

20.6.86

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
BEFORE THE HON. MR. JUSTICE HULL

CAUSE NO. 59/86

IN THE MATTER OF AN APPLICATION BY HAVEN HOLDINGS LTD. FOR
JUDICIAL REVIEW

AND IN THE MATTER OF THE REGISTERED LAND LAW

AND IN THE MATTER OF THE LAND SURVEY REGULATIONS

BETWEEN: HAVEN HOLDINGS LTD. APPLICANT
AND: THE CHIEF SURVEYOR OF THE RESPONDENT
CAYMAN ISLANDS

Mr Adams for the applicant.
Mr Ground for the respondent.

[Handwritten signatures and initials: Adams, Ground, and a large 'AG' in the right margin]

REASONS FOR JUDGMENT

The evidence in this matter is contained in three affidavits, one sworn on 27th February 1986 by Mr. Adams in support of the application, the next by the Chief Surveyor in answer on 21st April, and the last by Mr. Adams in reply on 20th May. A number of letters and plans were exhibited with the affidavits. I proceed on the basis that the existence of these documents and the fact of their delivery on the various dates shown on them is not disputed. Their proper interpretation is in issue.

Mr. Evans and Mr. Bushnell, who are licensed surveyors, were engaged on behalf of the applicant to survey land for the purposes of a subdivision.

On 17th October 1984 the Central Planning Authority gave permission ("the first permission") for the subdivision of Block 12C Parcel 211, West Bay Beach South, into two lots, "A" and "B", subject to the condition that Lot A was to be at least 17000 square feet. It did so pursuant to an application received by the Town Planning Department on 9th October 1984, described as an application under the Registered Land Law, section 21(2). The application has on it a diagram of the proposed subdivision. Below this are the names of the two surveyors.

The Chief Surveyor's evidence was that on 6th February 1985, on a further application, the Authority gave permission ("the second permission") for another subdivision and a combination, involving Lot B and also Parcel 191 of Block 12C into four lots X, YY+Y, Z, and ZZ. This permission was given subject to the conditions that Lot X and each of the components YY and Y should have specified minimum areas and further "that the access road(s) abutting the proposed lots shall be asphalted and registered as a 30 foot demarcated road reserve". The evidence does not show when the application for the second permission was made, but again that application contained a diagram of the proposal and beneath that the names of the surveyors. This diagram showed in bold freehand how that part of Parcel 211 which had been approved as Lot B under the first permission and Parcel 191 were to be subdivided and then (as to Y and YY) combined. Typed on the application was a note "Planning permission granted per your letter of 23/10/84 yr. ref. S.131/84 CPA 22/4.1" with an arrow drawn in, pointing to the part of Parcel 211 which had been approved as Lot A under the first permission. On this second diagram, Lot A is no part of the further proposal for subdivision.

The Chief Surveyor deposed that in June, 1985, Mr. Evan's firm was involved in another survey (which I shall call "the third subdivision") of Parcels 208, 209 and 210 which were to be west of Parcel 211, and that those three parcels were later mutated to Parcels 213 (a) and (b). He also said that for the purposes of that survey, Mr. Evans relied in part on a survey of the present applicant's Parcels 191 and 211 which embodied the first and second permissions.

The complaint in this matter is that the Chief Surveyor is wrongly refusing to authenticate under the Land Surveyors Law (Revised) the survey of Lot A. Although it is not the whole of the story, I find it convenient at this point to deal first with the correspondence that passed directly between the surveyors and the Chief Surveyor.

On 10th September 1985 Mr. Evans wrote to the Chief Surveyor. This letter was headed "Re: WBBS, 12C208-210, 01/603, Comps 847." It was copied to his client, and read:

"Confirming our conversation of today.

"I have now filed with you our survey #MJ564C, subdivide/combine 12C191 + 211. This survey has

not as yet received final planning permission.
The information you require is in this survey.

" I trust that this is satisfactory."

On 27th September the Chief Surveyor wrote back to Mr. Evans. The heading refers to Parcels 191 and 211 and also to MJ 564D. In the letter he said:

"The relevant original survey observations and computations have been extracted from the above file and placed in file Comps 847, to enable that submission to be fully checked.

"Your file can now be collected from this office and re-submitted, when you have got the necessary planning approval."

The Chief Surveyor's evidence was that he was informing the surveyors that the data from the survey of Parcels 191 and 211 had been transferred to the file for the third subdivision which had been the purpose of its submission to him. He went on to explain that he was by this letter making the survey for Parcels 191 and 211 available for collection to enable them to complete "the necessary formalities" for these two parcels. It appears from the letters from the surveyors that their reference MJ564C is to the subdivision of Parcels 191 and 211. In his letter of 10th September, which related to this and to the third subdivision, according to the Chief Surveyor, there is a reference MJ564D/C at the top, but in the body MJ564C clearly refers to Parcels 191 and 211. He said that at that point, the plans had never been submitted to him for the purposes of the subdivision of Parcels 191 and 211.

On 20th February, 1986, the Chief Surveyor wrote again to Mr. Evans. The letter is headed, inter alia "..... Parcels 191 & 211MJ564C". It says:

"We have been holding the above submission, at your request, since September 1985. The plan cannot be authenticated as the work does not fully comply with the Planning conditions and also the situation on the ground has now altered to such an extent that this submission has become out of date.

"As we do not have the facilities to store indefinitely work, which cannot be fully processed, I am returning to you herewith, your submission."

As I mentioned however, for a full picture it is also necessary to take into account the other correspondence that took place.

On 22nd May, 1985, Mr. Bushnell had written to the Planning Department, for the attention of a Mr. J. Beaubrun. This letter related to parcels 191 and 211, the sender's reference was MJ564C, and it referred also to what I take to be the first and second permissions. It began "Our survey to subdivide and combine the above parcels is now complete and we enclose three copies of each of our plans for approval." It went on to say that the client did not have the power to asphalt or demarcate the road reserve "as requested" and then continued "Would you therefore refer the matter to the Board with the intention of approving our final drawings. We would of course require written confirmation of any changes to avoid any problems at the Land Registry." - and it concluded "Should you have any questions please do not hesitate in contacting Chris Evans or myself."

On 7th June 1985, the Director of Planning wrote to Haven Holdings Limited, in relation to Parcels 191 and 211, citing the reference S 1310/84 which appears to relate to the first permission. He said "At a meeting of the Central Planning Authority held on 5th June 1985 your application was considered and it was resolved to adhere to the previous decision of 6th February 1985."

On 9th September 1985, Mr. Adams as attorney -at-law for the applicant, wrote to Mr. Evans expressing his client's concern "over the delay in clearing the surveys of the three additional lots shown hatched on plan enclosed." The letter related to Parcels 191 and 211. Mr. Adams expressed his understanding that the Central Planning Authority was obstructing the registration of these lots for reasons which were unclear to him but appeared to relate to the registration of rights of way from the West Bay road to the lots. He went on to inform Mr. Evans that his client was anxious to complete the sale of the additional lots, and said "Our clients are not willing to grant any road easement in advance of lot purchase completion regardless of any requirement of the CPA".

This letter concluded by asking Mr. Evans to submit his survey to the Chief Surveyor "for approval to lead the issue of titles to the additional lots."

On 23rd October, Mr. Adams himself took the matter up with the Chief Surveyor. His letter was headed in reference to Parcels 191 and 211 and enclosed a copy of his earlier

letter to Mr. Evans. He made three particular points. The first was that the surveyors had informed him that the surveys had not been approved by the Chief Surveyor because the Central Planning Authority had not given final approval for the subdivisions. (Mr. Adams went on to explain why he thought this was an incorrect requirement.) He then informed the Chief Surveyor that his client was not prepared to accept "any further delay" in the registration of the surveys and the issue of titles "for unlawful reasons". Finally he called on the Chief Surveyor to proceed to "register" the surveys within 7 days, failing which he gave notice of his intention to apply for mandamus.

It is relevant to note that this letter and subsequent correspondence between Mr. Adams and the Chief Surveyor were copied to Mr. Evans and the planning authorities.

Mr. Evans on 24th October received a letter from the Registrar of Lands. It related to the survey of Parcels 191 and 211. The Registrar said that the survey had been received by the Lands and Survey Department on 11th August 1985 and that his understanding was that it had been required to enable the Chief Surveyor to extract data for the third subdivision and that although the survey had remained in the department since, at Mr. Evan's request, it had been on the understanding that the latter had not fully completed his submissions for Parcels 191 and 211. The Registrar then referred to Mr. Adam's letter of the previous day and the apparent misunderstanding on Mr. Adams' part, and said that he himself had that day, in order to save delay, looked at the survey records. He listed three matters that he said required attention - the return of a land certificate, the resolution of the grant of easements, and the fact that no planning permission had been given for the survey. He said, "Approval has been given for previous layouts which are not now being adopted. I was led to believe that you are in the process of obtaining this approval.

"When the above points have been attended to the survey will have satisfied the Registrar's checking procedure and subject to authentication by the Chief Surveyor the survey could be approved." This letter was copied to Mr. Adams.

The Chief Surveyor replied to Mr. Adams on 25th October, saying that Mr. Adams had been misinformed by his surveyors as to the status of "this survey". He enclosed copies of

the correspondence with the surveyors, and said that since 4th October, the "survey" had been in his office, awaiting further action by the surveyors, and said "You will be now have seen the letter from the Registrar of Lands and the comments about the outstanding legal requirements", and further said that he himself needed a planning approval "authorising the layout of new parcels A,B,C,D,E,F", and he ended by re-iterating that he was still awaiting a submission from the surveyors.

On 25th November Mr. Adams replied to the Chief Surveyor enclosing the original planning approvals which had been requested in the Registrar's letter of 24th October; confirming that he was arranging fresh grants of rights of way, and asking the Chief Surveyor to confirm that there were no further impediments to the completion of the surveys. In his letter he also said that copies of the approvals had been given to the surveyors when they had been instructed and that he was inquiring whether he had filed them with his submission.

The Chief Surveyor acknowledged this on 2nd December. He confirmed that the surveyors themselves had in fact previously submitted copies of the original approvals. He next explained that when on 25th October, he had seen planning "approval" was needed, he had been ambiguous, and indicated that he had really meant a "release." He said that the practice was that after preparing his survey (once planning permission had been first given), the surveyor was to take the plan to the Director of Planning who was to stamp it to indicate his agreement to the layout. The reason for this, the Chief Surveyor said, was that "design changes may have to be done during the staking out, by the Surveyor, which need to be approved (released) by Planning, before the plan can be authenticated."

The Chief Surveyor ended by saying that he had spoken to the Director of Planning who would write to Mr. Adams about the road condition and that once the Director had confirmed that all his conditions were complied with, the Chief Surveyor would authenticate the plan.

The Director of Planning wrote to Mr. Adams on 4th December. He re-iterated the practice applied by the government agencies for the checking of survey plans before their submission to the Chief Surveyor for authentication. He also

stated that on 13th February 1985 a joint application had been received by the present applicant and Canal Holdings Limited to provide, at their own instigation, wider road access in place of that required under the second permission, and said that permission for this had been granted by the Authority on 13th March 1985. He then stipulated the requirements to be met before the Planning Department would give its "release", expressed an opinion on legal requirements for outline planning approval (which both parties agree is not involved in this case), and proposed a meeting to answer any further questions.

Mr. Adams replied to the Chief Surveyor on 10th December. He took the view that once it gave its initial permission to Central Planning Authority was functus officio and again asked the Chief Surveyor to register the surveys as submitted. He added that he would await to hear from the Central Planning Authority what was meant by "demarcated road reserve."

In reply to the Director of Planning, on 16th December, Mr. Adams in effect re-iterated his view that the administration could not require a survey plan to be checked for "release" (in the sense described above), and declined to discuss further the legal issues with the Director. He said he had instructions to take legal action, and also said that the submission of the proposal involving Canal Holdings Limited had not been made with the authority of his client.

Further correspondence followed between the Chief Surveyor and Mr. Adams. On 16th December, the former wrote again. In his letter, he said that the surveyors had not complied with the condition as to the road reserve and had therefore not complied with regulation 11 of the Land Survey Regulations. He indicated that he could not authenticate the plan until the condition was met or waived. He also explained the meaning of a demarcated reserve.

On 19th December Mr. Adams replied, saying that it was for the surveyor himself to ensure that planning permission had been obtained and that, under regulation 7(4), his survey complied substantially with it; and further that it was then for the Chief Surveyor and not the Authority to accept or reject the plan.

He then referred to Lot A specifically, saying it had been "stamped" by the Authority as long ago as 28th May 1985 and that he could see no reasonable ground for the Chief Surveyor's refusal to authenticate it. He formally asked him to proceed with the processing of Lot A, repeating that in the absence of any valid ground for failing to do so, the applicant would seek mandamus.

This concluded the exchange of correspondence between Mr. Adams and the Chief Surveyor. The latter returned the plan to Mr. Evans on 20th February, and has declined to authenticate it in respect of Lot A as matters stand. In his affidavit, he deposed that he needs a proper separate survey for Lot A if he is to comply with the request to authenticate it separately and that if he receives this, and obtains the signification of the Planning Department that the Lot as surveyed accords with the planning permission, he will authenticate the survey of Lot A.

At this point, I want to turn to the relevant law. It is not in dispute that the object of these activities was to procure the registration under the Registered Land Law of the subdivision of Lot A and the issue of a separate certificate of title for it, although in fact I think some of the same considerations govern the matter regardless of that Law.

The requirement for planning permission for a subdivision is contained in the Development and Planning Law (Revised). A subdivision is a "development" for the purposes of the Law: see section 10(2). Permission is required under Part III for developments carried out after 17th January 1972. It is clear from the context of Part III that the Central Planning Authority is in Grand Cayman the body whose permission is to be obtained under section 12(1). Where an application for permission is made to it, it may grant it unconditionally or subject to such conditions as it thinks fit, or it may refuse permission. There is a right of appeal to the Appeals Tribunal. Permission, once given, remains effective for one year from its promulgation (section 12(3)). The Authority has power under section 14 to modify or revoke permission and under section 15 to 18 to enforce planning control.

The Authority is established by section 3. By virtue of subsection (1) it is to exercise such functions as are assigned to it by the Law. So it is a statutory body, which

is to perform functions prescribed by statute.

Surveys in the Cayman Islands are regulated by the Land Surveyors Law (Revised). Although "survey" specifically includes one made for the purposes of the Registered Land Law, the term is in section 2 defined descriptively, to mean simply any survey defining the boundaries of any land.

The office of Chief Surveyor is constituted under section 3(1), as are its duties. He is, inter alia, to supervise and control all surveys that are not public surveys. The surveys in this matter are not public ones. His duty to "supervise" and control non-public surveys may be contrasted with his duty, in the same subsection, to "direct" and control public ones.

It is also his statutory duty to examine plans of surveys before any registration of land is effected in accordance with the Registered Land Law and to approve them if he is satisfied that the surveys have been carried out and the plans prepared in accordance with regulations made under section 28; to take charge of and preserve all survey records; and to cancel or amend "in accordance with the provisions of any law, survey plans found to be incorrect, outdated or inadequate."

The Law also provides for the licensing of surveyors of land. By virtue of section 14, in Part III, unlicensed surveyors may not undertake professional surveying. (I use for convenience the summary of the effect of the section in the marginal role. It is not precise, but the point is immaterial.) Throughout the Law the term "surveyor" refers to a licensed surveyor of land and Part III deals with his duties. He has the responsibility under section 13(1) of ensuring that the survey accords "in all respects" with the Law, and for the correctness and completeness of his surveys.

Section 14 says that where land is surveyed for the purposes of the Registered Land Law, the survey shall be carried out "under and in accordance with the directions of the Chief Surveyor."

Part V is entitled "General". Under section 23, a surveyor must send to the Chief Surveyor all plans, field notes and computations relating to any survey executed by him in accordance with the Law and its regulations (which I think in the context is really intended to mean a survey done by him to which the Law relates.) The section requires this data to be deposited in the survey department and declares that it becomes the property of the government. Once deposited a plan may not be altered without the permission of the Chief Surveyor.

Under section 24(1), the Chief Surveyor may check in field or office the survey work of a surveyor and under subsection (2) he has the power to instruct a surveyor to correct within a specified time any error in a survey plan submitted for authentication.

Authentication is dealt with in section 25. Land may not be considered as having been surveyed until the survey plan is authenticated by the signature of the Chief Surveyor. Once he does so, the plan becomes conclusive evidence of the survey information in it unless it is cancelled by him under the powers given to him by section 26.

Section 28 empowers the making of regulations for, amongst other things, any of the following purposes:

- "(1) prescribing the manner in which surveys are to be made
- "(2) with regard to plans of survey and their preparation and the matters to be shown thereon;
- "(13) prescribing any other matters which this Law requires or authorises to be prescribed.. .."; and
- "(14) generally for giving effect to the purposes of this Law so far as the Chief Surveyor and the Governor in Council are the appropriate authorities therefor."

In the Land Survey Regulations (Revised), regulation 7 (1) says that every surveyor is personally responsible for the accuracy, fidelity and completeness of every survey presented by him for the approval of the Chief Surveyor. The following paragraph says that it is a surveyor's duty to record all relevant information that may help secure the accuracy and completeness of his survey. Paragraph (3) requires him to perform enough work to thoroughly check every part of his survey.

Under paragraph (4), he is to present his plan and related computations and documents "in such a manner as the Chief Surveyor may require". If they do not "conform substantially with the appropriate requirements" the Chief Surveyor may at his discretion -

- (a) return them to the surveyor; and
- (b) refuse to authenticate them until they do conform.

Where they are returned, the surveyor must re-submit them without undue delay.

Regulation 11 says that before submitting any survey to the Chief Surveyor, a surveyor is to ensure -

- (a) that any requisite approval has been obtained for a subdivision; and
- (b) that the survey conforms with the approval.

Fees are payable under regulation 14(2) for the authentication of plans submitted under section 25.

All of these regulations are found in Part II which is entitled "Regulations affecting all surveys made under section 14" - ie. all surveys for the purposes of the Registered Land Law.

Finally, under section 21 (2) of the Registered Land Law, where a proprietor is subdividing his parcel for the purpose of a building development, the Registrar of Lands may require him to submit a survey plan prepared by a surveyor authorised under the Land Surveyors Law and certified by the appropriate authority as conforming with the requirements of any planning law for the time being in force.

Against this background of evidence and law, I come to the following conclusions.

In the first place, I think it is worth stating what was not really in issue, namely that this matter relates to a subdivision of land, under the Development and Planning Law the permission of the Central Planning Authority was therefore necessary, the surveys done by Mr. Evans and his colleague were in fact done for the purposes of the Registered Land Law (because it is clear that the applicant's concern was, eventually, to obtain separate documents of title for the subdivided lots) and of course the survey plans needed to be authenticated by the Chief Surveyor.

As I see it, the next question that needs to be decided is this - at what point of time did the surveyors submit survey plans in respect of Lot A for authentication?

Mr. Adams argued that as a matter of practice - of professional practice, I took him to be saying - dealings between members of the same profession often proceed the assumption that obvious action will follow. Not every transaction needs to be backed by a covering letter spelling out in terms the action which one is asking the other to take. Documents are routinely left with professional authorities in the expectation that the action will follow as a matter of course. He invited me to infer that clearly the surveyors did present the relevant plans for authentication.

Ordinarily, I think that submission would have force. Professional business is done that way. The provisions of sections 23 to 25 could be said to point to this, and I can see that often, if a surveyor presents his plans to the Chief Surveyor's office, his purpose may be understood and acted on without further explanation.

In the present case, however, before I can draw that inference, I must have regard to the correspondence that passed between the various people involved in the matter. The evidence for the respondent was that the survey plans affecting Lot A were only ever put to the Chief Surveyor by the surveyors for the purposes of the third subdivision; they were never submitted to him by the surveyors to obtain authentication in respect of Lot A and, more than that, although they were left with him at the surveyor's request after the purposes of the third subdivision had been met, neither Mr. Evans nor Mr. Bushnell thereafter requested authentication. Mr. Evans was aware of the correspondence between the authorities and Mr. Adams because it was being copied to him. He must therefore have been aware of the Chief Surveyor's position on the matter. There is no evidence from him or Mr. Bushnell to contradict the Chief Surveyor's understanding of the matter. In those circumstances, the only inferences I can properly draw are first that the plans were never submitted as such to him by either surveyor for authentication in respect of Lot A, and secondly that nothing was done by the surveyors themselves, after the work in respect of the third subdivision was completed, to make it clear to him that they now awaited authentication in respect of Lot A.

This leads on to the question whether or not any request for authentication was ever made, because if none was, this application for mandamus must fail for that reason.

Mr. Ground submitted that under the scheme of the Land Surveyor's Law and its regulations, it is for a licensed surveyor, and no-one else, to prepare and submit plans for authentication. He was saying that the process of preparation, submission and authentication is a process between professional surveyors. I think that submission has force too.

It is clear from the evidence that acting as the attorney-at-law for the surveyors' client, Mr. Adams did by his letter of 23rd October 1985 ask the Chief Surveyor to "proceed with registration of the surveys", this being a request in relation to both permissions. By his letter of 25th November, he provided the original planning approvals, indicated he was dealing with the rights of way, and sought confirmation that there would be no further impediments to the completion of the surveys. At this point, I think it is evident that the Chief Surveyor knew what he was asking for because in his reply on 2nd December, while insisting on a "release" from the Director of Planning, he said explicitly that on this being done, he himself would authenticate the plan. The request, however, at this point still related to both subdivisions. On 10th December Mr. Adams asked the Chief Surveyor to "register the surveys as submitted," and then on 19th December, concentrating for the first time specifically on Lot A, he asked the Chief Surveyor "to proceed with the processing of the survey... so that my client can obtain title." The Chief Surveyor's letter to Mr. Evans on 20th February 1986 amounts to a clear refusal to authenticate, for reasons stated.

I agree with Mr. Ground that the Land Surveyors Law regulates dealings between surveyors - professional dealings between surveyors - but in my view, given the history of this transaction, Mr. Adams as the attorney-at-law for the client could and did convey to the Chief Surveyor the request for authentication. He had already on 9th September 1985, on the client's authority, written to the client's surveyor asking him to seek the Chief Surveyor's approval for Mr. Evans' survey "to lead the issue of titles to the additional Lots." This was as I see it properly only a request because the decision to make a submission for

authentication under the Law must depend on the judgment of the surveyor, as he is the one who is responsible for its adequacy. However, Mr. Adams also copied his other correspondence to Mr. Evans. I think the correct conclusion to draw is that by the time Mr. Adams got into correspondence with the Chief Surveyor, and certainly by 19th December, there was the prospect of legal action and Mr. Adams was understood by the client and the surveyors to be dealing with the authorities on their behalf. This may explain why Mr. Evans evidently remained silent in the face of the Chief Surveyor's account of the history of the matter and I also think it explains why, on receipt of the plans back, he forwarded them to Mr. Adams on 21st February without comment, simply saying "I will await your instructions."

I also infer that from 2nd December at least, the Chief Surveyor accepted that Mr. Adams was speaking for the client and the surveyors because it was at that point that he clearly acknowledged a readiness to authenticate once the conditions he was insisting on were met.

The 19th of December is the critical date because this application is for mandamus to require the Chief Surveyor to reach a decision whether or not to authenticate the survey of Lot A. It is not concerned with any other lot. The reason for that is clear. In preparing his letter of 19th December Mr. Adams plainly came to the view, for the first time that, whatever the position on the other Lots, his client was entitled to mandamus in respect of Lot A. Although his letter refers to Lot A by way of being an example of his argument, I think it is also evident that it was at this point that he decided to confine his application to that Lot. His client had the first permission. No question of a road reserve arose.

The Chief Surveyor's evidence was that being faced, at that stage, with a request to proceed in respect of Lot A alone he was not prepared to do so. In order to consider the request he would require a separate survey of Lot A. This had never been provided of their own initiative by the surveyors; they had submitted amalgamated plans in respect of all the land to the subdivision, and they themselves had not done so by way of a submission for authentication. Now through their attorney-at-law they were electing to proceed only with Lot A. The Chief Surveyor also deposed that another reason for returning the plans to Mr. Evans was that a road

had in any event been constructed across all of the original Parcel 211, including Lot A, so that the situation on the ground had altered.

In the end, I think the application turns on this point.

The applicant did not lead evidence or put forward arguments to rebut these assertions. I cannot myself form an independent view as to whether a separate survey plan is necessary for the authentication of a particular lot. It does appear to me that, given that there had been a condition for a road reserve in respect of the other lots, the fact that a road had been constructed across all of the lots would affect "the situation on the ground". The Chief Surveyor has said that it would. Under section 3(1)(b) the Chief Surveyor is to supervise and control surveys. It is clear that the survey had been done for the purpose of obtaining the registration of the subdivision and the issue of separate titles under the Registered Land Law. Section 14 requires such a survey to be carried out under and in accordance with the Chief Surveyor's directions. Under regulation 7(4) of the Regulations, he may make requirements as to the manner in which a survey shall be presented; and may return plans and refuse authentication if those requirements are not substantially conformed to. Under section 3(1)(c) of the Law he is the person who must examine surveys before any registration is effected under the Registered Land Law and he is the person who has to be satisfied that the surveys have been carried out and the plans prepared in accordance with the regulations.

My function is not to substitute my judgment for his: it is to see whether or not he has gone about the process of reaching his decision in the right way. I have only to decide the case in relation to its own facts. In doing so, I do not lose sight of the fact that in regulation 7(4), the words "in such a manner as the Chief Surveyor may require" are not open-ended, and in section 14 the words "in accordance with the directions of the Chief Surveyor" will not necessarily be open-ended. In each case, any requisition must in my view fall within the overall scheme of the Law to be valid. But given the provisions I have referred to and the evidence for the respondent, and the absence of any evidence or submissions rebutting this, I cannot say either that he was wrong to insist on a separate plan or to decide

that work on the site had altered the situation, or that such reasons for refusing to authenticate the survey of Lot A are beyond the scope of the Law.

For these reasons I decided that the application must fail and that the applicant must pay the respondent's costs.

Although in the event, my decision does not turn on it, both counsel wanted me to express a view as to whether the Chief Surveyor's requirement for a "release" from the Director of Planning, before he will authenticate a surveyor's plan, is a proper one. Having had a survey plan, for a subdivision for which the Authority had already given permission, submitted to him for authentication in accordance with the Land Surveyors Law and its regulations, can the Chief Surveyor as a matter of practice within the framework of that Law, insist that after the survey plan is prepared, the surveyor should first obtain from the Director of Planning (the head of the Department but not a member of the Authority) an endorsement, or "release", that the survey plan gives effect to the intention of the permission?

The practical merits of the argument in favour of the practice, as put forward by Mr. Ground, are that the consequences of an imperfect subdivision may be serious and that although the Authority and the Chief Surveyor have powers of review, if administrators can devise a scheme of practice within the law that reduces the risk of a mistake before the subdivision is carried into effect, it is good sense to do so.

The opposing point of view is of course that whatever the apparent merits of that, persons who carry out statutory functions must confine themselves to those functions, and implicitly (though Mr. Adams did not hesitate to say forthrightly that a person does not need to go around looking for unnecessary approvals) that as long as private individuals do not breach the law, they are entitled to get ahead with their business, and more than that, I think, that it is a good thing too. I also understood Mr. Adams to put this in a more subtle way, which picked up the other side of Mr. Ground's argument that the Land Surveyor's Law is concerned to regulate matters between professional surveyors. The Law places statutory duties on surveyors. These are substantial duties. They must ensure the quality of their work. The Chief Surveyor is entitled to look to them to do so. The Authority being functus

officio, and surveyors having these professional responsibilities, once the former gives planning permission and the latter prepare their survey plans accordingly for submission to the Chief Surveyor (the licensed surveyors having a specific statutory duty to ensure not only that the permission has been obtained but also that their work complies with it), nothing remains but for the Chief Surveyor, who has his own responsibilities, to make his professional decision whether or not to authenticate.

This is not, in my view, a situation in which the Chief Surveyor has wrongly delegated a part of his discretion to another official. At first, I was inclined to think that in referring the plan to the Director, he was asking him to perform part of the role of a surveyor, but on reflection I agree with Mr. Ground that the survey function and the planning function are recognisably distinct. The reference to the Director is to find out whether the latter in fact regards the plan as meeting planning requirements, from a planner's point of view.

If the practice were open to objection, it would be rather on the basis that in requiring the surveyor to refer his plan to the Director, the Chief Surveyor is in effect refusing to carry out his own functions at a point at which it is time for him to do so.

I do not consider that it can be said that he is.

It is true that the Land Surveyors Law relies on the professional competence of licensed surveyors. This is evident both from the fact that through the process of licensing and the disciplinary provisions in the Law, it provides for standards of competence for surveyors and also from the extent of the responsibilities which it specifically imposes on them. To the extent that underlying Mr. Adams submissions, there is the premise that professional surveyors should be relied on to carry out their functions without unnecessary administrative impediments, I agree with him entirely in principle.

But under the Land Surveyors Law the Chief Surveyor has his own statutory functions to discharge. Not all professions are organised in exactly the same way. Looking at the overall scheme of the Law in relation to surveys, section 25 explicitly says that no land is to be treated

as having been surveyed until the Chief Surveyor has authenticated the plan; and important evidentiary consequences follow his authentication by reason of subsection (2).

The Law distinguishes between public and private surveys. The Chief Surveyor is to direct and control public surveys. He may well in practice sometimes engage a private practitioner to do the work on the Government's behalf but that is only a matter of administrative arrangement - what is clearly contemplated is that public surveys will be undertaken in the same way as other official business, under his directions as the Government's chief surveyor. The Law also clearly envisages that private surveys are a matter in the first instance between individuals and licensed surveyors in private practice of their own choice and, of course, at their own expense. But at that point, I think the analogy in this respect with other professions ceases. The Chief Surveyor still has a necessary role: he doesn't direct the carrying out of a private survey but if one is done, by law it must nevertheless be done under his supervision and control. In the end, he still has to authenticate it.

Moreover in the case of a private subdivision done for the purposes of the Registered Land Law, it must be carried out under and in accordance with his directions. (I think "direction" here is intended to have a more particular meaning, going to the actual mode of doing a survey, whereas in section 3(1)(a) it also includes directing that a survey shall take place.)

These provisions, and the others I have mentioned earlier which touch on the Chief Surveyor's powers to make requirements of private surveyors in relation to the conduct of surveys show that while the latter certainly themselves have professional responsibilities under the Law, there is also a particular relationship, statutory in nature, between them and the Chief Surveyor, and as I say, that he also has his own professional function to fulfill in relation to surveys.

Section 21(2) of the Registered Land Law is also of some relevance in this case. Whether the "appropriate authority" is the Central Planning Authority or the Chief Surveyor (I am inclined to think it means the former) the subsection envisages that a survey plan will bear a

certificate of conformity with planning requirements. The three Laws in point on this case are not drawn so as to inter-relate explicitly in all respects but in relation to subdivisions to be registered under the Registered Land Law, I think it is permissible and proper to look at them in overall context. In fact, the Registrar's letter of 24th October to Mr. Evans did refer to a need to comply with his, the Registrar's, "checking" procedure. In fact too, the Registrar and the Chief Surveyor, though performing separate functions, and in particular separate statutory functions, are officers of the same department.

The Director of Planning is not a member of the Central Planning Authority but he is required to attend its meetings and his title indicate that he is the chief executive officer of the department which "services" the Authority.

In my view, having regard to these considerations, the Chief Surveyor can properly as a matter of practice require a private surveyor to obtain from the Director of Planning an indication that he considers a survey plan intended for the purposes of registration under the Registered Land Law complies with planning permission before the Chief Surveyor proceeds to decide an authentication. Essentially, he is stipulating an administrative step to be taken in preparation for his decision. I think it is a reasonable requirement which in itself does not amount to a refusal by him to perform his function.

D. Hull.



David Hull
Puisne Judge
20 June, 1986.