

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No.: HBC 09 of 2023

BETWEEN : **TOVA RA FARMS LIMITED** a duly incorporated company having its registered offices at Suva

PLAINTIFF

AND: **VADIVELLU PILLAY aka WELLA PILLAY** of lot 16, The Cove, Denarau, Nadi, Businessman

DEFENDANT

Counsel : **Plaintiff: Mr. Jiaoji Savou**

Defendant: Mr. Rattan.S

Date of Hearing : **17.03.2023**

Date of Judgment : **12.05.2023**

JUDGMENT

INTRODUCTION

1. Plaintiff instituted this matter in terms of Section 109(2) of Land Transfer Act 1971 requesting Defendant to show cause, as to why the caveats (Caveat Nos 924672,924673,924674,924675 and 924676) stated in the summons should not be removed. Plaintiff is a legal entity and the proprietor of land parcels described more fully in the summons except seven land parcels in Caveat No 924676 (which belonged to Ra Cane Farms Ltd , and was the Plaintiff in HBC08 of 2023).According to caveats they were lodged on the titles of the respective land parcels, described in the summons, 'claiming an estate as Beneficiary in the Estate of Gopal aka Gopal Pillay incudes all the shares' of Plaintiff, by 'virtue of Terms of Distribution Agreement' (TODA). There was no agreement between Plaintiff and Defendant. There were 50% shares of Plaintiff belonging to the Estate of Gopal Pillay which required distribution in terms of Section 6 of Succession Probate and Administration Act. Beneficiaries of the estate Gopal Pillay, by TODA agreed

to 'relinquish and forever renounce all their interest in Gopal's also known as Gopal Pillay shares in' Plaintiff to a Trust, called 'Gopal Pillay Family Trust'. It is trite law that shareholders of a legal entity do not own properties owned by a legal entity. Defendant will be a trustee to 'Gopal Pillay Family Trust' and a beneficiary from that but neither said trust was established nor any shares of Plaintiff transferred by said beneficiaries of the estate of Gopal Pillay. The estate of Gopal Pillay held 50% of the shares of Plaintiff. So Defendant cannot have an interest for 'all shares' as claimed in the Caveats. Even after transfer of the shares held by the estate of Gopal Pillay, Plaintiff will become a trustee and one of the beneficiaries to shares held by the estate in terms of TODA. The properties owned by Plaintiff cannot be claimed by Defendant as its future trustee or beneficiary of shares of Plaintiff, held by the estate. All the caveats are removed forthwith. (Caveat No 924676 was removed by order of court in HBC 8 of 2023).

FACTS AND ANALYSIS

2. Section 106 of Land Transfer Act 1971 states who can lodge a caveat. This is a statutory right hence it limited to the circumstances stated in the act. 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)

3. So, in this matter Defendant is required to show case that he is a person who can lodge caveats in term of Section 106 of Land Transfer Act 1971.

4. Section 107 of Land Transfer Act 1971 makes it mandatory for caveator to state the nature of the estate claimed with clarity and it reads:

"Particulars to be stated in and to accompany caveat

In *New Zealand Mortgage Guarantee Co Ltd v Pye* [1979] 2 NZLR 188 considering analogous provision to the above quoted section emphasized the importance of interest stated in the caveat with sufficient clarity, and held, at pp194-95

“It is as a starting point desirable to note that the procedure which the applicants have invoked is entirely the creation of statute. This aspect was stressed in the decision of the Court of Appeal delivered by Callan J in *Guardian Trust and Executors Company of New Zealand Ltd v Hall* [1938] NZLR 1020, 1025, where it was said:

"A caveat is the creature of statute and may be lodged only by a person upon whom a right to lodge it has been conferred by the statute. It is not enough to show that the lodging and continued existence of the caveat would be in some way advantageous to the caveator. He must bring himself within s 146 of the Land Transfer Act." [1979] 2 NZLR 188 at 195

A perusal of the Australian decisions to which I have referred shows that there are a substantial number to be found to support the view that a caveator who fails to comply fully with the statutory requirements and fails to state accurately the nature of the interest which he claims by his caveat will not succeed in securing the assistance of the Court to maintain such a caveat. An early case of this kind is *Palmer v Wiley* (1906) 23 WN (NSW) 90. The Real Property Act 1900, s 72, required a caveator to state "the nature of the estate or interest claimed and the facts upon which the claim is founded".

5. In this action Defendant had failed to state his interest with sufficient clarity, he is neither a shareholder nor a trustee of shares of Plaintiff.
6. Defendant was not even a party to TODA, which he had relied on the purported interest relating to land parcels described in the caveats.
7. It is not disputed that 50% of the shares of the Plaintiff belonged to the estate of late Gopal Pillay, and upon death that devolved to widow and defacto partner and child of the deceased. Defendant is a beneficiary of ‘Gopal Pillay Family Trust’ and also its trustee. According to TODA the beneficiaries had agreed to renounce the shares of the estate to the said Trust, but this had not happened.
8. According to the Caveats the interest of the Defendant to the said seven land parcels were,
“Claiming an estate as **Beneficiary** in the Estate of Gopal aka Gopal Pillay incudes all the shares’ of Plaintiff, by ‘virtue of Terms of Distribution Agreement’
(emphasis added)
9. All the beneficiaries of late Gopal Pillay had entered in to a TODA and in terms of that a trust needs to be established to transfer the shares inherited to be transferred to ‘Gopal Pillay Family Trust’. The Defendant becomes beneficiary of the Trust and also one of its beneficiary.

10. Even after the creation of 'Gopal Pillay Family Trust', Defendant as its trustee and beneficiary, (after the shares held by estate of Gopal Pillay being transferred to it), cannot devise, to Defendant as its trustee for an interest '**claiming to be entitled or to be beneficially interested in any land**' owned by Plaintiff.
11. The properties owned by Plaintiff, are distinct from its shareholders and management.
12. Clause 4.15.2 of TODA states,

“The 1st, 2nd and 3rd Beneficiary (sic) relinquish and forever renounce all their interest in GOPAL’s also known as Gopal Pillay shares in Ra Cane Farms Limited to Vadivellu Pillay, the youngest brother of the late Gopal as the Trustee of a Trust which shall be called the “Gopal Pillay Family Trust” and whose beneficiaries shall include the living biological siblings of Gopal also known as Gopal Pillay”
13. According to Caveats, the purported interest to lodge a caveat for the land parcels described in the said Caveats, was 'by virtue of Terms of Distribution Agreement' (i.e. TODA), which only makes him a trustee and beneficiary of 'Gopal Pillay Family Trust', once it is created and the shares of the estate transferred to it by the beneficiaries, and not for properties of Plaintiff. Shares of the Plaintiff held by a trust and being the trustee of the said shares are distinct from the properties owned by the same legal entity(Plaintiff).
14. In terms of TODA, there was no creation of 'Gopal Pillay Family Trust' for which Defendant will be the trustee. It was only an agreement to create a trust, and more importantly no shares of Plaintiff were transferred to the said Trust. At the moment 50% of the shares are held by the 'estate of late Gopal Pillay' not the proposed 'Gopal Pillay Family Trust' in terms of TODA.
15. Even if the said trust is created without the shares being transferred to it, Defendant has no right deriving from the shares of Plaintiff as trustee for the 50% of the shares of Plaintiff. In the caveats Defendant had claimed for 'all the shares' of Plaintiff. This is incorrect statement, to say the least.
16. It is trite law that shareholders of a company are distinct from the company and its properties. Defendant is neither a shareholder nor a trustee of shares of Defendant. ¹

¹ Halsbury's Laws of England (353. Shareholders in companies Vol 60 (2018))

'..Thus, a shareholder in a company is not a part owner of the property of the company, in as much as the property belongs to the company, which is a legal entity independent of its shareholders.'

17. Defendant's position is that he is neither a shareholder nor a trustee of shares of Plaintiff. He will, only be a contingent trustee of shares of Plaintiff in terms of TODA and, had no beneficial right to any property of Plaintiff as claimed by him in the Caveats, and they were filed on a misconceived right and also incorrect statement as to purportal rights derived from 'all the shares'.

CONCLUSION

18. Defendant is not beneficiary interested in any of land parcels contained in the Caveat Nos 924672,924673,924674 and 924675 belonged to Plaintiff. Caveat No 925676 contains seven land parcels belonging to another legal entity and this was dealt in HBC 8 of 2023. So there is no need to deal with the same caveat again in this action. (Caveat No 924676 was ordered to be removed forthwith in HBC 8 of 2023). Defendant had failed to show cause as to the claimed interest in the Caveats Nos 924672,924673,924674 and 924675. The cost of this action is summarily assessed at \$4,000 considering the circumstances of the action.

FINAL ORDER

- a. Caveat Nos 924672,924673,924674 and 924675 are removed forthwith.
- b. Cost of this action is summarily assessed at \$4,000 to be paid by Defendant, in 28 days.

Dated at Suva this 12th day of May, 2023.




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Justice Deepthi Amaratunga
High Court, Suva