

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

Antigua and Barbuda

Claim No: ANUHCV 2021/0075

BETWEEN:

REGISTRAR OF LANDS

Claimant

and

**EURELL WEST as the Personal Representative of the Estate of
Jessie West aka Jesse West, deceased**

Defendant

Before:

Justice Jan Drysdale

Appearances:

Rose Ann Kim of counsel for the Claimant

Gail Perro Westin of counsel for the Defendant

2021: October 5th

2022: March 8th

RULING ON CASE STATED

[1] **Drysdale, J:** This is a case stated by the Registrar of Lands. The Registrar seeks the opinion of the Court in respect of inter alia a decision to maintain a restriction on immovable property registered as Block 35-2480E Parcel 56 in the Registration Section of English Harbour (hereinafter referred to as “the Property”) and consequently the decision to refuse to register an instrument of transfer presented by Eurell West.

[2] The facts as it relates to these events giving rise to this matter are not in dispute and for context will be set out hereunder.

- [3] On 20th March 1979 Jesse West (hereinafter called “the Deceased”) was registered as the owner of the Property.
- [4] On 27th October 2006 Watty Williams filed an application under section 107(1) of the Registered Land Act to dispense with the execution of an instrument of transfer by the Deceased. The Applicant swore on oath that he had purchased the Property from the Deceased in 1980 but the Deceased had failed to transfer it to him before his demise. An affidavit in support of this claim was filed in the name of Joseph Hadeed. The purported deponent stated that the Deceased was his longtime friend and further he was aware that the Deceased sold the property to Watty Williams as he was the person responsible for collecting the monies for the sale.
- [5] On 18th September 2009 Eurell West filed an application to replace a lost or destroyed land certificate. The Registrar signed the notice of Application on 28th September 2009. On 23rd October 2009 a notice of objection was filed by Watty Williams. That objection stated that the Registrar had granted his application to dispense with the execution of the Instrument of Transfer and that accordingly he was the beneficial owner of the Property.
- [6] On 12th November 2009 the Registrar entered a restriction in the proprietorship section of the land register of the Property. The register does not indicate the reasons for registering the restriction.
- [7] Subsequently an order to dispense with the execution of an instrument of transfer was issued by the Registrar on 5th December 2009. The entry of this order was eventually struck out by the Registrar as having been effected in error.
- [8] Several years later, the Defendant approached the Claimant concerning the application for the issuance of a lost or destroyed land certificate which application was pending since 2009. It appears that due to the manner in which documents relating to the Property was stored that the Registrar was unaware of the Application to dispense with the Instrument of Transfer granted to Watty Williams in 2009 and therefore advised that the same could be granted provided that the application was advertised in a local newspaper and filed. Upon the filing of the advertised notices, the Registrar subsequently granted the application on 22nd June 2018.
- [9] In October 2018 the Eurell Westt attempted to file an Instrument of Transfer. However in light of the restriction dated 12th November 2009, the Registrar advised him to apply for its removal. The application

and affidavit in support for removal of the restriction was filed on 24th January 2019. Mr. Watty Williams objected to the removal of the restriction.

- [10] A hearing was convened, and Mr. Williams restated his position referring to the order of the Registrar to dispense with execution of the Instrument of Transfer. He also advised that he had paid the stamp duty on the instrument of transfer and intended to file it shortly. Eurell West asserted that neither had he received any notice of the application made by Mr. Williams nor the order of the Registrar regarding that application. Therefore, he argued that he had been unduly prejudiced. He also asserted that to his knowledge the Deceased his father had never sold the Property.
- [11] The Registrar in the face of these competing claims ruled that the restriction would remain in place and that the Court should be petitioned for its opinion on this case. The Registrar suggests that even if the restriction was to be removed that the order dispensing with the need to execute an instrument of transfer is still in place and that she has no authority to revoke the same.
- [12] Thereafter the Registrar became aware of an affidavit of Joseph Hadeed dated 12th October 2020 filed in support of an application for a case stated. In it Joseph Hadeed states that the original affidavit which bears his name and was used by Watty Williams to establish beneficial ownership and the upon which the Registrar relied in issuing the order to dispense with the execution of an Instrument of Transfer, was fraudulent. Joseph Hadeed asserts that the affidavit was not sworn by him as he was not within the jurisdiction on the date that the affidavit was executed before a commissioner of oaths. This affidavit was supported by the passport of Mr. Hadeed showing his travels during that period of time and supporting the contention that he could not have executed that affidavit. Mr. Haddad also claims that at no time would he have made those allegations as he knew what was being alleged to be patently false.

Analysis and Law

- [13] The issue for determination is whether the Registrar was correct in maintaining the restriction on the land register regarding the Property.
- [14] By virtue of section 132 of the Registered Land Act the Registrar is empowered to make an entry restricting dealings with any immovable property. The Registrar is also seized with the power to remove any restriction imposed on a property. The relevant sections are quoted below::

'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.

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.

[15] Having previously set out the factual matrix that concerns this Property it is clear that there exists two competing claims for the same. Eurelle West claiming as the personal representative of the Deceased and Watty Williams as beneficial owner and pursuant to an order dated 5th December 2009 to dispense with the execution of a Deed of Transfer.

[16] Without there being a determination of whom the absolute title should be vested, the Registrar was correct in maintaining the status quo. Clearly this is to do the least injustice given the current situation.

[17] If there was any doubt that this was the correct posture to be undertaken, the subsequent filings of the Eurell West after the decision of the Registrar challenging the validity of the affidavit of Joseph Hadeed made in support of the claim made by Watty Williams on the basis of fraud, has underscored that there are serious issues of ownership to be determined. Without a full and proper ventilation of all the evidence it

would be wholly inappropriate for the Registrar to remove the restriction and award title of the Property to one party over another.

- [18] Accordingly, I am of the considered belief that an appeal pursuant to CPR 60 is the best and most viable course of action. The restriction being in place neither party would be unduly prejudiced until the issue of ownership has been resolved. If for any reason CPR 60 is not the most viable option I note that section 134(2) the Act allows a party to apply to the court for the removal of the restriction. Specifically that section provides that '[u]pon 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.' Ergo there are several avenues available to any affected party to bring some finality to this contentious issue.

Disposition

- [19] The answer to the case stated by the Registrar has been disposed of in paragraphs 16, 17, and 18 above. There is no order as to costs.

Jan Drysdale

High Court Judge

By The Court

Registrar