

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. 341 of 2022

BETWEEN : **MARTIN BRYAN** of 4875 Kapaka Street, Princeville, Hawaii, HI 96722, USA,
Retiree.

1st Plaintiff

AND : **STEVEN EDWARD DULMAGE** as the beneficiary of Richard Ahl, of 1456
Avalon Ave, lake Havasu, Arizona 86404, USA, Retiree.

2nd Plaintiff

AND : **VICTORIA YARBERRY**, retiree, #8 Kumu Road, Hanalei, Hawaii, USA,
Retiree.

3rd Plaintiff

AND : **MONA YARBERRY**, businesswoman, #8 Kumu Road, Hanalei, Hawaii, USA.

4th Plaintiff

AND : **JAMES ROBERT CARNEY** of 2360 Keneke Street, Kilauea, Hawaii, Retiree.

5th Plaintiff

AND : **PETER CHARLES THAYER** of 6/7/46 Pasadena, California, United States,
Carpenter.

1st Defendant

AND : **SAMSHUN NISHA THAYER** of 6/7/46 Pasadena, California, United States,
Domestic Duties.

2nd Defendant

Date of Hearing : 03 April 2023
Date of Ruling : 10 August 2023

Appearances : Ms. A. Ali for the Plaintiffs
: Mr. R. Singh for the Defendants

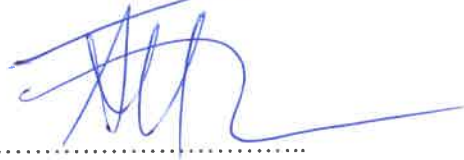
RULING

1. The plaintiffs are all US citizens. I gather from the intituling that they are all non-residents.
2. I must say at the outset that the statement of claim and the amended statement of claim filed by the plaintiffs are rather long winded and poorly pleaded.
3. The plaintiffs all claim a beneficial entitlement to a piece of land which is all comprised in Certificate of Title No. 17666 being Lot 13 on DP 2051 known as Gusunugaga (Part of) in the island of Viti Levu, situated in the district of Nadroga in Fiji, having an area of 6 acres 1 rood 9 perches (“**property**”).
4. At present, the first and the second defendants are the registered proprietors of the property. However, a good part of the money that was used to acquire the property, was actually paid by the plaintiffs for that very purpose.
5. The plaintiffs’ of course are asserting a beneficial claim to the property in question. Each claims a beneficial entitlement based on his or her individual contribution to the purchase price. Each plaintiff contributed to the purchase price pursuant to an arrangement which they all had.
6. By their arrangement, each plaintiff had sent money from the US to the first defendant. The monies sent were actually pooled together with some contribution by the first defendant to purchase the property.
7. The arrangement, according to the plaintiffs, was that the first defendant would then register the property in all their names (plaintiffs and first defendant). Once the property is securely registered in all their names, the first defendant would then take steps to survey the land, subdivide it, and then allot a plot to himself (first defendant) and one each to every plaintiff.
8. As the plaintiffs plead in their amended statement of claim, it was envisaged that four of the five plaintiffs and the first defendant would each receive 0.9 acres each. The remaining one of the five plaintiffs would be allotted 2.7 acres.
9. However, for one reason or another which is not important at this time, the property ended up being registered in the first and second defendant’s names.
10. Four of the plaintiffs allege that the defendants hold approximately 0.9 acres on constructive trust for each one of them. One of them alleges that the defendants hold 2.7 acres on constructive trust for him.
11. The question has arisen as to whether the parties arrangement was in breach of section 6(1) of the Land Sales Act and should therefore be struck out with costs.
12. Section 6(1) of the Land Sales Act provides:

6.-(1) No non-resident or any person acting as his agent shall without the prior consent in writing of the Minister responsible for land matters make any contract to purchase or to take on lease any land:

Provided that nothing contained in this subsection shall operate to require such consent or prevent a non-resident from making any such contract if the land together with any other land in Fiji of such non-resident does not exceed in the aggregate an area of one acre.

13. It is not clear to me whether the defendants are non-residents. According to the intituling, they are both residents of the US. I gather also that the second defendant is Fijian, though, I am not sure whether she has changed residency/citizenship. One can only assume that the appropriate regulatory consents were obtained before the property was acquired in their name.
14. As to whether the arrangement the plaintiffs had with the defendants – as alleged in the claim – was in breach of section 6(1) is a moot point.
15. I would rather err on the side of caution and reserve this issue for determination later.
16. I note that the plaintiffs have amended their statement of claim in attempt to plead the claim more clearly. Still, there is a lot of work to do on improving this. I gather that this was all prompted by the defendants striking out application.
17. I will reserve the issue as to whether or not section 6(1) of the Land Sales Act has been breached. However, I am inclined to grant costs to the defendant which I summarily assess at \$250-00 (two hundred and fifty dollars only)



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Anare Tuilevuka

JUDGE
Lautoka



10 August 2023