

**IN THE SUPREME COURT OF BELIZE, A.D. 2018**

**CIVIL APPEAL NO. 1 of 2017**

**DAVID GAYNAIR**

**APPELLANT**

**AND**

**REGISTRAR OF LANDS  
COLIN BULL**

**FIRST RESPONDENT  
SECOND RESPONDENT**

**BEFORE the Honourable Madam Justice Sonya Young**

Written Submissions

Appellant – 28.12.2017

First Respondent – 5.1.2018

Second Respondent – 29.12.2017

Decision

25.1.2018

Mr. Rodwell Williams, SC for the Appellant

Ms. Nichola Cho for the First Respondent

Mr. Wayne Piper for the Second Respondent

**Keywords: Procedure – Registration of Land – Caution – Requirements for  
Lodgment – Unregistrable Interest – Request for Removal – Registered  
Land Act Cap 194 (RLA)**

**JUDGMENT**

1. Mr. Gaynair is the registered proprietor of a parcel of land in Placencia (the Property). On March 2<sup>nd</sup> 2017, Mr. Bull in his capacity as executor of the Estate of Lester Bull, lodged a caution against the Property.

2. It is this caution and the decision of the Registrar of Lands (the Registrar) to maintain same, which occupies our concern. Mr. Gaynair has appealed this decision. He says the caution does not comply with the strict statutory requirements of section 130(3) of the RLA as it does not state the interest asserted by Mr. Bull. It ought not to have been registered in the first place. Further, whatever interest Mr. Bull seems to claim, thereby, is registrable and falls outside the prescribed conditions for registering a caution pursuant to section 130(1) of the RLA. Consequently, the Registrar erred in determining that the caution ought to be maintained. He seeks the court's assistance in its removal so that he may deal with the Property as he sees fit.
3. Mr. Bull, however, insists that the caution is proper in form, duly lodged and necessary to protect the unregistrable interest of the Estate of Lester Bull. He asserts that the boundary markers placed for the Property encroaches on land owned by the Estate so he is unable to register the parcel. He says the Estate's interest is evidenced by a deed of indenture in Lester Bull's name which is an unregistrable document. Moreover, the details of the unregistrable interest which he claims could adequately be found in the caution and declaration he lodged with it. Finally, Mr. Bull explains that in any event he must secure a Grant of Probate before he is able to apply for first registration.

**The Issues:**

4. The issues as the court finds them:
  1. Should the caution be removed:
    - A. Is the caution compliant with section 130(3) of the RLA.
    - B. Does the Estate of Lester Bull have a cautionable interest in the Property.

**Should the caution be removed:**

5. Before we attempt to go any further it would be wise to reproduce the relevant sections of the RLA

*130.-(1) Any person who,*

- (a) claims any unregistrable interest whatever, in land or a lease or a charge;*
- (b) is entitled to a licence; or*
- (c) has presented a bankruptcy petition against the proprietor of any registered land, lease or charge, may lodge a caution with the Registrar forbidding the registration of dispositions of the land, lease or charge concerned and the making of entries affecting the same.*

*(2) A caution may either,*

- (a) forbid the registration of dispositions and the making of entries altogether; or*
- (b) forbid the registration of dispositions and the making of entries to the extent therein expressed.*

*(3) A caution shall be in the prescribed form and shall state the interest claimed by the cautioner and the Registrar may require the cautioner to support it by a statutory declaration.*

*(4) The Registrar may refuse to register a caution which he considers unnecessary.*

*(5) Subject to this section, a caution shall be registered in the appropriate register.*

*131.-(1) The Registrar shall give notice in writing of a caution to the proprietor whose land, lease or charge is affected by it.*

*(2) So long as a caution remains registered no disposition which is inconsistent with it shall be registered except with the consent of the cautioner or by order of the court.*

*132.-(1) A caution may be withdrawn by the cautioner or removed by order of the court or, subject to subsection (2) of this section, by order of the Registrar.*

*(2) (a) ...*

*(b) ...*

*(c) ...*

*(3) ...*

*(4) On the withdrawal or removal of a caution, its registration shall be cancelled, but any liability of the caution previously incurred under section 134 of this Act, shall not be affected by the cancellation.*

**Is the caution compliant with section 130(3) of the RLA:**

6. There is no common law way to protect an interest in land by the registration of a caution. This means that its existence is entirely statutory. Ergo, its lodgement must be done in strict accordance with statute. The RLA at

section 130(3) states that: “A caution should be in the prescribed form and shall state the interest claimed by the cautioner and the Registrar may require the cautioner to support it by a statutory declaration.”

7. The Appellant agrees that Mr. Bull duly lodged his caution in the form prescribed. However, that caution states simply that he claims “*an interest as “EXECUTOR OF THE ESTATE OF LESTER BULL THROUGH A WILL.” In the land comprised in the above-mentioned title and forbid the registration of any dealings and the making of any entries in the register relating thereto altogether or to the following extent; that I have already apply for a Grant of Administration for the Estate (see attached the **Will** hereto and forming a part hereto). In the land comprised in the above mentioned, until this caution has been withdrawn ...*” It is completely silent as to what the interest is.
8. The Second Defendant by submissions accepts that the requirements of section 130(3) are strict. Nonetheless, he submits:  
*“While the interest is not in the clearest language, it is submitted that it sufficiently sets out the interest claimed to the satisfaction of the registrar ...”*
9. I add with haste that the standard required is not to the satisfaction of the Registrar. In fact, Counsel for the Registrar quoted from paragraph 25 of *Jose Hamilton et al v Attorney General, and Minister of National Resources and the Registrar of Lands (Claim No. 116 of 2008)*:  
*“It is also clear that the Registrar is moved to put the caution by any person who satisfies the requirements of section 130(1) (a), (b) or (c) of the Registered Land Act ... all that is required at the lodgement stage is that the caution should state the interest claimed by the cautioner. The Registrar may require the cautioner to support his statement of the interest claimed by a statutory declaration.”*
10. This court entirely agrees. At paragraph 10 of their submissions: Counsel then sets out the statutory bases on which a person may lodge a caution .

*“The requirement that a caution states the interest claimed by the cautioner may be interpreted to mean that the caution is to state which one of the three grounds set out in section 130(1) is the basis for his caution. That is whether he claims an unregistrable interest, or an entitlement under a licence or has filed a bankruptcy petition.”*

11. Again the court agrees entirely. However, we must part ways at counsel’s suggestion that perhaps the cautioner may not have “*plainly or thoroughly*” stated the interest on the caution form and that it need only be read in conjunction with the statutory declaration. This is the very same position which Mr. Bull proposed when he insisted that his interest could properly be gleaned from the declaration.
12. However, as simple and alluring as this may sound, it is not in compliance with the very clear and mandatory words of the section. The use of the word ‘*shall*’ indicates that there is no other possible way. Counsel for the Appellant relies on *Stoekert v Geddes JM 1999 CA 7*, and explains that “*the mandatory nature of the section is unremarkable as cautions interfere with the rights enjoyed by the proprietor without any judicial process or oversight.*”
13. Although the legislation considered in *Stoekert* (The Registration of Titles Act) refers to a caveat (accepted as another term for caution though the statutory grounds for lodging may differ) and reads somewhat differently, this court accepts that the tenor is the same. The caution stands on its own and what is stated therein, informs the Registrar’s decision whether or not it ought to be registered. She may require some elucidation by way of a statutory declaration but that is a matter for her. It is no mandatory requirement. Clearly, therefore, the statutory declaration ought only to support the contents of the caution. It forms no part of the caution, nor can its contents be invoked to cure obvious defects in the form of the caution.

This court therefore finds that the caution ought not to have been accepted for registration by the Registrar as it did not satisfy the statutory requirements and there is no provision which allows her to overlook or ignore such technical defects.

14. This, in effect, takes care of the appeal since an Order will necessarily be made removing the caution with immediate effect. However, the court is compelled to deal with the other issue if only for completion or as a matter of guidance.

**2. Does the Estate of Lester Bull have a cautionable interest in the Property:**

15. The statutory declaration informs: *“we have accupied this land for over 40 yrs and have land title to show that our land is 48ft 9” wide the adjacent land named in the caution is now being sold their surveyor recently posted a land mark encroaching 18’-0” unto my land (i.e. Lester Bull Estate). The dispute needs to be settled in court. Before the adjacent land is sold (i.e. Evadney Hulse Land) the reason for the caution is to allow this dispute to be settled before the sale is final. The Evadney Hulse land is up for sale and a offer is in place.”* From its contents, Mr. Bull appears to be claiming an unregistrable interest pursuant to section 130(3) of the RLA. He relies on a Deed of Conveyance made in 1966 between Adele Garbutt and Lester Bull for land situated in Placencia and measuring 174’ x 48’ 9”.
16. The Registrar correctly gave both sides the opportunity to be heard. The transcript or recording of the hearing, if one exists, did not form part of the Registrar’s Statement made pursuant to section 145(2) of the RLA.
17. However, in a letter to both parties she states her findings as follows:  
*“After the parties were given the opportunity to be heard I have decided that the caution will remain in place. In my opinion Mr. Bull has an unregisterable interest as he produced a Deed of Indenture for a piece or parcel of land situate in Placencia*

*measuring 174 feet long and 48 feet 9 inches wide, a portion of which purportedly is within Parcel 3441. As a consequence Mr. Bull is unable to apply for First Registration of the land contained in his Deed of Indenture.”*

**She continues:**

*“In my further opinion the dispute between the parties is essentially a boundary dispute. Please be advised that the Registrar of Lands has jurisdiction to determine and indicate the position of the boundaries of any parcel of land in accordance with section 20 of the Registered Land Act. However, no such application was\is before me to be determined.”*

**Consideration:**

18. Once a caution is lodged, its protection remains unless it lapses, where the cautioner makes no objection to a dealing, or until it is removed or withdrawn. It gives the cautioner no proprietary interest in the land. Its main purpose is to maintain the status quo in order to protect the rights of the cautioner until he can seek the court’s assistance. In reality, it acts like a statutory injunction preventing any dealing with the land which is inconsistent with, or not made subject to, it. By this unilateral act, a registered proprietor can no longer deal with his land until the caution no longer exists.
  
19. Generally, a caution lodged pursuant to section 130 (1)(a) of the RLA seeks to protect property rights which exists in equity. As explained in *Lilian Riley v Christopher Gerald, Registrar of Lands and Hon. Attorney General Claim No MNIHCV 2004/0009 (Eastern Caribbean Supreme Court.)* unregistrable interests in land are interests which the RLA does not recognize for the purpose of registration but which the law recognizes. A good example is a contract to purchase land. Its basic requirement is that the cautioner must claim to have an actual interest in the land, lease or charge itself. Interest here describes the nature, quality or extent of a person’s right in a freehold or leasehold estate. The Registrar need not enquire into the

veracity of the claim or whether it could actually be proven. Her duty is only to ensure that what is claimed is actually an unregistrable interest. If this criteria is not met, a caution is not appropriate.

20. There seems to be some confusion about whether or not the indenture was somehow “*unregistrable*.” The section says nothing about an unregistrable instrument it speaks only to unregistrable interests. In truth and in fact documents are not registered under the RLA. Registers are prepared in respect of parcels of land. It must show whether it is private or national land and if private land whether title is absolute or provisional. The proprietor’s name, inhibitions, cautions, restrictions and encumbrances are registered – see section 10 of the RLA. The RLA, in section 2, defines ‘*To register*’ as to make an entry, note or record in the register under this Act.
21. In this case the Estate of Lester Bull claims neither a legal or equitable interest in the Appellant’s land. Colin Bull has never asserted that perhaps some portion of the estate’s land was incorrectly included in Mr. Gaynair’s title. He simply says that the boundary marks are incorrectly placed. They are not the same thing, and the belief that they are, is the basis of further confusion in this matter. In my humble opinion a claim of an encroachment of boundary posts cannot be a claim of an interest (unregistrable or otherwise) in land. As the Registrar explained it is a boundary dispute.
22. Land boundaries, generally, do not move but the interpretation of the location of the boundary could be difficult. A boundary defines the legal limits of ownership of a parcel of land and a marked boundary serves only as prima facie evidence of this. A boundary does not convey or take away any existent interest. Equally, determining the precise location of a boundary



gives no one an interest in land, it simply settles the position of the disputed boundary of what is already legally owned. It is for this reason that the boundaries of land registered under the RLA are only approximately situated, until any uncertainty or dispute is determined by the Registrar. Such a dispute can be determined regardless to whether the land passes to a third party and is not dependent on who the proprietor is. A boundary dispute, involving no other legal issues, needs no protection against a purchaser of the legal estate. For this simple reason I find that the cautioner has no cautionable interest in the Property and the caution ought not to be on the register

23. In my estimation the Estate should have taken a different course of action to rectify the problem. The indenture presented to this court as part of the Registrar's statement clearly grants a fee simple interest to Lester Bull. A fee simple interest is certainly capable of registration and an indenture is a good documentary title to land. Such a document could easily be presented as part of a person's application for first registration pursuant to section 13 of the RLA and may be sound proof of the interest being claimed. That the executor has not yet secured a grant of probate renders the interest no less registrable. Registration is simply delayed.
24. If the Registrar, upon consideration and examination of the application and deed, is satisfied that the applicant ought to be recorded as owner she may do so and declare his title to be absolute or provisional. Whether or not a border dispute exists with the land does not render the interest unregistrable. Border disputes are determined between owners of registered and unregistered land all the time. The Registrar, by her own admission, is well

aware of the provisions made in the RLA for determining and resolving such issues.

Before closing I find it imperative to comment on the length of time Mr Bull has maintained this caution. It was lodged for registration on the 2<sup>nd</sup> March 2017. The evidence before the court at present is that he has neither secured a grant of probate or taken any necessary action to have the dispute settled. A caution shares many of the qualities of an injunction and by its very nature is susceptible to abuse. However, it is not an injunction and it is not intended to be permanent.

**Determination:**

**It is Ordered:**

1. The appeal is allowed.
2. The decision of the Registrar of Lands to maintain caution LRS – No 201701768 is set aside.
3. The Registrar is directed to cancel caution LRS – No 201701768 forthwith.
4. Costs to the Appellant in the sum of \$5,000.00 to be paid by the Second Respondent.

**SONYA YOUNG  
JUDGE OF THE SUPREME COURT**