Caveat is, in the case of Lee -v- Waikalou Development Ltd [2002] FJHC 17; HBC 0294d.1995s (1 August 2002) Scott MD, J stated –

“A **caveat** is a warning operating “as a notice to all the world that the registered proprietor’s title is subject to the equitable interest alleged in the **caveat**” (Butler v. Fairclough [1917] HCA 9; (1917) 23 CLR 78). A caveat does not itself constitute an estate or interest and does not operate to give a caveator better priority than he otherwise would enjoy. Section 72 is concerned with encumbrances which include claims (see Section 2 of the Act) but not notices of claims or, in other words, **caveats**. With respect, I adopt the reasoning of Barker J at 708, 25 in Stewart (supra).” (underlining my emphasis)

8. Section 106 of the Land Transfer Act provides the basis for which a person may apply for caveat and states –

“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 provision 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**.”

9. In Cambridge Credit (Fiji) Limited -v- W.F.G Limited [1975] FijiLawRp 25; [1975] 21 FLR 182 (26 November 1975) Gould V.P, Marsack,J.A and Spring, J.A stated –

“Section 138 of the Land Transfer Act 1885 (N.Z.) (which was not dissimilar from our Section 106) was discussed in *Staples & Co. v Corby and District Land Registrar* [1900] 19 NZLR 517 where Stout C.J. at page 536 said:

"Before a person can caveat under this section he must be a person who claims to be entitled to the land, or any estate or interest in the land, or to be ' beneficially interested ' in the land, or in any estate or interest in the land, and the person in either even must claim ' by virtue of any unregistered agreement, or other ' instrument or transmission ' ( ' transmission ' meaning acquirement by title or estate consequent on death, will, intestacy, bankruptcy, & c.), ' or of any trust expressed or implied, ' or otherwise howsoever. "

Section 106 of the Fiji Act is designed to protect unregistered instruments in land. For instance an agreement for sale and purchase, an unregistered mortgage, an agreement to give a mortgage or an option to purchase land are just a few examples of unregistered instruments which are capable of being protected by the lodging of a caveat.” (underlining my emphasis)

10. Again in Cambridge Credit (Fiji) Limited -v- W.F.G Limited (Supra) stated –

It will be noted that the respondent in the said deed sells, transfers and assigns its interest in the said lands and releases and forever quits claim to any right title or interest therein.

A transfer (under the Land Transfer Act) of the legal estate in the said lands in favour of the appellant was duly executed and registered in June 1974 registering the appellant as the sole registered proprietor of the lands.

In our view the documents on the record speak for themselves; the respondent was left with a mere right in contract (arising under the deed 1st May 1974) against the appellant for payment of the balance of the purchase moneys and interest thereon. Nothing could be more emphatic than the language used in the deed of the 13th June 1974, as indicating an intention that all the interest of the vendor in the land be extinguished. The question is does this right support the lodging of a caveat against the land. In *Miller v Minister of Mines* (1963) 1 All ER 109 at page 112 Lord Guest said:

"The caveat procedure is an interim procedure designed to freeze the position until an opportunity has been given to a person claiming a right under an unregistered instrument to regularize the position by registering the instrument."

Their Lordships stated that the correct view of the use of caveat procedure was expressed by Stout C.J. in *Staples & Co. v Corby and District Land Registrar* (supra) where he said:

"The whole policy of the law was to allow the registration of legal interests only if, then, the plaintiffs have not a legal interest in the land, and are not entitled to an interest either legally or beneficially, they cannot caveat under section 138. They are in this position: Having only a covenant which only binds a purchaser on notice, they have no interest in the land, either legal or equitable, and the Land Transfer system does not recognize trusts or equitable interests on its registry or certificates. If they cannot caveat under section 138 they have no means of bringing their covenant to the notice of intending purchasers. "

In this case the respondent when it negotiated the terms of sale could have sought and insisted upon a mortgage being given by the appellant to secure payment of the purchase moneys or even an agreement to mortgage both of which would have supported a caveat, or taken other security; it did not do so; it relied instead on the personal covenant of the appellant to pay."

11. Section 110 of the Land Transfer Act provides procedures for removal of Caveat. Subsection (3) states that –

“(3) 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 and upon such

evidence as the court may require, may make such order in the premises either ex parte or as the court thinks fit.”

12. In this instance, the land has not been transferred to the Plaintiff and the Sale and Purchase Agreement still is in abeyance awaiting trial as it is the issue of contention.
13. The Plaintiff, seeks for specific performance as a relief for having entered into the Sale and Purchase Agreement.
14. Contrary to the facts in the case of Construction Equipment Hire Pte Limited -v- Orchid Flat Investment Pte Limited [2020] FJHC 935; HBC 133.2020 (5 November 2020) Amaratunga J held that:

“25. In Fiji section 107 of the Land Transfer Act 1971 analogous to Section 138 of New Zealand Land Transfer Act 1952, states

*Particulars to be state and to accompany a caveat*

107. Ever caveat shall state the name, address and description of the person by whom or on whose behalf the same is lodged and, except in the case of a caveat lodged by order of the court or by the Registrar, shall be signed by the Caveator or his agent and attested by a qualified witness and shall state with sufficient certainty the nature of the estate or interest claimed and how such estate or interest is derived.

26. So it is paramount in terms of section 107 of Land Transfer Act 1971, for the Caveator to state the interest or estate with sufficient clarity and not to change such position when it seeks for extension of caveat.

27. There are two mandatory requirements in terms of Section 107 of Land Transfer Act 1971 for a caveat and they should state with “certainty”.

- a. Nature of interest or estate in the property;
- b. How such an interest derived to the Caveator.

28. Words are used in legislation for a purpose and word “certainty” in Section 107 when given the contextual meaning require a Caveator to act diligently not only in stating its interest or estate in the property but also how it had derived such interest or estate. Caveator is bound by that claim stated in the caveat.”

15. In the case of Construction Equipment Hire Pte Limited –v- Orchid Flat Investment Pte Limited (Supra), the Court found there was no claim in caveat that Caveator had advanced monies for purchase of CT 25233, instead it states that some monies were given for subdivision of the said lands. Furthermore despite the Plaintiffs claim in interests as equitable mortgagee, there was no evidence as caveatable interest from the Plaintiff. A loan given to the Defendant for \$476,000 which over years accumulated to a sum of \$1,045,460 cannot create an equitable mortgage.

## **PART E: ANALYSIS AND DETERMINATION**

16. In the application of the Plaintiff, they seek to extend the Caveat against the Defendants interest as having undivided fifth share on the property comprised Certificate of Title No 6626 being Lot 1 on Deposited Plan No. 1200.
17. Their application stems from the Sale and Purchase Agreement for the sale of the fifth share held by the Defendant as sole Executor and Trustee of the Deceased Estate.
18. The Defendant has not filed any Affidavit in Opposition. Instead the Counsel opted to argue on issues of law.
19. The provision in section 106 of the Land Transfer Act entitles a Caveator to seek for extension prior to or after the Caveatee has lodged a notice for withdrawal. Hence the Defendants argument on this point does not hold weight.
20. In order to continue the Caveat, the Caveator must prove the two requirements under section 107 of the Land Transfer Act, the basis of the initial application i.e.
  - (i) Nature of interest or estate in the property;
  - (ii) How such an interest derived to the Caveator.
  
- (i) Nature of Estate in the property
21. The Applicant had initially sort and was granted Caveat against the property comprised Certificate of Title No 6626 being Lot 1 on Deposited Plan No. 1200. His interest was a one fifth undivided share on the property.



(ii) How such an interest derived to the Caveator

22. Interest in the Estate is by way of a Sale and Purchase Agreement with the Defendant, who was the sole Executor and Trustee. The Sale and Purchase Agreement was executed by the Plaintiff and Defendant and a deposit of \$20,000 was made.
23. There was an Instrument of Transfer document prepared by Defendant to be filed at the Registrar of Titles transferring the title from Richard Rattan as sole Executor and Trustee of the Estate of Bhan Karan aka Bhan Karen Rattan to Richard Rattan which was not signed by the Defendant.
24. The Plaintiff also prepared an Instrument of Transfer document transferring the 1/5<sup>th</sup> undivided share from the Defendant to the Plaintiff.
25. The Defendant has given notice that the Defendant did not intend to complete the obligations in the Agreement.
26. Given that there is no Affidavit of Opposition, the Court is unable to know the opposed facts and evidence for the Defendant.
27. The only argument by the Defendant on an issues of law is not tenable and cannot stand. A registrar of title need not be joined in these types of proceedings. The orders of the court are suffice for the Registrar to act accordingly.
28. The Court finds there is sufficient interests based on the cases cited for the Plaintiff to rely upon in the executed Sale and Purchase Agreement for the Caveat to be extended.

**Orders of the Court:**

29. **The Court orders as follows:**

*(a) That the Application for Extension of Caveat is granted;*

*(b) Costs in the Cause.*

   
Ms Senileba LTT Waqainabete-Levaci  
Puisne Judge