

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN  
CAUSE NO. 233 of 1993



BETWEEN: **EASTERN REALTY LTD.** PLAINTIFF  
AND: ELLEN CLARE ROSS DEFENDANT

Mr. Shaun McCann for the plaintiff  
Mr. Clyne Allen for the defendant

BEFORE DOUGLAS J



RULING

This summons is filed by the plaintiff and seeks two orders which are as follows:-

1. That Summary Judgment be entered for the plaintiff against the defendant.
2. That the defendant's counterclaim be dismissed and judgment entered for the plaintiff.

The plaintiff is a company registered in the Cayman Islands, and is the registered proprietor of a parcel of land known as Bodden Town Block 43F Parcel 35 REM 2.

On the 2nd day of November 1992 the defendant Ellen Clare Ross registered a caution dated 30th October 1992 against the title of the said land claiming an interest therein as a contracting purchaser.

The plaintiff now claims a Declaration that the defendant is not a person interested in the land within the meaning of Section 127 of the Registered Land Law (1995 Revision) which provides, inter alia as follows:-

- (1) a Any person who claims any unregistered interest whatsoever in land, a lease or charge may lodge a caution with the Registrar forbidding the registration or dispositions of the land, lease or charge concerned and the making of entries affecting the same.

To this action the defendant has brought a counterclaim seeking specific performance of an agreement to purchase and damages in lieu of or in addition to specific performance.

The application before me falls under Order 14 rule 1 of the Grand Court Rules. This rule provides as follows:-

- (1) Where in an action to which this rule applies a Statement of Claim has been served on a defendant and that defendant has given notice of intention to defend the action, the plaintiff may, on the ground that the defendant has no defence to a claim included in the Writ, or a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against the defendant.

My first concern with this application is its very nature. The usual Order 14 r 1 applications are usually directed at defendants who have no defence to the claim, on most cases are sued for liquidated damages. The defendant in this matter not only filed a defence but also a counterclaim. The plaintiff is relying on his claim that the defence is not bona fide and accordingly there is not valid.

The relevant facts in this matter are all derived from documents, and can be summarised as follows. On 5th April 1997 the defendant Ellen Clare Ross wrote to E.D. Duncan & Co. forwarding a cheque in the sum of CAN\$5,000.00 as payment in full for Lot 45, Tax Haven Estate Cayman Islands. Duncan & Co. were at the time Barrister and Solicitor in Edmonton Alberta. The letter was signed by one Mollie McLaren for defendant.

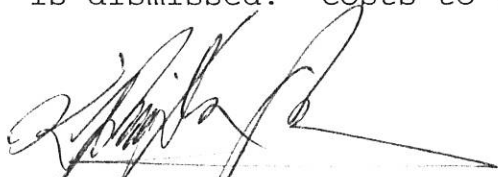
As shown by the Land Register the plaintiff company Eastern Realty Ltd. was the registered proprietor of the said land and E.D. Duncan owned all the shares of a company named Karman Investments Ltd. Two weeks prior to 5th April the director of the plaintiff company met and passed a resolution that the issued shares in the company be sold to Karman Investments Ltd. On 19th April 1997 the directors of the plaintiff company passed a resolution that the shares certificate be issued to Karman Investments Ltd. for 1202 shares. In January 1978 E.D. Duncan was the signatory to documents relating to the sale of land by the plaintiff as witness by a promissory note of that date and a letter from Duncan to one Isabel Jenkins confirming the receipt of a sum of money for the purchase of Lot 45 Tax Haven Estates on behalf

of their client Eastern Realty, the plaintiff in this action.

The evidence is that the defendant, Mrs. Ross paid money to Edward Duncan who held himself out as being in a position to give title for the land being purchased. Having done so she signalled her equitable interest in the said land, by registering a caution against it. Her claim is also supported by the affidavit of Edward Duncan himself who deponed that he acquired the beneficial interest in the plaintiff's company in March or April 1997, and that he then gave an indemnity and warranty which extended to a subject matter.

A plaintiff seeking a judgment under Order 14 has two hurdles to cross. Firstly, he must prove that the defence is not bona fide, secondly, that the defendant has not raised an issue against the claim which ought to be tried (see RSC Order 14/3-4/2). Accordingly, the judgment sought can only be obtained where the Court is satisfied that the defendant has no arguable case. It is ironic that during the hearing of this application the parties argued at length the various issues involved, thereby making it abundantly clear that both the plaintiff and the defendant have several arguable issues which can only be determined at the trial.

I therefore find that this application has no merit. Accordingly, it is dismissed. Costs to the defendant to be taxed or agreed.

  
Kipling Douglas  
Judge



9th April 1998