

IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

CASE NUMBER: HBC 66 OF 2025

BETWEEN: **LANCE JAMES LEE**

PLAINTIFF

AND: **BOD IN A POD (FIJI) LIMITED**

DEFENDANT

Appearances: Ms. M. Fong for the Plaintiff.

Mr. R. Lal and Ms. M. Raga for the Defendant.

Date/Place of Judgment: Friday 4 April 2025 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

RULING

(Application for Extension of Caveat)

A. Catchwords:

LAND TRANSFER ACT 1971 - whether the plaintiff has a caveatable interest in the lands in respect of which the caveat was lodged and is sought to be extended.

B. Legislation:

- 1. Land Transfer Act 1971: ss. 106 and 110(3).***
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The Application

- The plaintiff has filed an application for extension of caveat no. 919973 on the properties contained in CL 2514 (Lot 59) and CL 2739 (Lot 98), Muanikau, Suva until the hearing and determination of the High Court Probate Action No. HPP 51 of 2023. The application for extension is opposed by the defendant company.**

2. On 13 February 2025, I had granted an inter-partes interim order for extension of caveat no. 919973 on CL 2514. On 6 March 2025, I had granted an ex-parte order for extension of caveat no. 919973 on CL 2739. Since the application for extension was defended, I had granted the orders until the hearing and determination of the application in this case.

Issues, Law and Analysis

3. The issues before this court are:

- a. *Whether the plaintiff has a beneficial interest in the two properties;*
- b. *How does the interest arise?*
- c. *Whether the plaintiff's interest in the lands need to be protected by an order for extension of the caveat.*

Ss. 106 and 110 (3) of the Land Transfer Act 1971.

4. The plaintiff is the lawful son of Peter Lee. Peter Lee was married to the plaintiff's mother with whom he had 3 children including the plaintiff. Peter Lee died on 21 May 2015. At the time of Peter Lee's death, Gaetane Lee was married to him. Gaetane Lee and Peter Lee have 3 children of their own.
5. Gaetane Lee is the Director and shareholder of the defendant company. Peter Lee was a shareholder in the defendant company.
6. Part of the estate includes one undivided half share in CL 2739. Gaetane Lee is the other proprietor of CL 2739. The defendant company is the registered proprietor of CL 2514.
7. The plaintiff and his other siblings are beneficiaries in the estate of Peter Lee. Since the deceased had a share in the defendant company and this company owns the property contained in CL 2514, the plaintiff therefore consequently has a beneficial interest in this property. He also has a beneficial interest in CL 2739 as this property was partially owned by the deceased.
8. The plaintiff's beneficial interest arises from the will of Peter Lee. There is already an action pending in the High Court regarding the estate properties. The estate has not been divided by the trustee. It is almost 10 years that the distribution has not taken place.

9. It is in the interest of the plaintiff to protect his interest in all the properties of the estate and the most prudent way is to have a continued caveat on the property(s) until the estate is distributed.
10. Ms. Lal, the counsel for the defendant, argued that the plaintiff does not have a direct interest in CL 2514 as it is not owned by the estate. She argued that the estate merely holds 1 ordinary share in the defendant company. She says that the pending Probate Action protects the beneficiaries' interest in the estate and a caveat is not necessary. Ms. Lal also argued that the plaintiff cannot put a caveat on the entire property. She suggests a caveat only on the portion of the beneficial interest. It was also suggested that an injunction is a better way to protect the interest rather than a caveat.
11. I am of the view that a caveat is a more secure way to protect the plaintiff's interest. It will prohibit any dealings in the land to the detriment of the beneficiaries as the Registrar of Titles will not allow any such dealings. As for injunctions, it is not unknown that it can be flouted to the detriment of the beneficiaries. There have been instances where parties have defied injunction orders and loss and damages arise out of that defiance. I cannot bind the plaintiff to one particular procedure when the law provides him the protection under the Land Transfer Act. He chooses to exercise his right and unless he does not qualify, he cannot be precluded.
12. I cannot fathom the argument that the plaintiff cannot lodge the caveat on the entire property. The caveat has to be lodged on the entire property. The deceased had an undivided share in the property (s). There is therefore no way to lodge the caveat on only part of the property. I have not seen any provision in the Land Transfer Act which allows for caveats to be lodged in respect of parties' interest only when the property is held in undivided shares. If there is a way to do it, my attention has not be drawn to that practice or procedure for me to be convinced that it can be lodged on only part of the property.
13. I find it strange that Ms. Lal says that the plaintiff does not have a direct interest in the property but in the estate. S. 106 talks about beneficial interest. That interest can be direct or otherwise.
14. Ms. Lal has also argued that the plaintiff has not attached a caveat to the affidavit in support of the application for extension. She continues that if a caveat is not produced, the court cannot determine the basis of the caveatable interest. I do not have any reason to believe that the caveatable interest that is sought to be extended is the same that exists in the caveat document which is the plaintiff's beneficial interest in the estate of Peter Lee which owns a share in the defendant company, which company is the registered proprietor of the land.

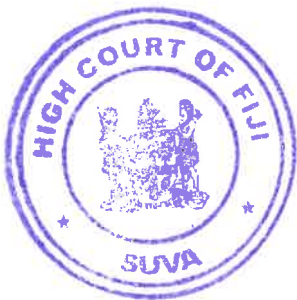
15. S. 110(3) of the Land Transfer Act does not require a caveat to be produced to Court for an extension to be granted. It requires appropriate evidence to find an order for extension and I find that evidence available in the affidavit in support. Ms. Lal was at liberty to produce the caveat and argue that it does not outline a caveatable interest for an extension to be granted.
16. Ms. Lal also argued that the caveat placed by the plaintiff is similar to the caveats placed by other siblings on the property and the cause is the same. I have not been shown any such caveats. Nevertheless, if there are different people securing their interests in the property, albeit for the same cause, the plaintiff cannot be excluded from protecting his interest. He cannot rely on the caveat lodged by others to protect his interest. The plaintiff has a right to protect his interest in the estate properties and that is what he is doing. He is not precluded by the law to do so.
17. It was also argued by the counsel for the defendant that the caveat by the plaintiff is affecting other party(s) rights in the property(s) and those party(s) are the Director of the defendant company who owns the property in her own right and the beneficiaries in the estate of Peter Lee. This same Director is the trustee in the estate of Peter Lee. The plaintiff is also a beneficiary. If the trustee is concerned about other beneficiaries, why not the plaintiff? The beneficiaries' interest lies in getting a distribution of the estate and until that is done the assets should be protected.
18. The defendant's counsel has pleaded difficulty in terms of not being able to distribute the estate under the will due to the caveat. That view is flawed. It is not the caveat that should stop the distribution of the estate.
19. The defendant also says that the caveat is affecting repair works, tenants and income to its full potential. The interest of justice lies in forbidding any dealings in the lands unless the estate is fully distributed. There will greater prejudice if the property is left unprotected.
20. The defendant also states that the property contained in CL 2739 is not owned by the defendant and yet the plaintiff is seeking extension of the caveat against the defendant company. This property, I find is subject of the same caveat and the same estate. The trustee is the same. There is no prejudice if the issue of extension of the caveat is considered in this matter.

21. I do not find any cogent grounds on which the application for extension of caveat was being defended. The arguments raised by the defendant has only consumed time and costs for the plaintiff in preparing for the hearing and prosecuting the application. Costs has also been incurred in preparing and filing an affidavit in reply to the affidavit in opposition. In modern day case management, counsel should assist the court in determining and disposing cases without involving too much expenditure and time. Bringing and defending applications which are not worthwhile is consuming resources which could be better utilized in other work and proceedings. I found the defendant's arguments irrelevant and unconvincing. It was doomed to fail. The application could have been easily resolved without a full blown hearing.

Orders

22. In the final analysis, I find that the plaintiff has a caveatable interest in the 2 properties being CL 2514 and CL 2739 and as such I order that the caveats lodged on the two properties be extended until the hearing and determination of HPP 51 of 2023.

23. The plaintiff shall have costs of the proceedings. The defendant is to pay costs to the plaintiff in the sum of \$2,000 within 14 days



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Hon. Madam Justice Anjala Wati

Judge

04.04.2025

To:

1. *Jamnadas & Associates for the Plaintiff.*
2. *Lal Patel Bale Lawyers for the Defendant.*
3. *File: Suva HBC 66 of 2025.*

