



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO *524* OF 2000

BETWEEN:

GOVERNOR'S SOUND LIMITED

Plaintiff

AND:

THE REGISTRAR OF LANDS

Defendant



APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

To the Clerk of the Court, Law Courts, George Town, Grand Cayman

<p>Name, address and description of applicant(s)</p>	<p>Governor's Sound Limited PO Box 1370 GT Grand Cayman Cayman Islands British West Indies</p> <p>An ordinary resident company registered in the Cayman Islands</p>
<p>Judgment, order, decision or other proceeding in respect of which relief is sought</p>	<p>The decision of the Registrar of Lands communicated to Governor's Sound Limited by letter dated 28 March 2000 reinstating an easement over land at West Bay Beach North - Block 11D, Parcel 44 (the "Land") (the "Decision").</p>

Relief Sought

1. A declaration that the Registrar of Lands does not have the power under Section 95(2) of the Registered Land Law (1995 Revision) to reverse his decision to cancel an easement and that the registration of the Easement is invalid;
2. Certiorari to quash the Decision; and/or
3. Mandamus to remove the easement from the Land Register;
4. Costs; and
5. Such further or other relief as to the Court may seem just.

Name and address of applicant's attorneys, or if no attorneys acting, the address for service of the applicant

Boxalls
Attorneys-at-Law
PO Box 1234GT
3rd Floor, Queensgate House
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Grand Cayman, Cayman Islands

Signed

Boxalls

Dated 27 June 2000

GROUNDS ON WHICH RELIEF IS SOUGHT

Statutory Provisions

1. The Registered Land Law (1995 Revision) contains the following provisions relevant to this application:

95(2) On application of any person affected thereby, the Registrar may, after such advertisement as he may direct, cancel the registration of an easement, profit or restrictive agreement upon proof to his satisfaction that-

- (a) the period of time for which it was intended to subsist has expired;*
- (b) the event upon which it was intended to terminate has occurred; or*
- (c) it has been abandoned.*

...

147(1) The Governor or any person aggrieved by a decision, direction, order, determination or award of the Registrar may, within thirty days of the decision, direction, order, determination or award, give notice to the Registrar in the prescribed form of his intention to appeal to the court against the decision, direction, order, determination or award.

Background

2. The Plaintiff is the registered proprietor of the Land, which is located at the end of Cook Quay in Governor's Harbour on Grand Cayman.

3. A waterway separates the Land from another plot of land known as West Bay Beach North - Block 17A, Parcel 3. The registered proprietor of that plot is Land Limited. Until 11 February 2000, there was an easement over the Land consisting of a 30 foot vehicular right of way in favour of Land Limited (the "Easement").
4. On 8 February 2000, the Plaintiff wrote to the Registrar of Lands applying under Section 95(2) of the Registered Land Law (1995 Revision) (the "Law") for the cancellation of the Easement. The Plaintiff relied upon each of the three grounds set out in Section 95(2) of the Law.
5. On 10 February 2000, the Plaintiff was informed by the Registrar of Lands that he did not consider that there was any need to advertise the Plaintiff's application, as contemplated by Section 95(2), as the case was clear in law. An Order was then made to cancel the Easement (instrument number 1307/00) (the "First Order").
6. On 28 March 2000, the Registrar of Lands wrote to the Plaintiff advising it that he had received an appeal notice in respect of the First Order from Land Limited. He stated that, based on certain case law quoted, and on other materials he had read, he had decided once again unilaterally to make an Order. It was apparent from the letter that the Registrar had changed his views on whether the easement had been abandoned. He did not address the other grounds relied upon by the Plaintiff in its letter of 8 February 2000.
7. The Registrar's second Order (instrument number 2268/00) (the "Second Order") reinstated the Easement which had been cancelled by the First Order.

Submissions

8. Section 95(2) of the Registered Land Law (1995 Revision) grants to the Registrar of Lands the power to cancel the registration of easements and other interests in certain circumstances. In this case the Registrar was satisfied that the easement should be cancelled. Indeed, he said that the case was “clear in law”.
9. Section 147(1) of the Registered Land Law (1995 Revision) provides a mechanism to appeal to the Grand Court in the event of a cancellation which another party does not accept.
10. Land Limited gave notice of its intention to appeal the Registrar’s First Order. It is assumed that this notice was given within the thirty day period set out in Section 147(1) of the Law and that this matter should therefore have proceeded on that appeal. Instead, the Registrar purported to reinstate the Easement.
11. The Plaintiff submits that on its proper construction Section 95(2) of the Law does not grant to the Registrar a power to reinstate an easement after it has been cancelled. The Section authorises the Registrar only to direct advertisements and/or cancel the registration. It contains no power to re-instate a cancelled easement.
12. The Plaintiff submits that on their proper construction neither Section 95(2) nor Section 147(1) of the Law allow the Registrar of Lands to reverse his decision to cancel an easement on receipt of a notice of appeal.
13. Although in this case the time between cancellation and re-instatement was only some six weeks, a longer period could cause serious injustice. There is no basis for the Registrar to determine arbitrarily what period would be a reasonable one

within which to reverse his decision. It follows that the Law does not allow the decision to be reversed at all.

14. The Plaintiff submits that the Registrar's decision to reinstate the easement was therefore made ultra vires, illegally and unlawfully and is subject to review – *R v Boundary Commission for England, ex p Foot* [1983] QB 600 at 615-616; *R v Shoreditch Assessment Committee, ex p Morgan* [1910] 2 KB 859 at 880.
15. The decision of the Registrar and his second Order were and are therefore void – see *Anisminic v Foreign Compensation Commission* [1969] 2 AC 147 at 170; *In re Roper* 1980-83 CILR 181 at 199.
16. Alternatively, the decision was voidable but of no legal effect – *Hoffman-La Roche & Co AG v Secretary of State for Trade and Industry* [1975] AC 295 at 365.
17. The Plaintiff therefore considered it inappropriate to appeal under Section 147(1) from the Registrar's Second Order, as that order was void and/or of no legal effect, and in the Plaintiff's submission it was made without jurisdiction and/or in consequence of an error of law – *R v Hillingdon London Borough Council, ex p Royco Homes Ltd* [1974] QB 720 at 729. Further the Plaintiff's application is not one on the merits – *R v Immigration Board ex p Kirk Freeport Plaza Ltd and Island Companies Ltd* 1996 CILR 281 at 295-299. The Plaintiff has therefore properly proceeded by way of this application for leave to apply for judicial review.
18. The attorneys for the Plaintiff wrote to the Registrar of Lands on 24 May 2000 requesting that he reconsider his decision to reinstate the easement, principally on the basis that that decision was made ultra vires. A chasing letter was sent on 9 June 2000.

19. The Plaintiff has delayed its application herein so far as possible in order to allow the Registrar to respond. To date, there has been no response.
20. The Plaintiff is entitled to relief by way of certiorari to quash the Decision – see *R v Criminal Injuries Compensation Board, ex p Tong* [1977] 1 All ER 171 at 175 and *In re Roper* 1980-83 CILR 181 at 199
21. Alternatively, the Plaintiff seeks relief by mandamus directing the removal of the Easement from the Land Register.

THIS APPLICATION is made by Boxalls, Attorneys-at-Law, whose address for service is: PO Box 1234GT, 3rd Floor, Queensgate House, South Church Street, George Town, Grand Cayman, British West Indies (Reference:1709-001/EDS).