

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

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CAUSE NO. 245 OF 1995

BETWEEN :	HAROLD E. BROWN	PLAINTIFF
AND	(1) GREEN THUMB NURSERY	FIRST DEFENDANT
	(2) RAPHAELLENA	SECOND DEFENDANT
	(3) BARCLAYS BANK PLC	THIRD DEFENDANT
	(4) GODFREY DAWKINS	FOURTH DEFENDANT
	(5) STANLEY SCOTT	FIFTH DEFENDANT

For the plaintiff: Mr. P. Broadhurst of
Collins, Broadhurst & Furniss

For the 3rd defendant: Mr. A. Turner of W. S. Walker & Co.

For the 2nd, 4th, and 5th defendants: Mr. S. Hellman of
Paget-Brown, Quin & Hampson

HARRE C. J.

RULING

The summons of the third defendant, Barclays Bank plc ("the Bank") seeks, inter alia, that the following question of law may be determined, namely, whether the rectification of the Registers sought in certain claims made in the Plaintiff's Statement of Claim shall be or shall not be made as against the Third Defendant in the light of the provisions of Section 140 (2) of the Registered Land Law.

D. ...
4/9/95

Section 140 (2) of the Registered Land Law (1995 Revision) reads thus

"(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents or profits and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake or substantially contributed to it by his act, neglect or default."

This is an application under Order 14A rule 1 of the Grand Court rules 1995, under which the Court may upon the application of a party or of its own motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that such question is suitable for determination without a full trial of the action, and such determination will finally determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.

Matters of law of some complexity and importance were argued. That in itself does not render the procedure under Order 14A inappropriate. The comment on the identical English provision in the Supreme Court Practice 1995 is this -

"the Court is enabled under this Order in an appropriate case to exercise its summary powers not only within the time honoured rubric of a "plain and obvious" case but also where the determination of the question of law may require prolonged and serious argument."

It is manifest that the determination sought will not determine the entire cause or matter. There are allegations of fraud and

conspiracy and claims for rectification of the Land Register against other defendants which will not be disposed of. A claim for damages against all the defendants, including the Bank, is included in the statement of claim, but no allegation of fraud or mistake has been made against the Bank. So I am left to decide whether the present question is suitable to be determined without a full trial of the action, and whether its determination will finally determine any claim or issue therein. An affirmative decision on the second of these matters would in my judgment lead inevitably to the conclusion that the present application is premature. The test which I should apply is whether all necessary and material facts have been duly proved or admitted, so that the Court is not called upon to hear the evidence or make its own findings of fact. The groundwork of the underlying facts will already have been prepared: See Note 14A/1-2/5 at page 181 of the Supreme Court Practice 1995.

This action is at an early stage of pleading. I had before me only the statement of claim, although I was told that defences by defendants other than the Bank had been filed earlier in the day, and served. Obviously no discovery has taken place. It is possible that amendment of the pleadings will take place once that has happened. To make a determination now on the assumption that none of the relevant matters of fact - knowledge neglect or default on the part of the Bank - can come to be in issue as the action unfolds would be in my judgment running the risk of taking the kind of treacherous short cut described by Lord Scarman in Tilling v Whiteman (1980) AC.1 which can have as its price delay, anxiety and expense. That was in

the context of the trial of preliminary questions or issues in accordance with O. 33 r 3, but the same cautious approach is called for, in my view, under O 14A and the drafting of the Order reflects this.

The application by the third defendant is premature. It does however raise an important point of law which may well be suitable for determination at a later stage without a full trial of the action. That stage in my view is after the close of pleadings and discovery, when all issues will be identified. Accordingly, I order that paragraphs 2 and 3 of the third defendant's summons be adjourned sine die with liberty to restore, for hearing before me if possible so that the time spent so far on the arguments of law need not be wasted, at that stage.

With regard to paragraph 1 of the summons, the time for the Bank to serve its defence in this action is extended to close of business on 18th August 1995.

Costs reserved.



G. E. Harre
Chief Justice

11th August 1995.