

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Action No. HBC 446 of 2005

BETWEEN:

ATUL NARAYAN

Plaintiff

AND:

NAVEDETA ASHWINI NARAYAN and
APRADETA ASHWINI NARAYAN

Defendants

Coram: Hickie, J

Date of Hearing: 25 and 26 August 2008

Counsel: Mr S. Stanton with Mr N. Prasad for the Plaintiff
Mr R. Prakash with Ms P. Kenilorea for the Defendants

Date of Decision: 2 February 2009

RULING

A. BACKGROUND

1. Preliminary point of Law

[1] This is an application whereby the Plaintiffs are seeking a Ruling on a preliminary point of Law to be determined on agreed facts and skeleton submissions filed by Counsel on behalf of their respective parties. The preliminary question to be determined is:

“Having regard to the provisions of Sections 6 and 7 of the Land Sales Act Cap.137 whether the document titled “Proposal to purchase Dilkusha land” dated 8 August 2003 (“the Agreement”) for sale and purchase of land was or is illegal, void and unenforceable at law as contended by the Defendants or was or is the Agreement a valid, legal and enforceable contract of sale and purchase of land as contended by the Plaintiff?”

2. The essential agreed facts

- [2] **The Plaintiff is and at all material times was not a resident of the Fiji islands as defined in the *Land Sales Act*.** As at 8 August 2004, the Plaintiff was a citizen of Australia holding an Australian Passport (No.L9073958) and was not a resident of Fiji. The Plaintiff's home is not in Fiji and he resided in Australia for not less than seven (7) years prior to the date of the said Agreement (8 August 2003).
- [3] **The Defendants are and at all material times was not a resident of the Fiji islands as defined in the *Land Sales Act*.** As at 8 August 2004, the Defendants were citizens of New Zealand holding New Zealand Passports (No.F223657 issued on 17 October 2000 and No.EA754254 issued on 6 July 2007) and were residents of Fiji. The Defendants' homes are not in Fiji and they resided in New Zealand for not less than seven (7) years prior to the date of the said Agreement (8 August 2003).
- [4] On 8 August 2003, the Defendants signed a document which the Plaintiff alleges to be an agreement of contract ("the Agreement") with him for the sale of certain freehold lands comprised and described in Certificate of Title No.10907 and Certificate of Title No.11976 containing approximately 60 acres and 3 acres 2 roods and 12 perches respectively situated at Dilkusha, Nausori, Fiji Islands ("the land") for the price of FDS\$100,000.00.
- [5] As at 8 August 2003 when the said Agreement was signed:
- (a) no application had been made to the Minister responsible for land matters for his consent to purchase the said land; and
 - (b) no prior consent in writing of the Minister to the proposed purchase of the said land had been granted or obtained.
- [6] It is part of the agreed facts that the Plaintiff expended sums from 30 October 2003 for work in preparation to obtain separate title to Certificate of Title No.10907 and Certificate of Title No.11976.

- [7] On 19 October 2004, the Defendants cancelled the said Agreement notifying the Plaintiff as such by a document sent to him by facsimile transmission. On 9 November 2004, the Plaintiff advised the Defendants through his Solicitors that cancellation of the said Agreement was not acceptable and gave notice of intention to proceed by way of legal action for specific performance of the said Agreement. The Defendants responded also through their Solicitors giving notice that they would be defending any legal action and proceedings for specific performance of the said Agreement.
- [8] On 1 September 2005, the Plaintiff issued a Writ against the Defendants seeking specific performance of the said Agreement and other remedies. The Defendants have defended the claim seeking dismissal of the action.

B. THE LAW

1. The legislation

- [9] Section 6 of the *Land Sales Act* [Cap 137] states in relation to the purchase of land by a non-resident of the Fiji Islands:

“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.***

*(2) The Minister responsible for land matters **may require** any application for his consent mentioned in subsection (1) to be in the appropriate form and **may refuse his consent without assigning any reason**, or may specify terms whether by way of imposition of bond or otherwise upon which such consent is conditional.*

*(3) **No appeal shall lie against a decision by the Minister responsible for land matters made under this section.***

*(4) The provisions of this section **shall not apply to dealings in native land**, as defined by the Native Land Trust Act, or to the original grant of any lease or licence by the Native Land Trust Board.” [My emphasis]*

[10] Section 7 of the *Land Sales Act* states in relation to the disposition of land by a non-resident of the Fiji Islands:

***“7.-(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 for the disposition of any land in favour of another non-resident.*”**

(2) The Minister responsible for land matters shall where necessary require any application for his consent mentioned in subsection (1) to be accompanied by a bond for such sum as he shall direct and to, be in the appropriate form and may refuse his consent without assigning any reason, or may specify terms upon which such consent is conditional.

(3) No appeal shall lie against a decision by the Minister responsible for land matters made under this section.

(4) The provisions of this section shall not apply to dealings in native land, as defined by the Native Land Trust Act, or to the original grant of any lease or licence by the Native Land Trust Board.”

[11] Section 2 of the *Land Sales Act* defines a non-resident and resident as follows:

“non-resident’ means an individual or a company not a resident as hereinafter defined”

‘resident’ in the case of an individual means an individual who is a Fiji citizen or an individual whose home is in Fiji and who has been resident in Fiji for not less than seven years at the date of the dealing or in the case of a company means a company, the controlling interest in which is held by a resident or residents as hereinbefore defined”

[12] Section 17 of the *Land Sales Act* deals with penalties for wilful contravention of the said Act as follows:

“17. Any person who wilfully contravenes the provisions of this Act or of any terms of any consent thereunder shall be guilty of an offence and liable on conviction to-

(a) a fine of one thousand dollars or of an amount equal to one-quarter of the purchase price or to total or partial forfeiture of any bond required by this Act or by any order made thereunder, whichever is the greater; or

(b) imprisonment for a period not exceeding five years; or

(c) both such fine or forfeiture and imprisonment.”

2. The case law

[13] The question as to whether the obtaining of the minister's consent for non-residents to purchase land in Fiji was a pre-condition to any purchase of land was considered by the High Court of Fiji in *Hunter v Apgar* [1989] 35 FLR 180; Paclii: [1989] FJHC 40, 15 September 1989, Palmer J, <http://www.paclii.org/fj/cases/FJHC/1989/40.html>). In that case land was being sold to purchasers who were non-residents. The minister's consent to the purchase was obtained after the agreements had been entered into with the vendors. Thereafter, the vendors rescinded the agreement. Palmer J ruled that the agreement was void "*unlawful and therefore of no effect and unenforceable*" upon the basis that (p.185A):

"The Land Sales Act ... aims directly at the non-resident. It provides a mechanism to ensure that a non-resident cannot obtain any enforceable right in relation to land right at the outset, the Minister has had the opportunity of prohibiting any such transaction or imposing terms and conditions for his consent to the same." [My emphasis]

To be clear, he also held at p. 193C:

"There remains the proposition that the Act would be unworkable if the Section were interpreted literally, on the basis that there must be some agreement reached upon which the Minister's consent may be sought. I find myself unable to accept that argument. The consent is required prior to the making of the contract. What this envisages in my view - and I see no difficulty with it - is that if a non-resident minded to purchase a property in Fiji is made an offer by a potential vendor or estate agent he [or she] can then apply to the Minister for consent to enter into that transaction and upon such consent being received he may then sign the contract. Or if a non-resident were looking for a property to purchase in Fiji and let this be known, upon receiving a reply or offer which he would be minded to accept, again he [or she] may apply to the Minister advising him of the necessary details and that he is minded to accept the offer if the consent is forthcoming. At that stage there would be no agreement. The whole purpose of the legislation is to ensure that no contract is made without first giving the Minister the opportunity of permitting or prohibiting it and in the former case of imposing conditions upon it." [My emphasis]

[14] A decade later, the High Court again had to consider the question of the effect of the lack of the Minister's consent in *Sakashita v Concave Investment Ltd* (Unreported,

High Court of Fiji at Suva, Civil Action No.HBC0121 of 1998, 5 February 1999, Fatiaki J; Paclii: [1999] FJHC 3, <http://www.paclii.org/fj/cases/FJHC/1999/3.html>). In ***Sakashita***, a Japanese businessman entered into a “Memorandum of Agreement” on 15 May 1997 to purchase land payable in three instalments, one on the signing of it, the next within 390 days and the balance on production of the title deed to the land. The first two payments were made. The agreement was also subject to various 'conditions precedent' one of which was that the purchaser would obtain “*the necessary approval from the Minister of Lands for this purchase and also the approval from FTIB and the RBF*”. The Minister’s consent was endorsed on 17 June 1997. The purchaser then filed an originating summons seeking a declaration that “*the Agreement is in breach of Section 6(1) of the Land Sales Act Cap. 137 and is therefore null and void*”. The case proceeded with Fatiaki J answering three preliminary questions as follows:

- (a) Whether 'the Agreement' dated 15th May 1997 is in breach of Section 6(1) of the Land Sales Act (*Cap. 137*)? Fatiaki J agreed it was citing the judgment of Palmer J in ***Hunter*** (supra);
- (b) Whether or not the Minister of Lands consent dated 28.8.97 is sufficient for the purposes of Section 6(1) of the *Land Sales Act*? Fatiaki J agreed it was not again citing the judgment of Palmer J in ***Hunter*** (supra);
- (c) What are the consequences in the event of either question being answered in the affirmative? Fatiaki J ordered that the Defendant repay to the Plaintiff the total sum paid in the two deposits together with costs to be taxed if not agreed.

[15] As Fatiaki J noted in ***Sakashita***:

“At the outset, and as already noticed by Palmer J. Section 6(1) 'aims directly at the non-resident', and I would add 'purchaser'. This is not to say however that a resident vendor cannot be a party to a contravention of its provisions. Plainly he can. Similarly with a contravention of the provisions of Section 7(1) of 'the Act' which deals with a 'non-resident' vendor. In neither instance however can the primacy of a 'non-resident' be ignored.

*Secondly, both Sections in clear terms require, **not** just the consent of the Minister responsible for land matters to the making of a contract to purchase or lease any land or for its disposition, but his '**prior consent in writing**'. '**Prior**' to what? one may ask - to any discussion, proposal or oral agreement? Common*

*sense dictates that none of these preparatory steps are within the contemplation of the **Sections**.*

*In my view therefore and bearing in mind the evidential requirements of **Section 59(d)** of the **Indemnity Guarantee and Bailment Act** (Cap. 232), the answer to the above question must be, prior to the execution by a '**non-resident**' of a written memorandum or note evidencing such purchase, lease or disposition of land."*

Thus Fatikai J concluded that he agreed with adopted "the words of Palmer J" in **Hunter** (supra) at p. 17:

*"The Minister's purported consent given on the (28th of August 1997) [after the Agreement was entered on 15 May 1997] can be of no effect. He derives his powers in the matter from Section 6 of the Act and those powers are to consent or refuse consent prior to the making of the contract. **Any consent he purports to give after that is in my view ultra vires and of no effect.**"*

- [16] The same issue as to "whether a contract for the sale of land can be enforced if it was entered into without the prior consent, in writing, of the Minister" was heard by the Supreme Court of Fiji in **Gonzalez v Akhtar** (Supreme Court of Fiji, Civil Appeal No.CBV00011 of 2002S, 21 May 2004, Fatiaki PSC, Gault JSC and Weinberg JSC; Paclii: [2004] FJSC 2, <http://www.paclii.org/fj/cases/FJSC/2004/2.html>). In that case, Mr Gonzalez who was both a citizen and resident of the United States of America, entered into an agreement on 25 September 1985 with a Mr Mohammed a 12-acre block of land. Only some years after the agreement was made did the parties become aware of s 6(1) of the *Land Sales Act*. They did eventually obtain the Minister's consent subject to the condition that the vendor had to obtain clearance from the Commissioner of Inland Revenue and the Governor of the Reserve Bank. Neither was given. Mr Gonzlaez lodged a caveat claiming "an estate or interest as equitable owner". In addition, Mr Gonzalez commenced proceedings claiming specific performance or damages for breach of contract as well as damages for fraud. As the Supreme Court held:

*"In our view, **Hunter v Apgar** was correctly decided, and remains good law. The appellant could not establish a cause of action based upon that agreement, and therefore could not rely upon the caveat, the sole basis for which was that agreement. Nor could the appellant succeed in the claim based on fraud since no loss of any kind was sustained as a result of that fraud."*

- [17] Whilst the law seemed settled on this issue, the Court of Appeal thought otherwise in ***Port Denarau Marina Ltd v Tokomaru Ltd*** (Unreported, Civil Appeal No. ABU0026U.2005S, 6 December 2006, Eichelbaum, Penlington and Scott JJA; Paclii: [2006] FJCA 27, <http://www.paclii.org/fj/cases/FJCA/2006/27.html>). In ***Port Denarau Marina***, the Plaintiff/Purchaser, Port Denarau Marina Ltd, entered into an agreement with the Defendant/Vendor, Tokomaru Ltd, for the sale and purchase of a marina business on Denarau Island which included two parcels of land for which Tokomaru had two leases from the Crown. As part of the said agreement, the Vendor was to sublease those two leases to the Purchaser. Both the Vendor and Purchaser were non-residents of the Fiji Islands. A condition of the sale of the business was that the parties were only obliged to proceed to completion if “*all Authorisations necessary for the parties to sign and complete this Agreement*” and in relation to the sub-leases that the Vendor would “*prior to or immediately upon registration of the Leases with the Titles Office submit the Sub-Leases to the Crown and any other relevant Authority for approval and all necessary Authorisations*”. As the Court of Appeal noted:

“Although there is no explicit reference to the Land Sales Act the definition of ‘Authorisation’, read in conjunction with the definition of ‘Authority’, is sufficient to encompass the Ministerial consent required by section 6(1).”

- [18] The Vendor began proceedings in the High Court whereby the Court directed (as the Court of Appeal noted) that the following two questions were to be decided as preliminary points:

*“(a) Whether the Sale Agreement dated 8 September 1999 made between [Tokomaru] as vendor and [PDML] as purchaser was and is void ab initio for illegality pursuant to Section 6 of the Land Sales Act?
(b) In the event that it is void ab initio for illegality, is [Tokomaru] thereby entitled to recover possession?”*

- [19] Connors J in the High Court answered both questions in the affirmative, that is:

*“(a) The sale agreement dated April 1999 between the plaintiff as Vendor and the defendant as Purchaser was declared void ab initio for illegality pursuant to section 6 of the Land Sales Act” and
(b) The plaintiff is thereby entitled to recover possession”*

See ***Tokomaru Ltd v Port Denarau Marina Ltd*** (Unreported, High Court of Fiji at Lautoka, Civil Action No.HBC0145 of 2004, 29 April 2005, Connors J; Paclii: [2005] FJHC 676, <http://www.paclii.org/fj/cases/FJHC/2005/676.html>)

[20] In reaching his decision, Connors J noted in ***Tokomaru*** what the Supreme Court of Fiji had held in ***Gonzalez*** (supra) at paragraph 112 cited above, that is, that “the words of the subsection are clear and unambiguous ... Those words mean precisely what they say” to which Connors J added:

“The words of the section also include ‘or take on lease any land’. There is no reason why the additional words ‘or take on lease’ do not similarly mean ‘precisely what they say’.”

[21] Connors J also noted in ***Tokomaru*** that the basis of the Defendant’s argument that the sub-leases were valid even though the prior consent of the Minister had not been obtained was based on the proposition in paragraph 90 of ***Gonzalez*** that “a conditional contract would not become effective unless and until the condition had been fulfilled”. As Connors J explained: “The proposition in paragraph 19 [sic 90] of ***Gonzalez*** is dependent upon ***Butts v O’Dwyer*** [1952] 87 CLR 267 at 279 – 280”.

[22] It is probably best to deal with each of these paragraphs in turn. In ***Gonzalez***, the Supreme Court of Fiji stated at paragraph 90:

*“Mr Patel next submitted that it was always open to the parties to enter into a contract for the sale of land **subject to a condition that the contract would not become effective unless, and until, the Minister’s consent had been obtained.** He referred to ***Butts v O’Dwyer*** (1952) 87 CLR 267 at 279-280 for that proposition. **That submission was not challenged. It is obviously correct, and nothing more need be said about it.**” [My emphasis]*

[23] Connors J, however, in ***Tokomaru*** stated:

*“The High Court of Australia in **Butts** was considering the provisions of the New South Wales Crown Lands Consolidation Act 1913. That Act requires the Minister’s consent to be obtained to the transfer of certain land. It was there stated by the Court:*

“If the sub-section simply provided that a transfer should not be effected unless the Minister’s consent thereto had been obtained, it

would be open to the construction that every memorandum of transfer given without his previous consent should be invalid. But the subsection also provides that such a transfer shall not be valid unless his consent thereto has been obtained. This provision appears to us to mean that an application may be made for the consent of the Minister not only before but also after the instrument of transfer has been given and that upon obtaining his consent the transfer shall be valid according to its tenor and, in the case of dealings under the Real Property Act, when registered effective to pass the legal estate or interest. In other words the parties may enter into a transfer subject to a condition that is not to become effective unless the Minister's consent has been obtained."

*Clearly the provisions being considered by the High Court of Australia in **Butts** are quite different from those contained within section 6(1) of the Land Transfer Act and certainly as that section has been interpreted by Fatiaki J. in **Sakashita** which requires that the consent be obtained prior to the making of any contract.*

It can be without doubt that the agreement was entered into without the consent having been obtained and accordingly, it is without doubt that the agreement is in contravention of the provision of section 6(1) of the Land Sales Act."

- [24] By contrast, the Court of Appeal held in **Port Denarau Marina** on appeal from Connor J's judgment in **Tokomaru** held:

*"Nothing in **Gonzalez** prevents a finding that s6(1) will not be breached by an appropriately worded contract, binding the parties to try to obtain Ministerial consent to a proposed sale or lease and, if obtained, to sell or lease on predefined terms. Indeed the obiter passage quoted above supports that conclusion."*

- [25] Clearly, the Court of Appeal's view in **Port Denarau Marina** in endorsing the argument of Counsel for the Plaintiff/Purchaser, Port Denarau Marina Ltd, is, on one view, (as set out by Connors J at first instance in **Tokomaru**) in conflict with the judgment of the Supreme Court of Fiji in **Gonzalez** which endorsed the judgment of Palmer J in **Hunter** (supra) and as was followed by Fatiaki J in **Sakashita** (supra). On another view, however, it could be argued that both judgments can be accommodated in that **Gonzalez** involved a situation where the parties to the respective agreements only became aware of s 6(1) of the *Land Sales Act* AFTER the agreement had been made. In **Port Denarau Marina**, it was a condition of the contract for the sale of the business

that the contract “*would not become effective unless and until the condition had been fulfilled*”, that is, the obtaining of the Minister’s consent and thus based upon the decision of the High Court of Australia in **Butts** (supra) it could be argued that: “***parties may enter into a transfer subject to a condition that is not to become effective unless the Minister’s consent has been obtained***”. The problem with the latter argument is that Palmer J in **Hunter** (supra), as was followed by Fatiaki J in **Sakashita** (supra), was also dealing with a condition of the contract for the sale that the agreement was conditional upon the consent of the Minister.

- [26] The Court of Appeal in **Port Denarau Marina** was able to distinguish Fatiaki J’s judgment in **Sakashita** (supra) saying at paragraphs 23-24:

“Fatiaki J ... held that the agreement was in breach of s6(1), and that the Minister’s purported consent, given after execution, was ineffective. Referring to the requirement for prior consent in writing, the Judge posed the question: prior to what? and answered it by reference to the evidential requirements of s59(d) of the Indemnity Guarantee and Bailment Act (Cap 232):

prior to the execution by a non-resident of a written memorandum or note evidencing such purchase, lease or disposition of land

In the case before us, neither side invoked that principle. In the absence of argument we do not propose to consider this approach further.

*Although, as noted, the Judge referred to the condition relating to Ministerial approval as a condition precedent, the judgment makes no mention of any argument based on a possible distinction between the facts of **Hunter v Apgar** and the case before him, on that score.”*

- [27] This then allowed the Court of Appeal in **Port Denarau Marina** to distinguish it from the earlier cases particularly as in **Port Denarau Marina** concerned subleases rather than transfer of property as they explained at paragraph 40:

*“We conclude the contract before us is distinguishable from those in issue in **Hunter v Apgar**, **Sakashita** and **Gonzales**. It is sufficiently plain that the obligation to grant the subleases did not arise unless and until satisfaction of the condition that the Minister of Lands consented to the grant. The Minister had the opportunity to consider the proposed subleasing “right at the outset”. The agreement did not infringe s6(1), and Question 1 should be answered in the negative.”*

[28] Of further concern is that the Court of Appeal then went on to agree with the answer of Connors J to the second question, that is:

Q: “In the event that it is void ab initio for illegality, is [Tokomaru] thereby entitled to recover possession?”

A: “The plaintiff is thereby entitled to recover possession”

The problem with this answer is that Connors J answered in the affirmative to question 1, that is, the agreement *is void ab initio for illegality* whereas the Court of Appeal answered it “*did not infringe s6(1), and Question 1 should be answered in the negative.*”

B. RECONCILING THE CASE LAW

1. Appeal in Port Denarau Marina to Supreme Court pending

[29] I mentioned to the parties at the time of the hearing on this preliminary point in August 2008 that it was my understanding that the Court of Appeal decision in Port Denarau Marina was awaiting to be heard by the Supreme Court of Fiji. The appeal was not heard in the October 2008 sittings as the parties were still attempting to negotiate a settlement. I further understand that it has not been listed for the April 2009 sittings for the same reason.

[30] By simply sending the present case to the Court of Appeal as a stated case is, in my view, not the solution. Each Counsel for the respective parties has spent considerable time assisting the Court with their submissions and, obviously, at some considerable cost to their clients. In the interests of resolving the matter for the parties noting not only the costs each will have outlaid combined with the fact that they have been waiting well over three years for it to be heard, I will proceed to judgment reconciling as best I can the Supreme Court judgment in Gonzales and the Court of Appeal judgment in Port Denarau Marina. In doing so, I would also like to acknowledge the considerable assistance which the submissions of Counsel have been to me in being able to proceed to judgment.

2. Distinguishing Port Denarau Marina

- [31] After a close reading of the Court of Appeal judgment in Port Denarau Marina, it seems clear that the Court in that case distinguished it on the basis, as Counsel for the Defendants have submitted “*on its own facts and in particular on the substantive and detailed agreement in question*”.
- [32] Port Denarau Marina involved an obligation to grant subleases which, as the Court of Appeal found (cited above), “did not arise unless and until satisfaction of the condition that the Minister of Lands consented to the grant”. Therefore, the Court was able to distinguish it from Hunter, Sakashita and Gonzales on the basis that the “*Minister had the opportunity to consider the proposed subleasing ‘right at the outset’*”.
- [33] In my view the reference to *the High Court of Australia in Butts should be treated with caution*. As Connors J noted in Tokomaru (supra), the provisions in “*are quite different from those contained within section 6(1) of the Land Transfer Act*”. Further, even the Court of Appeal in Port Denarau Marina whilst overturning Connors J’s judgment in Tokomaru, noted that Fatiaki J in Sakashita had discussed the requirement of section 6(1) of the *Land Transfer Act* that no non-resident “*shall without the prior consent in writing of the Minister responsible ... **make any contract to purchase or to take on lease any land***” and posed the question: “*prior to what?*” Fatiaki J in Sakashita answered it by (as noted above) by asking the rhetorical question “*to any discussion, proposal or oral agreement?*” and answering thus: “*Common sense dictates that none of these preparatory steps are within the contemplation of the Sections.*” In this regard, Fatiaki J cited LOCAL LEGISLATION “*being the evidential requirements of s59(d) of the Indemnity Guarantee and Bailment Act (Cap 232)*” such that he was able to conclude: “*the answer ... must be, prior to the execution by a 'non-resident' of a written memorandum or note evidencing such purchase, lease or disposition of land.*” Surprisingly, the Court of Appeal in Port Denarau Marina did not deal with that issue raised by Fatiaki J in Sakashita on the basis that:

“In the case before us, neither side invoked that principle. In the absence of argument we do not propose to consider this approach further.”

[34] Accordingly, I have come to the view that the law in the Fiji Islands on the issue of the sale of freehold land to a non-resident is well settled by the High Court of Fiji in ***Hunter*** which was also followed by the High Court in ***Sakashita*** and endorsed by the Supreme Court of Fiji in ***Gonzales***. In short, as the Supreme Court concluded in ***Gonzales***: ***“Hunter v Apgar was correctly decided, and remains good law.”***

[35] The Court’s Ruling on the preliminary point of Law is as follows

Question:

“Having regard to the provisions of Sections 6 and 7 of the Land Sales Act Cap.137 whether the document titled “Proposal to purchase Dilkusha land” dated 8 August 2003 (“the Agreement”) for sale and purchase of land was or is illegal, void and unenforceable at law as contended by the Defendants or was or is the Agreement a valid, legal and enforceable contract of sale and purchase of land as contended by the Plaintiff?”

Answer:

Having regard to the provisions of Sections 6 and 7 of the Land Sales Act Cap.137 the document titled “Proposal to purchase Dilkusha land” dated 8 August 2003 (“the Agreement”) for sale and purchase of land was or is illegal, void and unenforceable at law as contended by the Defendants.

I will now hear the parties as to costs.

Thomas V. Hicke

Judge

Solicitors:

Mitchell Keil, Lawyers, Suva, for the Plaintiff

Mishra Prakash & Associates, Suva, for the Respondents