

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. 349 of 2023

BETWEEN: **ZHONG LIN CONSTRUCTIONS PTE LIMITED** a limited liability
company having its registered office AT Suva, Fiji.

PLAINTIFF

AND: **THE OCCUPIERS** of Lot 23 Nuku Road, Fantasy Island, Nadi

DEFENDANT

Before: Mr. Justice Deepthi Amaratunga

Counsel: Mr. A. Pal for the Plaintiff
 Ms. N. Singh for the Defendant

Date of Hearing: 13.3.2024

Date of Judgment: 6.5.2024

JUDGMENT

INTRODUCTION

[1] Plaintiff filed this action for eviction of 'occupiers' from a land and the building on it. The building was constructed for person who had also admittedly paid a sum of FJ \$ 877,020. The valuation of the land and building on 30.4.2021 was \$700,000 from which \$280,000 was for the land. It is alleged a sum of \$1,334,738.51 was paid for the land and building, but this is amount is disputed. A dispute had arisen between the parties but the prospective buyer was granted possession and the occupiers who are Defendants are on the land with his permission. Plaintiff's position is that it permitted only Zhang Zihua to possession hence others should be evicted under Order 113 of High Court Rules 1988. This cannot be accepted due to equitable interest created due to conduct of the parties. Plaintiff cannot seek eviction of Defendants as they were allowed entry to the premises based on equitable interest of the person who granted them entry to premises.

FACTS

[2] Plaintiff is the registered owner of State Lease No 21157 being Lot 23 on SO 7531 and this land and the building constructed on it was valued at \$700,000 by way of valuation dated 30.3.2021. The valuation of the land was \$280,000.

[3] In paragraph 7 of the affidavit in opposition stated,

“THAT in response to paragraph 4, I do admit and confirm that there is a structure on the property, but I would rather describe it as a House and Office Building that was tailor made for Mr Zhang as per his instruction to the Plaintiff. The Building was built for Mr Zhang to occupy as a house and as office space for the Company RHR. Annexed and marked as ZZ-7 is a copy of the construction contract entered into between Mr Zhang and the Plaintiff and annexed and marked as ZZ-8 are copies of receipts for payments made by Mr Zhang to the Plaintiff for construction works done on the property by the Plaintiff. That the Plaintiff was paid a total of FJD\$877,020.00 [Eight Hundred and Seventy-Seven Thousand Twenty Dollars by Mr Zhang. Annexed and marked as ZZ-9 is a copy of the valuation of the property at the point in time monies were paid to the Plaintiff.”

- [4] Xiahua Zhang and or his agent had paid FJ\$877,020 for the transfer of the land and building and the building and he had lodged a caveat on the said State Lease on 12.7.2022
- [5] The construction cost was agreed between the parties pursuant to a document in Chinese language which is not in dispute , but neither party had explained the total cost stated therein .(See ZZ-7 annexed to affidavit in opposition).
- [6] Paragraph 8 of the affidavit in reply admitted said document annexed as ZZ-7 to the affidavit in opposition as 'construction contract' which is only one page list of some values or costs and at the end stated 'Total Amount \$195,000.00 but also contains some hand written Chinese characters and values, which remains unexplained. It was dated 4.7.2021. This was after the valuation of the land and partially completed construction for \$700,000
- [7] There are receipts and payment of money and these are not disputed including bank transfers for a total sum of \$877,020.
- [8] Plaintiff stated in the paragraph 8 that according to the 'agreement' it had, the land and building were to be transferred together upon payment of 'all payment obligations'.
- [9] There were no written agreements with specific conditions produced by parties for sale of the land and or the construction of the building on it.
- [10] According to paragraph 9 (b) total price for the land and the building constructed on it needs to be fully paid and this had not happened.
- [11] Plaintiff admit it had given possession to Zhang Ziahua to occupy the premises and state that it had not permitted any other person to occupy the premises.

ANALYSIS

- [12] Plaintiff is the registered proprietor of State Lease No 21157 being Lot 23 on SO 7531 (the Land). Plaintiff is also a construction company and admittedly

received more than FJ \$ 877,020.00 for the Land and dwelling on it, without a sale and purchase agreement and or registration of transfer of the Land.

[13] Transfer documents of the Land, were executed on 9.7.2021 after, the mandatory consent of Director of Lands obtained. This is yet to be registered on the certificate of title. There is a caveat lodged by Xiahua Zhang (XZ) who is a Director of intended transferee of the Land in terms of transfer documents executed on 9.7.2021. This had happened due to some dispute between the parties, though possession of XZ is not in dispute.

[14] Plaintiff admit that the Land can be transferred to any nominee of XZ

[15] Defendant who filed affidavit in opposition is Zheng Zhui (ZZ), is the power of attorney holder of XZ and also a person authorized by XZ, affidavit in reply stated;

“At paragraph I Zheng Zhui admits that he is an occupant of the property. The Plaintiff has not permitted Zheng Zhui to occupy the premises. Furthermore, I have perused the power of attorney. It is a standard document and there is no reference to the property. Furthermore, the power of attorney gives no power of occupation. Furthermore, the right given to Zhang Xiahua cannot be unilaterally assigned to third parties without the consent of the Plaintiff. Similarly, no consent was given to Hua Zhu Construction Pte Limited or Rock Hard Rock Mines & Quarries Pte Limited.”

[16] There is no written authority granted exclusively to XZ for possession considering the facts he had acquired a claimed based on equitable interest in the Land through conduct of the parties.

[17] So there is a dispute as to payments and this had led to failure of the transfer of the Land including the building on it. The unnamed ‘occupiers’ are ZZ who had occupied the premises while XZ was abroad with his permission.

[18] This is an originating summons in terms of Order 113 of High Court Rules 1988(HCR) for an order for possession against the unnamed Defendants who are named as ‘occupiers’. The Land contains a permanent structure and

admittedly XZ is in possession of this upon a 'right given' by Plaintiff. Plaintiff allege that such right to possession cannot be delegated to third parties including 'occupiers'.

[19] According to affidavit in opposition filed by ZZ , Plaintiff and its main shareholder were aware of his occupation of the dwelling on the Land while XZ was abroad and there were some others who come to the premises for certain work. These are simply people who entered the Land with temporary permission from XZ who admittedly possessed the Land and the building on it based on equitable claim of XZ.

[20] Order 113 of HCR provides a quick relief for a person who is entitle for possession to obtain possession from "occupiers". So a head lessee is not entitled to obtain possession of a sub-lessee. Similarly, 'this order would normally apply only in **virtually uncontested cases or in clear cases where there is no issue or question to try**. i.e where there is no reasonable doubt as to the claim of the plaintiff to recover possession of the land or as to wrongful occupation of the land without licence or consent and without any right , title or interest thereto '(Supreme Court Practice 1988 (White Book) p 1470-1471)(113/1-8/1).(emphasis is mine). It is clear that in this action there are complex issues such as construction contract and or payments and work done and payments made . Central to the issue of refusal to transfer of the Land to XZ or his nominee is the cost of improvements and alleged payments .

[21] Plaintiff had received money for transfer of the Land which was valued at \$280,000. XZ was given possession of the building which is also used as residence of XZ. The 'occupiers' in this action , were all in occupation of the said structure with the permission granted by XZ they are not permanently residing on it.

[22] Plaintiff relied on clauses 3 and 7 of the State Lease which stated,

"Clause 3 of the lease document clearly shows that there is to be a building constructed for residential purposes.

Clause 7 of the lease says

"The Lessee shall not use or permit to be used the demined land or any party thereof or the dwelling house or accessory outbuildings to be erected thereon for any trade, business occupation or calling

whatsoever, an no act matter or thing whatsoever shall during this term be done in or upon the said land or building or any part thereof which shall or may be or grow to the annoyance, nuisance, grievance, damage or disturbance of the occupier, lessee or owner of the adjoining lands and properties provided that a home industry approved by the lessor or a professional practice with the written consent of the lessor first hand and obtained be conducted within the dwelling house.”

[23] Plaintiff cannot seek eviction of all Defendants based on Clauses 3 and 7 of the lease agreement in terms of Order 113 of HCR in summary eviction. The purpose of Order 113 of HCR is not to evict occupiers when there are disputes between parties and whether such clauses were violated. Defendants' entry to the Land is based on equitable interest of XZ.

[24] In paragraph 13 of the affidavit in opposition ZZ stated that he was not occupying the Land exclusively, but he along with others only enter the premises to 'conduct business' and this statement cannot be taken as violation of Clause 3 and or 7 for eviction of 'occupiers'. It would be wholly unreasonable to give such an interpretation to clause 3 and 7 to evict Defendants. This defeats the purpose of order 113 of HCR.

[25] According to affidavit in opposition total sum of \$1,334,738.51 was paid and this was in excess of the sum agreed by the parties and awaits transfer of the Land and building on it. This sum is denied and paragraph 9 (c) of the affidavit in reply. The issue of the occupation of parties other than XZ, while he is abroad is invariably linked to the possession granted to XZ by Plaintiff and the alleged equitable interest created through executed transfer and payments admitted. So Plaintiff is not in a position to restrict possession only to XZ considering the prior conduct relating to the Land and building.

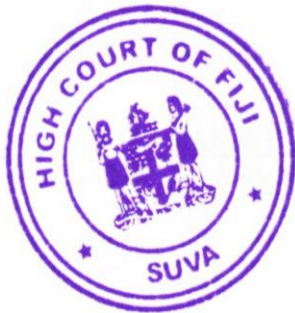
[26] Plaintiff was not entitled to possession in terms of Order 113 of HCR as the 'occupiers' were authorized by XZ who had paid substantial sum for the transfer of the Land and awaits the due execution of the transfer and the 'occupiers' including ZZ cannot be considered as squatters of the Land.

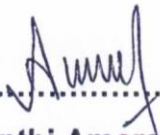
CONCLUSION

[27] Plaintiff had executed transfer of the land in issue State Lease No 21157 to Hua Zhu Construction Pte Ltd a nominee of XZ. He had authorized Defendant and other to occupy the land in issue, for his requirements XZ has also lodged a caveat for the Land. He has a claim based on equity to possession of the Land. So Defendants cannot be evicted.

FINAL ORDERS

- a. Plaintiff's originating summons struck off.
- b. Plaintiff is ordered to pay a cost of \$3,000 to Defendant (Zhang Zihua) assessed summarily.




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Deepthi Amaratunga
Judge

At Suva this 6th day of May, 2024.

Solicitors

AP Legal
Nambiar Lawyers