

HPP Action No. 48 of 2014 Frank B Whippy & Gluck W Pilot Whippy

In the High Court of Fiji at Suva
Civil Jurisdiction

HPP Action No. 48 of 2014

Between: Frank Bert Whippy

Plaintiff

And: Gluck William Pilot Whippy

Defendant

Counsel : Ms M. Tikoisuva for the plaintiff
Ms Swastika Narayan for the defendant

Date of hearing: 6th February, 2015

Date of judgment: 23rd August, 2016

Judgment

1. The plaintiff is a beneficiary of the estate of Samuel Whippy. On 21 June, 2007, the defendant was appointed sole administrator of the estate. On 21 February, 2008, several beneficiaries, including the plaintiff lodged caveat no.700438 against the estate property, CT 4268. The property comprises 2110 acres. The defendant has applied for removal of the caveat. In this application the plaintiff, moves for an order extending the time for removal of the caveat, until the hearing and determination of this action and/or Civil Action No. 61 of 2012 between the plaintiff and defendant.
2. The plaintiff, in his affidavit in support states that the defendant has lost the confidence and trust placed in him by the beneficiaries, as a result of misusing funds received for road compensation, entering into logging agreements and allowing squatters to use the estate land causing irreparable damage to the land. It is alleged that the defendant has failed to:(i)take into consideration the expectations and/or instructions of the beneficiaries,(ii) distribute the estate property and,(iii) consult the beneficiaries of steps he intends to take, since his appointment as Administrator in 2007.

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3. The defendant, in his affidavit in response states that the plaintiff has failed to provide any authorization or consent letters from the individuals named authorizing the plaintiff to register the caveat on their behalf. He is advised by many of them that they never consented to, or authorized the plaintiff to do so and have requested that the caveat be removed, as stated in an attached letter. The plaintiff has failed to provide any evidence of breach of his duties as Administrator. Logging activities are being currently undertaken on the property by persons, who have acquired a registered title within the property, prior to his appointment as sole administrator. Squatter settlements have existed on the property prior to his appointment. Some who claim to be beneficiaries are residing on the estate property and have created the squatter dwellings. Some squatters have vacated the estate and he is in the process of issuing notices to vacate to the rest. He is working in Suva and is not able to travel frequently, apart from the expense of travelling to the property "*due to the distance and condition of the road*". He has been consistently in contact with the beneficiaries. The plaintiff has not attended two of the three meetings he organized with the beneficiaries, to sell the property nor indicated his intentions to resolve any issues.

The determination

4. The plaintiff moves for an extension of the time for removal of the caveat, until the hearing and determination of this action and/or Civil Action No. 61 of 2012 between the plaintiff and defendant.
5. In Civil Action No. 61 of 2012, filed on 28th February, 2012, the plaintiff has moved that the defendant provide a full account and inventory of the estate, the income derived and cooperate with the beneficiaries in the survey, valuation and subdivision of the property. Alternatively, that the Court appoint a new administrator to attend to the distribution and dissolution of the estate.
6. In that action, the plaintiff had also moved for an interim injunction restraining the defendant from disposing of and dealing with the estate property.

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7. On 7th November, 2013, I declined the application for an interim injunction for the reason that at that stage, it appeared that the defendant was taking steps to administer the estate. He had obtained an estimate of costs of surveying the land.
8. Since 7th November, 2013, the defendant has not obtained a survey nor distributed the land to the beneficiaries.
9. The defendant does not appear to be genuine in that regard, as evident in his email of 8 September 2014, attached to his affidavit in response, where he says:

One of the claims by the beneficiaries through Frank that I was not conducting any work on the estate and that it was left idle and I should be removed. It was lucky I had been collecting quotations for surveys cost and due to this quotations presented in Court saved me.
10. The defendant continues to complain that a “*huge amount of funds would be need to be invested.. approximately cost \$50,000*” for the survey of “*the large area of the property*” and he needs to arrange for finance, as no income is generated from the property.
11. In my view, that argument is unsatisfactory. The administration of the estate has to be concluded.
12. The plaintiff, in his affidavit in support has expressed concerns that the defendant would sell, transfer or mortgage the property. The defendant in his affidavit in response states that “*he has only recently been approached by some individuals who have shown interest in purchasing the Estate property*”.
13. The evidence is that the plaintiff is residing on the land, as stated in the defendant’s response.
14. The defendant disputes that several beneficiaries have authorized the plaintiff to file the caveat, contrary to the assertion of the plaintiff.
15. In my view, the affidavits filed by the parties raise serious issues to be tried.

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16. The purpose of a caveat is to protect the rights of the caveator by preserving the status quo until the court has had the opportunity of ascertaining the rights of the parties.

17. In *Kelly vs Bentinck*,(1903) 22 NZLR 235 (CA) Williams J at page 255:

The object of lodging a caveat.. is to give time for the caveator to bring an action to establish his title.. In an ordinary case the caveat ought not to be removed, unless lodged frivolously.

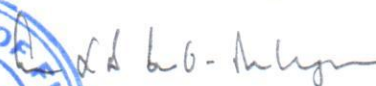

18. Lord Diplock in *Eng Mee Young vs Lechumanan*,(1980) AC 331 at 337 said

This is the nature of the onus that lies upon the caveator in an application by the caveatee under Section 327 for removal of a caveat; he must first satisfy the court that on the evidence presented to it his claim to an interest in the property does raise a serious question to be tried; and, having done so, he must go on to show that on the balance of convenience it would be better to maintain the status quo until the trial of the action, by preventing the caveatee from disposing of his land to some third party.

19. In my judgment, the plaintiff has shown cause, as to why the caveat should not be removed. Accordingly, I order that caveat be extended until the determination of Civil Action No. 61 of 2012. I note that the hearing in that case has been concluded before the Master.

20. **Orders**

- (a) I order that caveat be extended until the determination of Civil Action No. 61 of 2012.
- (b) The defendant shall pay the plaintiff costs summarily assessed in a sum of \$ 750.



A.L.B. Brito-Mutunayagam
Judge
23rd August, 2016