

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 195 of 2022

BETWEEN: **DIGMACH CIVIL CONTRACTORS PTE LIMITED** a limited liability Company duly incorporated under the Companies Act 2015 and having its registered office at Lautoka, Fiji.

PLAINTIFF

AND : **LALITA DEVI** of Vitogo, Lautoka, Domestic Duties.

DEFENDANT

Appearances: Ms. A. Chand for the Plaintiff
Mr. E. Dass for the Defendant
Date of Hearing: 04 August 2022
Date of Ruling: 30 September 2022

R U L I N G

1. I granted an ex-parte injunction on 12 July 2022 restraining the Defendant (“Ms. Lalita”) from selling, gifting, transferring, assigning, encumbering, or otherwise disposing of all that land comprised in Native Instrument of Tenancy No. 8474 until the final determination of this matter.
2. The matter was then dealt with inter-partes and I now have to consider whether or not to extend the injunction. The onus is still on the plaintiff.
3. The backstory to the plaintiff’s claim might be stated as follows.
4. On 12 July 2022, the plaintiff (“DCCPL”) filed a writ of summons and statement of claim against the Defendant (“Ms. Lalita”). The claim is based on an arrangement between DCCPL and Ms. Lalita. Under the said arrangement, Ms. Lalita would subdivide a piece of agricultural land comprised in iTLTB Instrument of Tenancy No: 8474. Ms. Lalita would then rezone a portion or portions of the land into industrial and residential. A small portion is to remain agricultural in zoning.

5. According to DCCPL, the agreement was that Ms. Lalita would sell DCCPL the industrial and agricultural land and retain for the benefit the residential lots.
6. Pursuant to that arrangement, the parties executed a sale and purchase agreement on 25 September 2017. According to the said Agreement, DCCPL is to pay Ms. Lalita the total sum of \$60,000.00 (sixty thousand dollars) in consideration.
7. It was also agreed that sub-division would commence forthwith upon execution of the said Agreement.
8. DCCPL claims:
 - a) that it has paid Ms. Lalita a deposit of \$10,000 on execution.
 - b) the balance was to be paid by DCCPL upon issuance of the lease for the industrial plot.
 - c) after execution, DCCPL took possession of the industrial lot and the agricultural lot and Ms. Lalita gave power of attorney to DCCPL's director, Mr. Prabha Karan in respect of the agricultural plot.
9. At paragraph 12 to 19, DCCPL pleads as follows:
 - (12) A few days later Narayan contacted the Plaintiff and requested the Plaintiff to return the original copy the said agreement and stated that the said agreement will have to be redone to reflect sale and purchase of Lot 1 in a separate agreement claiming that this was required for subdivision purposes and obtained the Plaintiff's signature on another agreement (hereinafter referred to as the "second agreement").
 - (13) The Plaintiff took possession of Lot 1 and the balance area of the said property since the time he signed the said agreement and had been paying the Annual iTLTB Ground rent for the said portions.
 - (14) After executing the Agreement, the Defendant would, from time to time, request the Plaintiff to make some advance payments towards Lot 1 and balance agriculture area, which the Plaintiff would oblige through cash or cheque in good faith that the Defendant will not renege the contract.
 - (15) As of 13th January 2017, the Plaintiff had paid the Defendant the entire purchase price for Lot 1 and the balance of the said property in the sum of \$60,000.00.
 - (16) The Plaintiff's Surveyors namely Bamola and Associates have also carried survey of the said land as per iTLTB Survey Instructions No. NW/0336 and submitted the same to ITLTB.

- (17) The two residential lots which the Defendant was to retain have been taken out from the said property, and now have separate Agreements for Lease and are being occupied by the Defendant and her family.
- (18) The only portion(s) of land currently remaining under the Instrument of Tenancy for the said property is the balance area of the said property, which the Defendant is rightfully supposed to transfer to the Plaintiff.
- (19) Till date the balance portion of the said property still remains under Instrument of Title No. 8474 under the name of the Defendant who is now refusing to cooperate any further in the required subdivision work to effect the conveyance.
10. The main issue raised by the defendant to oppose the injunction is that there was no prior consent of the i-TLTB pursuant to the arrangement between DCCPL and her. The agreement is illegal as it does not comply with section 12 of the i-Taukei Lands Trust Act and is therefore unenforceable. The plaintiff therefore cannot derive any beneficial interest or entitlement out of an illegal agreement as such – let alone – can such an agreement be the foundation of any interim injunction.
11. I must agree with the defendant's submissions. The only course for the plaintiff is to pursue a claim for the monies it had given the defendant.
12. Injunction dismissed. Costs to the defendant which I summarily assess at \$500-00 (five hundred dollars).



Anare Tuilevuka
JUDGE
Lautoka

30 September 2022