

EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE COURT OF APPEAL

HCVAP 2012/003

BETWEEN:

SEA STAR LIMITED

Appellant

and

[1] TIMOTHY DUPONT-STINEDURF
[2] BLUE A DESIGN COMPANY INC.

Respondents

Before:

The Hon. Mr. Don Mitchell

Justice of Appeal [Ag.]

Appearances:

C. Debra Burnette of Henry & Burnette for the Appellants
No appearance for the Respondents

2012: July 13.

Civil appeal – Interlocutory appeal – Contract – Registered Land Act, Cap 374 – Registrar’s power to enter a restriction on Land Register

The appellant filed a notice of appeal against an order made on 16th January 2012 by the Master six weeks after the grant of leave to appeal. The notice of appeal was clearly out of time; however no notice of opposition was ever filed by the respondent. The appeal raises certain questions which includes but are not limited to the use and abuse of restrictions placed on land by a Registrar of Lands and whether a contractor who had not been paid was entitled to bring a claim against a company, which said company did not sign the contract in issue but which was the registered proprietor of the land.

Held: allowing the appeal and reversing the decision of the learned Master in relation to the application of 6th June and 18th June 2011, that:

1. An exercise of a discretion by a master based on a complete misunderstanding or error on the facts is capable of being overturned by an appellate body.

2. In the absence of any notice of opposition to an appeal, the Court is entitled to conclude that the respondent does not intend to oppose the appeal, and to overlook the unauthorised breach of the time limit prescribed by the Rules.

JUDGMENT

- [1] **MITCHELL JA [AG.]**: This interlocutory appeal raises interesting questions about the use under the **Registered Land Act**,¹ of the power given to a Registrar of Lands to enter on the Land Register a restriction against title at the request of a person who claims an interest in the land by virtue of having entered into a contract to construct a valuable building on the land for which work he has not been paid, particularly where that contract was not made between the contractor and the registered proprietor. The use and abuse of restrictions is a matter of much discussion among practitioners in the States and Territories that have the **Registered Land Act**. It would be useful to have the benefit of an authoritative ruling on the issues by the Court of Appeal. But, such a ruling must wait a properly argued case in the High Court, and a definitive ruling by the Court of Appeal.
- [2] The appeal also raises the separate very interesting question of the consequence of a Master having based a decision on an application on the failure by a party to serve the Registrar of Lands with notice of the proceedings below, when in fact there was on the file evidence of the very service by the party on the Registrar. There can be little doubt that an exercise of a discretion by a master based on a complete misunderstanding or error on the facts, is capable of being overturned by an appellate body.
- [3] The third and final very interesting issue raised on this appeal is whether a cause of action is made out against a company which is the registered owner of a parcel of land when it is clear from the evidence that the contract in issue was executed

¹ Cap 374, Revised Laws of Antigua and Barbuda 1992.

by individuals and not by the company. Though one of the two individuals signing the contract may be the sole director of the company which was the registered proprietor of the land, and though the contract was for the construction of a valuable building on the land in question, the question is did that entitle the contractor who had not been paid to bring a claim against the company which was the registered proprietor of the land? If I may put it this way, does the rule in **Saloman v Saloman & Co Ltd**² trump the rule against unjust enrichment? Of course, a great deal will depend on what is pleaded and what evidence is led. However, a determination of the question must await a properly contested case with a definitive ruling in the Court of Appeal on the issue. This is not the case here, as this is an uncontested appeal.

- [4] On 6th February 2012, subsequent to the filing on 31st January 2012 of the application by Sea Star for leave to appeal an order of the Master made in Chambers on 16th January 2012, the Chief Registrar faxed a notice to both counsel in the High Court requiring compliance with the relevant Rules and Practice Directions. This notice serves to remind the parties of the requirements of **Civil Procedure Rules 2000** Part 62 (“CPR 2000”) and of **Practice Direction** (“PD”) 10 of 2011. In particular, CPR 62.10(1) requires the appellant to file and serve with the notice of appeal written submissions in support of the appeal among other things. Subrule (3) requires a respondent who intends to oppose the notice of appeal within 7 days of receipt of the appeal to file and serve a notice of opposition. Subrule (4) requires the respondent within 14 days of receipt of the notice of appeal to file and serve 6 copies of any written submissions in opposition to the appeal. PD No. 10 of 2011 gives further directions on the contents of any skeleton argument. Despite the notice from the Chief Registrar neither counsel has filed any skeleton arguments, nor any notice that they rely on any skeleton arguments they may have filed on the hearing of the application for leave to

² [1897] AC 22.

appeal. Nor is there any notice of opposition by the respondent. Only the appellant filed submissions on the hearing of the application for leave to appeal.

[5] On 29th March 2012 in Chambers and upon reading the application for leave, the affidavit in support, the submissions of the appellant, and noting that the application had been served on the respondent, Pereira JA granted the appellant leave to appeal and granted a stay of the Order made on [16th February 2012] pending the hearing and determination of the appeal.

[6] On 4th May 2012, some six (6) weeks after the grant of leave on 29th March and not within the twenty-one (21) days provided in CPR 62.5(1)(b), the appellant filed the notice of appeal. Nor is there any application by the appellant under CPR 62.5(3) for an extension of time. If the appeal had been opposed, one might have to consider whether the appeal was a nullity in the same way that an appeal which requires leave is a nullity if filed without leave.³ However, in the absence of any notice of opposition, the Court is entitled to conclude that the respondent does not intend to oppose the appeal, and to overlook the unauthorised breach of the time limit prescribed by the Rules.

[7] In the circumstances, the appeal is allowed. The decision of the learned master in relation to the application of 6th June 2011 is reversed. The application is granted and it is ordered that judgment be entered for the claimant against the defendants in Claim No. ANUHCV2010/0775 for the following relief:

(i) An order for the removal of the restriction placed on the title to the parcel of land owned by the claimant and recorded and registered in the Land Registry as follows:

Registration Section	Barnes Hill & Coolidge
Block No	41 2595A
Parcel No	180

³ Antigua Commercial Bank v Louise Martin Antigua and Barbuda Civil Appeal No. 22 of 2007 (delivered 15th January 2008).

- (ii) A declaration that the recording of the restriction was wrongful;
- (iii) An order that the defendants do compensate the claimant for the wrongful recording of the restriction;
- (iii) An order that the Registrar remove the said restriction;
- (iv) An order that the defendants do pay to the claimant costs as prescribed by CPR 2000.

[8] The decision of the learned Master in relation to the application of 18th June 2011, is reversed. The application is granted and it is ordered that:

- (i) The counterclaim filed by the defendants against the claimant on the 25th March 2011 is dismissed;
- (ii) The defendants will pay to the claimant costs of this application in the sum of \$16,979.26 in accordance with CPR 2000.

Don Mitchell
Justice of Appeal [Ag.]