

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. 155 of 2017

BETWEEN: FIJI FOOTBALL ASSOCIATION an association duly affiliated and registered with Federation Internationale de Football Association and having its registered office at Taramati Street, Bhindi Subdivision, Vatuwaqa, Suva, Fiji.

PLAINTIFF

AND: NASINU LAND PURCHASE & HOUSING CO-OPERATIVE LIMITED (formerly Nasinu Land Purchase and Housing Co-Operative Society Ltd) a society duly registered under the Co-operative Societies Ordinance and having its head office at 6½ Miles, Nasinu, Suva.

DEFENDANT

BEFORE: Justice Vishwa Datt Sharma

COUNSEL: Mr S. K. Ram with Mr Patel D. for the Plaintiff
Mr Maharaj V for the Defendant

Date of Decision: 15th June, 2023 @ 9.30am

DECISION

[Summons seeking Restraining Order, Liberty to Survey, and disclose transaction]

INTRODUCTION

[1] The Plaintiff filed a Summons on 13th April 2022 and sought for the following orders:-

- (i) The Defendants and/or their agents and/or their servants be restrained from in any way selling, transferring, dealing with or alienating 8.1821 Ha (approximately 20 acres) of land sold to the Plaintiff by Sale and Purchase Agreement between the Plaintiff and the Defendant dated 5th April 2022 as varied by Agreement dated 23rd January 2006 from Certificate of Title number 12468 land known as Nasinu Part of containing three hundred and twenty six acres and two rods, situated in the district of Naitasiri in the Island of Viti Levu being Lot 1 on Deposited Plan No. 3130 until the final determination of this matter.
- (ii) An order that the Plaintiff shall have the liberty to survey the 8.1821 Ha (approximately 20 acres) of land sold to the Plaintiff by Sale and Purchase Agreement between the Plaintiff and the Defendant dated 5th April 2002 as varied by Agreement dated 23rd January 2006 from Certificate of Title number 12468 land known as Nasinu Part of containing three hundred and twenty six acres and two rods, situated in the district of Naitasiri in the Island of Viti Levu being Lot 1 on Deposited Plan No. 3130.
- (iii) For the purposes of compliance with Order 2 above, the plaintiffs, their surveyors and/or their servants, and/or their agents shall be permitted to enter Certificate of Title number 12468 land known as Nasinu Part of containing three hundred and twenty six acres and two rods, situated in the district of Naitasiri in the Island of Viti Levu being Lot 1 on Deposited Plan No. 3130 and carry out the survey.
- (iv) The Defendants are to disclose the details of any transactions that may involve or may encroach on the land purchased by the plaintiff particularly the 8.1821 Ha (approximately 20 acres) of land sold to the Plaintiff by Sale and Purchase Agreement between the Plaintiff and the Defendant dated 5th April 2022 as varied by Agreement dated 23rd January 2006 from Certificate of Title number 12468 land known as Nasinu Part of containing three hundred and twenty six acres and two rods, situated in the district of Naitasiri in the Island of Viti Levu being Lot 1 on Deposited Plan No. 3130.
- (v) The time for service of any documents be abridged.
- (vi) That costs of this application be paid by the Defendant.

[2] Affidavits filed:

1. Affidavit in Support of Mohammed Sheeraz

2. Affidavit in Response of Satya Narayan
3. Affidavit in Reply to Mohammed Sheeraz

Brief Background

- [3] The Defendant is the Registered proprietor of the balance area contained in Certificate of Title No. 12468 being Lot 1 and DP 3130 initially containing an area of 226 acre and 2 roods (hereinafter referred to as 'the land').
- [4] The Defendant according to its own objectives subdivided various parts of the land since 1977 and is continuing to do so for the benefit of its members.
- [5] The part of the land the Plaintiff initially purchased from the Defendant being 16 acres by virtue of Sale and Purchase Agreement dated 5th April 2002 and later another 4 acres by virtue of sale and Purchase Agreement dated 23rd January 2006. Both pieces of land were not zoned and had to be developed as per the contracts.
- [6] The Purchase of the subject land had pre conditions to be complied by the Plaintiff before it was rezoned and developed and the title to be issued.
- [7] The Plaintiff is complaining that the subject land which the Plaintiff is purchasing from the Defendant has discovered that certain people were carrying out Construction Works.
- [8] The Plaintiff was informed by those people that they were given title by the Defendant.
- [9] The Plaintiff now believes that the information received by the people on the subject land and by the fact that construction work has commenced on the Land the Defendant is dealing with the Subject land.
- [10] According to the Plaintiff, the Defendant's actions is greatly prejudicing the Plaintiff's remedy.
- [11] The Defendant's Contention is that the Subject Land has changed zoning and 22 bona-fide purchases for Value have been transferred separate residential titles. These registered proprietors are not a party to this action. Mr Sheeraz admitted at paragraph 3 of his affidavits filed herein that a construction works are being carried out on the subject land.
- [12] Some of these proprietors have even developed the Lots of construction of a building on the subject land.
- [13] Those dealing with the subject land was carried on by the Defendant on the basis that there was no restraintment or caveat registered on the subject title since 2002.
- [14] The Defendant Contends that the Caveat by the Plaintiff in this case, if any, was never registered as it was not completed by the Registrar of Titles and the Defendant therefore

want ahead, rezoned, developed the subject land and disposed part of it to the bona-fide purchaser.

- [15] The Defendant submitted that the Defendant had the right to deal with the subject land in the circumstances.
- [16] The issue for the Court to determine is *'whether the Defendant should be restrained from dealing with the subject land Certificate of Title No. 12468 on Deposit Plan No. 3130 until the final determination of the Substantive matter herein?'*
- [17] The Defendant has not disputed the fact that the subject land has changed zoning and 22 Bona-fide purchaser for Value have been transferred separate residential titles. Further, these dealings with the Subject Land was carried by the Defendant on the basis that there were no restraintment or caveat registered on the subject title since 2002. Unless it can be provided otherwise by evidence.
- [18] On evaluating the facts herein at the Interlocutory Stage, *Lord Diplock in the American Cyanamid* [1975] 1 All E.R. 504, 510 (d) H L Stated as follows:

'It is no part of the Courts function, at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. There are matters to be dealt with at the trial.'

- [19] The Principle developed in *American Cyanamid* are a guide only. However, it will equally apply herein in addition to the *"Inglist principles"*.
- (a) Whether there is a serious question to be tried;
 - (b) Whether damages are an adequate remedy; and
 - (c) Whether the balance of convenience favours the refusal or grant of the interim injunction.

Whether there is a serious question to be tried?

- [20] The subject land certificate of title no. 12468 on Report Plan no. 3130 has changed zoning and 22 bona fie purchasers have been transferred with separate Residential Title.
- [21] Further, the dealings with the subject land was carried out by the Defendant on the basis that there was no restraintment or caveat registered on the subject title?
- [22] The court states that there was a Sale and Purchase Agreement executed between the Plaintiff and the Defendant regarding the subject land.

[23] At this stage of the proceedings, I do not find any serious question to be tried at the trial, until the trial proper begins and triable issues raised therein then will it be for this Court to deliberate upon and then determine the issues accordingly.

Damages is an adequate Remedy.

[24] Whether damages are an adequate remedy or not will only become applicable if there is a serious issue to be tried?

[25] This Court found that there is in fact no serious question to be tried.

[26] The Plaintiff's claim is seeking for Breach of Purchase Agreement, Damages and specific performance.

[27] The Plaintiff in its written submissions furnished to Court given an undertaking as to damages since the Plaintiff has the financial capacity to meet orders of costs in the even the Court invoke an orders as to undertaking.

[28] Therefore, I find that Damages would then be an adequate remedy for the Plaintiff.

Balance of Convenience

[29] Lord Diplock in *American Cyanamid* case at page 408 stated as follows:"

"It is where there is doubt as to the adequacy of the respective remedies no damages available to either party or to both that the question of balance of Conveniences arises."

[30] The Plaintiff entered into a Sale and Purchase Agreement and later had it valued on 23rd January 2006.

[31] Whether the Term of Agreement entered into confirmed that he total area of land to be purchased was approximately 20 acres of Land marked as Lot on DP 9134 by part of LT 12468?

[32] Further, whether the Defendant delayed carrying out the subdivision work and provided a separate title? The Plaintiff allegedly needed to get funds approved from Federation Internationale De Football Association [FIFA] for the commencement and completion of

the Project.

- [33] To secure the funding from FIFA, whether the Plaintiff entered into a **Lease Agreement**?
- [34] I find that the Plaintiff at this stage has not succeeded in making out a case against the Defendant since the Agreement and other documentary evidence remains to be tendered into evidence and can be done at the trial.
- [35] The Balance of Convenience, therefore, favours the Defendant in the refusal to grant the injunction order sought in the Plaintiff's application.

In Conclusion

- [36] There is no Agreement tendered into evidence that was executed for the Purchase of the land between the Plaintiff and the Defendant before this Court.
- [37] Upon a careful consideration application of the principles set out as a guide in *American Cyanamid Case*-

- (a) *There is no serious question to be tried by this Court.*
- (b) *Plaintiffs remedy (if any) lies in damages, and*
- (c) *The balance of convenience favours the Defendant Nasinu Land Purchase & Housing Co-operative Limited.*

- [38] Therefore, the Plaintiff's application seeking for injunctive relief together with other orders therein is accordingly refused and stands dismissed.
- [39] The Plaintiff has failed to make out a case favoring any grant of Interim Injunction orders as sought therein.
- [40] The Plaintiff's Injunction application before this court fails.

Costs

- [41] The Application proceeded to full hearing. It is only appropriate that I grant a summarily assessed costs of \$1,000 against the Plaintiff.

ORDERS

- i. The Plaintiff Summons filed on 13th April 2022 seeking for Restraining Order from sale, transfer, dealing with or alienating 8.1821 Ha [approximately 20 acres] of land sold to the Plaintiff by Sale & Purchase Agreement on 05th April 2002 until final determination of this matter is accordingly refused and dismissed.
- ii. The Plaintiff to have the liberty to survey the 8.1821 Ha [approximately 20 acres] of land sold to the Plaintiff by Sale & Purchase Agreement and varied on 23rd January 2006 is also refused and dismissed accordingly.
- iii. The Plaintiff, agents, surveyors are not permitted to enter Certificate of Title No. 12468 on Lot 1 on Deposited Plan No. 3130 and carry out any survey work.
- iv. The order seeking for the defendants to disclose the details of any transactions that may involve or may encroach on the said subject land sold to the Plaintiff by the Sales & Purchase Agreement on Lot 1 Deposited Plan No. 3130 is also refused and dismissed accordingly.
- v. The Plaintiff is ordered to pay a summarily assessed costs of \$1,000 to the Defendant.
- vi. The substantive action is now adjourned to 31st July 2023 @ 9.30am.

Dated at Suva this 15th day of June, 2023.



VISHWA DATT SHARMA
JUDGE

cc: Samuel Ram Lawyers
Vijay Maharaj Lawyers.