

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN ON 1 MARCH 1982

BEFORE THE HONOURABLE SIR JOHN SUMMERFIELD, C.B.E. Q.C.

CAUSE No. 514 of 1981

IN THE MATTER OF THE DECISION OF THE
REGISTRAR OF LANDS ON THE 2ND DAY OF
NOVEMBER 1981

AND

IN THE MATTER OF DUCK POND SECTION
BLOCK 42A PARCEL 4

BETWEEN

GEORGE SELKIRK *
TWEED INVESTMENTS LTD.

APPELLANT

AND

THE REGISTRAR OF LANDS
THE ATTORNEY GENERAL

RESPONDENT

Mr. N. W. Levy for appellant

Mr. John Martin for respondent

JUDGMENT

This is an appeal against the decision of the Registrar of Lands ordering the withdrawal of the appellants' caution relating to land at Duck Pond, Block 42A Parcel 4.

My difficulty in this appeal has been the absence of evidence on some of the disputed facts at the hearing before the Registrar. The Registrar made certain findings of fact but there was no evidence in support of some of them e.g. whether the appellant was in default of his agreement to purchase the land by reason of non-payment of instalments. The appellant maintained that he was not in default as payments of instalments had been tendered but refused. He further contended that he was, in any event, ^{entitled} to part of the land under the agreement by reason of a clause for the transfer of portions of the

land concerned proportionate to payments made and it was common ground that he had paid \$20,000 of the \$85,000 purchase price.

It may often happen that when the Registrar is called upon to exercise his powers or judicially determine any disputed matter before him that the facts on which he is to reach a decision or exercise a power are agreed between all parties affected. In that event he is free to determine the matter before him on those agreed facts - provided they are not at variance with his records. When any fact is disputed he can only arrive at a finding of fact on evidence adduced before him or contained in his records.

Here, the appellant filed an affidavit in support of his case for resisting the removal of the caution. No evidence whatever was called on behalf of the respondent.

The decision turned on the interpretation of a contract between the parties for the sale of the land (Ex.c attached to the appellant's affidavit). It should be noted that there had been an earlier contract between the parties in relation to the same lot of land (Ex.a). A caution had been placed on the Register in consequence. That caution was removed. The fresh agreement, Ex.c, was entered into and a new caution registered in consequence thereof which is the subject of this appeal. The only agreement relevant to the determination was, therefore, the latter agreement, Ex.c, dated 7th October 1977.

That agreement called for an initial payment of \$20,000. (which was paid) and subsequent instalments scheduled therein for the balance.

That agreement also provided for the transfer of parts of the land (called partial releases) proportionate to the amount of the purchase price actually paid. The location of those sub-parcels was to be amicably agreed between the vendor ^{and/} or her agent and the

purchaser". It is very doubtful if such an "agreement to agree" could be an enforceable clause of the contract. At all events it was an issue between the parties and the purchaser put in evidence a plan (Ex.B) of a sub-division of the land, representing one-fifth of the whole and dated 15th October 1977, which had been signed by both parties on that date. It was contended that that plan was drawn up and signed in part performance of the clause for "partial releases" in connection with the \$20,000 already paid. There should have been a finding on this issue as, if the respondent's contention was correct, he might have had a cautionable interest in the land or part of it.

I am being careful not to make any pronouncements on the facts or the law at this stage as, in view of the order I have in mind, it would be inappropriate to do so. I am merely drawing attention to what appear to me to have been some of the issues which should have been resolved, the most important one being whether the appellant was in default for failure to meet instalment payments and, if so, what the consequences are. Also important, irrespective of the foregoing considerations, may well be whether the cautioner (the appellant) has had sufficient time to establish the rights he claims in the land or has taken all available steps to that end. He cannot use the caution as a tool to enable hostile claims to be prolonged indefinitely without taking appropriate steps to resolve them.

It is unlikely that the parties will be able to reach an enforceable decision on the main differences between them in proceedings before the Registrar e.g. whether the \$20,000. paid was a deposit and became forfeit by reason of failure to perform and whether the appellant is entitled to "partial release" of the sub-parcel in the plan Ex. b. That is not the Registrar's function. In relation to this matter he is there to determine only whether the caution should remain on the Register. The resolution of the issues referred to above are relevant to that determination only. The finding of the Registrar could not effect the forfeiture of the \$20,000.00 or any "partial release". The bona fides of the

appellant in pursuing his remedies in the appropriate court could, therefore, be relevant to the question of whether it is reasonable to allow him to retain the caution on the Register to the detriment of the respondent. The respondent may also have remedies under section 131 of the Registered Land Law 1971.

As to procedure in matters of this kind before the Registrar, although one must keep in mind the important differences between our Registered Land Law and the English Land Registration Act 1925, it seems to me that the procedure for resolving disputed facts etc in England (as summarized in Ruoff's Concise Land Registration Practice 2nd Edition pp 231 and 232) would be appropriate. The Registrar's admirable notes would render a shorthand writer unnecessary.

As it is, in the absence of findings on disputed facts crucial to the determination of the main issues, or evidence by either party thereon, it is not possible for me to come to a conclusion as whether the Registrar's decision was right or wrong. It has been agreed by both parties that should this be the case I should remit the matter to the Registrar to record such evidence as the parties may wish to adduce in relation to the disputed facts, reach his conclusions thereon, and thereupon make his determination. I, therefore, set aside the Registrar's order and so remit the matter to him for such further hearing. Costs will abide the event.



SIR JOHN SUMMERFIELD.

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