

IN THE HIGH COURT OF SOLOMON ISLANDS
Civil Jurisdiction

Civil Claim Number. 50 of 2019

BETWEEN: KUO FUNG CHI - Claimant
AND: EMILY KUO FUNG LI – 1st Defendant
AND: DODO TRADING - 2nd Defendant
AND: ATTORNEY GENERAL - 3rd Defendant
(Representing the Commissioner of Lands)

Hearing: 22nd November 2021

Ruling: 26th May 2022

Hou A for the Claimant

Dudley J for 1st and 2nd Defendants

Attorney General: No Appearance

RULING ON APPLICATION FOR EVICTION ORDERS

KOUHOTA PJ:

The Claim

The claimant Kuo Fung Chi filed a category (A) claim on 1st February 2019 seeking inter alia the following orders;

1. A declaratory order that the grant of fix term estate in parcel No. 191-031-84 by the claimant to the second defendant is only to secure a loan pursuant to a verbal agreement between the claimant and the 1st and 2nd defendant; and/or alternatively;
2. A declaratory order that the execution of grant instrument to transfer title of fix term estate in Parcel No. 191-031-84 was not an outright giveaway;
3. An order for specific performance that the title to fixed term estate in P/N 191-031-84 be transferred back by the 3rd defendant to the claimant.
4. An order that the register of fixed term estate title in P/N 191-031-84 be rectified by the 3rd defendant and that the name of the 1st defendant be cancelled and replaced with the name of the claimant.

Pursuant to an unless order of 10th June 2020, the Court struck out the claim for want of prosecution. on 1st July 2020.

The claimant application to set aside the order was also dismissed by the court. In that respect there is no substantive claim or proceeding pending before the court.

The application now before the court is an application by the First and Second defendant in which they raised two issues;

- (1) Whether the claimant/respondent will still continue to take possession and remain in the legally owned property of the applicant/first and Second defendant without the applicants' consent.
- (2) Whether the Applicants First and Second Defendant have legal right to evict the claimant from the property.

The applicants seek the court to grant the application because the claimant/respondent is illegally occupying the property of the First and Second Defendant/applicant.

Counsel Hou for the respondent submits that the application is misconceived because Civil Case No. 50 of 2019 is his client's case and there was no counterclaim by the applicant/defendants. Counsel Hou also submit that the claimants claim Civil case No 50 of 2019 has been struck out and the defendant claim Civil Case No. 374 of 2018 was also struck out. Thus he submit there is no substantive claim before the court on which the application can be based. I understand both Civil Cases 374 of 2018 and 50 of 2019 are over the dispute of ownership of FTE No. 191-031-84. The court had struck out both proceedings. In that respect I agree with Counsel Hou's submission that there is no substantive claim on which the defendants' application can be based. The defendants also did not filed any counter claim in cc 50 of 2019 hence as correctly submitted by counsel Hou the applicant cannot rely on Mr Hou's client's case as a basis for this application.

The difficult faced by the applicant is that there is no substantive claim before the court on which her application can be based. My view is that in a claim for eviction, the applicant's lawful possession or her title to the property and trespass must be proven. In the present case the title to the property is still in dispute as both claims by the defendants and the claimant have all been struck out hence the title to the property is still in dispute and yet to be determined. Unless the title to the property is determined and trespass is proven, the court will be unable to answer the questions. The application is dismissed, parties to bear their own cost.

THE COURT



Hon. Justice Emmanuel A. Ahota
PUISNE JUDGE