EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

SAINT CHRISTOPHER AND NEVIS

SKBHCVAP2014/0017

In the matter of Condominium Property registered as Condominium #5 known as Nelson Spring Condominium

and

In the matter of Section 7 of the Condominium Act, Cap 10.03 and Section 3 of the Condominium Regulations

and

In the matter of Section 19 of the Title by Registration Act, Cap 10.19

and

In the matter of ands registered in Book 43 Folio 58, Book 47 Folio 431, Book 47 Folio 432

BETWEEN:

NELSON SPRING CONDOMINIUM HOMEOWNERS ASSOCIATION

Appellant

and

[1] BEACH FRONT CONDOMINIUM HOLDING COMPANY LTD
[2] DEON DANIEL
[3] NELCIA DANIEL
[4] THE REGISTRAR OF TITLES
[5] THE ATTORNEY GENERAL OF ST. KTTS AND NEVIS

Respondents

Before:

The Hon. Dame Janice M. Pereira, DBE — Chief Justice
The Hon. Mr. Mario Michel — Justice of Appeal
The Hon. Mde. Gertel Thom — Justice of Appeal

On written submissions:

Ms. Kurlyn D.V. Merchant for the Appellant
No submissions filed by the Respondents

2015: October 15;
Corrected and re-issued: 2016: February 15.

Interlocutory appeal – Striking out statement of case – Whether the learned judge erred in striking out the appellant's statement of case – Section 2(1)(a) of the Public Authorities Protection Act – Whether the learned judge erred in concluding that the claim against the Registrar of Titles was statute barred – Section 19 of the Title by Registration Act – Whether the learned judge erred in concluding that the claim against the Attorney General was based on the vicarious liability of the Crown – Section 139 of the Title by Registration Act – Whether the learned judge erred in holding that the appellant ought to have availed itself of the procedure and remedy under section 139 of the Title by Registration Act – Whether the learned judge erred in concluding that the Registrar of Titles was discharging responsibilities of a judicial nature by registering a document according to the Title by Registration Act

The appellant, an association of homeowners of the Nelson Spring Condominium, commenced proceedings against the respondents. The first respondent was the developer of the Nelson Spring Condominium and owned units in the condominium. The second and third respondents are directors of the first respondent. The fourth respondent was sued by virtue of his office and the fifth respondent was sued pursuant to section 19 of the Title by Registration Act.[1]

On 4th October 2013, the fourth and fifth respondents applied to the High Court to strike out the appellant's statement of case against them on grounds that the claim was improperly brought against them; that the claim was statute barred under the Public Authorities Protection Act;[2] that the claim was procedurally improper pursuant to the Title by Registration Act; and/or that the claim should be struck out against them pursuant to the

[1] Cap. 10.19, Revised Laws of Saint Christopher and Nevis 2009.
[2] Cap. 5.13, Revised Laws of Saint Christopher and Nevis 2009.

Crown Proceedings Act.[3] The first, second and third respondents, on 16th October 2013, also applied to strike out the appellant's statement of case on the ground that it did not disclose any reasonable ground for bringing the claim and alternatively, that the claim was an abuse of the process of the court.

The applications were heard together by the learned judge in the court below and in a judgment delivered on 24th June 2014, the judge granted the application of the first, second and third respondents and struck out the appellant's claim on the ground that it was an abuse of the process of the court and did not disclose any reasonable ground for bringing the claim. The learned judge also granted the application of the fourth and fifth respondents to strike out the claim against them.

The appellant, being aggrieved by the learned judge's decision, has appealed on a number of grounds.

Held: allowing the appeal (except with respect to the striking out of the claim against the fourth respondent, the appeal against whom is dismissed, together with the related ground 7)**;** remitting the case to the High Court for case management by the master (including the determination of the applications for extensions of time) and trial by the judge**;** ordering that the first, second and third respondents pay the appellant's costs on the appeal and in the court below**;** and making no order as to costs for or against the fourth and fifth respondents on the appeal or in the court below, that:

1. The summary procedure of striking out statements of case should only be used in clear obvious cases when it can clearly be seen, on the face of it, that the claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the court. In this case, on the face of the claim or on a closer examination of it, it cannot be seen, clearly or otherwise, that the claim is obviously unsustainable, cannot succeed, or is in some other way an abuse of the process of the court. The appellant's statement of claim detailed allegations against the respondents which, if proven, would give a clear factual basis for a court to grant some or all of the relief claimed by the appellant against one or more of the respondents. There was nothing in the rules or the cases the judge considered that could justify the finding that the appellant's case disclosed no reasonable ground for bringing a claim or was an abuse of the process of the court.

   Baldwin Spencer v The Attorney-General of Antigua and Barbuda et al ANUHCVAP1997/0020A (delivered 8th April 1998, unreported) applied.

2. Section 2(1)(a) of the **Public Authorities Protection Act** effectively immunizes public officers from criminal or civil action against them for any act done by them in

[3] Cap. 5.06, Revised Laws of Saint Christopher and Nevis 2009.

the pursuance or execution of any public duty or authority, or any alleged neglect or default in the execution of any such act, duty or authority, after 6 months have passed since the act, neglect or default. In this case, the acts, neglects or defaults complained of by the appellant against the fourth respondent were alleged to have occurred some 2 years before the claim against the respondents was filed, and in accordance with section 2(1)(a) of the Act, proceedings ought to have been commenced within 6 months thereof.

Section 2(1)(a) of the **Public Authorities Protection Act** applied.

3. The reference in section 2(1)(a) of the **Public Authorities Protection Act** to "a continuance of injury or damage", which must cease before the limitation period commences, refers to a claim of causing "injury or damage" or some such claim which would not crystalize until the injury or damage being caused has ceased, but not to a claim such as the present one in respect of specific actions occurring at specific times. If it were otherwise, it would render the protection afforded by section 2(1)(a) to be meaningless. Therefore, in this case, although it may well be that the appellant continued experiencing negative consequences from the act, neglect or default of the fourth respondent; this does not enlarge the limitation period of 6 months. In the circumstances, no fault could be found in the reasoning and conclusion of the learned judge that the claim against the fourth respondent was statute barred by the time it was filed by the appellant.

4. Section 19 of the **Title by Registration Act** provides for a person aggrieved by the issue of a certificate of title under the Act to commence proceedings against the Attorney General as defendant, claiming damages for injury. In the instant case, the appellant's statement of case stated that the Attorney General was a party to the claim in accordance with section 19. Further, there was nothing in the appellant's statement of case which indicated that the Attorney General was joined in the suit on the basis that the he was vicariously liable for the actions of the fourth respondent, the Registrar of Titles. The claim against the Attorney General was therefore not based on any vicarious liability of the Crown. Accordingly, the learned judge erred in striking out the claim against the Attorney General on the basis that he was vicariously liable for the actions of the Registrar of Titles and that the claim against the Registrar of Titles and consequently, the Attorney General, was statue barred.

Section 19 of the **Title by Registration Act** applied.

5. Section 139 of the **Title by Registration Act** is not intended to restrict access to the court by an aggrieved person (in respect of matters concerning land and involving the Registrar of Titles) to an application to the Registrar of Titles under

the section. Section 139 of the Act gives a right to anyone who might be dissatisfied with an act, omission, refusal, decision, order, noting or other completed proceeding of a Registrar of Titles affecting the right of such person to any land, to apply to the Registrar of Titles to set out in writing the grounds on which he or she proceeded. However, nothing in the wording of the section mandates a person to make application to the Registrar of Titles before he or she can institute proceedings against the Registrar in the courts. Consequently, section 139 was not intended to enact a statutory requirement that an aggrieved party must first make application to the Registrar of Titles before instituting proceedings in court.

6. The interpretation of section 139 of the **Title by Registration Act** is underscored by the fact that the operative word in the section providing for the application for relief is "may" and not "shall". In section 139 or any other section under Part X of the Act, the word "may" is used to introduce an option, while "shall" is used to introduce a requirement. Accordingly, an aggrieved party has the option whether to apply to the Registrar of Titles and bring any question in relation thereto to be adjudicated by the court in accordance with section 139 or to have his or her grievance adjudicated by the court without making any application to the Registrar of Titles. Consequently, in this case, the appellant was not required to proceed under section 139 in order to seek relief against the Registrar of Titles and certainly not against the other parties. The appellant's claim was properly before the court and the court had jurisdiction to hear and determine the claim.

   Section 139 of the **Title by Registration Act** applied; Section 141 of the **Title by Registration Act** considered; **The Attorney General of Saint Lucia et al v Vance Chitolie** SLUHCVAP2003/0014 (delivered 10th January 2005, unreported) distinguished; **Wilkinson v Barking Corporation** [1948] 1 KB 721 distinguished; **Pasmore and other v The Oswaldtwistle Urban District Council** [1898] AC 387 distinguished.

7. Section 4(5) of the **Crown Proceedings Act** bars proceedings against the Crown in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him or her. In this case, the Registrar of Titles, by registering documents according to the **Title by Registration Act**, was not discharging responsibilities of a judicial nature, but rather, was carrying out an administrative function. Accordingly, section 4(5) of the **Crown Proceedings Act** did not apply to the actions of the Registrar of Titles.

8. (Per the observations of Pereira CJ):

It is doubted that the general limitation protection contained in the **Public Authorities Act** can be prayed in aid so as to trump the clear and expressed provision of section 19 of the **Title by Registration Act** which specifically and expressly provides for a person who is 'aggrieved by the issue of a certificate of title' to institute a suit for damages for injury sustained, and the conjoint effect of section 139 of the Act. Section 19 contains no time limitation for the institution of such a suit and if Parliament wished to impose a time limitation for bringing the suit in relation to a certificate of title it could easily have done so by the insertion of simple language to this effect. The fact that there is no such limitation suggests that such was not the intention.

9. (Per the observations of Pereira CJ):

Section 19 of the **Title by Registration Act** expressly makes the Attorney General as the person against whom suit is to be brought in respect of a grievance occasioned by the 'issuance of a certificate of title under the Act' where that aggrieved person claims 'damages for the injury he or she may have sustained'. The Registrar of Titles is tasked with the function of issuing certificates of titles; accordingly, by virtue of section 19, this places the Attorney General as representative for the Crown in the shoes of the Registrar of Titles for this purpose in recognition of the Crown's vicarious liability resulting from the wrongful issuance of a certificate of title by the Registrar of Titles. Further, the **Title by Registration Act** provides that civil proceedings thereunder shall be governed by the **Crown Proceedings Act**.

JUDGMENT

[1] **MICHEL JA**: The appellant in this case (which was the claimant in the court below) is an association of homeowners of the Nelson Spring Condominium in the Island of Nevis in the Federation of Saint Christopher and Nevis. The first respondent (which was the first defendant in the court below) is a Nevis registered company which was the developer of the Nelson Spring Condominium and the owner of several units in the condominium, while the second and third respondents (the second and third defendants in the court below) are directors of the first respondent. The fourth respondent (who was the fourth defendant in the court below) was sued ex officio, while the fifth respondent (who was the fifth

defendant in the court below) was sued in accordance with section 19 of the **Title by Registration Act**.[4]

[2] By fixed date claim filed on 5th December 2011, the appellant instituted proceedings against the five respondents, claiming various declarations, damages, costs and other relief.

[3] On 22nd December 2011, the first, second and third respondents filed an application to strike out the appellant's claim on the basis that it was instituted by way of a fixed date claim form when it ought properly to have been instituted by way of a claim form in accordance with rule 8.1 of the **Civil Procedure Rules 2000** ("CPR 2000") or, alternatively, on the basis that the claim was an abuse of the process of the court, since the matter had already been determined by Redhead J in a previous case.

[4] On 14th January 2013, the High Court ordered that the fixed date claim form be rectified and the matter be proceeded with as if it had been commenced by a claim form. No order was made on the abuse of process claim.

[5] On 4th October 2013, the fourth and fifth respondents filed an application to strike out the appellant's statements of case against the aforesaid respondents on the basis that the claim was improperly brought against them, that the claim was statute barred under the **Public Authorities Protection Act**,[5] that the claim was procedurally improper pursuant to the **Title by Registration Act** and/or that the claim should be struck out against them pursuant to the **Crown Proceedings Act**.[6]

[4] Cap. 10.19, Revised Laws of Saint Christopher and Nevis 2009.
[5] Cap. 5.13, Revised Laws of Saint Christopher and Nevis 2009.
[6] Cap. 5.06, Revised Laws of Saint Christopher and Nevis 2009.

[6] On 16th October 2013, the first, second and third respondents filed another application to strike out the appellant's statements of case on the ground that the same did not disclose any reasonable ground for bringing the claim and, alternatively, was an abuse of the process of the court.

[7] The applications were heard together by Williams J [Ag.] on 6th May 2014 and in a judgment dated 24th June 2014, the learned judge granted the application of the first, second and third respondents and struck out the appellant's statement of claim on the ground that it was an abuse of process of the court and did not disclose any reasonable ground for bringing the claim. The learned judge also granted the application of the fourth and fifth respondents to strike out the claim against them.

[8] By notice of application filed on 8th July 2014, the appellant sought leave to appeal the judgment, which application was granted by Blenman JA on 24th July 2014.

[9] Notice of appeal was filed on 14th August 2014, with the following grounds of appeal:

(1) The learned judge failed to properly consider and/or apply the relevant principles of law.

(2) The learned judge erred in law and misdirected herself on the evidence and wrongly considered the evidence of the first, second and third defendants in the affidavit of Charmaine Hanley in determining whether the claim should be struck out.

(3) The learned judge was wrong in concluding that the matter should be struck out.

(4) The learned judge failed to properly consider and/or consider all the issues raised in the claimant's claim.

(5) The learned judge was wrong in concluding that the claim was statute barred.

(6) The learned judge failed to acknowledge that separate relief was sought against the first, second and third defendants who are not protected by the

Public Authorities Protection Act

(7) The learned judge failed to properly consider that the injury to the claimant is continuing, particularly since there are presently five homeowners who hold indefeasible titles showing a common interest to the lands described as the restaurant and the gym and titles have been subsequently issued to the first defendant for the said portions of land.

(8) The learned judge misdirected herself and erred in her conclusion that the claimant should have availed itself of the procedure and remedy under section 139 of the **Title by Registration Act** and as a result the claimant is therefore procedurally improperly before the court and the court therefore has no jurisdiction to hear the claimant's claim.

(9) The learned judge failed to consider that apart from the particulars in section 139 of the **Title by Registration Act**, the **Condominium Act**[7] gives a specific procedure and remedies for matters concerning condominium property.

[7] Cap. 10.03, Revised Laws of Saint Christopher and Nevis 2009.

(10) The learned judge wrongly considered section 5(1) of the **Title by Registration Act** and failed to acknowledge section 21 of the Act which sets out the time and date on which ownership of property passes.

(11) The learned judge erred in her application of the law set out in section 4(5) of the **Crown Proceedings Act** that the Registrar was discharging or purporting to discharge responsibilities of a judicial nature vested in her.

(12) The learned judge misdirected herself and erred in her conclusion that the Attorney General was joined in the suit as being vicariously liable for the actions of the Registrar who is an employee of the State, when it was specifically pleaded that the claim was brought against the Attorney General in accordance with the provisions of section 19 of the **Title by Registration Act**.

(13) The learned judge erred in her conclusion that the claimant's claim should be struck out as it was misconceived and devoid of merit.

(14) The learned judge erred in her application of the law in concluding that the claimant's claim disclosed no reasonable grounds for bringing the claim and that the claim is an abuse of the process of the court.

(15) The learned judge was wrong in her determination that the notice of application for an extension of time to file and serve standard disclosure by the fourth and fifth defendants should be dismissed.

(16) The learned judge was wrong in her determination that the application for extension of time to file and serve standard disclosure, witness

statements and relief from sanctions by the first, second and third defendants should be dismissed.

(17) The learned judge's decision was unreasonable.

[10] On the same 14th August 2014, the appellant filed legal submissions in support of its notice of appeal. No notice of opposition to the appeal was filed by any of the respondents as required by CPR 62.10(3) for a party intending to oppose the appeal, nor were any written submissions in opposition to the appeal filed, as provided for by CPR 62.10(4). Consideration of the appeal will therefore proceed on the basis of the appellant's submissions only.

[11] The appellant's first ground of appeal is that the learned judge failed to properly consider and/or apply the relevant principles of law in relation to the striking out of claims by the court.

[12] I am satisfied that the learned judge referred specifically to the applicable rules and referred extensively to relevant cases setting out the principles of law on the striking out of claims by the court. I am not satisfied, however, that the learned judge properly or correctly applied these principles to the facts of the present case in determining that the appellant's statement of claim was 'an Abuse of the Process of the Court and did not disclose any reasonable ground for bringing the Claim …'[8]

[13] I find it unnecessary to reproduce the provisions of CPR 26.3 or to relate or restate the principles set out in the several cases on the striking out of statements of case; they are too well known to justify this. It would suffice to refer only to the words of

[8] Judgment of Williams J [Ag.] (delivered 24th June 2014) at para. 74.

Sir Dennis Byron in the case of **Baldwin Spencer v The Attorney-General of Antigua and Barbuda and others**:

> "This summary procedure should only be used in clear and obvious cases, when it can clearly be seen, on the face of it, that the claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the court." [9]

[14] On the face of it, or indeed on closer examination of the claim filed by the appellant in this case, it can certainly not be seen, clearly or otherwise, that the claim is obviously unsustainable, cannot succeed, or is in some other way an abuse of the process of the court. The statement of claim filed by the appellant chronicled a number of allegations against the respondents which, if proved, would constitute a clear factual and legal basis for a court to grant some, if not all, of the relief claimed by the appellant against one or more of the respondents. Nothing in the rules to which the learned judge referred or in any of the cases which she considered could justify the finding which she made that the appellant's case disclosed no reasonable ground for bringing a claim against the respondents or was an abuse of the process of the court.

[15] The appellant's first ground of appeal is therefore allowed, which renders it unnecessary to address grounds 3 and 4.

[16] I propose now to consider ground 5 of the grounds of appeal, which I regard as the next main ground of appeal and the treatment of which, in this judgment, will address as well grounds 6 and 7.

[17] In ground 5 of its grounds of appeal, the appellant contends that the learned judge was wrong in concluding that the claim was statute barred; in ground 6 it is

[9] ANUHCVAP1997/0020A (delivered 8th April 1998, unreported) at para. 18.

contended that that the learned judge failed to acknowledge that separate relief was sought against the first, second and third respondents, who are not protected by the **Public Authorities Protection Act;** and in ground 7 the appellant contends that the learned judge failed to properly consider that the injury to the appellant was continuing.

[18] The appellant's claim was filed in December 2011 and complained of wrongs committed against it in October and December 2009. The proposition that the appellant's claim was statute barred is based not on the **Limitation Act**,[10] but on section 2(1)(a) of the **Public Authorities Protection Act**, which provides as follows:

> "(1) Where any action, prosecution, or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any Act, or of any public duty or authority or of any alleged neglect or default in the execution of any such act, duty, or authority, the following provisions shall have effect:
>
> (a) The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof**;**"

[19] The learned judge held that this provision protected the Registrar of Titles from suit after six months from the act, neglect or default complained of.

[20] A reading of the **Public Authorities Protection Act** and of section 2(1)(a) in particular, does indicate that the provision was designed to effectively immunize public officers from criminal or civil action against them for any act done by them in the pursuance or execution of any public duty or authority, or any alleged neglect

[10] Cap. 5.09, Revised Laws of Saint Christopher and Nevis 2009.

or default in the execution of any such act, duty or authority after six months have elapsed since the act, neglect or default.

[21] In the submissions made on behalf of the appellant, it was not argued that the **Public Authorities Protection Act** does not apply to the Registrar of Titles in this case or to any act, neglect or default alleged against her, but only that the loss occasioned to the appellant consequent on the act, neglect or default of the Registrar of Titles was a continuing one, with the injury to the appellant having continued into the period within six months of the filing of the claim.

[22] This submission made on behalf of the appellant did not find favour with the learned judge, who took the view that the acts of the Registrar of Titles which were the subject of complaint by the appellant, occurred some two years before action was commenced and the claim against the Registrar of Titles was therefore barred by the time that it was filed by the appellant.

[23] I can find no fault with the reasoning and conclusion of the learned judge in this regard.

[24] It may well be that the appellant continued to experience negative consequences arising from the actions of the fourth respondent in accepting the amended declaration for registration and in registering certificates of title in the name of the first respondent, but the appellant's claim against the fourth respondent was for a declaration that the aforesaid respondent was negligent in not ensuring that the requirements of the **Condominium Act** and **Regulations** were met prior to accepting an amended declaration of covenants, conditions and restrictions for registration, for wrongly issuing certificates of title registered in the name of the first respondent concerning the disputed property, and for damages for trespass and loss of income arising therefrom. These acts, neglects or defaults complained

of are alleged to have occurred on 23rd October 2009 and on 31st December 2009 and in accordance with section 2(1)(a) of the **Public Authorities Protection Act**, action against the Registrar of Titles had to have been commenced within six months of 23rd October 2009 in respect of the registration of the amended declaration and within six months of 31st December 2009 in respect of the issue of the certificates of title. That the claimant may still be experiencing negative consequences from the act, neglect or default of the Registrar does not enlarge the limitation period any more than if it was a claim for negligence in causing a vehicular collision and the claimant was still experiencing pain from injuries sustained in the collision or loss of use of his vehicle arising from the collision.

[25] When section 2(1)(a) of the Act speaks of "a continuance of injury or damage", which must cease before the limitation period commences, it would have to be referring to a claim of causing "injury or damage" or some such claim which would not crystalize until the injury or damage being caused has ceased, but not to a claim such as the present one in respect of specific actions occurring at specific times. If it were otherwise, it would render the protection afforded by section 2(1)(a) to be meaningless.

[26] The learned judge did err however in striking out the claim against the fifth respondent on the basis that the Attorney General was joined in the suit as being vicariously liable for the actions of the Registrar who is an employee of the State. There is nothing in the appellant's statements of case which indicates that the Attorney General was joined in the suit on this basis. In fact, it is specifically stated in the statement of claim that the Attorney General is a party in accordance with section 19 of the **Title by Registration Act**.

[27] Section 19(1) of the Act provides that:

> "(1) Any person aggrieved by the issue of a certificate of title under this Act may, institute a suit as plaintiff against the Attorney-General as defendant, claiming damages for the injury he or she may have sustained."

The appellant's statement of claim did contain averments amounting to it being aggrieved by the issue of certificates of title to the first respondent and did contain a claim for damages for injury sustained as a result of the issue of the certificates of title. The claim against the Attorney General was not therefore based on any vicarious liability of the Crown for the acts, neglect or default of its employees such as to protect the Attorney General from suit after six months.

[28] The appellant submitted that the learned judge went further and struck out the claim against all of the respondents on the basis of the **Public Authorities Protection Act**. The appellant did not, however, state where in the judgment that the learned judge was supposed to have done so and I saw no finding of the judge to this effect. For the avoidance of any doubt though, I will make it clear that the **Public Authorities Protection Act** is intended only to protect public authorities, such as the fourth respondent in this case and does not protect others from criminal or civil action arising from or connected to the acts, neglects or defaults of public authorities. For the protection of others against suit based on delay in instituting proceedings against them, one would have to have recourse to the **Limitation Act** which provides for much longer limitation periods.

[29] I would therefore dismiss ground 5 of the appellant's notice of appeal in so far as the fourth respondent is concerned, but allow the appeal on ground 5 with respect to the other four respondents. It accordingly becomes unnecessary to deal specifically with ground 6 of the appellant's grounds of appeal. Ground 7, focussing on the continuance of the injury to the appellant as a basis to dis-apply

the limitation imposed by section 2(1)(a) of the **Public Authorities Protection Act**, would also stand dismissed.

[30] In ground 8 of its grounds of appeal, the appellant contends that the learned judge misdirected herself and erred in her conclusion that the claimant should have availed itself of the procedure and remedy under section 139 of the **Title by Registration Act** and as a result the claimant is procedurally improperly before the court and the court therefore has no jurisdiction to hear the claimant's claim.

[31] Section 139 of the **Title by Registration Act** states:

> "If any person is dissatisfied with any act, omission, refusal, decision, direction, order, noting, or other completed proceeding of a Registrar of Titles affecting the right of such person to any land, or any mortgage or encumbrance thereon, or any caveat in relation thereto, such person may apply to the Registrar of Titles to set forth in writing the grounds upon which he or she proceeded, and, thereupon, such person may bring any question in relation thereto before the Court by summons served on the Registrar of Titles, and the Court shall hear and determine the question at issue, and give such order and directions thereupon as may appear just."

[32] In the court below, the learned judge held that the claimant should have availed itself of the procedure and remedy under section 139 and is therefore procedurally improperly before the court, which therefore has no jurisdiction to hear the claim. The learned judge stated (at paragraph 58 of her judgment) that she had arrived at this position on reviewing the provisions of section 139 of the Act and reviewing three cases cited by her.

[33] The three cases cited by the learned judge, however, are all clearly distinguishable from the present case.

[34] In the first of the three cases, **The Attorney General of Saint Lucia et al v Vance Chiltolie**[11] the Court was dealing with a part of the Saint Lucia **Customs (Control and Management) Act**[12] which, according to Gordon JA, codified the procedure for the determination of disputes concerning the amount of duty demanded, and took away from the High Court and Court of Appeal the original jurisdiction to determine such disputes, giving only appellate jurisdiction to the courts.

[35] In the second case referred to by the learned judge, **Wilkinson v Barking Corporation**,[13] the English Court of Appeal was dealing with section 35 of the United Kingdom Local Government Act, 1937 which enumerated certain rights and liabilities of employees of a local authority and provided that questions concerning these rights and liabilities 'shall be decided in the first instance by the authority concerned, and if the employee is dissatisfied with any such decision … shall be determined by the Minister … [whose] determination shall be final.' The Court of Appeal held that Parliament having appointed a specific tribunal for dealing with the rights and liabilities of the employees of a local authority, the employee's rights must be determined in the first instance by the authority and on appeal, by the Minister.

[36] In the third case, **Pasmore and others v The Oswaldtwistle Urban District Council**,[14] the House of Lords (on an appeal from a judgment of the English Court of Appeal) held that when there is:

> "an obligation which is created by a statute and by the statute alone … you must take your stand upon the statute in question, and the statute which creates the obligation is the statute to which one must look to see if there is a specific remedy contained in it."[15]

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[11] SLUHCVAP2003/0014 (delivered 10th January 2005, unreported).
[12] Cap. 15.05, Revised Laws of Saint Lucia 2008.
[13] [1948] 1 KB 721.
[14] [1898] A.C. 387.
[15] At p. 394.

The House held that since there was a specified remedy contained in the statute, then it is to that remedy the party complaining must have recourse.

[37] None of these cases is analogous to the present one. There is in the present case no codification of rights and remedies as in the **Vance Chitolie** and **Wilkinson** cases, nor is there the creation of a specific obligation and the provision of a specific remedy for its breach as in the **Pasmore** case. Section 139 of the **Title by Registration Act** does no more than give a right to anyone who might be dissatisfied with an 'act, omission, refusal, decision, order, noting or other completed proceeding of a Registrar of Titles affecting the right of such person to any land' to apply to the Registrar of Titles 'to set forth in writing the grounds upon which he proceeded'. Nothing in the wording of the section appears to require a person to make application to the Registrar of Titles before he can access the courts for any grievance he may have with the registration of an amended declaration in accordance with the **Condominium Act** or with the issue of certificates of title.

[38] The cases aside, the wording and context of section 139 also lead to the conclusion that the section was not intended to enact a statutory requirement that an aggrieved party, like the appellant in this case, must first make an application to the Registrar of Titles to 'set forth in writing the grounds upon which he or she proceeded' before the aggrieved party can institute proceedings in court seeking declaratory and compensatory relief against the authors of his loss. The fact that the operative word in providing for the application for relief is "may" and not "shall" is instructive, because whether in section 139 of the Act or in any of the other sections in Part X, the word "may" is used to introduce an option, while "shall" is used to introduce a requirement. So that in section 139 itself, the aggrieved party

"may" apply to the Registrar and "may" bring any question in relation thereto before the court, but the court "shall" hear and determine the question at issue. This means that the aggrieved party has the option to apply to the Registrar of Titles and to bring any question in relation thereto to the court in the manner provided for in section 139, but once the aggrieved party does so the court is required to determine the question. Section 139, therefore, leaves it open to the party aggrieved to have his grievance adjudicated by the court instead of making any application to the Registrar of Titles.

[39] Also of significance in relation to section 139 of the **Title by Registration Act** is section 141 of the Act, which is contained in Part X. Section 141 provides as follows:

> "At the request of a Registrar of Titles upon petition or case stated, or in any proceeding respecting any land, or in respect of any contract or transaction relating thereto, or in respect of any instrument, caveat, or dealing with land, the Court may by decree or order direct the Registrar of Titles to cancel, correct, substitute, or issue any certificate of title, or make any noting or entry thereon, and to do such acts as may be necessary to carry into effect any judgment of the Court."

[40] The significance of the wording of this section is that it makes it clear that a party aggrieved about any matter concerning land or any contract, transaction or instrument relating to land, may come to the court for redress either upon petition or case stated by the Registrar of Titles or otherwise and may obtain orders directing the Registrar of Titles to undertake various actions. Section 139 was not, therefore, intended to restrict access to the court by an aggrieved person in respect of matters concerning land and involving the Registrar of Titles other than by application to the Registrar of Titles under the section.

[41] But, even if I am wrong in my interpretation of section 139, and the section was intended to prescribe the course to be pursued by an aggrieved person seeking redress in relation to "any act, omission, refusal, decision, direction, order, noting or other completed proceeding of a Registrar of Titles affecting the right of that person to any land" etc., this restriction could not apply to a claim against a party other than the Registrar of Titles himself or herself and since I have already found that the learned judge was correct in her determination that the claim against the Registrar of Titles is statute barred, then it really makes no difference whether action against the Registrar of Titles had to be instituted and was not instituted, in accordance with section 139. Either way, the appellant was properly before the court and was entitled to have its claim adjudicated by the court.

[42] In the circumstances, the appellant was not required to proceed under section 139 of the **Title by Registration Act** in order to seek relief in this case and certainly not relief against parties other than the Registrar of Titles. The appellant's claim was properly before the court and the court did have jurisdiction to hear and determine the appellant's claim. Ground 8 of the appellant's grounds of appeal is accordingly allowed.

[43] Ground 9 of the appellant's grounds of appeal also comes into play here. In ground 9 the appellant contends that the learned judge failed to consider that apart from the particulars in section 139 of the **Title by Registration Act**, the **Condominium Act** gives a specific procedure and remedies for matters concerning condominium property. This contention may be somewhat exaggerated in so far as it suggests that the **Condominium Act** has an entire roadmap to procedures and remedies relating to condominium property. It does not. But the Act and the Regulations made under it do contain provisions relating to procedures and remedies concerning condominium property which do also have

the effect of enabling aggrieved persons in respect of matters concerning land and involving the Registrar of Titles, to access the courts other than by application to the Registrar of Titles under section 139 of the **Title by Registration Act**.

[44] Ground 9 of the appellant's grounds of appeal is therefore allowed.

[45] In ground 11, the appellant contends that the learned judge erred in her application of the law set out in section 4(5) of the **Crown Proceedings Act** that the Registrar was discharging or purporting to discharge responsibilities of a judicial nature vested in her.

[46] Section 4(5) of the **Crown Proceedings Act** states:

> "(5) No proceedings shall lie against the Crown by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him or her, or any responsibilities which he or she has in connection with the execution of judicial process."

[47] The learned judge found that:

> "the Registrar of Titles by placing a Certificate of Title, dated, signed and sealed in the correct volume, and making [sic] thereon the number of the Folium by which it is thereafter to be designated and referred to … has registered the document according to **the First Schedule of the Title by Registration Act Cap 10.19** [and] has discharged or purported to discharge her responsibilities which she has in connection with the execution of a judicial process."[16]

She also found that 'the Registrar of Titles in accepting the Amended Declaration and registering it was discharging the responsibilities of a judicial nature vested in her …'[17] The learned judge consequently held that 'the Registrar of Titles would

[16] Judgment of Williams J [Ag.] (delivered 24th June 2014) at para. 60.
[17] Ibid at para. 61.

be entitled to the protection provided under the **Crown Proceedings Act** …'[18]

The learned judge concluded this segment of her judgment as follows:

> "In the circumstances and having reviewed all the authorities and legislation, I find the arguments advanced by the 4th and 5th Defendants to be persuasive, and that the Claimant's case against the 4th and 5th Defendants is misconceived and devoid of merit."[19]

[48] The submission of the appellant on this issue, which I unreservedly accept, put simply, is that in undertaking the above tasks, 'the Registrar was carrying out an administrative function and not a judicial function' and that section 4(5) of the **Crown Proceedings Act** 'does not apply to the actions of the Registrar'.[20]

[49] Ground 11 of the appellant's grounds of appeal is accordingly allowed.

[50] The appellant's other grounds of appeal (apart from grounds 15 and 16) were either not pursued by the appellant in the submissions filed on its behalf in support of the notice of appeal or they have been covered in addressing the other grounds of appeal dealt with in the course of this judgment.

[51] As to grounds 15 and 16, the applications by the respondents for extensions of time to file and serve standard disclosure and witness statements and for relief from sanctions, which were dismissed by the learned judge as not being relevant, are restored and will be determined by a master at case management.

[52] Grounds 1, 8, 9, 11, 15 and 16 of the appellant's grounds of appeal are allowed; ground 5 is allowed with respect to the first, second, third and fifth respondents,

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[18] Ibid at para. 69.
[19] Ibid at para. 70.
[20] Legal submissions in support of notice of appeal on behalf of the appellant in accordance with CPR 62.10 (filed 14th August 2014) at para. 34.

but dismissed with respect to the fourth respondent; ground 7 is also dismissed. Grounds 2 and 10 were not pursued by the appellant in its written submissions and appeared really to fall within ground 11, which ground is allowed. Having allowed ground 1 it became unnecessary to separately address grounds 3 and 4, and having allowed ground 5 with respect to four of the five respondents, it became unnecessary to separately address ground 6. Ground 12 was fully addressed in dealing with ground 5 and based on the analysis there, ground 12 of the appellant's grounds of appeal is allowed. Ground 13 was addressed in dealing with ground 11 and like ground 11, ground 13 is allowed. Ground 14 was addressed in dealing with ground 1 and like ground 1, ground 14 is allowed. Ground 17 appears to be more a general conclusion than a specific ground of appeal and need not be addressed.

[53] In conclusion, the appeal is allowed, except with respect to the striking out of the claim against the fourth respondent, the appeal against whom is dismissed, together with the related ground 7.

[54] The case is remitted to the High Court for case management by the master (including the determination of the applications for extensions of time) and trial by a judge.

[55] The first, second and third respondents are ordered to pay the appellant's costs here and in the court below. No order is made as to costs for or against the fourth and fifth respondents here or in the court below.

Mario Michel
Justice of Appeal

I concur.

Gertel Thom
Justice of Appeal

[56] **PEREIRA CJ:** I have read the judgment of my learned brother and I agree that the appeal should be allowed for the reasons which he gave subject only to two observations:

(a) The first is in respect of the time limitation contained in section 2(1)(a) of the **Public Authorities Protection Act**. Having regard to the express provision of section 19 of the **Title by Registration Act** ("the TRA") coupled with section 139 of the TRA already set out above in the judgment of my learned brother, I entertain grave doubts that the general limitation protection contained in the **Public Authorities Protection Act** can be prayed in aid so as to trump the clear and expressed provision of section 19 of the TRA which specifically and expressly provides a remedy to a person who is 'aggrieved by the issue of a certificate of title**…**' and the conjoint effect of section 139. Section 19 permits a person so aggrieved to institute a suit for damages for injury sustained and contains no time limitation for the institution of such a suit. If the Parliament wished to impose a time limitation for bringing suit in relation to a certificate of title they could easily have done so by the insertion of simple language to this effect. The fact that there is no such limitation suggests that such was not the intention. This is perhaps for good reason. As long as the impugned certificate of title remains in effect, the injury may be said to continue until such time as the certificate of title is rectified. Where there remains in effect a certificate of title which is incorrect, whether as a result of error or fraud, it may be said that the injury to the party aggrieved thereby is a continuing one so that for the purposes of section 2(1)(a) of the **Public Authorities Protection Act**,

assuming its applicability, the injury would not have ceased and no doubt will not have ceased until such time as the certificate of title is corrected which in my view is the very mischief at which sections 19 and 139 of the TRA are aimed. For this reason I do not consider that the general time bar relating to public authorities contained in the **Public Authorities Protection Act** applies as it relates to the claim made in respect of the TRA whereas it may very well be applicable in respect of other claims made in the proceedings which do not engage the specific remedies given by the TRA.

(b) The second is as to the vicarious liability of the Attorney General. Section 19 of the TRA expressly makes the Attorney General the person against whom suit is to be brought in respect of a grievance occasioned by the '[issuance] of a certificate of title under the Act' where that aggrieved person claims 'damages for the injury he or she may have sustained.' The person tasked with the function of issuing certificates of title is the Registrar of Titles. The TRA, by virtue of section 19, places the Attorney General as representative of the Crown in the shoes of the Registrar of Titles for this purpose in recognition of the Crown's vicarious liability which may flow from the wrongful issuance of a certificate of title by the Registrar of Titles. Furthermore, the TRA itself provides that civil proceedings thereunder shall be governed by the **Crown Proceedings Act**.[21]

Dame Janice M. Pereira, DBE
Chief Justice

[21] See section 19(2) which provides for any damages recovered to be paid out of the Consolidated Fund.