

11/9/08

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. 75 OF 2006

BETWEEN: 1. ROBERT SELKIRK WATLER III
2. IRENE WATLER
3. LYNETTE WATLER

Plaintiffs

AND: 1. A. DWIGHT PANTON
2. SHANNON PANTON
3. MARTYN BOULD

Defendants

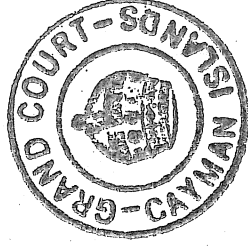
Appearances: Mr. Michael Alberga of Myers & Alberga for Lynette
Watler the 3rd Plaintiff
Mr. Anthony Akiwumi of Stuarts Walker Hersant for
Robert Selkirk Watler III the 1st Plaintiff
Mr. Andrew Jones instructed by Mr. Stuart Diamond of
Diamond Law for Shannon Panton and Dwight Panton the
1st and 2nd Defendants
Mr. Neil Timms instructed by Mr. Nick Holland of
Solomon Harris for Mr. Martyn Bould the 3rd Defendant

Before: Hon. Justice Henderson

Heard: September 11, 2008

RULING

Martyn Bould, the co-executor of the estate of Robert Selkirk Watler, asks this court for directions. Amongst other things, he wishes to know whether certain bodies of water are to be included within a conveyance of some 70 acres of land to two beneficiaries, Shannon Panton and Lynette Watler.



The decedent died in 1989. He left a substantial estate consisting mostly of land, much of which was owned by two of his companies, Red Bay Estates and Frank Sound Estates. There are four beneficiaries. One, Mrs. Watler, no longer has a financial interest in the estate.

The administration of the estate has been a long and troubled process. An independent executor, Mr. Parker, was appointed in an unsuccessful effort to end the acrimony. On February 19, 1993, the four beneficiaries, Red Bay Estates, and Frank Sound Estates entered into a Deed of Family Arrangement intended to settle all issues which had arisen. Another party to that agreement was Watler Holdings, a newly incorporated company. The will and codicil were set aside by agreement. The shares of Red Bay Estates and Frank Sound Estates were transferred to Watler Holdings. Shannon Panton, Lynette Watler and Selkirk Watler became the three shareholders of Watler Holdings in equal proportions. A shareholders' agreement annexed to the deed confirms Mr. Parker's appointment as sole director of all three companies and asserts that the three shareholders of Watler Holdings are "the beneficial owners of all three companies".

Certain clauses in this agreement (Clauses 11 and 12, and paragraph (e) of the recitals) demonstrate that the parties expected that the companies would continue to operate for a period of time in order to liquidate the inventory of land in an orderly manner. The Deed of Family Arrangement grants certain specific bequests, if I may use that term, to the beneficiaries. Clause 4 is the subject of the present application.

It reads:

"[Mrs. Panton] and Lynette shall take absolutely as tenants in common in equal shares and not as joint tenants those

portions of the parcels of land at Prospect Block 22D Parcels 182 and 141 REM4 identified in Part 2 of the Third Schedule subject to and with the benefit of the terms and conditions in respect thereof set out at the Fourth Schedule."

The purpose of Part 2 of the Third Schedule is to describe with particularity the land to be conveyed to Shannon and Lynette. Part 2A reads:

"Prospect 22D 182 except those portions identified on the attached map and more particularly described as all of Parcel 22D 182 less the aggregate of the area described in Part 1 of this Schedule and the area bounded on the west by the existing canal to the point where it dissects the boundary of Parcel 182 and bounded on the north by the shore of the existing lake until it dissects a theoretical line to be drawn from the north eastern corner of Prospect Block 22D Parcel 68 on a longitude of approximately 12 degrees east of north."

Part 2B of that same Schedule describes how the 70 acres is to be made up in part from Prospect 22D Parcel 141 REM4.

The Fourth Schedule is also referred to in what I have termed the "bequest clause".

Clauses 1 to 5 of the Fourth Schedule are relevant and read as follows:

"These terms and conditions are written and accepted to the intent that the net area of land passing to Mrs. Panton and Lynette amounts to a total of 70 acres only.

"Prospect Block 22C Parcel 67 has an area on the Land Register of approximately 1.14 acres.

"Prospect Block 22C Parcel 74 has an area shown on the Land Register of approximately 3.92 acres.

"A professional estimate indicates that the area of land described in part 2A of the Third Schedule (excluding lakes and canals) is approximately 51 acres.

"The remaining land required (approximately 14 acres) to make up the total area of 70 acres is to be satisfied by a transfer of a portion of Prospect Block 22D 141 REM4 identified in Part 2B of the Third Schedule."

Clauses 2 and 3 of the Fourth Schedule refer to a total of about 5 acres of land. Clause 4 asserts that the area of land described in Part 2A, that is, the detailed particularisation of the land in the bequests, is 51 acres "excluding lakes and canals". Clause 5 then says that another 14 acres is needed to make up the 70 acres to be conveyed. The clear intent of these provisions is to convey to Shannon and Lynette 70 acres of dry land.

I return to Part 2A of the Third Schedule. It describes the land to be conveyed twice in two separate ways. The first description states that Shannon and Lynette are to receive all of Prospect 22D 182 except those portions "identified on the attached map". The map is a sketch not drawn to scale. It contains two shaded pieces of dry land which were part of Parcel 182 but have now been conveyed to others and may not, as a consequence, be given to Shannon and Lynette. It also shows the two bodies of water in dispute, the body labelled "Lake" and what has been referred to as the "Canal". Both are a part of Parcel 182. Neither water area is shaded, hence they are not excluded from the transfer and are to be included in what is conveyed to Shannon and Lynette.

I reach the same conclusion when examining the second way in which the subject of the conveyance is described in Part 2A, in text in a sort of metes-and-bounds description. "All of Parcel 22D 182" is to be given to Shannon and Lynette with two exceptions. The first exception describes the upper shaded area on the map and refers to a parcel already given to the deceased's wife. The second exception describes the lower shaded area on the map, a parcel which had already been sold to a third party.

I have considered the argument advanced by Mr. Selkirk Watler including the change in language in Clause 4 of the deed when contrasted with earlier sections, the use of the phrase "less portion removed" in Schedule 2, the reference to the shore of the existing lake in the Third Schedule, Part 2B, and the phrase "excluding lakes and canals" in the Fourth Schedule. These references do not cast any doubt on the true construction of Part 2A which is clear and unambiguous. They are used to add specificity to the descriptions of area in which they appear and to manifest an intent that only dry land is to be conveyed.

In conclusion, I direct Mr. Bould to include the lake and the canal in what is conveyed to Shannon and Lynette.

Dated this 11th day of September, 2008

Henderson, J.

Henderson, J.
Judge of the Grand Court

