

The Isle of Man Land Registry
THE LAND REGISTRATION ACT 1982
AND
THE LAND REGISTRATION RULES 2000

Application numbers: 201602130, 201700582, 2017005784
First Applicant: **James Andrew Forster ("Mr Forster")**
Application Property: Plot of Land at Lonan Church Hall (Mr Forster's Property)
Second Applicant: **Richard David Bellamy ("Mr Bellamy")**(represented by Kelly Luft Stanley & Ashton ref H01060062/jbts/jm)
Second Applicant Properties: Heathercliffe, Lonan ("Heathercliffe") by application 201700584 and area of possessory title land (the "Possessory Land") by application 201700582

IN THE MATTER of the assessment of costs in Land Registration proceedings.

DECISION OF THE LAND REGISTRAR

DATED 13th September 2023

Introduction. The Applications for Registration.

1. Claims for costs have been made by both the First Applicant and the Second Applicant relating to the Applications.
2. The first application (number 201602130 subsequently called "Mr Forster's Application") was received in the Land Registry on the 26th September 2016 and related to a plot of land in Lonan. The second application (201700582) and the third application (201700584) were both received in the Land Registry on the 22nd February 2017. The second application related to a possessory title application (the "Possessory Application") for land surrounding the third application property which was Heathercliffe in Lonan (the "Heathercliffe Application").
3. Mr Forsters' application was completed on 19th April 2022, the Possessory Application was withdrawn on 24th March 2022 and the Heathercliffe Application was completed on 16th June 2022.

The Land Registry costs jurisdiction and the application of the Advocates (Conveyancing Fees) Regulations 2000

4. The Registrar for the purposes of the Land Registration Act 1982 has the power to hear and determine any *question, difficulties or dispute arising in any registration or other proceedings in the Registry* (Rule 120 of the Land Registry Rules 2000). Where on any application before the Registrar a dispute arises which cannot be disposed of by agreement the Registrar must hold a hearing to determine the questions in dispute or refer the matter to the Land Commissioner by Order under section 6(2) of the Act. Neither party, through counsel, have questioned the jurisdiction of the Registrar to hear and determine these proceedings.

5. My jurisdiction in relation to costs in respect of any proceedings on a hearing is derived from Rule 135 of the Rules. All costs incurred in proceedings are in the discretion of the Registrar which he will exercise having regard to the provisions as to costs contained in the Act and Rules.

"135. Award and taxation of costs of hearings

(1) Subject to any provision as to costs contained in the Act and these rules, the award of costs in respect of any proceedings on a hearing before the Land Commissioner or the Registrar shall be in his discretion, and he may direct by and to whom costs are to be paid.

(2) The Land Commissioner or the Registrar, as the case may be, may, with the consent of all the parties concerned, assess such costs.

(3) The amount of any costs awarded by the Land Commissioner or the Registrar under paragraph (1) shall be taxed unless the parties agree the amount thereof or the costs are assessed under paragraph (2).

(4) The rules of court relating to the taxation of costs in the High Court shall apply in any case where costs are to be taxed under paragraph (3)."

6. In relation to my discretion as to costs in respect on a hearing before the Registrar, the general rule pursuant to part 11 of the Rules of Court is that the unsuccessful party shall be ordered to pay the costs of the successful party. However by virtue of rule 135(2) I have a broad discretion to make a different order and there is no established rule that costs in Land Registration proceedings will automatically follow the event nor that they shall not. Previous published decisions before the Land Registrar and/or the Land Commissioner have confirmed the breadth of this discretion. I note that in considering costs in Craine & Hommet v Cleator the Land Commissioner declined to award costs against the losing party because his advocate's actions were not founded in *carelessness or malintent or negligence*.

7. My jurisdiction to award costs in connection with all proceedings before the Registrar is derived from the Land Registry Rules 2000 which in turn devolves from

section 77 of the Land Registration Act 1982 and specifically, with regard to costs from paragraphs 14-16 of Schedule 11 to the Land Registration Act 1982.

8. The Land Registration Act 1982 and Land Registry Rules 2000 impose no restrictions on cost awards in proceedings before the Registrar or the Land Commissioner. As such the Land Registry jurisdiction is a full costs jurisdiction and its statutory power to award costs looks very similar to that of the courts. It is well established that costs awards by a court will often include pre-action costs, for example of taking legal advice or obtaining expert evidence before proceedings and explicit provision is made for this in the Rules of Court of the High Court Rule 11.3(7)(d):

The orders which the court may make under this rule include an order that a party must pay -...

(b) a stated amount in respect of another party's costs

(c) costs from or until a certain date only

(d) costs incurred before proceedings have begun ...

(f) costs relating only to a distinct part of the proceedings.

9. There is a regime outside the Land Registration Act 1982 contained in the Advocates (Conveyancing Fees) Regulations 2000 (SD675/00) which imposes restrictions on the fees chargeable by Advocates when providing conveyancing services (*the preparation of transfers, conveyances, leases, contracts and other document in connection with, and other services ancillary to, the disposition or acquisition of land or interests in land*). Clearly, where these Regulations apply the Registrar must take notice of these Regulations relating to the recoverability of fees from an advocate's client and as to the level of any cost award.

10. Mr Forster in his costs submissions at paragraphs 66 and 67 refers to the comments of the previous Land Registrar (Mr Nicholas Arculus) in relation to costs. The decision that is referred to in this statement was from the case of Michael Street Management and Palmer.

<https://www.gov.im/media/1365785/2019-04-08-cost-decision-201604310.pdf>

11. Mr Bellamy counters this argument with paragraphs 6-31 of his response dated 30th June 2023. In this instance I am persuaded by the arguments of Mr Stanley on behalf of Mr Bellamy that in essence the decision of the Land Commissioner in Moon v Cleator (Land 202001971) is a pervasive precedent and that the Advocates (Conveyancing Fees) Regulations 2000 should not apply to contested matters in relation to Land Registry Applications.

The Second Applicants Cost Application

12. The basis for Mr Bellamy's cost application related to objections submitted in relation to the first application. The basis for his objection was that Mr Forster was not entitled to be registered as owner of the area the application related to. In essence Mr Forster was seeking more land than he owned. The argument for costs is then that the objections made by Mr Bellamy were valid and were adopted

in the finalised title. On that basis the costs should follow the action being a successful objection.

13. In this respect there are 3 main areas of objection to the area relating to Mr Forster's Application:-

(a) There is a triangle of land to the north west of Mr Forster's property that is part of Heathercliffe (the "Triangle").

(b) That the southern boundary of Mr Forster's property is plotted too far south and possibly encroaches on Lower Ballabeg Farm (which is property owned by Mr Bellamy).

(c) The eastern boundary of Mr Forster's property is plotted too far east and encompasses land owned by the Department for Infrastructure as part of the Manx Electric Railway.

14. There was however also additional initial objection that all of the applicant property with the exception of the school house building was in conflict with the second applicant's possessory title application (201700582). I will address the nature of these objections individually.

The Triangle

15. I do not consider that it is in dispute that the first plan submitted with the first application may have contained a triangle of land (coloured blue) which was subsequently registered as part of Heathercliffe. Heathercliffe had an epitome of title dating back to 1909 and the deed from 1909 has a fairly accurate plan including the triangle of land. On this basis the initial objection from the second applicant was reasonable.

16. The triangle is, however, also included in the boundary of Asylum plan number 213 which is the basis of the title to the first applicant property. It is therefore not completely unreasonable for this triangle to be included in the first applicant plan. In theory the Asylum plan title predates the 1909 deed. It does appear that the first applicant conceded ownership of this triangle by letter of 15th March 2017 to the Land Registry. In essence this was just a clarification of the first plan where the colouring was not clear. There does however continue to be confusion created by an apparent intention from the first applicant to then re-include the triangle area in subsequent correspondence.

The Southern Boundary

17. It is clear that Mr Forster's Application was submitted with a plan and also subsequent plans that included a southern boundary which extended further than the land included in the Asylum plan number 213. It is difficult to conclude exactly how far south this boundary reached as there are limited features available to compare with on the Ordnance Survey Map. The area subsequently registered was calculated using transposition of the Asylum plan and comparison with the County

Series Map and ground based measurements. As with any registered boundary the General Boundaries Rule would apply.

18. I conclude that in this respect the Mr Bellamy's objection was justified in that he was entitled to ensure that what was registered to Mr Forster did not overlap with the boundary of Lower Ballabeg Farm.

The Possessory Title Land

19. One of the grounds for objection was initially that any area of land outside of the Church Hall building was subject to the Possessory Application. I note that Mr Bellamy has stressed that the ownership of land delineated by Asylum Plan 213 was conceded in his statement of 29th May 2019 and I accept this. The wording of the statement does go on to say:-

“(iv) the remainder of my possessory application (for the land lying outside the area shown on Asylum Plan 213) should be granted based on the use of that land by Robert Gill and his predecessors.”

The Eastern Boundary

20. Despite the concession in 2019 in this statement the Possessory Application therefore remains until it is withdrawn on 22nd March 2022. This application remains and is used as justification to object to the Eastern Boundary encroaching on land where the Department for Infrastructure has paper title. In this respect whilst I consider the content of the objection made by the Mr Bellamy in this regard is valid it is based on the Possessory Application to provide a Locus Standi.

21. I consider that the objection submitted by the Department of Infrastructure relating to this boundary to be valid and sustained. No claim for costs in this respect has been received.

The Successful Party.

22. I consider that the Mr Bellamy's position with regard to success is partially correct. The area ultimately registered was less than the area requested in the initial application and in particular the southern boundary is further north than initially requested.

Mr Forster's Cost Application

23. I will initially make comments regarding this application referring to the paragraph numbers in said application dated 31 May 2023.

24. Firstly, I address point 4 regarding the declarations made in the Form 1's submitted to the Land Registry. I note that the allegation that a false declaration was made at paragraph 3 of the Mr Bellamy's costs submissions. I agree that it would appear this declaration to be potentially false. I have however also reviewed the Form 1 submitted with the Possessory Application and this declaration also does not disclose any ongoing dispute. At this point, namely 22nd February 2017,

clearly Mr Bellamy was fully aware of Mr Forster's Application and that there was a dispute.

25. In this respect I consider both applicants to be equally incorrect in how they approached their applications.

26. Referring to paragraphs 5-8 of the Mr Forster's submissions I do not consider when or why an application was submitted to be of any relevance in relation to costs.

27. Referring to paragraphs 9-15 I have previously addressed the objections submitted by Mr Bellamy. I do consider that the Possessory Application was used by Mr Bellamy to add weight or widen the potential objections available to him. I consider that a valid objection was received to the Possessory Application by letter of 16th October 2017 from Mann Benham as advocates for Mr Forster. This letter objected on the basis that the Possessory Application was not adequately evidenced.

28. I note that at this time much of the correspondence related to the mental status of Mr Gill who had provided the only evidence of possessory title to support the Possessory Application. I do not believe that this is relevant on the basis that I do not consider that the evidence provided in his affidavit is sufficient to establish possessory title. I am of the opinion that the Possessory Application was at best evidentially weak and possibly fanciful. Part of the land claimed is a track used by neighbouring properties and customers of the Manx Electric Railway. Part of the land claimed is within the paper title of the Department for Enterprise. Part of the land claimed is within the paper title of the Mr Forster. Shortly after I asked Mr Bellamy for further evidence of possession the application was withdrawn.

29. Although the nature and reasoning behind the objection of 16th October was perhaps slightly flawed I consider that this objection was a valid one and once the Possessory Application was withdrawn the objection was ultimately successful.

30. In relation to paragraph 17 I do not agree this is correct as this was raised in objections raised by Mr Bellamy. The further references to the "Status Quo" application are not relevant to costs and Mr Arculus's comments on fixed costs have previously been addressed.

Conduct of the Parties

31. I have also considered the overall conduct of the parties in this matter pursuant to Rule 11(3) of the Rules of Court. This matter continued for over 6 years and has clearly involved a huge amount of legal costs for both applicants and a huge investment of time and resources at the Land Registry. I have considered the progress of the matter and make the following comments on the conduct of the parties.

32. Both applicants have made Land Registry applications which contained significant defects and false declarations. It is important to stress that the responsibility in Isle of Man Land Registration Law lies with the advocate to certify

the title to their applications and in particular to declare an advocates certificate in the Form 1.

33. The certificate which accompanies the Form 1 first registration form states:-

I hereby certify as follows:-

*(a) I *have/have not acted for the applicant(s) in the transaction which is the subject of this application. *Delete as applicable*

(b) I have made or caused to have been made all necessary searches and enquiries.

(c) I am not aware of any claim to possession of the land adverse to the interest of the applicant(s).

(d) I have made full title investigation and declare that the title is good and I am not aware of any defect which would give rise to a claim for compensation under Schedule 10 of the Land Registration Act 1982 other than disclosed in this application.

(e) As far as I am aware the applicant(s) is/are not subject to any legal disability which would prevent or restrict their ability to hold or deal with the legal estate of the property to which this application relates. *Delete as applicable*

(f) The extent of the land, as far as I am able to ascertain, is as shown on the maps submitted with this application.

(g) The epitome of title, set out in Appendix A of this application, gives particulars of all the instruments, acts and events relevant to the title of the applicant(s) to the land.

(h) I believe that the applicant(s) is/are, and have since the date of acquisition mentioned in this application, been in sole and undisputed possession of the land or in sole and undisputed receipt of the rent or profits thereof. *Delete as applicable*

(i) I am satisfied that the land is not subject to any burden requiring entry in the title register except for the matters (if any) specified in this application.

(j) Where the applicant is a corporate body or unincorporated association it is legally constituted and it is legally entitled to hold and deal with land.

34. In particular point (c) is relevant as previously discussed but I also consider point (f) and (d) to be relevant. This dispute has arisen due to submission of plans which have not adequately defined the extent of the land and the possessory application which appears to have been without evidence to support it.

35. In general terms my predecessor Mr Arculus mentioned on a number of times that correspondence was not responded to and directions were not complied with. I note that once I took over this matter and issued directions on the 11th November 2021 these were not complied with by either party.

36. It appears to me that there was an intention on behalf of Mr Bellamy to make this matter continue for as long as possible. A number of legal routes were taken to do this such as the failed "Status Quo" application and the request to Mr Arculus to recuse himself. On the other side Mr Forster has clearly not been consistent in the plans submitted relating Mr Forster's Application and was obstinate in not accepting the decision of the Land Registrar. I am disappointed that this matter has taken so long to resolve as in my opinion it is not a particularly complex one. I do not think any party including the Land Registry has covered themselves in glory here.

Conclusions

37. The cost regime in the Land Registry is not intended to punish applicants or to discourage applications being made in good faith or even in honest error. I note that I do not have the power to assess costs summarily unless both parties consent.

38. In this matter I consider that the Mr Bellamy has validly objected to Mr Forster's application in part and that potentially some costs could follow this action. I do however consider that the conduct of Mr Bellamy particularly in relation to the Possessory Application which was withdrawn 6 years after submission to be a potential abuse of the Land Registry process. This Application should have been investigated in more detail at an earlier stage but I understand that this was not done so on the instructions of both applicants.

39. Had this application been withdrawn at an earlier stage I believe this matter would have resolved much more quickly. Overall I consider both applicants have had valid objections in part and therefore I think that it is just and equitable that each applicant bear their own costs in relation to these matters.

Order

40. Each applicant to bear their own costs.



James Lowery

Deputy Registrar General and Land Registrar

Legal Officer (Land)