

25.6.96



IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN  
CAUSE NO. 158/96

BETWEEN: ADELE ANN TARTAGLIA PLAINTIFF  
AND: COLONIAL DEVELOPMENT CORP. LTD DEFENDANTS  
AND: ALAN EARL WALKER

FOR THE PLAINTIFF: Mr. Michael Parkinson  
FOR THE DEFENDANT: Mr. John McDonough

RULING

The Plaintiff ("the wife") acknowledges that a declaration by a foreign court as to title of immoveable property in Cayman is not capable of enforcement in Cayman. The reason for that is that a foreign court has no jurisdiction to adjudicate upon the title to or the right to possession of any such property. It seems to me that an adjudication made without jurisdiction can be neither enforced nor recognized.

The wife cannot in this case be said to be relying on the title created by the foreign judgment rather than the judgment itself because that judgment has created no title in her. Matters of estoppel cannot arise if the purported adjudication was made without

jurisdiction.

However, the order of the special master, affirmed by the Circuit Court in Florida, was an allocation of marital property, fortified by an order that all necessary transfers and formalities be completed by the parties. That was an order in personam. There followed an order dated 6th April 1995 which, among other things, purported to convey West Bay South Block 5D 19H25, which is an apartment at Discovery Point Club, to the wife and ordered the husband to execute a Quit Claim Deed, as it is known in Florida, in favour of the wife. If such a deed were, without more, an effective basis for title in Cayman we would not be here today.

Though the contract is not before me, the evidence of the wife is that the owner of the property, the first defendant, contracted to sell it to the husband and the wife. What is before me is a copy of the Land Register which shows that title was never transferred either to these parties or to a company which the wife says was the intended transferee. Be that as it may, the essence of this application is in my judgment an application to enforce, and not merely to recognize, the Florida judgment in respect of real property in the Cayman Islands. The judgment is being used as a sword, not as a shield.

No title to Cayman real property can be created in this way by a foreign judgment.

It is unfortunate that in a related case, Cause 112/95 an order in

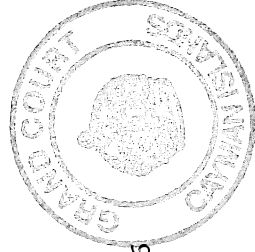
favour of the husband against the wife in respect of certain other property in Cayman was made. However the facts, including allegations of fraud against the wife were different. Moreover the affidavit of the husband in that cause, sworn on 20th March 1995 was referred to in the order as being that on the reading of which it was made. That affidavit contains the following assertion by the husband -

"I have executed all documents necessary to transfer title to the property awarded to my ex-wife in accordance with the Special Master's order."

That is clearly untrue. Not even the Quit Claim Deed had been executed on that date. On 6th April 1995 it was necessary for a further order to be made in Florida for each party to execute Quit Claim Deeds "the Court having received argument of counsel and the court being advised that neither party has transferred to the other party the real property awarded to them under the Final Order entered in this cause."

It is with some regret that I conclude that the wife's claim to the orders which she seeks has not been made out on the basis on which she has argued. Nevertheless, rather than dismissing the summons I adjourn it sine die in order that an opportunity may be left open to the wife's advisers to consider whether any other principles of equity may be called in aid on her behalf, based on the terms of the deed itself.

Dated 25th June 1996



A handwritten signature in dark ink, appearing to read "G. E. Harre", is written over the seal.

G.E. Harre  
Chief Justice