



[2016] JMSC Civ 126

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 201HCV0238

BETWEEN	SUNSWEPT JAMAICA COMPANY LIMITED	CLAIMANT
AND	THE REGISTRAR OF TITLES	1ST DEFENDANT
AND	ANGELA CLARKE-MORALES	2ND DEFENDANT

Application To Strike Out – Whether No Reasonable ground for bringing claim – Registration of Titles Act – Duty of Registrar – Whether Caveat renewed – Whether Registrar’s Reasons valid – Procedure – Whether permission to issue summons to Registrar required – Whether procedural error can be corrected.

Georgia Gibson-Henlin QC instructed by Henlin Gibson-Henlin for Claimant.

Monique Harrison, Dania Fuller Barrett instructed by the Director of State Proceedings for 1st Defendant.

Lijyasu M. Kandekore for 2nd Defendant

Heard: 15th June, 2016.

IN CHAMBERS

CORAM: BATTS J

[1] The First and Second Defendants applied to strike out the Claim. Having considered the evidence and the written and oral submissions of all parties I made the following order on the 15th June 2016:

“Claim dismissed with costs to the 1st and 2nd Defendants”

I promised to put my reasons in writing at a later date. This judgment fulfills that promise.

[2] The applications were made pursuant to Rule 26.3(1) (c) of the Civil Procedure Rules. The Defendants contend that the claim discloses no cause of action, or in other words that there are no reasonable grounds for bringing the claim. The issue concerns the construction of the Registration of Titles Act and in particular the power of the Registrar as it relates to caveats.

[3] The Fixed Date Claim is brought by the Claimant, “against the Registrar of Titles a duly appointed statutory officer under the Registration of Titles Act for orders in the following terms:

1. “An order compelling the Registrar to uphold and substantiate the grounds for her refusal to remove caveat 1683338 as set out in her reasons for refusal dated February 19, 2014.
2. A Declaration that the Registrar has acted in breach of Section 140 of the Registration of Titles Act by wrongly refusing to remove caveat 1683338.
3. A Declaration that the Registrar comply with Section 140 of the Registration of Titles Act and remove caveat 1683338.
4. Costs
5. Such further and other relief as this Honourable Court may deem just.”

[4] The 1st Defendant contends that the claim must be struck out as (a) the procedure adopted is incorrect and (b) the Registrar has no statutory authority or power to remove caveat 1683338. The 2nd Defendant adopts those submissions but says also that no relief is claimed against the 2nd Defendant and therefore the Claim should be dismissed. One need only read the claim quoted above to see the merit in the 2nd Defendant’s latter contention.

[5] The relevant facts are as follows:

- a) On or about the 2nd August 1989 Caveat #102036 was lodged with respect to a Title registered at Volume 695 Folio 84 of the Register Book of Titles. (Hereinafter referred to as the said Title). The caveator was Nadia Nadiak. (Exhibit KF1 to Affidavit of Kristen Fletcher dated 9 December 2015)
- b) The Statutory Declaration in support of Caveat #102036 was sworn to by Nadia Nadiar, she alleged that pursuant to a contract with the registered proprietor and a promise of a share in the property, substantial improvement and repairs had been done to the premises. An equitable interest was claimed. (See Exhibit KF1 to Affidavit of Kristan Fletcher dated 9th December 2015)
- c) Caveat #102036 was warned on the 20th July 2010 after an attempt to register mortgage #1651448. (Exhibit KF2 to Affidavit of Kristen Fletcher dated 20th July, 2010).
- d) By Fixed Date Claim 2010 HCV 04115 the caveator Nadia Nadiak sought an injunction to prevent the registration of the mortgage. That claim was amended on the 2nd November 2010 to add Angela Clarke-Morales as a 2nd Claimant. The 1st and 2nd Claimants in that suit alleged that they had been in open exclusive and undisturbed joint possession and occupation of the said premises for more than 12 years. The claim relied on the Limitations of Acts Act as a basis for saying the registered proprietor's title had been extinguished. (Exhibit KF3 Affidavit of Kristen Fletcher dated 9th December 2015).

e) The Registered proprietor of the said, land and the defendant in Claim HCV04113, is and was at all material times Sunswept Jamaica Company Ltd. That company is also the Claimant in the action before me today. The 2nd Claimant in that action is the 2nd Defendant in the action before me today.

f) The Affidavit in support of the Amended Fixed Date Claim filed in 2010HCV04115 was sworn to by Angela Clarke-Morales on the 1st November 2010. In that Affidavit she alleged that the 1st Claimant Nadia Nadiak-Parchment remained in occupation of the said land even after a Notice of possession dated the 5th May 1989. She stated inter alia:

“Being the friend and sister of the 1st Claimant and as a result of her growing concern that the property would fall into great disrepair, I agreed with the 1st Claimant that I would oversee the property to include paying taxes and utilities for the property and maintaining the general upkeep of the property.” (Para 22 of exhibit KF4 to Affidavit of Kristen Fletcher dated 9th December 2015)

g) That Affidavit in Suit 2010 HCV04115 also outlined in detail structural changes and improvements allegedly made to the said property by the 1st and 2nd Claimants.

h) On the 24th August 2010 the Claimants in Suit 2010 HCV04115 obtained an Injunction against Sunswept Jamaica Company Ltd. That Injunction was discharged by Order of the Honourable Mr Justice Lennox Campbell on the 10th December 2010 after an inter partes hearing. There

appears to have been no written judgment delivered.(Exhibit KF5 to Affidavit of Kristen Fletecher dated 9th December 2015).

- i) While preparing for the trial of Suit 2010 HCV04115 counsel for Sunswapt Jamaica Company Limited discovered that a second caveat #1683338 had been lodged in respect of the said land. (Affidavit of Kamou Ruddock dated 16 May 2014 Para 6).
- j) The Caveator of Caveat # 1683338 was Angela Clarke-Morales the second Claimant in Suit 2010 HCV04115 and the 2nd Defendant in this action.
- k) There followed an exchange of correspondence between the attorneys for Sunswapt Jamaica Company Limited and the Registrar of Titles of which more will be said.
- l) Ultimately and after having received the Registrar's reasons pursuant to Section 156, for refusing to remove Caveat #1683338, the Claimant, Sunswapt Jamaica Company Ltd. commenced this action. (Affidavit of Kamau Ruddock dated 16th May 2014 at paras 16 and 17).

[6] The Registration of Titles Act (hereinafter referred to as the Act) creates a statutory regime for the notification of claims to interests in land. This involves the lodging of caveats. The caveats in this matter were lodged pursuant to Section 139 of the Act. Section 140 of the Act provides for an elaborate but detailed system by which caveats may be warned and/or removed.

Section 140:

“Upon the receipt of any caveat under this Act, the Registrar shall notify the same to the person against whose application to be registered as proprietor, or as the case maybe to the

proprietor, or as the case may be, to the proprietor against whose title to deal with the estate or interest such caveat has been lodged, and such applicant or proprietor or any person claiming under any transfer or other instrument signed by the proprietor may, if he thinks fit, summon the caveator to attend before the Supreme Court, or a Judge in Chambers, to show cause why such caveat should not be removed, and such Court or Judge may, upon proof that such caveator has been summoned, make such Order in the premises, either ex parte or otherwise, and as to costs as to such Court or Judge may seem fit.

Except in the case of a caveat lodged by or on behalf of a beneficiary under disability claiming under any will or settlement or by the Registrar, every caveat lodged against a proprietor shall be deemed to have lapsed as to the land affected by the transfer or other dealing, upon the expiration of fourteen days notice given to the caveator that such proprietor has applied for the registration of a transfer or other dealing, unless in the meantime such application has been withdrawn.

A caveat shall not be renewed by or on behalf of the same person in respect of the same estate or interest, but if before the expiration of the said period of fourteen days or such further period as is specified in any order made under this section the caveator or his agent appears before a Judge, and gives such undertaking or security, or lodges such sum in court, as such Judge may consider sufficient to indemnify every person against any damage that may be sustained by reason of any disposition of the property being delayed, then and in such case such judge may direct the Registrar to delay registering any dealing with the land, lease, mortgage, or charge, for a further period to be specified in such order or may make such order as may be just, and such order as to costs as may be just.”

- [7] Section 156, pursuant to which the Fixed Date Claim in this matter was filed (see Particular (C) of Fixed Date Claim dated 16th May, 2014) provides as follows:

Section 156

“If, upon the application of any owner or proprietor to have land brought under the operation of this Act, or to have any transaction or transmission registered or recorded, or to have any certificate of title, foreclosure, order or other

document issued, or to have any act or duty done or performed which by this Act is required to be done or performed by the Registrar, the Registrar shall refuse to accede to such application , or if such owner or proprietor shall be dissatisfied with the direction upon his application, given by the referee, it shall be lawful for such owner or proprietor to require the Registrar or Referee, as the case may be, to set forth in writing, under his hand, the grounds of his refusal, or the grounds upon which such direction was given; and such owner or proprietor may, if he think fit, at his own costs, summon the Registrar or Referee, as the case may be, to appear before a Judge to substantiate and uphold the grounds of his refusal, or of such direction as aforesaid; such summons to be issued under the hand of a Judge, and to be served upon the Registrar or Referee six clear days at least before the day appointed for hearing the complaint of such owner or proprietor.

Upon such hearing the Registrar or Referee or his counsel shall have the right to reply, and the said Judge may, if any question of fact be involved, direct an issue to be tried to decide such fact, and thereafter the said Judge shall make such order in the premises as the circumstances of the case may require, and the Registrar shall obey such order, and all expenses attendant upon any such proceedings shall be borne and paid by the applicant, or other person preferring such complaint, unless the judge shall certify that there was no probable ground for such refusal or direction as aforesaid.”

[8] Section 160 protects the Registrar against legal action “for or in respect of any act or matter bona fides done or omitted to be done in the exercise or supposed exercise of the powers of this Act.” There is no suggestion or allegation that the actions of the Registrar were not bona fides. Section 143, I should mention for good measure, provides that persons who lodge caveats with the Registrar “without reasonable cause” shall be liable to any person who thereby sustains damage. Nothing in this judgment concerns the question whether there was reasonable cause to lodge the caveat, I make no comment on that.

[9] The Fixed Date Claim in this matter was not “issued under the hand of a Judge” within the meaning of Section 156 or at all. Nor indeed was permission sought for the filing of the claim against the Registrar. Manifestly, therefore, the

Defendants are correct that the formalities required and stipulated for, in Section 156 have not been complied with. It is clear that by stipulating that a Section 156 Summons should be “issued under the hand of a Judge,” the legislature wished to prevent frivolous or vexatious or unmeritorious applications. The Registrar should not be lightly summoned to court to justify her every decision. It is, I suppose, a safeguard similar to the “leave requirement” in Judicial Review Proceedings. The failure to observe the process is therefore, without more, a basis to dismiss the claim.

- [10] I allowed submissions to be made on the assumption that the court could treat the application to dismiss, as an application for permission to issue the summons or claim. It seems to me, that if there were some merit, any disadvantage the Defendants may have had by the failure to follow the procedure, might be compensated for in costs. It would indeed be a waste of resources and hence contrary to the “overriding objective” to dismiss a valid claim merely on a procedural irregularity, which could be corrected simply by filing a new application.
- [11] There is however no merit in the substantive application, and a Judge would not on the facts of this case, issue a summons to the Registrar. This is because, there is no power granted in the Act for the Registrar to remove a caveat filed by a person once it has been lodged. The statutory scheme pursuant to Section 140 is for the caveator or the owner of the land against which the caveat is lodged to take steps for its removal. This is done either by having the caveat warned, in the hope that after the stipulated period it will lapse, or by application. Since the removal of such a caveat is not a duty to be performed by the Registrar, there can be no application pursuant to Section 156 against the Registrar.
- [12] The Claimant contends that the Registrar erred by wrongfully renewing a caveat. Mrs. Gibson-Henlin QC, asserted that the caveat had already been warned and ordered removed by this court. Reliance was placed on Section 140 of the Act

as pointing to the relevant duty breached, which would trigger a Section 156 application. Section 140 quoted at paragraph 6 above, precludes renewal, 'by or on behalf of the same person in respect of the same estate or interest', unless certain things are done. The Defendants assert that no caveat was renewed; they do not contend that the preconditions to renewal have been satisfied.

- [13] In this regard reference should now be made to the relevant correspondence. By letter dated 20th March 2013 (which itself references two earlier letters to the Registrar) the Claimant's attorneys communicated to the Registrar of Titles their concern that Caveat #1683338 was inconsistent with Section 140 as it constituted a renewal. The penultimate paragraph of that letter states, ' (Exhibit KR2 to Affidavit of Kamau Ruddock dated 16 May, 2014).

"We are therefore bringing this omission to your attention and trust that you will take immediate steps to remove Caveat No. 163338 which was lodged notwithstanding the court orders in the very claim that is attached to the instrument. The very affidavit was also before the court. Incidentally we are surprised that the instrument was accepted even though it was not duly witnessed."

This letter was copied to Shelards, the attorneys representing the caveator.

- [14] Shelards, by letter dated the 26 March 2013, wrote to the Registrar of Titles and copied the Caveator's lawyer. The tenth paragraph of that letter puts the matter rather succinctly, (Exhibit KR3 Affidavit of Kamau Ruddock dated 16 May 2014).

"Section 140 of the Registration of Titles Act 1889 provides that a caveat shall not be renewed by or on behalf of the same person in respect of the same estate or interest. Mrs. Angela Clarke-Morales and

Mrs. Naida Nadiak-Parchment are not one and the same person.”

- [15] On the 2nd May 2013 the Claimant’s attorneys again wrote to the Registrar to enquire whether the Registrar regarded the lodging as a breach of Section 140. On the 7th May 2013 the Registrar responded to say that the matter had been referred to the Attorney General’s Chambers. (Exhibits KR6 and KR 7 of the Affidavit of Kamau Ruddock dated 16th May, 2014)
- [16] On the 1st November 2013, the Claimant’s attorneys having had no further word from the Registrar, wrote to request the Registrars reasons pursuant to Section 156 of the Act. On the 22nd November 2013 the Registrar invited the Claimant to lodge an application pursuant to Section 156. By letter to the Registrar dated the 13th December 2013 the Claimants attorneys wrote: (Exhibits KR 8,9 and 10 of Affidavit of Kamau Ruddock dated 16th May, 2014).

“Re: Caveat No. 1683338 – Volume 1446 and Folio 84 of the Register Book of Titles – Renewal of Caveat No. 102036.

Reference is made to the captioned matter and your letter of November 22, 2013.

In light of your refusal to remove the Caveat under caption, our client has instructed us to pursue this matter pursuant to Section 156 of the Registration of Titles Act.

This letter therefore serves as our application requiring you to set forth in writing the grounds of your refusal to remove the second caveat, which was lodged in breach of Section 140 of the Registration of Titles Act.

Please find enclosed the required fee for processing this application.

Your usual prompt attention will be appreciated.”

- [17] In a document entitled, “Ground for refusal Pursuant to Section 156 Re: Caveat#1683338” and dated 19th February 2014 the Registrar stated her reasons. Paragraphs [10] to [14] encapsulates her position (Exhibit KF11 of Affidavit of Kamau Ruddock dated 16 May 2014):

“[10] The issue that has arisen is whether Caveat No. 1683338 is in breach of Section 140 of the Registration of Titles Act which outlines that where a caveat lapses same shall not be renewed by or on behalf of the same person in respect of the same estate or interest.

[11] The first caveat No. 102036 was lodged by Nadia Nadiak. She claimed an equitable interest arising from an Agreement with the registered proprietor that she get an interest in the property if she conducted renovation on the property.

[12] Caveat No. 1683338 lodged by Angela-Clarke Morales claimed an interest in the same property on the basis that she made significant improvements to the property valued at thirty (30) million dollars and spent significant sums in making the said improvements.

[13] It is quite clear that the parties are different Caveators and that Caveat No. 1683338 was not expressly lodged by or on behalf of Nadia Nadiak.

[14] The Caveator Angela Clarke-Morales claims an interest in her own right and not for on or behalf of Nadia-Nadiak.”

[18] Queen’s Counsel in oral submissions conceded that the caveat in question was not a Registrar’s caveat. She also admitted that there were three methods of removing the caveat in question: by warning (and lapse), by withdrawal, and by order of the court. She however contended that the caveat was a renewal in substance and/or in form. The caveator (Angela Clarke-Morales) had earlier claimed a joint interest in the land with Nadia Nadiak. That earlier caveat had been warned and lapsed after the court refused an injunction. She pointed to a letter stamped “received 20th October 2010” from Nadia Nadiak Parchment Frey to the Registrar of Titles, in which a change in legal representation is advised and the following request made,

“The second matter is to the adding of two names to the Caveats. My son Jerome Alexis Johnson and my partner in the matter Mrs. Angela Clarke-Morales. Mr. Paris may have

information you may need on these persons.” (Exhibit KR4 to Affidavit of Kamau Ruddock dated 16 May 2014.”

It was submitted that that letter, and the matters in paragraphs 5(d) and (f) above, demonstrated that caveats 102036 and 1683338 were for the same interest by the same caveator. Since therefore the preconditions for renewal of caveat had not been met, the Registrar had erred in renewing the caveat.

[19] I respectfully disagreed. In the first place, and as submitted by the 1st Defendant’s counsel, there is no evidence that the request to add names was ever acted on by the Registrar. Angela Clarke-Morales never became a caveator. In the second place, the second caveat is by Angela Clarke-Morales in her own right and not as agent and/or partner of anyone. On the face of the Declaration and documents presented to the Registrar for registration, there is nothing to suggest that a renewed request was being made. The Registrar ex facie was entitled to treat, as she did, the application as a new one. The Registrar therefore correctly gave it a new number and lodged the caveat.

[20] It would be unreasonable and not in keeping with the statutory scheme to impose a duty on the Registrar to investigate; that is to go behind a Declaration properly filed, to see if its allegations are true. A Caveat is generally a matter of urgency. It serves to protect or warn of an interest. The Registrars’ act of lodging it is administrative or ministerial; it is not a judicial or quasi-judicial act. The Registrar in this case acted in accordance with the law and her duty when she lodged caveat 1683338 and treated it as a new caveat from a person other than the caveator for caveat 102036, and one claiming a separate interest. It cannot be said that the Registrar erred in renewing (pursuant to Section 140) when there was no renewal.

[21] As regards the procedural question Queens Counsel submitted that her letter of the 10th December 2015 constituted the application and the Fixed Date Claim was the summons in question. Alternatively that this court ought to utilise Section 26.9 powers to correct any procedural errors. Counsel referenced some

authorities including *Eldermire v Eldemire (1990) 38 WIR 314 and Honibal v Alele (1993) 43 WIR 314* as demonstrating a certain judicial attitude at the highest level, which does not allow the form of proceeding to defeat its substance.

[22] As intimated above, had there been some merit in the claim, I would have been prepared to treat the filing of the Fixed Date Claim at its first hearing, as the application for permission to issue a summons. The parties being compensated in costs. In that event I would have treated with the joinder of the second Defendant to this action as reasonable, she being an interested party whom the court would in all likelihood, have ordered to be served with process. However, I find no merit in the suggestion that there has been renewal by the Registrar of a caveat. It, not being a renewal the Registrar's reasons cannot be faulted. There being no reasonable cause of action against the 1st and/or 2nd Defendants the claim was dismissed with costs.

David Batts
Puisne Judge
15th July, 2016