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1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 HOLDEN AT GEORGE TOWN, GRAND CAYMAN - Civil

3
4 CAUSE NO. 416 OF 2005

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7 **BETWEEN:** THE **ATTORNEY GENERAL**



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10
11 **AND:** CADIAN EBANKS

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14 **Appearances:** Mr. Cadian Ebanks Appellant/Plaintiff
15 Ms. Reshma Sharma of the Legal Department
16 Respondent/Defendant

17
18 **Before:** Hon. Justice Henderson

19
20 **Heard:** February 8, 2006



21
22
23 **RULING**

24
25 This is an appeal from a decision of a Magistrate in the Summary Court on a civil claim.

26
27 The Registrar of Land Titles conducted a hearing in 1985. At the conclusion of it, he ordered the
28 present appellant, Cadian Ebanks, to have a survey conducted of the northern boundary of his
29 property. The Registrar also ordered, at the same time, that Mr. Ebanks pay the cost of the survey.

30
31 Mr. Ebanks saw no need for another survey as he was happy with the boundary established by the
32 Cadastral Commission. In addition, he considered the Registrar's order wrong. He commenced an
33 appeal of it, but did not carry through with the appeal for reasons which are unclear. Remarkably,
34 nothing happened for 16 years.

1 In 2001, the Registrar (or his successor) ordered the survey to be carried out at Government
2 expense. That was done. The Registrar, acting through the Attorney General, then asked Mr.
3 Ebanks to pay the cost, which was \$1,897.10. Mr. Ebanks refused to do so. The Attorney General
4 took action against him in the Summary Court and obtained the judgment now under appeal.

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6 The decision of the Registrar to which I have referred is dated September 5th, 1985 and is in
7 writing. It is entitled "Boundary Dispute". After a description of the property, it contains the same
8 sort of style of cause one finds in a civil action in this Court. That reads: "*Cadian Ebanks v.*
9 *Esther Rackley & Idania Ebanks*".

10
11 The Registrar says in his decision that a hearing was held on June 11th, 1985, and what he called
12 "all the parties in this case" were before him. He made reference to the original cadastral field
13 notes, to two subsequent surveys which were done for the purpose of dividing adjacent parcels and
14 not for the express purpose of determining the boundary line in question, and then to an unrecorded
15 survey carried out in 1982. He noted that the unrecorded survey was not lodged in the Registrar's
16 office because of a disagreement relating to the northern boundary. After saying that he noted
17 "(Cadian Ebanks)". The Decision does not say expressly that Mr. Ebanks did not agree with the
18 northern boundary. Finally, he made reference to a survey carried out by the Lands and Survey
19 Department which related to a different parcel.

20
21 He summarized his findings from these various surveys and then made a finding as to where the
22 northern boundary of Mr. Ebanks' property was to be drawn.

1 In conclusion, the Registrar said this:

2 "The whole of this dispute appears to have been totally
3 unnecessary and I am led to believe that Mr. Cadian Ebanks
4 has shown unwillingness in attending meetings and discussions
5 arranged on site. On the other hand the two sisters did attend
6 when so requested."
7

8 (The two sisters are the owners of the adjoining property.)

9 "The dispute appears to be over the displacement of a tree
10 from a straight line by a matter of 3.9 feet. This distance is
11 barely plottable at the scale of the Registry Map, being more
12 or less the thickness of the line on the map and it would not
13 have been necessary for the 'Cadastral' surveyors to measure
14 to every tree."
15

16 Later still, he ordered a new survey to be carried out and said:

17 "The cost of the survey needed to define this boundary and
18 to replace missing marks shall be paid for by Cadian Ebanks.
19 ... The survey shall be completed and lodged with the Chief
20 Surveyor not less than 6 months after the date of this order."
21

22 In paragraph 19(c) of his decision the Registrar said:

23 "Mr. Ebanks is free to request any survey organisation on
24 the Island, licensed to carry out title surveys, to carry out the
25 work, but if he does not choose to use the services of Christopher
26 Evans and Co. for this work, then it will be necessary for the
27 survey records to be made available, at a fair cost, by Christopher
28 Evans & Co. If a fair cost cannot be agreed, the matter shall be
29 referred to the Land Surveyors' Board for arbitration and the
30 Board's decision shall be adhered to."
31

32 As I have said, Mr. Ebanks had no unhappiness with the present state of affairs. He did not, at any
33 material time, see the need for a new survey. He also took objection to the Registrar's decision that
34 Mr. Ebanks should pay the cost of another survey.
35

1 Mr. Ebanks did nothing. It must have been apparent to the Registrar, after a reasonable period of
2 time, say six months, that Mr. Ebanks was not going to act. Nonetheless, the Registrar took no
3 action in the matter until 2001, 16 years later.

4
5 The claim is advanced under certain provisions of the *Registered Land Law*. I quote here from the
6 2004 Revision. Section 6(e) of that Law says that the Registrar may:

7 "order that the costs, charges and expenses incurred by him
8 or by any person in connection with any investigation or hearing
9 held by him for the purposes of this Law be borne and paid by
10 such person in such manner and in such proportions as he may
11 think fit, and the amount of such costs, charges and expenses
12 as shall have been incurred by the Registrar shall be deemed
13 to be a fee to which sections 157 and 158 apply."
14

15 I accept that the investigation of a boundary line which appears to have been uncertain, and perhaps
16 in dispute, is an "investigation" within the meaning of that section.

17
18 The section speaks of "costs, charges and expenses incurred", in the past tense, by the Registrar.
19 Because of the conclusion to which I have come, I do not need to decide now whether that
20 language is broad enough to include charges incurred by the Registrar at a time after his decision
21 was rendered.

22
23 Sections 157 and 158 provide for the enforcement of Registrar's orders with respect to fees and
24 expenses. We are not concerned here with section 157. Section 158 reads:

25 "Unpaid fees or expenses incurred by the Registrar shall
26 constitute a civil debt recoverable in the appropriate court."
27

1 Again, the language suggests that it has application only to charges which have already been
2 incurred by the Registrar prior to his order whereas, in the case at bar, the order was made 16 years
3 before the charges were incurred. However, again, because of the decision to which I have come, I
4 need not decide with certainty whether the language is capable of extending to expenses incurred in
5 the future by the Registrar.

6
7 The order made by the Registrar in 1985 did not, as at the date of its pronouncement, create a debt
8 obligation owing by Cadian Ebanks to the Registrar. That is because there was, as at that date, no
9 liquidated amount. Mr. Ebanks was ordered to pay the cost of the survey, but that cost had yet to be
10 established.

11
12 The *Limitation Law* contains two provisions which seem to me to have some relevance here. I refer
13 to the 1996 Revision. Section 9 says that:

14 "An action to enforce an award, where the submission is
15 not by an instrument under seal, shall not be brought after
16 the expiration of six years from the date on which the cause
17 of action accrued."

18
19 Section 11 reads:

20 "An action to recover a sum recoverable by virtue of any
21 instrument of a legislative character shall not be brought
22 after the expiration of six years from the date on which
23 the cause of action accrued."

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Finally, I make brief reference to the *Judicature Law* which provides (in section 32) that execution proceedings on a judgment of the Grand Court in a civil action may not be taken after 12 years from the date of judgment.

Ms. Sharma's argument is that, for the purposes of calculating limitation periods, the cause of action does not arise until the amount becomes a liquidated amount. She says, therefore, that the appropriate date is 2001 and it is of no consequence, for the purpose of calculating limitation periods, that the Registrar waited 16 years to have the survey conducted at his expense. No authority has been cited. I am unaware of any on even remotely similar facts.

It seems to me that the submission by Ms. Sharma cannot prevail. It cannot be the law that, by virtue of his own inaction, the Registrar can postpone the running of what would otherwise be a limitation period applicable to awards or debts or judgments of the Court.

In my view, for the Registrar's decision to be enforceable, the survey would have had to have been conducted at the Registrar's expense within six years after the date of judgment and the action would have had to have been started within that six-year period.

It is, therefore, not open to the Attorney General to maintain this action based solely on the 1985 decision of the Registrar. His prospects of doing that are statute barred.

There is a different way of approaching the case.

1

2 Having incurred in 2001 the expense of the survey, the Registrar still retained a jurisdiction to
3 order that someone such as Mr. Ebanks pay the cost of that survey. It does not appear that any
4 order of that sort was made in 2001. In addition, an order of that sort could only have been made
5 after giving interested parties an opportunity to be heard.

6

7 I am satisfied, on my review of the evidence, that there is not enough justification in the evidence
8 to support an order that Mr. Ebanks pay for the survey. The usual provision for the cost of a
9 boundary survey would, I assume, be an order dividing the cost equally between interested parties.
10 In this case, it would have been reasonable in 2001 to order Mr. Ebanks to pay half the cost of the
11 survey and to order the adjoining landowner to pay the other half. Any departure from the
12 principle of equality would need some special justification.

13

14 The two apparent criticisms of Mr. Ebanks in the 1985 judgment are: that he did not attend
15 meetings when requested to do so; and that he cut down a tree on the boundary.

16

17 As to the first of those, Mr. Ebanks says simply (and convincingly) that he had no unhappiness
18 with the current boundary as established by the Cadastral Commission and, therefore, had no
19 particular motivation to attend meetings. I think that is an acceptable response.

20

21 As to the second, Mr. Ebanks has flatly denied cutting down the tree. The Registrar, unfortunately,
22 included nothing in his 1985 judgment to tell the reader how he concluded that Mr. Ebanks cut
23 down the significant tree. What was the evidence? The record is silent. Did Mr. Ebanks deny at the

1 hearing that he cut down the tree? We don't know that. If so, did the Registrar find the denial
2 unworthy of belief? Nothing is said on the subject. In any event, cutting down the tree, it seems to
3 me, would only be an act worthy of criticism if Mr. Ebanks was aware that it had legal significance
4 in the sense that it was being used as a boundary marker. It is not clear from the evidence that he
5 knew that, or that he was shown in the hearing before the Registrar to have known that.

6
7 I find myself unable to conclude, as the Registrar appears to have done in 1985, that the demands
8 of equity require that Mr. Ebanks pay the entirety of this survey cost.

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10 For these reasons, the appeal is allowed, and the judgment under appeal is set aside.

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12 Mr. Ebanks has been unrepresented by counsel and is not entitled to costs. The Attorney General is
13 not in a position to claim them.

14
15 Dated this 8th day of February, 2006

16 *Henderson, J.*
17



18 Henderson, J.
19 Judge of the Grand Court