

EASTERN CARIBBEAN SUPREME COURT
ANTIGUA & BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV 2012/0851

ABI BANK LIMITED

Claimant

and

ANGEL ESTATES LIMITED

Defendant

Before:

Ms. Agnes Actie

Master [Ag.]

Appearances:

Ms. Camilla F. Roberts of counsel for claimant

Dr. David Dorsett with Mr. Jared Hewitt for Saffron Limited

Ms. Fidella Corbin-Lincoln of counsel for Antigua Overseas Bank (An Interested Party)

2013: October 8;
2014: February 10

JUDGMENT

- [1] **ACTIE, M. [AG.]:** The claimant obtained default judgment against the defendant on 6th February 2013 and by notice of application filed on 7th May 2013 applied to the court for an order for the sale of Block # 551186 A, Parcels 449,450 & 451 to satisfy the judgment debt.
- [2] On 19th September 2013, Saffron Limited filed an affidavit in opposition to the sale of parcel 451. Saffron Limited contends that on 13th November 2002, it obtained a judgment against the defendant for damages for breach of a lease agreement and registered a restriction on 18th December 2007 on the land register prohibiting dealings in the said parcel without its consent.

[3] The claimant contends that the leasehold interest in which the restriction seeks to protect is not effective at law as Saffron Limited is no longer in possession of the premises.

[4] The main issue to be determined is whether the Order for the sale of land can be made in light of the restriction entered on the land register in favor of Saffron Limited forbidding dealings without its consent.

The nature and effect of a Restriction

[5] Section 132 of the Antigua and Barbuda **Registered Land Act**¹ makes provision for the entry of a restriction on the land register and states as follows:-

“132. (1) For the prevention of any fraud or improper dealings or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, after directing such inquiries to be made and notices to be served and hearing such persons as he thinks fit, make an order (in this Division referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge.

(2) A restriction may be expressed to endure –

(a) for a particular period; or

(b) until the occurrence of a particular event; or

(c) until the making of a further order, and may prohibit or restrict all dealings or only such dealings as do not comply with specified conditions, and the restriction shall be registered in the appropriate register.

(3) The Registrar shall order a restriction to be entered in any case where it appears to him that the power of the proprietor to deal with the land, lease or charge is restricted.”

[6] The entry of a restriction has the effect of indicating that no disposition of, or transaction in relation to, the registered title can thenceforth be effected except in the manner expressly specified by the particular restriction. The restriction may

¹ Laws of Antigua Cap 374.

prohibit the making of a particular entry indefinitely or until the occurrence of an event specified in the restriction. A restriction regulates circumstances in which a disposition of a registered estate or charge may be effected as indicated on the land register.

- [7] The Registrar of Lands by instrument number RLC-200700176 dated 18th December 2007, placed a restriction in the proprietorship section of Land Register No 55 1186 A 451 in the following terms *"No dealings without the consent of Saffron Limited of Jolly Harbour, St Mary, Antigua"*. The restriction in effect limits all dealings except with the consent of Saffron Limited.
- [8] Saffron Limited is vigorously opposing the application for the sale of the said parcel in light of the restriction entered on the land register which seeks to protect its interest until the proper determination of quantum of outstanding monies which is the issue on appeal before the Court of Appeal.
- [9] The application for the sale of parcel 451 is also strongly opposed by the Antigua Commercial Bank. It is to be noted that Saffron Limited is not a party to the claim but is merely seeking to protect its overriding interest.
- [10] The claimant in response contends that the leasehold interest which the restriction seeks to protect is not effective at law as Saffron Limited is no longer in possession of the premises. The claimant further contends that the court may wish to consider the circumstances surrounding the registration of the restriction in favour of Saffron limited and the nature of Saffron's interest (if any) as it relates to the land in question.

Analysis

- [11] As a general rule, where a restriction is entered in the register, no entry or dealing in respect of a disposition which is inconsistent with the restriction may be made except in accordance with the terms of the restriction. Once entered on the land

register, a restriction remains unless it is withdrawn or canceled. However once it remains there is a procedure by which it may be dis-applied.

[12] The **Registered Land Act** provides the mechanism for the removal or variation of a restriction. Section 134 of the Act states as follows;

“134. (1) The Registrar may at any time, upon application by any person interested or of his own motion, and after giving the parties affected thereby an opportunity of being heard, order the removal or variation of a restriction.

(2) Upon the application of a proprietor affected by a restriction, and upon notice thereof to the Registrar, the Court may order a restriction to be removed or varied, or make such other order as it thinks fit, and may make an order as to costs.

[13] In this instant case the restriction entered on the land register forbids all dealings without the consent of Saffron Limited. The land register mirrors all registered estates and charges including the restriction in favour of Saffron Limited in relation to the said parcel. The claimant having notice of the restriction had the option to either seek the consent of Saffron Limited for the sale of the said parcel in accordance with terms of the restriction or to make an application to discharge or vary the terms of the restriction pursuant to section 134 of the **Registered Land Act**. The claimant did not explore any of the options.

[14] The **Registered Land Act**² provides the regime for dealings in registered land and also regulates the procedures for the removal or variation of a restriction. Section 134 of the **Registered Land Act** is clear on the procedures to be adopted for the removal or variation of a restriction placed on the land register. The application for the order for sale of land of parcel 451 is circumscribed by the restriction placed on the land register in favour of Saffron Limited. Any dealing inconsistent with the restriction is not allowed except with the consent of Saffron Limited or by order discharging or varying the restriction in accordance with the Act.

² Laws of Antigua Cap 374

ORDER

[15] In the circumstances the claimant's application for the order for the sale of Parcel 451 is refused with costs to Saffron Limited to be assessed if not agreed within 21 days.

Agnes Actie
Master [Ag.]