IN THE HIGH COURT OF BELIZE A.D. 2023

CIVIL APPEAL No. 9 of 2023

BETWEEN

SUN-BAY DEVELOPMENT COMPANY LIMITED

APPELLANT

AND

REGISTRAR OF LANDS

FIRST RESPONDENT

KEVIN KENNETH KNASEL

SECOND RESPONDENT

BEFORE THE HONOURABLE MADAM JUSTICE MARTHA ALEXANDER

Oral Submissions date: May 30, 2023

Delivery date: August 21, 2023

APPEARANCES:

Ms. Lissette V. Staine, Counsel for the Appellant

Ms. Agassi Finnegan, Counsel for the First Respondent

Mr. Andrew Marshalleck S.C. for the Second Respondent

KEYWORDS: Land – Registrar of Lands – Registered Land – Appeals – Case Stated – Case Stated Appeals – Procedure for Appeals under CPR Sections 60 and 61 – Inferior Tribunal Appeals to High Court - Jurisdiction

DECISION

INTRODUCTION

1. This decision relates to a preliminary objection taken by the second respondent ("Kevin Knasel"), challenging the jurisdiction of the High Court to entertain the appeal of the appellant ("Sun-Bay") from a decision of the Registrar of Lands ("the Registrar"). The objection relates to the procedure adopted to bring the appeal. Sun-Bay's appeal originated by way of written Notice of Appeal dated February 22, 2023. The Notice of Appeal was filed pursuant to the provisions of **Part 60.2(1) of the Civil Procedure Rules 2005 ("CPR")**. Part 60.2(1) specifies that an appeal is made by Notice of Appeal using Form 23 and must annex the grounds of appeal ("a direct appeal").

2. The Registrar's decision was made under and by virtue of the **Registered Land Act** ("the Act"), which confers the right of appeal and provides the avenue for appeal of decisions made pursuant to its provisions. The decision was given by letter dated February 08, 2023 and issued to parties by way of email on February 10, 2023. Sun-Bay filed a Notice of Appeal on February 22, 2023 against the Registrar's decision.

3. Counsel for Kevin Knasel argues that the procedure used is incorrect as the court lacks the jurisdiction to entertain a direct appeal of the Registrar's decision under Part 60.2(1). The proper procedure for appealing the Registrar's decision is by way of case stated under Part 61 and not, as done by Sun-Bay, by way of a direct appeal under Part 60. Having brought a direct appeal, the court has no jurisdiction and the Notice of Appeal must be dismissed.

4. Counsel for Kevin Knasel argues, also, that the statute provides a single mode of approaching the High Court to appeal a decision of the Registrar, which is by way of case stated. Having conferred the right of appeal and defined the court's jurisdiction

for entertaining the appeal, an appellant seeking to challenge a decision under the Act must follow the procedure for appeals by case stated as set out in Part 61.

5. Counsel for Sun-Bay resists Kevin Knasel's objection as to jurisdiction and the applicable procedure. She argues that the Act provides two distinct and separate avenues for advancing an appeal of the Registrar's decision to the High Court. She submits that the Act confers both a right of an appeal by way of case stated and a direct right of appeal on any person aggrieved by the Registrar's decision, direction, order, determination or award (hereinafter together referred to as "decision"). The argument that the Act provides only a single, joint procedure for appeal of the Registrar's decision is erroneous. Counsel asks that the preliminary point not be upheld but be dismissed.

6. I find that the appeal is properly before me and dismiss the preliminary objection with costs. The right of appeal is conferred by section 145 of the Act and Sun-Bay has used the correct procedure in Part 60 of the CPR to bring the appeal before this Court.

ISSUE

7. The issue before this court is whether the Act entitles Sun-Bay to invoke the jurisdiction of the High Court by way of a Notice of Appeal under Part 60 of the CPR after a final decision of the Registrar or the Registrar must appeal by way of case stated under Part 61 of the CPR.

SUBMISSIONS

8. Counsel for Kevin Knasel submits that Sun-Bay has used the wrong procedure for the current appeal, by coming under Part 60 (direct appeal) and not Part 61, which provides for appeals by way of case stated. He states that the Act, conferring the right

of appeal and then giving the court jurisdiction to entertain it, provides for how appeals of decisions made under it must be advanced to the High Court. The Act provides for a single mode of approaching the court to appeal a decision of the Registrar, which is by way of case stated. Sections 144 and 145 must be read together to show that single right of appeal, by case stated, to be formulated by the Registrar. Further, initiating an appeal via Part 60, and not Part 61, is not only the wrong procedure but; it allows Sun-Bay to effectively usurp the power of the Registrar to state the issues. This wrong procedure enables Sun-Bay to vest the power, usually exercisable by the Registrar, in itself and to circumvent the requisite conditions for the prosecution of an appeal under the enactment. A procedure that excludes the Registrar's role in prosecuting an appeal is not contemplated by the Act and is procedurally improper.

9. Sun-Bay responds that the procedures set out in Part 61 are irrelevant to this appeal since they relate to appeals by way of case stated pursuant to section 144. This appeal does not fall under section 144 but section 145, since both sections provide for distinct types of appeals. Sun-Bay, who is appealing a final decision of the Registrar, is entitled to bring a direct appeal under section 145 of the Act.

10. Sun-Bay's counsel frames her arguments in opposition based on the canons of statutory interpretation, specifically on the natural, ordinary and grammatical use of the words used in sections 144 and 145. She advances that these provisions provide for two separate and distinct avenues for advancing an appeal. It is section 145 that allows for an appeal of a final decision of the Registrar who is at that point *functus*.

11. The kernel of the submissions of counsel is that there is no justification for interpreting a statute that is clear and unambiguous in the restrictive way proposed by counsel for Kevin Knasel. Section 144 is left for questions posed to get clarification during the proceedings before the Registrar, before she is *functus*. A section 145 appeal is not

possible without a final decision. Sun-Bay's appeal is filed pursuant to a final decision given by the Registrar, not an interim order or decision given during the course of the proceedings. Unless the Registrar issues a final decision or order, there is nothing to appeal from under section 145. The argument of a single right of appeal by way of case stated is erroneous. The appeal is properly before the court, which has the jurisdiction to hear it.

ANALYSIS

12. The process to determine the preliminary point raised by Kevin Knasel is an exercise of statutory interpretation. The modern approach to statutory interpretation is encapsulated in the decision of the Supreme Court of the United Kingdom in ***R (on the application of O (a minor, by her litigation friend AO))*** v ***Secretary of State for the Home Department***.[1] I have taken the liberty to quote liberally from the statements at paragraphs 29-31 as I find them important and helpful:

> *29.* ***The courts in conducting statutory interpretation are "seeking the meaning of the words which Parliament used":*** *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG [1975] AC 591, 613 per Lord Reid of Drem.* ***More recently, Lord Nicholls of Birkenhead stated:***
>
> > ***"Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context."***
>
> *(R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd [2001] AC 349, 396).* ***Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained. There is an***

[1] [2022] UKSC 3 at paragraphs 29-31

important constitutional reason for having regard primarily to the statutory context as Lord Nicholls explained in Spath Holme, 397:

> ***"Citizens, with the assistance of their advisers, are intended to be able to understand parliamentary enactments, so that they can regulate their conduct accordingly. They should be able to rely upon what they read in an Act of Parliament."***

30. ***External aids to interpretation therefore must play a secondary role.*** *Explanatory notes, prepared under the authority of Parliament, may cast light on the meaning of particular statutory provisions. Other sources, such as Law Commission reports, reports of Royal Commissions and advisory committees, and Government White Papers may disclose the background to a statute and assist the court to identify not only the mischief which it addresses but also the purpose of the legislation, thereby assisting a purposive interpretation of a particular statutory provision.* ***The context disclosed by such materials is relevant to assist the court to ascertain the meaning of the statute, whether or not there is ambiguity and uncertainty, and indeed may reveal ambiguity or uncertainty:*** *Bennion, Bailey and Norbury on Statutory Interpretation, 8th ed (2020), para 11.2.* ***But none of these external aids displace the meanings conveyed by the words of a statute that, after consideration of that context, are clear and unambiguous and which do not produce absurdity.*** *In this appeal the parties did not refer the court to external aids, other than explanatory statements in statutory instruments, and statements in Parliament which I discuss below. Sir James Eadie QC for the Secretary of State submitted that the statutory scheme contained in the 1981 Act and the 2014 Act should be read as a whole.*

31. Statutory interpretation involves an objective assessment of the meaning which a reasonable legislature as a body would be seeking to convey in using the statutory words which are being considered. Lord Nicholls, again in Spath Holme, 396, in an important passage stated:

> ***"The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful, so long as it is remembered that the 'intention of Parliament' is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used. It is not the subjective intention of the minister or other persons who promoted the legislation. Nor is it the subjective intention of the draftsman, or of individual members or even of a majority of individual members of either House. … Thus, when courts say that***

> ***such-and-such a meaning 'cannot be what Parliament intended', they are saying only that the words under consideration cannot reasonably be taken as used by Parliament with that meaning."*** [All emphasis added]

13. I accept that this learning reflects the proper approach which the courts in Belize should adopt in statutory interpretation cases. The language of a provision, in the context of the enactment as a whole, reveals the meaning intended by Parliament. External aids can be used to understand the background or wider context in which the enactment is made but they cannot displace the meaning (which does not lead to an absurdity) conveyed by the language of the provision in the context of the Act as a whole.

14. Of course the starting point is the language of the sections. The Act reads at sections 144 and 145 as follows:

> *144.–(1) Whenever any question arises with regard to the exercise of any power or the performance of any duty conferred or imposed on him by this Act, the Registrar may, and shall, if required to do so by an aggrieved party, state a case for the opinion of the court; and thereupon the court shall give its opinion which shall be binding upon the Registrar.*
>
> *(2) Where an aggrieved party requires the Registrar to state a case for the opinion of the court, such party shall deposit with the Registrar such sum as the Registrar shall consider sufficient to meet the costs of such proceedings.*
>
> *145.–(1) The Minister or any person aggrieved by a decision, direction, order, determination or award of the Registrar may, within thirty days of the decision, direction, order, determination or award give notice to the Registrar in the prescribed form of his intention to appeal to the court against the decision, direction, order, determination or award.*
>
> *(2) On receipt of a notice of appeal, the Registrar shall prepare and send to the court and to the appellant, and to any other person appearing to him from the register to be affected by the appeal, a brief statement of the question in issue.*

(3) On the hearing of the appeal, the appellant and the Registrar and any other person who, in the opinion of the court, is affected by the appeal may, subject to any rules of court, appear and be heard in person or by a legal practitioner.

(4) The court may make such order on the appeal as the circumstances may require, and every such order shall be given effect to by the Registrar.

(5) The costs of the appeal shall be in the discretion of the court.

(6) The Minister or any person aggrieved by an order of the court, may appeal to the Court of Appeal within such time and in such manner as may be regulated by the laws and rules of court for the time being in force relating to appeals to that Court in civil cases.

15. By section 144(1), the Registrar is required to "state a case for the opinion of the court" where "***any question arises with regard to the exercise of any power or the performance of any duty conferred or imposed on him by this Act."*** In my judgment, the ordinary meaning of the language of the section is speaking in terms of disputes as to the lawfulness of the Registrar taking a certain course of action purportedly in the exercise of powers conferred or in fulfilment of duties imposed on her by the Act. It is a dispute which arises *before* the Registrar has made a final decision.

16. The case stated interrogates whether the Registrar can lawfully take the step she is being asked to take or which she purports to have the power to make. This is a question of law which is the sole preserve of the High Court. Consequently, before making a decision, the Registrar is entitled to seek the opinion of the High Court on whether she has the power to act as requested by an individual party or as proposed by herself. Section 144 gives the right to appeal to the High Court by way of case stated for such an opinion.

17. Part 61 of the CPR regulates the procedure by which the case stated is brought before the High Court. It is important to appreciate that when Part 61 of the CPR is drawn in terms of "Appeals to the Court by way of Case Stated", the word 'appeals' must be

understood in the ordinary sense of "*referring a decision to a higher court*" as defined in the Oxford Dictionary.[2] It is not used in the technical sense of creating classes of cases stated such as a 'case-stated simpliciter' and an 'appeal by way of case stated'. There is only one 'case-stated' procedure which is where an inferior tribunal or administrative entity (in this case the Registrar) reduces into writing the circumstances of the dispute or question in issue or application before it to be referred to the High Court for decision. It is the Act of referring the case to the High Court which is the 'appeal' that the CPR envisages. It is not the technical legal meaning of 'appeal' in law which is a challenge to a decision already made by a court or administrative tribunal or person subject to an appellate jurisdiction.

18. Part 61.6 of the CPR prescribes that the person who has requested that a case be stated for the opinion of the High Court must commence proceedings to determine a case by Fixed Date Claim Form and the 'case-stated' must be annexed to the same. I find it convenient to set out Part 61.6 and 61.7 of the CPR at this point:

> *61.6 (1) Proceedings to determine a case must be commenced by issuing a fixed date claim in Form 2.*
>
> *(2) The claim form may be issued by –*
>
> *(a) any party on whom a case was served under Rule 61.5(3); or*
>
> *(b) where a Minister, magistrate, judge of a tribunal, a tribunal, arbitrator or other person is entitled by any enactment to state a case or to refer a question of law by way of case stated to the court, that person or tribunal.*
>
> *(3) The claim form must have the case stated annexed.*
>
> *(4) The claim form, or a statement of claim issued and served with it, must set out the claimant's contentions on the question of law to which the case relates.*
>
> *(5) Such contentions may be in the form of skeleton arguments.*
>
> *(6) The court office must fix a date, time and place for the determination of the case.*
>
> *(7) The claim form must be served on the persons set out in Rule 61.5(3).*

[2] Stevenson, A. (Angus) (2010) *Oxford Dictionary of English*. New York: Oxford University Press

61.7 (1) Not less than 7 days before the date fixed to determine the case, the claimant must file a copy of the proceedings to which the case relates.

(2) The court may amend the case or order it to be returned to the person or tribunal stating the case for amendment.

(3) The court may draw inferences of fact from the facts stated in the case.

(4) A Minister is entitled to be heard on any case stated by him.

19. That Part 61.6 speaks in terms of '*commencing*' proceedings confirms that Part 61 prescribes an original procedure and is not to be confused with an appeal in the technical sense as used in Part 60 of the CPR.

20. The procedure for dealing with stating cases for the determination of the High Court is distinct from the right of appeal against a final decision of the Registrar, as contained in section 145 of the Act. After the Registrar has made a "***decision, direction, order, determination or award,"*** section 145 grants to an aggrieved person (which includes an "aggrieved party") and/or the Minister a right to challenge that decision by way of appeal to the High Court. This is an appeal in the technical sense which I have described at paragraph [17] above.

21. The procedure for appealing to the High Court (i.e. a direct appeal) is contained in Part 60 of the CPR. The appeal is made by issuing a Notice of Appeal in Form 23. The grounds of appeal must be annexed. The Notice of Appeal must be filed within twenty-eight (28) days of notice of the decision appealed against: see Part 60.5 of the CPR.

22. Section 145(1) imposes an additional procedural step to appealing a decision of the Registrar, by requiring that a Notice of Intention to Appeal be served on the Registrar within thirty (30) days of the final decision, determination or award. The Notice of Intention must be in Form R.L.20 of the Registered Land Rules. The purpose of this Notice is to *alert* the Registrar of the appeal. The Notice enables her to prepare a brief statement of the question in dispute to send to the court, the appellant, and any person who from the register she believes will be affected by the appeal.

23. This brief statement of "the question in issue" is not the same as a 'case-stated' in section 144. Parliament is presumed not to legislate in vain. If the legislature intended sections 144 and 145 to be a single mode of appeal by case stated only, section 145(2) would be wholly unnecessary since the question in dispute would have already been contained in the case stated prepared by the Registrar. Imposing a notification requirement in section 145(1) would also be wholly unnecessary since the Registrar is always the starting point for case-stated matters and would be aware of the impending High Court proceedings from the beginning.

24. In my judgment, there is no ambiguity in sections 144 and 145 of the Act. The sections apply to different circumstances, have different requirements, are grouped under different sub-headings, and cannot be read together. They provide two distinct routes to the High Court: by way of case stated in section 144 and; by way of appeal from a decision of the Registrar in section 145. It stands to reason that an opinion by way of case stated can only be sought before a final decision of the Registrar. It follows, therefore, that Sun-Bay is entitled to appeal against the Registrar's decision by way of Notice of Appeal pursuant to Part 60 of the CPR.

25. On the facts, Sun-Bay has complied with the requirements of both the Act and Part 60 of the CPR. The Registrar's decision refusing to remove Caution No. LRS-202201509 from the Land Register was promulgated on February 10, 2023. A Notice of Intention to Appeal in Form R.L 20 dated February 21, 2023 was served on the Registrar, as required by section 145(1) of the Act, and a Notice of Appeal was filed with the High Court on February 22, 2023 – both well within the statutory time limits.

26. Consequently, the appeal is properly before this court. The preliminary objection is dismissed with costs.

DISPOSITION

27. It is ordered that:

a) The second respondent's preliminary objection is dismissed;
b) The second respondent is to pay the appellant's costs of the application to be assessed in default of agreement.

Justice Martha Alexander

Judge of the High Court of Belize