

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No.: HBC 336 of 2017

BETWEEN : **AVISHEK ANMOL KUMAR** of Nadera, Nasinu, c/- PO Box 16435,
Suva, Student.
PLAINTIFF

AND : **NASINU LAND PURCHASE AND HOUSING CO-OPERATIVE**
SOCIETY LIMITED a limited liability company having its office at 68
Suva Street, Suva.
DEFENDANT

Counsel : **Mr. O'Driscoll G. for the Plaintiff**
Mr. Singh R. for the Defendant
Date of Hearing : **3rd May, 2018**
Date of Judgment : **25th June, 2018**

JUDGMENT

INTRODUCTION

1. The Plaintiff had filed this application seeking extension of caveat on 22.11.2017 and it was called before another bench of this court on 1st December, 2017 and Plaintiff did not appear on that date and the judge had adjourned the matter to 18.01.2018. In the meantime the caveat was removed on 5th December, 2017. This matter was referred to me on 7th December, 2017 due to a letter written by the solicitor for the Plaintiff and when I called this matter before me I was informed by the Defendant that the caveat was already removed from the title. No extension can be granted once it is removed. The Plaintiff nevertheless wanted to proceed with their application. This matter was fixed for hearing on 22nd February, 2018 and on that date the Plaintiff sought time to consider withdrawal of this application, on the basis of an application for extension of time for an appeal in the Court of Appeal and an application for a stay in that matter. So, the hearing was refixed to 3rd May, 2018, and Plaintiff did not make oral arguments but sought to file written submissions. I granted 7 days for the Plaintiff to file written submissions. So far no submission was made by the Plaintiff.

ANALYSIS

2. The Plaintiff had failed to appear before another bench of this court when it was first mentioned on 1.12.2017. The caveat was removed on or around 5.12.2017. The Plaintiff's caveat was already removed when this matter was called before me on 13.12.2017. The Plaintiff is seeking extension of caveat which was already removed. So the application fails *in limine*, as no extension of caveat can be granted on a caveat that is removed.
3. Even if I am wrong, the Plaintiff had not clearly indicated in caveatable interest in the said caveat. In the absence of this again his application for extension of the caveat cannot proceed further and needs to struck off *in limine*.
4. **Ball v Fawcett** (1997) 1 NZLR 743 at page 747 stated.

*'In Re Peyachers Caveat [1954] NZLR 285 at pa 286 Archer J said that:
'Section 138 of the Land Transfer Act, 1952, provides that the caveat shall state with sufficient certainty the nature of the estate or interest claimed by the caveator, and that would appear to prevent a caveator from claiming to retain the caveat on some ground other than that set out in the caveat itself. It would accordingly seem that in order to justify the retention of his caveat, the caveator is entitled to rely only upon his claim to have an interest in the property by virtue of a trust. Provided, however, that the nature of the interest claimed is described with reasonable certainty. I do not think the caveator is necessary to be bound by the precise form of words used.'* (emphasis added)
5. So it is a mandatory requirement to state an unambiguous interest, in the caveat, so that the caveator would be prevented from claiming a different interest at the hearing when an application for removal of the caveat is dealt. The caveatee should also know the caveatable interest of the caveator to meet his contention.
6. A caveat is a limited interim measure till final determination of the rights or interests of the parties to the property. It can be considered as an intrusion to the property rights of the registered proprietor who obtains indefeasible rights under Torrens system. A caveat is also a statutory provision under Land Transfer Act (LTA) and a caveator's interests

should be stated with sufficient certainty so that he cannot rely on a different interest when required to show cause under Section 109(2) of LTA

Under section 106 of the LTA, the instances under which a caveat can be lodged is stated and 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)

7. The Plaintiff stated in the caveat that he had acquired equitable interest from a person called Satya Nand. This is contingent on Satya Nand having any legal interest in the said land. There is no such interest registered on title and or recognized by a court of law. In fact Satya Nand's alleged interest is rejected by another bench of this court and there was no appeal from that decision. The Plaintiff's Caveat No. 846854 was in 2015 lodged on 1st August 2017. This is clearly an abuse on the part of Plaintiff.
8. Without prejudice to the above positions, the Plaintiff had failed to file the statement of claim, after filing an endorsement and writ of summons on 22.11.2017. Without a substantive claim being filed for more than 6 months an application for extension of caveat, cannot be granted. There is no substantive claim for the alleged interest in land.

CONCLUSION

9. The application for extension of caveat cannot be sustained once it is removed. Without prejudice to that the Plaintiff had failed to state his caveatable interest, as stated in the caveat, in terms of Section 106 of LTA. The purported caveatable interest is a contingent

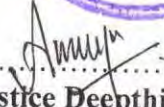
rejected/dismissed interest by another bench of this court. There was no appeal against that decision. The Plaintiff had failed to file statement of claim for over 6 months. In the absence of caveatable interest stated in the Caveat No. 846854 or by way of statement claim this application for extension is struck off. Despite revealing that the caveat was removed the Plaintiff desired to proceed with the hearing that resulted Defendant filing an extensive affidavit in opposition. Even after that affidavit which annexed a copy of title that indicated the removal of caveat the Plaintiff desired hearing of this matter. The Plaintiff has abused the process of this court by filing this application and also not appearing on 1.12.2017 and also through subsequent conduct. The cost of this application is summarily assessed at \$2,500 considering the circumstances to be paid by the Plaintiff within 21 days.

FINAL ORDERS

- a. The application for extension of caveat filed on 22.11.2017 is struck off.
- b. The cost of this application is summarily assessed at \$2,500 to be paid within 21 days.

Dated at Suva this 25th day of June, 2018




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Justice Deepthi Amaratunga
High Court, Suva