



**IN THE SUPREME COURT  
TURKS AND CAICOS ISLANDS**

**CL 150 of 2022**

**BETWEEN:**

**DUNCANSON & CO.  
(BERVYN DUNCANSON DBA)**

**Plaintiff**

**And**

**(1) EAST WIND DEVELOPMENT COMPANY LTD  
(2) WILLIAM DEAN REEVES  
(3) RICHARDSON ARTHUR  
(4) JEFFREY HERMAN  
(5) RONNIE MOORE  
(6) JOHN FLEMING  
(7) WILLIAM MADDOX  
(8) WB CORPORATE MANAGEMENT LTD  
(9) SAUNDERS & CO. (NORMAN SAUNDERS JR, DBA)**

**Defendants**

**CL 97 of 2022**

**BERVYN DUNCANSON  
(DBA DUNCANSON & CO.)**

**Appellant**

**And**

**(1) THE REGISTRAR OF LANDS  
(2) THE ATTORNEY GENERAL OF THE TURKS AND CAICOS ISLANDS**  
**Respondents**



**EAST WIND DEVELOPMENT COMPANY LTD.**

**Interested Party/  
Registered Proprietor**

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**REASONS**

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**Before: The Honourable Justice Chris Selochan**

**Appearances: Mr. Beryn Duncanson for the Plaintiff in CL 150/2022 and  
the Appellant in CL 97/2022**

**Mr. Conrad Griffiths KC instructed by Mr. Smith of  
Griffiths and Partners for the 1st to 7th Defendants in CL 150/2002  
and the Interested Party in CL 97/2022**

**Ms. Clemar Hippolyte of the Attorney  
General's Chambers for the Respondents in CL 97/2022**

**No appearance by the 8th and 9th Defendants  
in CL 150/2022**

**Hearing Date: 31<sup>st</sup> July, 2023**

**Venue: Court Room #1, Supreme Court, Providenciales**

**Handed Down: 18<sup>th</sup> August, 2023**

## **Background**

1. These proceedings commenced by Originating Summons filed on 11<sup>th</sup> October 2022 (CL150-22) wherein the Plaintiff, in summary, is claiming, inter alia, that there was a written contract with the First Defendant, East Wind Development Company Ltd., for legal services to be provided to the First Defendant. According to the Plaintiff, certain sums became due and owing to the Plaintiff under the written contract, culminating in a settlement agreement dated 14<sup>th</sup> June, 2007. The Plaintiff further contends that Defendants 2 to 7 acted fraudulently by transferring and selling various parcels of land. The Plaintiff is also asking for, inter alia, full disclosure and accounting by the Defendants. The Plaintiff claims in the alternative that even if there was no concluded contract for legal services between the parties, the Plaintiff would still be entitled to a quantum meruit for all their work produced as assessed up until 2004 and 2007, plus interest for the legal services in equity and under the general principles of Restitution due to the Defendant's delay and acts of fraud.
2. The reliefs sought by the Plaintiff in its Originating Summons are as follows:
  - i. An order for accounting by all the Defendants to the Plaintiff.
  - ii. An order for payment of all sums due under the aforesaid settlement agreement of 14<sup>th</sup> June 2007 including all contract interest @ 2% per month for the avoidance of doubt compounded monthly not only by virtue of the express terms for said interest in the contract, but also by virtue of the following additional considerations where the Defendants have operated in mala fides:- a) their joint and several breaches of contract; b) breach of directors' duties; c) in consequence of both proprietary and promissory estoppel; d) repeated fraudulent misrepresentations; e) conspiracy between all Defendants and 3<sup>rd</sup> Parties unknown; f) failure to act in good faith; g) breach of statutory duties under the Companies Ordinance; and h) the unconscionable conduct of the Directors with regard to the Plaintiff, but

with especial reference to Director William Dean Reeves by the additional appearance of accessory to 'cheating the public revenue' to further the aforesaid fraud upon the Plaintiff, as evident in the aforesaid Transfers of the 4 lots 40311/27-30 (inclusive), and in respective contemporaneous emails and in those deeds as registered.

- iii. That a declaration be made for a Charging Order be registered for the benefit of the Plaintiff as against all the 1<sup>st</sup> Defendant's known TCI properties – all those parcels remaining in the name of the 1<sup>st</sup> Defendant within the Phase II parcels at Block 40311, East, Middle Caicos – without prejudice to generality namely- 40311/44, 45, 46, 47, 48, 49, 50, 53, 54, 55, 56, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74 & 75, EAST, MIDDLE CAICOS (COMPRISING FORMER 40311/42; WHICH ITSELF FORMER 40311/31 & 32).
- iv. That all the fraudulent and irregular transfers from out of East Wind Development Company Ltd these past 3 years – all such as are lacking signatures by the Transferees, in clear breach of Land Registry protocol, and/or also where they have closed at a substantial and considerable undervalue thus cheating the public revenue – be hereby ordered to be set aside and reversed at the Land Registry, without prejudice to generality namely: -
  - a) Those hasty transfers out of EWD's name from Phase 1 last year of the following 4 lots – namely 40311/27-30 (inclusive);
  - b) Those transfers out of EWD's name from Phase II the past 3 years of the following 6 lots – 40311/51 & 52; 57 & 58; and 59 & 60.
- v. Such further relief as may be advised and should occur to this Court to be meet.

3. The Appellant in CL 97 of 2022 (being the Plaintiff in CL 150-22) had applied for cautions over all the Interested Party's properties in Middle Caicos, which was rejected by letter from the Registrar on 16<sup>th</sup> September 2022. This decision is the subject of an appeal (Civil Appeal CL 97-22), which is also before this court. The Appellant had appealed these rejections by separate notices on 26<sup>th</sup> September 2022 and 4<sup>th</sup> October 2022.
4. However, as a result of the filing and service of the Originating Summons in CL 150-22, the Registrar of Lands imposed a restriction on the disposition of lands of the First Defendant in this action (being the Interested Party in CL 97-22) on 20<sup>th</sup> October 2022.
5. The restriction was entered pursuant to section 132 of the Registered Land Ordinance CAP 9:01 ("the Ordinance"), which provides:

*132(1) For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, after directing such inquiries to be made and notices to be served and hearing such persons as he thinks fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land lease or charge.*

*(2) A restriction may be expressed to endure –*

*(a) for a particular period; or*

*(b) until the occurrence of a particular event; or*

*(c) until the making of a further order, and may prohibit or restrict all dealings or only such dealings as do not comply with specified conditions, and the restriction shall be registered in the appropriate register.*

*(3) The Register shall order a restriction to be entered in any case where it appears to him that the power of the proprietor to deal with the land, lease or charge is restricted.'*

6. Pursuant to section 133(2) of the Ordinance, once a restriction remains registered, no instrument which is inconsistent with it shall be registered except by order of the court or of the Registrar.
7. Having entered the restriction, the Registrar served Notice of a Statement of Questions on 12<sup>th</sup> December 2022 making the Interested Party a party to CL AP 97/22. The Statement of Questions contained six questions in relation to the refusal of the Registrar to enter the cautions and one question (Question 7) in respect of the registration of the restriction. For the purpose of this opinion, Question 7 is relevant, and I therefore state it in full:

**Question 7:** *Whether as a further issue, the Registrar was correct to have ordered and registered a restriction against disposition pending determination of case CL150/22 on his determination that the service of proceedings gives 'sufficient cause' for such restriction on disposition.*

8. The Statement of Questions was filed pursuant to Section 146 of the Ordinance which provides:

*Whenever any question arises with regard to the exercise of any power or the performance of any duty conferred or imposed on him by the Ordinance, the Registrar may and shall if required to do so by an aggrieved party state a case for the opinion of the Supreme Court, and thereupon the Supreme Court shall give its opinion thereon, which shall be binding upon the Registrar.*

9. In accordance with section 146 of the Ordinance, the Registrar, being in doubt about whether he had acted correctly in registering the restriction, therefore sought the opinion of the Supreme Court, as he was entitled to.

10. Paragraph 8 of the Registrar's Statement of Questions filed on 12<sup>th</sup> December, 2012 states:

*Following an application presented to the Land Registry on 20<sup>th</sup> October, 2022 (Application 3234/22) the Registrar, after raising enquiries of Mr. Duncanson for him to confirm service of the Originating Summons in CL150/22 made an Order dated 31 October 2022 imposing a restriction on dealing with the subject titles pursuant to section 231 of the Registered Land Ordinance in the form set out below:*

*"No dealing to be registered until the conclusion of case CL150/22 in the supreme Court otherwise than pursuant to an Order of the Court or the Registrar."*

11. The Interested Party brought an application for removal of the restriction via Notice to the Registrar herein on 13<sup>th</sup> February 2023 within CL AP97/22 seeking, inter alia, the following, at relief (4):

*An Order pursuant to inter alia Order 29 of the Rules by way of interim relief and section 134 of the Registered Land Ordinance CAP 9:01 (the "Ordinance") directing the Respondent, the Registrar of Lands, to forthwith remove the restrictions registered on title to parcels 40311/44-50, 53-56, 61-75 (the "Properties" on the ground that:*

- (i) No sufficient basis for the registration of a restriction exists in law under section 132 of the Ordinance as the Appellant has disclosed no legal or equitable interest in the Properties.*
- (ii) The Appellant has neither shown nor disclosed any sufficient basis for alleging fraud or improper dealing and in any event absent any interest in the Properties no proper basis for a restriction exists; and*

(iii) *The request for a caution and the consequent restrictions are improperly made and obtained in that the Registrar of Lands has no statutory power to provide de facto injunctive relief to an alleged creditor claimant thereby usurping the role of the Supreme Court and section 124 of the Ordinance.*

12. These matters, being CL 150/2022 and 97/2022, first came before me on Wednesday 21<sup>st</sup> June 2023, on which date the Plaintiff made an application to adjourn the proceedings sine die on the ground that it was preparing to file proceedings for judicial review challenging my assignment to these matters. I adjourned the matters to 29<sup>th</sup> June, 2019 to consider the Plaintiff's application. However, after taking into account the court's schedule and the diaries of counsel for all the parties, a hearing date of 27<sup>th</sup> July 2023 was set down in the event that the Plaintiff's application was unsuccessful.
13. On 29<sup>th</sup> June 2023 I gave my decision, in which I denied the Plaintiff's application for the matter to be adjourned sine die. On that date, I was invited by counsel for the Interested Party to deal with the issue of whether the Registrar had been correct to impose the restriction, having regard to the hardships that he contended were being caused to his clients. However, I declined to do so, indicating that this would be addressed at the hearing of the matters on 27<sup>th</sup> July, 2023.
14. Three days before the hearing on 27<sup>th</sup> July 2023, the Plaintiff filed an application for me to recuse myself from the matters. This was met with an application for abuse of process by counsel for the First to Seventh Defendants, on the primary ground that I had previously considered the issue of recusal in my judgment on the application for the adjournment sine die.
15. At the hearing on 27<sup>th</sup> July 2023, counsel for the Plaintiff, Mr. Duncanson, claimed that he was feeling unwell and could not proceed with the matter. Notwithstanding

representations to the court by counsel for the First to Seventh Defendants, Mr. Griffiths KC, that he had been instructed that Mr. Duncanson was moving with vigour and had turned around and winked and grinned at the Defendants who were present in court, I decided to give the benefit of the doubt to Mr. Duncanson and adjourn the matters, notwithstanding the fact that the entire day had been set aside for the hearing of them. However, on the enquiry of the court, Mr. Duncanson said that he was well enough to address the court on the abuse of process application and the court entertained submissions from the parties on this issue. The court then adjourned the matters to the last date of the law term, being 31<sup>st</sup> July 2023 at 1:00 p.m., for its decision on the abuse of process application. Having regard to the fact that the court would be unable to facilitate the full hearing of the matters on that day due to the limited time available and that there was not going to be a new hearing date before at least late September 2023 (due to the court vacation), the court indicated to the parties that in the event that it ruled that the recusal application amounted to an abuse of process, it would hear the parties on the issue of whether the Registrar acted lawfully in registering the restriction.

16. On 31<sup>st</sup> July 2023, the Plaintiff's attorney arrived in court at around 1:20 p.m., well after the scheduled 1:00 p.m. start, claiming that a constitutional motion was being filed against me in respect of alleged breaches of his client's constitutional rights and that, as such, the matters should proceed no further. He also claimed that because of directions that I had given in another matter in which he was counsel involving a general recusal application, I could not do anything further in these matters. I again carefully considered Mr. Duncanson's arguments, but having not been served with any constitutional motion, having already addressed the issue of my recusal in these matters, and there being nothing before the Court that would cause me to stay the proceedings, I decided to proceed with the hearing. I pause to point out that to date I have not been served with any filed Constitutional Motion on behalf of Mr. Duncanson and/or his client.

17. I then proceeded to deliver my ruling, the effect of which was that the application for recusal amounted to an abuse of process. After hearing from the parties, I granted leave to the Plaintiff to appeal this decision as well as the decision that I had given on 29<sup>th</sup> June, 2023, but declined to stay the proceedings.
18. I then proceeded to hear arguments from the parties on the issue of whether the Registrar had acted lawfully in registering the restriction. Following this, Mr. Duncanson requested time to submit additional arguments in writing and the Court acceded to his request, granting both parties until Friday 4<sup>th</sup> August 2022 to provide further Submissions in writing if they wished to do so. All parties took advantage of this opportunity and the Court is grateful to counsel for their efforts in this regard.
19. Essentially, the Court is required at this stage to give its opinion on the following issue: Whether the Registrar of Lands acted correctly in registering a restriction on dealings with parcels of lands owned by the Interested Party (40311/44-50, 40311/53-59 and 40311/61-75).

#### **Summary of the Plaintiff's (Appellant's) Submissions**

20. On behalf of the Plaintiff, Mr. Duncanson submitted that the Interested Party failed to lodge an appeal within 30 days of the registering of the restriction as provided for by section 146 of the Ordinance. This, he has contended, is fatal to the Interested Party's quest to have the restriction removed.

21. Mr. Duncanson further submitted that, in any event, this court could not proceed any further with the matters since it had recently given directions in relation to a general recusal application involving him which should be determined before. In addition, he asserted that a constitutional motion had been filed seeking, inter alia, a Declaration that I do immediately stop appearing in all matters involving the applicants and/or their counsel due to, inter alia, what he contends is a bias against his client.
22. He further argued that the restriction was registered because the issue of fraud was raised in the proceedings which he filed as well as in the supporting narrative affidavit, and that the issue of fraud was evident on the face of these documents. As such, he contended that the status quo should remain intact pending the final determination of all the matters.
23. Mr. Duncanson also referred to a letter dated 23<sup>rd</sup> February 2023 by the Registrar to counsel for the Interested Party in which the Registrar was adamant that the issue of whether the restriction was properly registered should be determined by the Court.
24. By way of background to this letter of 23<sup>rd</sup> February, 2023, by letter dated 13<sup>th</sup> February, 2023, the attorney-at-law for the Interested Party had written to the Registrar of Lands, enclosing a copy of the Notice of Application challenging the entry of restriction on the Registers for the relevant properties and stating, inter alia, the following:
- “For the reasons given by you, with which we concur, the Applicant, Duncanson & Co., has no interest (legal or equitable) in the relevant properties. On that basis there was no proper reason as to why the restriction should have been entered on the registers. You appear to impliedly concede that point in your Statement of Questions in issue pursuant to Section 147(2) of the Registered Land Ordinance (the “Ordinance”).*

*In the circumstances we invite you to now exercise your discretion to remove the restrictions which discretion you continue to have under section 134 of the Ordinance.*

*As you will appreciate, the entry of the restrictions (which we respectfully say is wrongful) is causing loss and damage to the registered proprietor in that it has delayed the sale of one of the parcels (Parcel 40311/61)."*

25. By letter dated 23rd February, 2023, the Registrar had replied to the letter of 13<sup>th</sup> February, 2023. The text of the letter dated 23<sup>rd</sup> February 2023 from the Registrar of Lands to the attorneys-at-law for the Interested Parties, Griffiths & Partners, is as follows:

*Dear Sirs,*

**CL 97/22 Titles 4031 1/44-50: 53-56, 61-75 Appeal under section 147, RLO**

*I refer to your letter of 13 February 2023, Addressing its content I respond as follows:*

- 1. I have taken the decision not to register cautions over the titles when this was applied for by the Applicant, Mr. Beryn Duncanson, an attorney in application 2975/22.*
- 2. Mr. Duncanson has appealed this decision in form RL27. This was filed in court prior to submission to the Register of Lands as section 147 of the Registered Land Ordinance requires. It was allocated reference CL97/22 by the Registrar of the Supreme Court and this reference appears to be continuing. I have raised a preliminary point with the court about this procedure in my reference to the court.*
- 3. The brief statement of the questions in issue was referred to the court on 12 December 2022. I await the directions of the court in this matter.*
- 4. I have registered notice of appeal on the titles.*
- 5. I have registered in response to an application from Mr. Duncanson (application 3234/22) a restriction prohibiting dealing until the conclusion of case CL150/22 in the Supreme Court. **You have not appealed against the registration of this restriction.** (Emphasis mine).*

6. *I have, acting under section 146, referred the question of whether I was right to impose this restriction to the Supreme Court [paragraph 18 of the filed Statement of the 12 December 2022].*
7. *The matter is properly before the court in reference 97/22 and I await the Directions of the Court in these proceedings on 1 March 2023. The questions I have referred to the Court is whether or not I was correct to register the restriction bearing in mind there is no charging order and that a contractual claim, even where specific performance is awarded, acts in personam only. I consider the reference from the Registrar of Lands and the appeal should be progressed in advance of the substantive dispute between the parties.*

*I am not trying to appear unhelpful but it would be inappropriate for me to enter into any further correspondence with the parties without direction from the court and I am not required to do so.*

*Yours faithfully,*

*Nicholas Arculus*

*Registrar of Lands*

*cc B Duncanson; cc Registrar of the Supreme court (Ag)*

*cc Registrar of the Supreme Court*

### **Summary of the Interested Party's (First Defendant's) Submissions**

26. The position of the Interested Party is quite simple: the Plaintiff has failed to assert that he has any legal or equitable interest in the properties and the restriction on the lands should be removed forthwith because there is no sufficient basis for the registration of these restrictions under section 132 of the Registered Land Ordinance.

27. It was submitted that a lawyer's/solicitor's contract for provision of legal services or retainer does not in itself create an interest in any assets of the client or property of that client. In this regard, reference was drawn to, inter alia, the decision in *Gavin Edmondson Solicitors Ltd v Haven Insurance Company Ltd* [2018] UKSC 21.
28. The Interested Party further asserted that by registering the restriction, the Registrar of Lands had, in effect, provided the Plaintiff with a "free injunction" in what is an alleged mere creditor claim, thereby usurping the role of the Supreme Court and section 124 of the Ordinance.
29. The restriction is, according to the Interested Party, causing it loss and damage in that the Registrar has refused to register a transfer of Parcel 40311/61 from the Interested Party to a bona fide purchaser.

### **Summary of the Registrar's Submissions**

30. Having considered the Submissions and the decision of the Privy Council in *Attorney General of the Turks and Caicos Islands and Another (Appellants) v Richardson (as Trustee in bankruptcy of Yellowstone Club World LLC (Respondent))* [2013] UKPC 9 (Privy Council Appeal No. 0047 of 2012) (which is considered below in the Court's analysis), the Registrar seemed minded to agree that he may have erred in the registering of the restriction.
31. Whilst acknowledging that he has the authority to remove the restriction without the intervention of the court, he nevertheless continues to seek the opinion of the court on the correctness of his actions in registering the restriction.

### Analysis of the Court

32. Before proceeding, I pause to state that I have noted and considered the argument of Mr. Duncanson that the Interested Party should not be granted relief since it was out of time in the filing of an appeal, being outside of the 30-day period specified by section 147 of the Ordinance. Mr. Duncanson has also sought to draw support from the highlighted portion of the letter of 23rd February, 2023 in this regard. (See paragraph 25 supra).

33. Section 147(1) of the Ordinance provides as follows:

*"The Permanent secretary, Finance 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 Supreme Court against the decision, direction, order, determination or award."*

34. Section 147(1) therefore provides a mechanism whereby a person aggrieved by a decision of the Supreme Court can appeal the decision within thirty (30) days of its delivery.

35. The issue of the restriction being properly registered is being considered by this court at this stage by virtue of:

- i. The Registrar's Statement made by way of referral in CL AP 97/22 pursuant to sections 146 and 147(2) of the Ordinance seeking the court's opinion on,

inter alia, whether he was correct to have ordered and registered a restriction against disposition pending determination of case CL150/22 on the determination that the service of proceedings gives 'sufficient cause' for such restriction on disposition.

- ii. The Interested Party's Notice of Application in CL AP97/22 for removal of the Restrictions pursuant to section 134(2) to which the Registrar of Lands is a named party.

36. The appellate process under section 147 bears no relevance to my consideration of these matters and the issue of the Interested Party being out of time therefore simply does not arise.

37. I have also considered the submissions of Mr. Duncanson in which he has contended that by virtue of the filing of the Constitutional Motion and the application for my recusal in another matter, I am no longer able to hear these matters. (See paragraph 21 *supra*). I am not in agreement with this position. Firstly, the filing of those actions do not operate as a stay of these proceedings. Secondly, this court has already considered and ruled on the issue of recusal in these matters. Thirdly, to bring this matter to a standstill due to the mere filing of another action will set a dangerous precedent that some parties may abuse by filing actions challenging a judge's continued presiding over a matter in order to delay litigation and perhaps, in some instances, engage in judicial forum shopping. Fourthly, I have not been served with the filed Constitutional Motion referred to by counsel for the Plaintiff.

38. I will now go on to consider the issues that I consider to be relevant to my opinion in this matter.

39. Pursuant to section 132(1) of the Ordinance, for the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, after directing such inquiries to be made and notices to be served and hearing such persons as he thinks fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land lease or charge.

40. The Registrar is therefore empowered to enter a restriction:

- i. For the prevention of any fraud; or
- ii. For improper dealing; or
- iii. For any other sufficient cause.

41. I return to Question 7 of the Registrar's Statement of Questions: *Whether as a further issue, the Registrar was correct to have ordered and registered a restriction against disposition pending determination of case CL150/22 on his determination that the service of proceedings gives 'sufficient cause' for such restriction on disposition.* (Emphasis mine).

42. It is self-evident from the Submissions on behalf of the Registrar, and the letter dated 23<sup>rd</sup> February 2023 from the Registrar of Lands to the attorneys-at-law for the Interested Parties, Griffiths & Partners, that the restriction was registered in response to the filing of action CL150/22.

43. It is clear, by the Registrar's very statement in Question 7 (supra), that the restriction was registered because he found the situation to fall within the third of the three categories outlined in paragraph 40 (supra): "For any other sufficient cause". In other

words, the restriction was not entered “for the prevention of any fraud” or “for improper dealing” notwithstanding the very serious allegations alluded to in the Plaintiff’s Originating Summons.

44. The Plaintiff’s argument that the restriction was registered because the issue of fraud was revealed in his pleadings therefore cannot be sustained since this is simply not the case.
45. In any event, the legislation does not permit the registering of a restriction merely because an issue of fraud is raised but rather for *the prevention of fraud*.
46. The issue for determination can thus be further narrowed to state whether the scenario fell within the ambit of “other sufficient case”.
47. The further issue, as identified by the Registrar, is whether or not the Registrar was correct to register the restriction bearing in mind there is no charging order and that a contractual claim, even where specific performance is awarded, acts in personam only.
48. I return to the reliefs claimed by the Plaintiff in action 150/22. The primary claim in the Originating Summons is for payment of all sums due under a settlement agreement of 14<sup>th</sup> June 2007 in respect of legal services performed by the Plaintiff for the Defendants.

49. In this context, I will now proceed to examine what I consider to be the relevant authorities.

50. In *Attorney General of the Turks and Caicos Islands and Another (Appellants) v Richardson (as Trustee in bankruptcy of Yellowstone Club World LLC (Respondent))*<sup>1</sup>, the issue was whether the Registrar acted correctly in registering a restriction under section 132 of the Ordinance against property that the government claimed an interest in due to unpaid stamp duty. The restriction prohibited the dealings with the property until all the stamp duty had been paid. The Board agreed with the Court of Appeal that the Registrar entered the restriction based upon the application of the government and did not direct her mind to whether there was other sufficient cause. The restriction was held to have been wrongly entered.

At paragraph 28 of its judgment, the Board said:

*The judgment of the Court of Appeal is dated 3 May 2012. It was delivered by Ground JA. At paragraph 17 of that judgment the Court upheld the judge's view that the Government had no interest in the land They said this:*

*"In this case TCIG was claiming unpaid Stamp Duty. Even after judgment such a claim remains in personam. We have been shown nothing in the Stamp Duty Ordinance or elsewhere which converts such a claim into a charge against the land concerned. An unsatisfied judgment could give rise to a charge by way of a Charging Order, but that had not been done here at the time of the registration of the Restriction. TGIG had, therefore, no interest in the land, despite the assertions to the contrary contained in the application. We do not understand 19ecognizn to be seriously contested before us, although it was argued at length before the trial judge."*

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<sup>1</sup> [2013] UKPC 9 (Privy Council Appeal No. 0047 of 2012)

The Board also said the following at paragraphs 35 to 37:

*35: In exercising the power on the basis of the application that was made on behalf of the Government – and in making Entry No. 5 on the register – the Registrar must be taken to have accepted that the Government was entitled, by virtue of the interest in the land which it claimed, to prohibit any dealing with the land comprised in title 60400/219. The Board can see no escape from the conclusion that the Registrar did not, in fact, ask herself whether there was any sufficient cause – other than the claim made on behalf of the Government – which should lead her to enter a restriction.*

*36. In reaching that conclusion the Board rejects the submission, made on behalf of the appellants, that the restriction entered comprises two distinct limbs: (A) a statement that “The Government of the Turks and Caicos Islands claims an interest under the Stamp Duty Ordinance in whole of the above mentioned parcel as more fully set forth in the Application to Enter a Restriction dated 19<sup>th</sup> May 2010” and (B) an order, made under section 132(1) of the Ordinance, by which the Registrar “prohibits any dealing with the parcel until the full amount of stamp duty on the sale of the parcel from Worldwide Commercial properties Ltd to Emerald Cay Ltd on 14 August 2006 has been duly paid”. It is plain that the subject of the verb “prohibits” is “The Government of the Turks and Caicos Islands”: the restriction cannot be read in the sense that it is the Registrar who is the subject of that verb. And, given that the text of the restriction follows, without material variation, the text of the restriction applied for in the Government’s application dated 4 June 2010, that is unsurprising.*

*37: If the Registrar did not, in fact, ask herself whether there was sufficient cause – other than the claim made on behalf of the Government – which should lead her to enter a restriction, then her decision to do so was flawed in law. For the reasons that Mr. Justice Martin and the Court of Appeal have given, there was no basis for the Government’s claim that it was entitled to an interest in the land comprised in title 60400/219; and no basis*

*upon which the Government was entitled to prohibit dealings with that land until the full amount of the stamp duty payable on the transfer from Worldwide Commercial Properties Ltd to Emerald Cay Ltd had been made."*

And at paragraph 40, the Board stated, *inter alia*:

*"...For the reasons explained by Mr. Justice Martin and the Court of Appeal, underpayment of stamp duty at the time that the proprietor acquires title by registration is not, of itself, a basis for restricting the registered proprietor's power to deal with the land."*

51. In *Gavin Edmondson Solicitors Ltd v Haven Insurance Co Ltd*<sup>2</sup>, Lord Briggs said the following at paragraphs 36 and 37 on the issue of a solicitor's equitable lien:

*"[36] The authorities on the solicitors' equitable lien (including many of those 21ecognized above) were recently reviewed by the Court of Appeal in Khans Solicitors (a firm) v Chifuntwe [2013] EWCA Civ 481, [2013] 4 All ER 367, [2014] 1 WLR 1185. The fund in question consisted of a debt arising from the agreement of the Home Secretary to settle pending judicial review proceedings by a payment of a specific sum on account of the claimant's costs. The payment was made direct by the Treasury Solicitor to the claimant (by then acting in person) after express notice from the claimant's former solicitors that they claimed a lien. The Home Secretary was ordered to pay the settlement sum a second time to the solicitors, less an amount already paid by the client on account. Sir Stephen Sedley provided this summary ([2014] 1 WLR 1185 at [33]): 'In our judgment, the law is today (and, in our view, has been for fully two centuries) that the court will intervene to protect a solicitor's claim on funds recovered or due to be recovered by a client or former client if (a) the paying party is colluding with the client to cheat the solicitor of his fees, or (b) the paying party is on notice that the other party's*

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<sup>2</sup> [2018] UKSC 21

*solicitor has a claim on the funds for outstanding fees. The form of protection ought to be preventative but may in a proper case take the form of dual payment.'*

*[37] I consider that to be a correct statement of the law. It 22ecognized that the equity depends upon the solicitor having a claim for his charges against the client, that there must be something in the nature of a fund against which equity can 22ecognize that his claim extends (which is usually a debt owed by the defendant to the solicitor's client which owes its existence, at least in part, to the solicitor's services to the client) and that for equity to intervene there must be something sufficiently affecting the conscience of the payer, either in the form of collusion to cheat the solicitor or notice (or, I would add knowledge) of the solicitor's claim against, or interest in, the fund. The outcome of the case also 22ecognized that the solicitor's claim is limited to the unpaid amount of his charges. Implicit in that is the recognition that the solicitor's interest in the fund is a security interest, in the nature of an equitable charge."*

52. In *Turner & Co (a firm) v O Palomo SA*<sup>3</sup>, it was held that a solicitor's claim for costs not fixed by agreement or assessment is not for a liquidated sum. In this matter, the solicitor had contended that there was an agreement that the time of the relevant fee-earner was to be paid for at a given hourly rate. Evans LJ, giving the judgment of the court said, *inter alia*, at page 367:

*'Mr. Morgan submits that the legal basis for the solicitor's claim is found in s 15 of the Supply of Goods and Services Act 1982 in any case where a contract exists between the solicitor and client. The contract contains a statutory implied term "that the party contracting with the supplier will pay a reasonable charge", and what is a reasonable charge is a question of fact. This has to be read, in the case of a solicitor, subject to the terms of the retainer in the particular case and subject also to the statutory provisions which give the solicitor, as well as the client, certain additional rights. But we do not see any difficulty in holding that the solicitor's claim is for a reasonable sum, whether by statute or at common law, and not for a liquidated sum. Again in accordance with general principles,*

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<sup>3</sup> [1999] 4 All ER 353

*the burden of proving that the sum is reasonable rests upon him. This is supported, if authority is needed, by the judgments in Re Park [(1889) 41 Ch D 326] and Jones & Son v Whitehouse [[1918] 2 KB 61, [1918–19] All ER Rep 708] which I have quoted above.'*

53. The case of *Truex v Toll*<sup>4</sup> concerned a debt arising out of a solicitor's unassessed bill, which of course could not be finalized without reference to principles such as reasonableness. Proudman J held that a solicitor's claim for costs, not fixed by agreement, assessment or judgment, was not a debt on which a bankruptcy petition could be founded and said, inter alia at paragraph 24:

*'... it would seem to follow as a matter of principle that a claim for solicitors' fees not as yet judicially assessed or determined is not a claim for a liquidated sum which can be the subject of a bankruptcy petition under s 267 of the 1986 Act, even if the period for challenge under the 1974 Act has expired.'*

Proudman J. then went on at paragraph 36 to state the circumstances in which the sum claimed in a solicitor's bill is converted from unliquidated to liquidated:

*"...Accordingly any admission, acknowledgment or agreement converting the amount claimed from an unliquidated to a liquidated sum must be one from which the client has bound himself not to resile. A mere acknowledgment would be insufficient to bind him to forego judicial assessment or determination..."*

54. I have come to the following conclusions based on the principles extracted from the authorities:

- a. The Plaintiff has failed to establish any legal or equitable interest in any of the Interested party's properties so as to justify the registering of the restriction.

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<sup>4</sup> [2009] EWHC 396 (Ch)

- b. There was no charging order at the time of the registration of the restriction and the Plaintiff's claim could not have created a charge over the Interested Party's lands, the claim being primarily a contractual claim which acts in personam and which would not affect the lands of the Interested Party unless and until a charging order is made.
- c. The Plaintiff's claim at this stage is for an unliquidated debt. Even if the Plaintiff is successful in his action on the issue of liability, the issue of quantum would remain in dispute.

55. It is therefore the considered and respectful opinion of this court that the Register erred in registering the restriction.

56. Put another way, and in direct answer to the Registrar's Question 7, the court is of the opinion that the Registrar was incorrect to have ordered and registered a restriction against disposition pending determination of case CL150/22 on his determination that the service of proceedings gives 'sufficient cause' for such restriction on disposition.

57. Having given this opinion, there is no need for me to make an Order directing the Registrar to remove the restriction pursuant to the Interested Party's Notice of Application, since, pursuant to section 146 of the Ordinance, the Registrar is bound by the opinion of this court.

58. In addition, counsel for the Registrar had given an undertaking in court that the Registrar would act to remove the restriction if the Court had come to the conclusion that it was unlawfully registered. The Court has in fact come to this conclusion so one

would expect that the Registrar would act accordingly, bearing in mind the continued prejudice which the Interested Party has complained of once the restriction remains in place. I hasten to add that there is no need for the Registrar to give any affected party an opportunity to be heard before proceeding to act since to do so would be a superfluous and time-wasting exercise, the relevant parties having already made representations before this court.

59. I conclude with an observation. As previously canvassed, pursuant to section 132(1) of the Ordinance, for the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, *after directing such inquiries to be made and notices to be served and hearing such persons as he thinks fit*, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land lease or charge. (Emphasis mine).

60. The registering of a restriction has serious consequences, since it can prevent the actual disposition of the property in question. With the exception of cases where there is clearly the need to act urgently for the prevention of fraud or improper dealing or other serious cause, it would be advisable for the Registrar to invite representations from the proprietor before registering a restriction. Indeed, the legislation contemplates this course of action. (See the emphasised portion in paragraph 59 (supra)).

61. In the instance where the Registrar forms the view that he has clearly erred in entering a restriction, he ought to act expeditiously in taking the necessary steps to remove the restriction (after following the requirements outlined in the legislation of course), in order to minimise the losses sustained or prejudice suffered by a proprietor. The Registrar's authority to remove a restriction is outlined in section 134(1) of the

Ordinance, which provides that the Registrar may at any time, upon application by any person interested or of his own motion, and after giving the parties affected thereby an opportunity of being heard, order the removal or variation of a restriction.

62. This is not in any way an indictment on the actions of the present Registrar, since he was entitled to seek the opinion of the court where he was in doubt about the correctness of his actions. However, in a situation where the Registrar is clear that he has erred, he should act expeditiously to correct his wrong.

63. The parties are invited to make submissions in writing on the issue of costs on or before 22nd September 2023 and I will hear the parties on this issue at the next date of hearing, being 28<sup>th</sup> September, 2023.

**Dated the 17<sup>th</sup> day of August, 2023**

**The Honourable Justice Chris Selochan  
Judge of the Supreme Court**

