

IN THE GRAND COURT OF THE CAYMAN ISLANDS

Cause No. 323 of 2002

IN THE MATTER OF THE REGISTERED LAND LAW (1995 REVISION)

BETWEEN: CAYMAN HOMES LTD.

MAY 3 - 2002

APPELLANT

AND: KINGSLEY E. DONALDS
PEARLINE A. DONALDS

RESPONDENTS

ORIGINATING MOTION

TAKE NOTICE that the Grand Court at the Law Courts, George Town, Grand Cayman will be moved before The Honourable Mr. Justice _____ on the 28 day of June, 2002 at 9:30 o'clock in the _____ noon or as soon thereafter as counsel can be heard by counsel on behalf of Cayman Homes Ltd. for the following relief, namely:-

1. An Order that the decision dated 25th February 2002 of the Registrar of Lands that, inter alia, the Respondents continue to possess an unregistrable interest in the land and are entitled to maintain the Caution lodged by them on the Title to Parcel 229 in Block 20D of the George Town East Registration Section ("the Property") may be discharged and an Order be made that the Court remove the said Caution and that the Appellant be entitled to dispose of the Property free of the Caution.
2. An Order that the costs and expenses of the Appellant properly incurred before the Registrar of Lands and the costs of and incidental to this Appeal may be provided for.

AND FURTHER TAKE NOTICE that the grounds of this Appeal are as follows:-

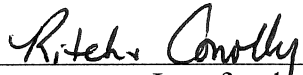
1. The Registrar erred in not finding that the Agreement of 13th April 1977 ("the Agreement") was at an end.
2. Specifically, without evidence of payment of the purchase price mentioned in the Agreement, the Registrar erred in finding that the Agreement was not at an end. An assumption could rightly be made, on the facts, that there had been default in the payment of the sums due under the Agreement. This was not denied by the Respondents.
3. The Registrar erred in not finding an inference that as the Respondents had made no mention of their entitlement to an interest in the property for over 25 years, until notification of the Appellant's wish to remove the Caution, that they considered rightfully that they had no further interest in the Agreement or the property.
4. Further, the Registrar erred in not paying proper regard to known facts, namely:-

- (a) That the Respondents vacated the property (admitted);
 - (b) That the Respondents took no Title to the property (admitted);
 - (c) That the Respondents made no claim for the refund of monies paid under the Agreement prior to the application for removal of the Caution (admitted).
5. The Registrar erred in not finding that the continued existence of the Caution on the Title was a mechanism used by the Respondents for the return of funds which were otherwise non-refundable.
 6. The Registrar failed to pay proper regard to the provisions of Paragraph 2(c) of the Agreement and, in particular, failed to find that in the absence of any evidence that the Respondents had paid all the monies agreed to be paid therein, that the Appellants were under no duty to convey the property to the Respondents.
 7. The Registrar failed to pay proper regard to the provisions of Paragraph 2(d) of the Agreement. In particular, the Registrar failed to find an inference from the Respondents voluntary departure from the property that they (the Respondents) had defaulted under the terms of the Agreement and that the Appellant was entitled to treat the Agreement as rescinded and to have return of possession of the property free of any claims thereto by the Respondents.
 8. Having found that there was no evidence adduced by either party that any sums over and above the initial figure of CI\$5,500.00 was paid or not paid under the Agreement, the Registrar erred in not going on to find that the Appellant was entitled to treat the Agreement as at an end, to regain possession and to dispose of the property free of any Caution registered by the Appellant.
 9. The Registrar erred in placing emphasis on the issue of whether any notices were ever served on the Respondents in the absence of any requirement in the Agreement imposing an obligation on the Appellant to serve any such notice.
 10. The Registrar erred in failing to pay proper regard to Paragraph 3 of the Agreement. In particular, the Registrar failed to find that if the Appellant made default in any payments, that the Appellant "...shall be at liberty at his option after such default either to declare the Agreement determined and at an end and retain all sums paid and all improvements made on the land...". Such provision is inconsistent with the Registrar's finding that as a sum of CI\$5,500.00 was paid by the Respondents, the Agreement would remain in effect until such time as it was repaid.
 11. Further, the Registrar failed to pay proper regard to the provisions of Paragraph 3 of the Agreement which stated that in the event of default, "*The Company shall also be entitled to take possession of the said premises and occupy and enjoy the same and remove the Donalds therefrom.*" Had the Registrar given proper regard to this provision, he should

have found that the Appellant was entitled to possession of the property and to subsequently dispose of the same free of any further claims from the Respondents.

12. In the absence of any evidence to the contrary, the Registrar erred in finding that the CI\$5,500.00 paid by the Respondents under Clause 1(a) of the Agreement was a part payment and not a deposit. Further, the Registrar erred in emphasising such a distinction which was unnecessary on the basis of the specifically agreed provisions of the Agreement and, in particular, Paragraph 3.
13. In the absence of any evidence or cogent argument advanced by the Respondents, who had the onus of justifying the retention of the Caution on the Title, the Registrar erred in finding in the Respondents' favour.

Dated this 3rd day of May 2002.



Attorneys-at-Law for the Appellant

TO: The Registrar of Lands

AND TO: The Respondents

Time Estimate: The estimated length of the hearing of this Motion is one day.