

In the High Court of Fiji at Suva

Civil Jurisdiction

HBC Action No. 108 of 2017

Between

Alan Robert Smith

Plaintiff

And

Luisa Lavenia Tavola

Defendant

COUNSEL: Mr G. O'Driscoll for the plaintiff
The defendant absent and unrepresented

Dates of hearing 8th September, 2017

Date of Judgment: 2nd May, 2018

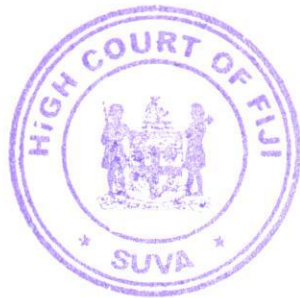
Judgment

1. By originating summons the plaintiff seeks the following orders:
 - i. *That a declaration be made that the Plaintiff is the owner of Housing Authority Sub-Lease No 699484 by virtue of a constructive trust created when the Plaintiff purchased the said property and placed it under the Defendant's with the intention that the Defendant was not to own the said property but would hold the same in trust for the Plaintiff; or*
 - ii. *Alternatively that a declaration be made that the Plaintiff is the owner of the Housing Authority Sub-Lease No. 699484 by virtue of an agreement between the Plaintiff and Defendant dated the 27th July 2009 in which the Defendant agreed to transfer the said property to the Plaintiff if the Defendant failed to repay all monies that the Plaintiff had invested into the property up until the end of December 2012.*
 - iii. *That a declaration be made that the Defendant's interest in the Housing Authority Sub-Lease No. 699484 be extinguished.*
 - iv. *That the Housing Authority Sub-Lease No. 699484 be transferred from the Defendant to the Plaintiff.*
 - v. *That the Defendant be compelled to do all that is necessary and incidental to execute a transfer of the Housing Authority Sub-Lease No 699484 from the Defendant to the Plaintiff.*
 - vi. *Alternatively to (iv), for an Order that the Chief Registrar of the High Court to be authorised to execute necessary paper work including, but not limited to, transfer and Capital Gains Tax return and declaration to effect transfer of the property from the Defendant to the Plaintiff.*

2. The plaintiff, in his affidavit in support states that he paid the charges, expenses and incidental fees for the purchase of Housing Authority Sub-Lease No. 699484, but the property was purchased in the name of the defendant, as he is an Australian national. The utility bills were paid by him. On 27th July, 2009, the parties entered into an agreement, in terms of which the defendant agreed to transfer the Sub Lease to the plaintiff, if she failed to repay all monies that he had invested in the property by December 2012. The agreement is attached. The defendant failed to pay any monies. The affidavit concludes stating the plaintiff was advised that the failure to repay the monies results in the defendant being obligated to transfer the Sub-Lease.
3. At the hearing, the plaintiff produced a letter from the Fraud Investigator of the Fiji Police Force of 23rd May, 2016. The letter states that when the defendant was interviewed under caution, she admitted the plaintiff paid for the property, built the house on the property and is residing therein.
4. The plaintiff's evidence was not challenged by the defendant. The defendant did not appear at the hearing. Service on the defendant was effected by substituted service by way of advertisement in the Fiji Sun of 21st June, 2017.
5. Section 6 of the Land Sales Act, 1974, provides that a non-resident shall not take on lease any land in excess of one acre, without the prior written consent of the Minister.
6. I note that the plaintiff is an Australian national. The property in the relevant Sublease comprises of 451m², which is less than one acre.
7. The plaintiff's summons succeeds.

8. *Orders*

- a. Orders i to vi of the plaintiff's summons is granted.
- b. I make no order as to costs.



A.L.B. Brito-Mutunayagam

A.L.B. Brito-Mutunayagam

Judge

2nd May, 2018