

Handwritten: 11-11-98
~~J. Murphy~~ *Libby*

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
CAUSE NO: 839/97**

11-11-98

BETWEEN : KEMPTON M. WEBSTER PLAINTIFF

**AND : (1) REGISTRAR OF LANDS
(2) AUDREY THOMPSON-EBANKS
ROBERT EBANKS, ROXIE BODDEN AND
ARAUNAH POWERY as joint trustees. DEFENDANTS**

**BEFORE MURPHY, J.
IN COURT**

11 November, 1998

**For plaintiff/applicant : P. Lamontagne, Q.C.
S. Brooks**

For first defendant/respondent : S. Hall - Jones

For second defendants/respondents : N. Levy



REASONS FOR DECISION

This is an application for judicial review of a decision of the Registrar of Lands, made between 21 and 31 July, 1997, to rectify the register with respect to the land legally described as Registration Section Breakers, Block 52 C, Parcel 18 (hereinafter, "the land"). The land is in fact The Church of God church building at Breakers and, sadly, is one of the battlegrounds for warring factions within the Church.

The application before me today was essentially unopposed, and I delivered very brief oral reasons granting the application. I now amplify my reasons somewhat in writing, not because of any particularly novel issue pertaining to judicial review, but rather to highlight a point relating to an unincorporated association's right to hold land in this jurisdiction.

On 7 September, 1998 I heard the second defendants' interlocutory application attacking these proceedings on various bases including the plaintiff's alleged lack of locus standi . I regarded that application as having no merit whatsoever. I gather that as a result of the order I made then, and my underlying reasons, the second defendants soon afterwards decided not to oppose the substantive application for judicial review . Crown counsel, appearing for the Registrar, has taken a neutral position throughout.



I propose to set out briefly the main background to this application, taken largely from my reasons in the interlocutory application.

Related litigation

The litigation involving both the West Bay and Breakers congregations of The Church of God focuses upon rectifications made in July 1997 to the land registers for parcels upon which are situated the various Church of God church buildings. These rectifications resulted in the second defendants herein becoming registered proprietors "as joint trustees". Prior thereto, the registered proprietors appeared as "The Church of God" or some variant of that name, indicating a voluntary association.

Other members of the West Bay and Breakers congregations objected to the new registrations. This reflects a fundamental rift within the two congregations mentioned.

In the West Bay litigation purported trustees, including those now shown on the register, have sued members of the congregation for, inter alia, trespass and property damage (Cause no. 816/97). The defendants in that action have responded with an action (Cause no. 835/97) in which rectification of the register is sought.

As to the Breakers church, the purported trustees now shown on the register sue an individual regarded by some as an Overseer or Pastor (or former



Overseer or Pastor) for trespass and seek an injunction barring him from the premises (Cause 817/97).

In this Cause (839/97) another member of the Breakers congregation, Kempton M. Webster, seeks judicial review of the Registrar's decision to alter the register for the parcel on which is situated the Breakers church.

Graham J. on 23 December 1997 granted leave to the plaintiff to apply for judicial review.

Factual background to the present proceeding

The plaintiff, Kempton M. Webster, an active member of The Church of God at Breakers, on 12 June 1950 by deed of gift, gave the land to trustees to be used for church purposes. The church was built and used for the intended purposes.

The land was adjudicated to "The Church of God" as the proprietor thereof, as a result of the adjudication process, on 7 July 1975 and registered accordingly when the first register was opened on 28 August 1976. "The Church of God" is a voluntary or unincorporated association.

In February 1997 the plaintiff applied to the Registrar for a change in the stated postal address of "The Church of God". By letter dated 20 February 1997 addressed to the plaintiff's attorneys, the Registrar replied, in



part, as follows:

“ ...

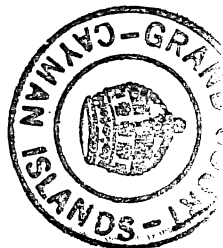
Before processing this application, I would require a correction to the present entry in the Proprietorship Section of this register. As can be seen from the complimentary copy enclosed herewith, the property was casually registered at the time of adjudication. However, now would be an appropriate time to have the land properly recorded in the name of the church trustees. This would have the added benefit that any title or church name change, together with change of postal addresses etc. could all be incorporated, and taken care of at the one time.

To this end I also enclose a copy of the relevant law [The Trustees (Charitable Purposes) Vesting Law] which would guide the church in the necessary procedure to achieve its desired end.

... ”

I pause to observe that the Registrar obviously was of the view that church land must be registered in the names of trustees. His words “casually registered” I assume refer to the fact that the register then showed “The Church of God” as registered proprietor. In his brief affidavit filed on this application the Registrar deposes that the February 1997 application for the address change “was the first occasion I had to examine the Land Register for the relevant property, upon which I discovered that the registered proprietor, The Church of God, was not a legal entity capable of holding land”. I shall return to the matter of whether the Registrar’s opinion on this point was correct.

The plaintiff took no further action pursuant to his request for the address change.



On or about 21 July 1997, however, the second defendants applied for the rectification of the register with respect to the land. They sought a change in the name of the registered proprietor from "The Church of God" to their own names and addresses. The Registrar apparently believed that the second defendants' application was made pursuant to his 20 February letter to the plaintiff's attorneys suggesting the same, and granted the second defendants' request on or before 31 July 1997.

As the Registrar put it in his affidavit :

" I took this, despite the interval of time from my recommendations of 20th February 1997, to be the Church eventually " putting its house in order " vis - a - vis all of its property. I had no reason to doubt that [the second defendants] were not Trustees for this voluntary association, on the basis of the copy resolution accompanying the application ".

In fact there was no connection between the plaintiff's application of February 1997 and that of the second defendants of July 1997. Indeed, the activities of the second defendants are looked upon with disfavour, to put it mildly, by others in the Church, including the plaintiff.

Neither the plaintiff nor, so far as he knows, any other member of The Church of God at Breakers was aware that the name of the registered proprietor



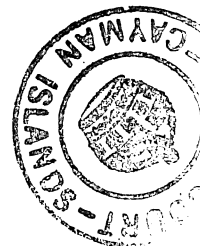
had been changed, until 19 November 1997 after some unpleasant incidents at the West Bay Church caused them to investigate the state of the register for their church land.

The trespass action against the alleged former Overseer or Pastor (Cause 817/97) followed in early December. Later that month the plaintiff brought his judicial review application asserting that the Registrar's decision to rectify the register was illegal and contrary to principles of natural justice.

The Registrar's view of his powers to rectify the register.

Though it was nowhere stated in evidence, the Registrar's decision to rectify the register in response to the second defendants' application must have been taken purportedly pursuant to s. 139 (1) (c) of the Registered Land Law (1995 Revision) , that is, "with the consent of all persons interested" . As a matter of fact, however, there were at least several persons within this unincorporated association - indeed, a significant faction - who did not know of the Registrar's decision and would never have consented had they known.

I make clear that in these circumstances I ascribe no particular blame to the Registrar. He, however, seems to have been of the view that an unincorporated association such as this church could not hold land and accordingly felt he was justified in "regularising" the situation by rectifying the register to show the



purported trustees.

In argument on the interlocutory application in September I raised for counsel's consideration - though the issue was not strictly germane to the issues there decided - my view that, as a matter of statute law, unincorporated associations can hold land in this jurisdiction.

Simply put, the Registered Land Law speaks generally of "persons" as those who can be registered proprietors. By s. 3 (1) of the Interpretation Law (1995 Revision) "person" is defined as including "any club, society, association or other body, of one or more persons". This statutory definition is not altered in any way as far as I can see by any other more specific reference or definition in any other statute in pari materia.

Other statutes lend support to my view. The Trustees (Charitable Purposes) Vesting Law, while focussing primarily on vesting in trustees and their successors, does contemplate (in s. 2) that a congregation can acquire property for religious purposes and may thereafter transfer to trustees. The Churches Incorporation Law (1998 Revision), a consolidation of numerous earlier enactments relating specifically to various churches, also contemplates situations where land may be held legally or equitably as the property of a church whether in the name of trustees or not (see, as an example, s. 37 (1)).



In my opinion, the Registrar was in error on this point. The respondents do

not disagree with my view, and in fact I took Crown Counsel to have conceded the Registrar's error.

Disposition

Applicant's counsel submits that the Registrar's decision to rectify must be quashed because:

(a) he lacked jurisdiction to do so under s. 139 of the Registered Land Law;

(b) he failed to give the plaintiff or any of the other members of The Church of God at Breakers the opportunity to be heard; and

(c) he exceeded his jurisdiction by purporting to rectify the adjudication record : Wilson v Bodden et al . ,
CICA No. 23/89, 28 March, 1990 (unreported) ;
Cook - Bodden v. Kirkconnell [1992 - 93] C.I.L.R. 89
(C.A.) .

I agree that the Registrar's decision must be quashed for these reasons.

I therefore make an order in the form of paragraphs 1, 2, and 3 of the Notice of Motion, that is, for certiorari in respect of the Registrar's decision, a declaration that the decision was of no effect, and for rectification of the register to remove entry no. 2 and restore entry no. 1 in the proprietorship section. As indicated,

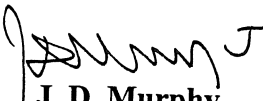


none of the respondents oppose an order in these terms.

I also order costs of these entire proceedings to be paid to the plaintiff by the second defendants. In the circumstances of this case a costs order against the Crown would not be appropriate. The Crown has quite properly remained neutral and awaited the outcome as between the rival factions. These proceedings were effectively necessitated, and driven, by the actions of the second defendants and are simply another aspect of the war between the factions.

I mention in passing that counsel for the applicant urged me to consider another head of relief - nowhere clearly articulated in the material - in the form of a direction that the plaintiff prepare a draft scheme (to be submitted to the Court for approval) for the appointment of trustees who would ultimately become the registered proprietors "in keeping with the original intent of the deed of gift". I declined to consider this, accepting as I do Crown Counsel's submissions that it is well outside the public law parameters of a judicial review application; and that there must be finality to these proceedings. It must now be left to the factions to sort out their differences in the context of the private law relating to unincorporated associations. Hopefully these parties will have the sense to do so informally without the need for further proceedings in this Court.

11 November, 1998


J. D. Murphy
Judge of the Grand Court

