

IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION

CIVIL ACTION NO.: HBC 34 of 2019

BETWEEN : HOME FINANCE COMPANY LIMITED

PLAINTIFF

AND : ANAND KUMAR

DEFENDANT

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APPEARANCES/REPRESENTATION

PLAINTIFF : Ms. N Choo [R. Patel Lawyers]

DEFENDANT : Mr. K Singh [K S Law]

JUDGMENT OF : Acting Master Ms Vandhana Lal

DELIVERED ON : 17 June 2019

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**JUDGMENT**

[Removal Of Caveat]

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1. Home Finance Company Limited makes this application by originating summons dated 1 February 2019 and filed on 4 February 2019 for orders that:
  - a. *That the Defendant SHOW CAUSE why Caveat Number 855795 lodged against Certificate of Title No. 29212 by the Defendant should not be removed immediately;*
  - b. *That Caveat Number 855795 registered against Certificate of Title No. 29212 be removed forthwith;*
  - c. *The Registrar of Titles be directed pursuant to section 168 of the Land Transfer Act 1971 to remove Caveat No. 855795; and*
  - d. *That the Defendant do pay costs of this Application on an indemnity basis.*
2. The land described in CT No. 29212 is registered under the name of Evalyne Rajani Lata Kumar aka Evalyne Rajini Lata aka Evalyne Kumar.

3. Home Finance Company Limited has the benefit of first mortgage registered on 15 October 2009 and a second ranking mortgage registered on 30 September 2013.
4. The Defendant's Caveat was endorsed/registered on the Title on 21 December 2017.

His caveat claims an estate or interest as an equitable owner by virtue of an agreement between Evalyne and him dated 01 June 2017.

5. On 19 October 2018 a judgment was entered against Evalyne in favour of Home Finance Company Limited entitling Home Finance Company to recover possession of the property in CT No. 29212, Lots 9 and 2 on DP Plan No. 1888 and 5394 situated at 4 Miles, Nasinu.
6. Home Finance Company Limited has now secured a purchaser for the property under the Mortgage and is unable to transfer the property due to the caveat placed on the Title by the Defendant.
7. Section 106 of the Land Transfer Act allows following persons to lodge caveat with the Registrar:
  - a. *Person 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 express or implied, or otherwise howsoever; or*
  - b. *Person 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.*

8. Section 109(2) of the Act provides:

*"Any such applicant or registered proprietor, or any other person having any registered estate or interest in the estate or interest protected by the caveat, may by summons, call upon the caveator to attend before the court to show cause why a caveat should not be removed, and the court on proof of service of the summons on the caveator or upon the person on whose behalf the caveat has been lodged and upon such evidence as the Court may require, may make such order in the premises, either ex-parte or otherwise as to the court seems just, and where any question of right or title requires to be determined the proceedings shall be followed as nearly as may be in conformity with the rules of court in relation to civil causes".*


9. Under Section 109 (2), the Caveator bears the onus of establishing that there is a serious question to be tried that he or she does have estate or interest in the land claimed and that the balance of convenience requires the caveat to remain.

10. Till to-date the Defendant has not make any application to any Court of Law seeking declaration as to an interest in the land or made a claim for recovery of the contribution made for payment and development of the land under the agreement.
11. Home Finance Company Limited had registered its mortgages prior to the interest claimed by the Defendant. I do not find there is any fraud in the said registration.
12. Furthermore, Home Finance Company Limited has obtained a court order for immediate vacant possession in its favour against Evalyne.
13. Hence I do not find there is any serious question to be tried and the balance of convenience favours the removal of caveat.

#### FINAL ORDERS

14. In the circumstances, orders made due that caveat number 855795 lodged against certificate of title number 29212 by the Defendant to be removed forthwith by the Registrar of Titles.
15. I further order the Defendant to pay cost of this action summarily assessed at \$1,000. Said cost is to be paid in 14 days from to-date.



  
Vandhana Lal [Ms]  
Acting Master  
At Suva.