

**IN THE SUPREME COURT OF BELIZE A.D. 2019
(CIVIL)**

CLAIM NO. 357 of 2019

**IN THE MATTER OF a Case Stated pursuant to section 144 of the
Registered Lands Act, Cap. 194 of the Laws of Belize.**

BETWEEN:-

THE REGISTRAR OF LANDS

CLAIMANT

AND

**THE CENTRAL BANK OF BELIZE
GINA GAYLE GRAY
BG/GG ENTERPRISES**

**1st INTERESTED PARTY
2nd INTERESTED PARTY
3rd INTERESTED PARTY**

Dates of Hearing: 15th October, 2019; [oral decision on 8th November, 2019]

Before: The Hon. Madame Justice Griffith

Appearances: Ms. Nichola Cho, Sr. Crown Counsel, Ministry of Lands for the Claimant; Mr. Yohhahseh Cave, Cave Lochan Watson LLP for the 1st Interested Party; Mrs. Magali Marin Young S.C., Marin Young & Co. for the 2nd & 3rd Interested Parties.

RULING ON CASE STATED

Introduction

1. This is a case stated by the Registrar of Lands pursuant to section 144 of the Registered Lands Act, Cap. 194 ('the RLA') of Belize, as enabled by Part 61 of the Civil Procedure Rules, 2005. The case stated seeks the opinion of the Court in respect of the registration of transfers of land by the Registrar of Lands ('the Registrar'), which are subject to foreign exchange controls under the Exchange Control Regulations, Cap. 52S of the Subsidiary Laws of Belize. In particular, the Registrar contends that she is precluded from registering a transfer of land in respect of which the Central Bank of Belize ('the Central Bank') has refused permission to transfer, pursuant to Regulation 40(1) of the Exchange Control Regulations ('the Regulations'). The Central Bank agrees with this position, whilst the purchasers to the transfer advocate that the Registrar is not so precluded, and that the only consequence of a transfer executed without the Central Bank's permission is the criminal penalty prescribed by the Regulations.

The questions posed raise an issue of legislative interpretation as between the Registered Land Act and the Exchange Control Regulations. The case stated in its entirety is as follows:-

- (i) Whether the Registrar of Lands has discretion or is obliged to refuse to register a transaction subject to Regulation 40 of the Exchange Control Regulations, Cap. 52 of the Subsidiary Laws of Belize Revised Edition 2003, where there has been a failure to procure the permission of the Central Bank of Belize or where the Central Bank of Belize refuses to grant permission?*
- (ii) Whether a failure to comply with Regulation 40 of the Exchange Control Regulations, Cap. 52 of the Subsidiary Laws of Belize Revised Edition 2003, is merely an offence punishable in accordance with the provisions of the Exchange Control Regulations and therefore a transaction referred to in Regulation 40 in respect of which no permission has been granted by the Central Bank of Belize is nevertheless capable of being registered by the Registrar of Lands?*
- (iii) Whether a failure to comply with Regulation 40 of the Exchange Control Regulations, Cap. 52 of the Subsidiary Laws of Belize Revised Edition 2003 renders a transaction referred to in the said Regulation 40 in respect of which no permission has been granted by the Central Bank of Belize void ab initio and therefore not capable of being registered by the Registrar of Lands?*
- (iv) Whether Regulation 40 of the Exchange Control Regulations, Cap. 52 of the Subsidiary Laws of Belize Revised Edition 2003 imposes an obligation only upon the owner of land seeking to dispose of or deal with his or her interest in any of the ways referred to in the said Regulation 40, so that in the case of a transfer of land by way of sale in respect of which no permission has been granted by the Central Bank of Belize to the transferor as vendor and which is presented by the purchaser as transferee for registration at the Land Registry, the Registrar of Lands can accept and register same? Or whether Regulation 40 of the Exchange Control Regulations, Cap. 52 of the Subsidiary Laws of Belize Revised Edition 2003 imposes an obligation also upon the other party to a transaction, including a purchaser?*
- (v) In the absence of any exchange control permission by the Central Bank of Belize for a transfer of a parcel of land by a transferor to a transferee, whether the Registrar of Lands can accept for registration and register another transfer of land*

for the same parcel of land in the name of a new transferee in lieu of the original transferee where the Central Bank declined exchange control permission for the original transfer?

Brief Background and Submissions

2. Only the briefest of factual backgrounds is necessary. The 2nd and 3rd Interested Parties are transferees under respective transfers of a single parcel of registered land situate in Placencia, Belize. The 2nd Interested Party is not a resident of Belize and as such permission for the transfer was required pursuant to section 40(1) of Cap. 52S. The transfer was executed, but permission for the transfer was refused by the Central Bank. Upon presentation of the transfer for registration, the Registrar refused to register same on the basis of the absent Central Bank permission. Subsequently, the 2nd Interested Party again presented for registration, a transfer of the same property by its vendor, but on this second occasion, in favour of the 3rd Interested Party. The Registrar declined to register the transfer on the basis that the permission of the Central Bank was nonetheless required, notwithstanding the transfer in the name of the 3rd Interested Party. As regards the several questions posed in the case stated as set out above, the Court considers that there is one underlying question which would properly dispose of the matter in its entirety. That question is really the first one posed, namely, whether the Registrar is obliged to register a transfer, which, being subject to Regulation 40, is presented for registration without the required permission.

3. The relevant legislation engaged by the issue of foreign exchange control and transfer of land is extracted as follows:-

(i) Regulation 40 of the Exchange Control Regulations, Cap. 52S

40. (1) Subject to such exemptions as maybe granted by order of the Central Bank, it shall not be lawful, except with permission granted by the Central Bank and in accordance with any conditions subject to which the permission was granted, for any person resident in any of the scheduled territories to transfer, by way of sale, exchange, gift or mortgage any land situate in Belize or any document of title thereto or conclude any transactions which form part of a series of transactions calculated to result in any such transfer, to a person resident in any country,

the currency of which is a foreign currency, or to a person resident in any of the scheduled territories who shall be a subject or citizen of or a company incorporated in any country the currency of which is a foreign currency.

(2)-(3)”

(ii) Sections 3 and 7 of the Registered Lands Act

“3. Except as otherwise provided in this Act, but subject to section 38 of National Lands Act, Cap. 191, no law, practice or procedure relating to land shall apply to land registered under this Act so far as it is inconsistent with this Act,

Provided that except where a contrary intention appears nothing contained in this Act shall be construed as permitting any dealing which is forbidden by express provisions of any other law or as over-riding any provision of any other law requiring the consent or approval of any authority to any dealing.”

“7. The Registrar may exercise the following powers in addition to any other powers conferred on him by this Act, that is to say,

(a) he may require any person to produce any instrument, certificate or other document or plan relating to the land, lease or charge in question, and that person shall produce it;

(b) he may summon any person to appear and give any information or explanation respecting land, a lease or a charge, or any instrument, certificate or other document or plan relating to the land, lease or charge in question, and such person shall appear and give such information or explanation;

(c) he may refuse to proceed with any registration if any instrument, certificate, or other document, plan, information or explanation required to be produced or given is withheld or any act required to be performed under this Act is not performed;

(d)...(e)”

4. Both counsel for the Registrar and for the Central Bank advance the same argument with respect to the answer to the primary issue – namely – whether the Registrar is obliged to decline the registration of a transfer submitted for registration without the requisite Central Bank permission. Counsel for the Registrar rests her submissions entirely on her construction of the relevant statutory provisions, particularly section 3 of the RLA.

Counsel submits that the intended effect of section 3 is clear on its face – in that unless expressly authorized to do so the Registrar cannot carry out or give effect to any dealing, which under any other law, is prohibited by or requires the permission of any other person or authority. In this regard, Counsel for the Registrar submits that the requirement for Central Bank permission on a transfer involving a non-resident falls squarely within the intended application of section 3 and in the absence of any express intention to the contrary, the Registrar is obliged to uphold the requirement for permission. Counsel for the Central Bank adheres to same view, but extends that argument, by identifying section 7 of the RLA, as providing the basis upon which the Registrar is entitled to refuse to register the transfer in question. Particularly, section 7(c) insofar as it empowers the Registrar to refuse to register any dealing where any instrument, document or certificate required to be produced is not produced. Counsel for the Central Bank therefore regards the permission required under Regulation 40(1), as being one such required document, which would then entitle the Registrar to refuse registration.

5. Besides the issue of construction, both Counsel submit that the transfer executed in breach of Regulation 40(1) was rendered void as a result of the prohibition of the transfer and criminal sanction prescribed. Counsel for the Central Bank cited a number of cases illustrating that a contract prohibited by statute is rendered void.¹ Counsel did however recognize within the line of those authorities, that whether the transaction itself was to be considered illegal, depended on the nature of the act and particular purpose of the prohibition in the first place². Senior Counsel for the 2nd and 3rd Interested Parties premises her submission in respect of the primary question to be answered by the Court, on two bases. First that the refusal of the Registrar to register the transfer presented to her on the grounds of the absence of Central Bank permission to transfer is ultra vires her prescribed powers under the RLA.

¹ In the first instance - **Cope v Rowlands (1836) 2 M&W 150; Cornelius v Phillips (1918) AC 199**

² Counsel for Central Bank illustrated this point by reference to **Curragh Investments Ltd. v Cook (1974) 3 All ER 658** – a requirement relating to corporate governance was held as insufficiently connected to a contract for sale of land.

Senior Counsel submits that the Registrar's functions are primarily administrative (for the purpose of ensuring that all requirements under the Act are complied with), as well as, limited adjudicative powers, such as determination of boundary disputes and prescriptive title. Insofar as it pertains to the function of registration itself, it was submitted that this function is purely administrative, so that as long as all requirements arising under the RLA are met, the Registrar is obliged to complete the process of registration. In relation to the reliance placed on s.7(c) as empowering the Registrar to refuse registration of dealings, Senior Counsel submitted that the documents or instruments referred to in this provision must be those required to be produced or given under the Act – of which the Central Bank permission was not.

6. The main thrust of Senior Counsel's argument however concerned the construction of Regulation 40(1) in terms of the effect of the contravention on the transfer. Contrary to the position advanced by respective counsel for the Registrar and Central Bank, senior counsel for the 2nd and 3rd Interested Parties held the view that the effect of contravention of Regulation 40(1) was not to render the transfer void. This she submitted, was because the prohibition was not against the act itself (the transfer), but against its performance (i.e., transfer by or to a non-resident without permission). The cases cited on this particular issue of construction included at least two regional cases which were decided on the same regulation of Cap 52S, under consideration in the case at bar. The two regional cases were **Kings Beach Hotels Ltd et al v Marks**³ from Barbados and **Grant v Williams**⁴ from Jamaica. Senior Counsel referred to the fact that in **Grant v Williams** the Court of Appeal of Jamaica⁵ articulated the scheme and purpose of the exchange control regulations therein as to '*permit the government to use monetary policy to manage and control the economy of the country.*' Following upon that rationale, it was held in both cases that the failure to obtain the consent required by the exchange control law did not render the formation of the contract to sell the properties in question illegal and such void.

³ Barbados Civ. App No. 23 of 2006

⁴ Jamaica Civ. App No. 20 of 1985

⁵ That court itself referring to earlier the Jamaican decision of *Watkis v Roblins*.

7. Senior Counsel for the 2nd and 3rd Interested Parties has urged this Court to accept the law as decided in these cases, as applicable in kind, to the transfer in breach of Regulation 40(1) in the instant case. Armed with this position in mind, Senior Counsel further submits, that in the absence of the transfer being void, the Registrar, given her administrative functions under the Act, is obliged to accept the transfer for registration, once satisfied that all necessary requirements as to its execution or presentation, under the RLA, are in order. Contrary to the submission of Counsel for the Central Bank regarding the application of section 7 of the RLA, Senior Counsel contended that the absence of documentation which might entitle the Registrar to refuse registration under section 7(c) being limited to such required to be provided under that Act itself, afforded no basis for the Registrar to demand the Central Bank permission, and so refuse registration upon a failure to produce. Proceeding on the basis that the transfer was not rendered void by a failure to comply with Regulation 40(1), Senior Counsel's final submission was that contrary to the legislative intent, the consequence of the Registrar refusing to register the transfer would in fact be to render it void.

Discussion and Analysis

8. The Court has no difficulty with the submissions of senior counsel for the 2nd and 3rd Interested Parties regarding the legal effect of a transfer executed in breach of Regulation 40(1). The Court is quite happy to accept the submission that Regulation 40 does not prohibit the act of transfer by or to a non-resident, in and of itself – but rather, the prohibition pertains to performance of the act. In this regard, the Court notes, (as discussed in **Kings Beach Hotel Ltd.**⁶ in relation to section 37(1) of the Barbados Exchange Control Act) the existence of the equivalent Regulation 31 of Cap. 52S, which in effect preserves the performance of a contract subject to exchange control permission, depending on the intention of the parties to the contract. In the circumstances, the Court is prepared to accept that the prohibition prescribed by Regulation 40(1) of Cap. 52S, pertains to the performance of the act of transfer rather than prohibiting the action of

⁶ Supra at what would be pg 4 of the case report

transferring land by or to a non-national at all. However, the Court is not of the view that the determination of the issue of **registration of the transfer** turns on the interpretation of Regulation 40 as it pertains to the questions of breach and consequence. Counsel for the 1st Interested Party pointed out that the authorities cited by senior counsel for the 2nd and 3rd Interested Parties regarding the consequence of breach of the equivalent of Regulation 40, all concerned the parties to the agreement to transfer, as opposed to any question of registration by the regulating authority, as in the case at bar.

9. As a result, counsel contended that the authorities were not of assistance in resolving the issue of registration of the transfer. The Court agrees with this contention of counsel for the Central Bank that none of the authorities speak to the particular issue of what the Registrar is obliged to do when presented with a transfer executed in breach of Regulation 40. On the other hand, the Court agrees with senior counsel in relation to her construction of section 7(c), in that this section empowers the Registrar to require production of documents arising under the RLA itself. In this regard, the Court considers by way of example, section 111 which expressly forbids the registration of instruments not stamped for stamp duty or in respect of which property taxes are not paid. The Registrar would be within rights to demand production of evidence of payment. Instead of dwelling on the issue of the effect of breach of Regulation 40 on the transfer, the Court attempts to contextualize the issue with a view to its resolution. The issue concerns the exercise of the Registrar's power to register instruments presented for registration - in the instant case, a transfer - versus the existence of the statutory prohibition under a separate Act, against executing a transfer in which one party is a non-resident save for with permission from the Central Bank. The question that arises therefore concerns the relationship between the two Acts, more particularly, the manner in which the two Acts are to be implemented relative to their respective provisions.

10. The Court considers that the answer of how the two Acts are to operate in relation to the other falls squarely within the provisions of section 3 of the RLA. Senior Counsel for the 2nd and 3rd Interested Parties sought to confine the application of section 3 to laws the subject matter of which concern interests in land, thereby excluding the Exchange Control Regulations, which as accepted all around, is concerned with the fiscal interest of regulating the movement of foreign currency out of the country. The Court agrees somewhat with this proposition, given the qualification of 'relating to land' which applies to 'any other law' in the **first part** of section 3. The Court therefore agrees that this first part of section 3, speaks not only to laws which create interests in land, but also laws which regulate the practice and procedure of holding, disposing or recording interests in land in Belize. Such laws would obviously include the Law of Property Act and General Registry Act, and but for the express provision of its section 38, would have included the National Lands Act also⁷. Aside from reserving primacy of the NLA, the first part of section 3, makes clear, that where there is inconsistency, no other law relating to land applies to registered land except as may be otherwise provided in the RLA. The Court agrees that the laws covered by this part of section 3 are those the subject matter of which is land. This interpretation can be illustrated by the Eastern Caribbean Court of Appeal case of **Keithley Lake et al v Richard Vento et al**.⁸
11. The Court had under consideration the operation of the Judgments Act and the Registered Land Act of Anguilla, as pertained to enforcement of a money judgment pursuant to a lien created on land arising out of judgment. Citing Anguilla's equivalent of section 3,⁹ it was acknowledged therein that the controlling legislation for all land in Anguilla was its RLA. Because the RLA lacked a procedure for sale of a judgment debtor's land, it was ruled that there was no inconsistency with the RLA and the Court applied the provisions of the Judgments Act. This is the manner in which the Court apprehends the operation of Belize's section 3 insofar as it applies to inconsistencies amongst laws related to land.

⁷ Section 38 of the National Lands Act, expressly provides that the provisions of that Act prevail in the event of any inconsistency with the RLA.

⁸ AXAHCVP2016/0012

⁹ The Registered Land Act Cap. 30, Anguilla, section 2.

Further illustration of the operation of section 3 (of the RLA Belize) can be taken from **Spiricor of Saint Lucia Ltd. v The Attorney-General of St. Lucia**¹⁰ in which the ECSC Court of Appeal addressed the effect of the Registered Land Act in St. Lucia (equivalent section to Belize's RLA section 3) as against the still existing land laws under the Civil Code. The Court confirmed that whilst s. 3 of the St. Lucia RLA had as its marginal note 'reconciliation with other laws', it was a misnomer to speak of 'reconciliation' as the terms therein resulted in an implied repeal of the law, practice and procedure relating to land, outside of the provisions of the St. Lucia RLA¹¹. Neither of the above cases however, addressed nor were they called upon to examine the proviso, which in those respective cases was in the same terms as that in Belize.

12. It is useful to revisit the proviso for present purposes:-

"...Provided that except where a contrary intention appears, nothing contained in this Act shall be construed as permitting any dealing which is forbidden by express provisions of any other law, or as over-riding any provision of any other law requiring the consent or approval of any authority to any dealing."

The Court was not provided with nor unearthed any authority that applied the proviso to section 3. Notwithstanding the absence of authority, the Court is of the view that construction of the proviso is firstly clear on its face, and secondly, applicable to any law and not just law relating to land. It can be observed that unlike in section 3 proper, the qualification 'relating to land' in respect of the 'other laws' referred to, is absent from the terms of the proviso. Upon the plain reading of the proviso therefore, the Court apprehends firstly the opening words '*except where a contrary intention appears...*' as putting the reader on notice that the matters expressed in the proviso shall be the general rule, unless there is express provision wherever and however arising, to the contrary. The general rule thereafter stated in the proviso captures as its objects - (i) any dealing forbidden by express provisions of any other law; and (ii) any provision requiring the consent or approval of any authority to any dealing.

¹⁰ St. Lucia Civil Appeal No. 3 of 1996.

¹¹ Ibid @ pg 9 of the case report.

What is clearly to be gleaned is that there is no qualification of what kind of dealing is referred to – therefore any dealing as known under the RLA is covered. Further, unlike the qualification of ‘relating to land’ as exists in the main part of section 3, there is no such qualification of ‘express provisions of any law’ – therefore the prohibition may arise out of any law in Belize and in relation to any dealing. Finally, there is no qualification of the authority from which consent or approval to any dealing is required. The clear terms of the proviso therefore are, that unless there is the clear intention expressed within or outside the RLA, a dealing forbidden by any other law remains forbidden; and the requirement for consent or approval remains to be obtained or observed.

13. In relation to the instant case, a transfer would be captured by ‘any dealing,’ and the requirement for the Central Bank’s permission for a transfer by or to a non-resident would be captured either by ‘forbidden dealing’ or ‘consent or approval’ required by ‘any other law’. In the Court’s view it is inconceivable that the proviso to section 3 does not apply to the expressly forbidden dealing of a transfer involving a non-resident which is prescribed by section 40(1) of the Exchange Control Regulations of Belize. Further, the Court draws attention to Schedule IV of the Regulations which makes provision for enforcement of criminal proceedings arising from any breach by any person of any of the Regulations. In addition to the offences created under the Regulations, (which includes that created by Regulation 40(1)), Schedule IV, Part II, paragraph 1(1) statutorily prescribes the creation of inchoate offences and penalties therefor, in respect of offences created under the main Regulations. Aside from the untenable idea of the Registrar of Lands as holder of a public office with statutory responsibility for carrying out prescribed functions partaking in or ignoring the unlawful transfer by effecting its registration, it is possible to go as far as to say, that as envisioned by Part II of Schedule IV of the Regulations, the Registrar would be aiding and abetting the commission of the offence under Regulation 40(1) were she to register the transfer in question.
14. The Court is therefore firmly of the view that by the plain terms of the proviso to section 3 of the RLA, the Registrar is precluded from registering a transfer which she is aware to have been executed in breach of Regulation 40(1) of the Exchange Control Regulations.

To conclude the matter, insofar as senior counsel for the transferees contended that the effect of non-registration would be to render the transfer void, the Court entirely disagrees. The un-registered transfer would fail to pass any proprietary interest in the property¹² (except as may be preserved by sections 26 or 31 of the RLA), but the contract as between the parties remains enforceable in relation to any rights which may flow from non-completion¹³. Further in relation to remedy of the purchaser or the status of the transfer upon refusal of registration, the Court again refers to Regulation 31 (as discussed in *Kings Beach Hotel Ltd. v Marks*)¹⁴, which preserves the enforceability of the contract for sale dependent upon the parties' intentions vis-à-vis the requirement to obtain permission to sell having been a term of the contract. With respect to the disposal of the questions as they arose on the case stated, the following answers are provided by the Court:-

(i) Whether the Registrar of Lands has discretion or is obliged to refuse to register a transaction subject to Regulation 40 of the Exchange Control Regulations, Cap. 52 of the Subsidiary Laws of Belize Revised Edition 2003, where there has been a failure to procure the permission of the Central Bank of Belize or where the Central Bank of Belize refuses to grant permission?

The Registrar of Lands is precluded by virtue of the application of section 3 of the Registered Land Act, Cap. 194, from registering a transfer which to her knowledge is executed in breach of Regulation 40 of the Exchange Control Regulations, Cap. 52S.

(ii) Whether a failure to comply with Regulation 40 of the Exchange Control Regulations, Cap. 52 of the Subsidiary Laws of Belize Revised Edition 2003, is merely an offence punishable in accordance with the provisions of the Exchange Control Regulations and therefore a transaction referred to in Regulation 40 in respect of which no permission has been granted by the Central Bank of Belize is nevertheless capable of being registered by the Registrar of Lands?
AND

¹² *Rosalind Nicholls et al v Rose et al SKBHCVP2011/0015*

¹³ Belize RLA s.40(2)

¹⁴ *Supra* fn 3

(iii) Whether a failure to comply with Regulation 40 of the Exchange Control Regulations, Cap. 52 of the Subsidiary Laws of Belize Revised Edition 2003 renders a transaction referred to in the said Regulation 40 in respect of which no permission has been granted by the Central Bank of Belize void ab initio and therefore no capable of being registered by the Registrar of Lands?

The consequence in law in relation to any offence committed by the parties for breach of, or the legal standing of a transfer executed in breach of, Regulation 40, is irrelevant to the obligation of the Registrar to act in compliance with section 3 of the Registered Land Act, Cap. 194.

(iv) Whether Regulation 40 of the Exchange Control Regulations, Cap. 52 of the Subsidiary Laws of Belize Revised Edition 2003 imposes an obligation only upon the owner of land seeking to dispose of or deal with his or her interest in any of the ways referred to in the said Regulation 40, so that in the case of a transfer of land by way of sale in respect of which no permission has been granted by the Central Bank of Belize to the transferor as vendor and which is presented by the purchaser as transferee for registration at the Land Registry, the Registrar of Lands can accept and register same? Or whether Regulation 40 of the Exchange Control Regulations, Cap. 52 of the Subsidiary Laws of Belize Revised Edition 2003 imposes an obligation also upon the other party to a transaction, including a purchaser?

Regulation 42(2) (Part VIII) of the Exchange Control Regulations, Cap. 52S extends the prohibition in respect of any transaction, imposed on account of the residence of any one or more of the parties to the transaction, to all parties to the transaction.

(v) In the absence of any exchange control permission by the Central Bank of Belize for a transfer of a parcel of land by a transferor to a transferee, whether the Registrar of Lands can accept for registration and register another transfer of land for the same parcel of land in the name of a new transferee in lieu of the original transferee where the Central Bank declined exchange control permission for the original transfer?

It is a question of fact for the Registrar of Lands upon evidence available, to determine whether or not the new transfer has been executed for the benefit of the original transferee in respect of whom permission to transfer was refused. If the Registrar, upon available evidence, comes to that conclusion, the Registrar would then be bound to act in accordance with section 3 of the Registered Land Act.

Disposition

15. The questions on the case stated by the Registrar of Lands pursuant to section 144 of the Registered Land Act are answered by the Court as in paragraph 14 above. There is no order as to costs.

Dated the 12th day of November, 2019.

Shona O. Griffith
Supreme Court Judge.