

provisions of the Merchant Shipping (Salvage) Act 1940, but neither of these eventualities has occurred.

10 Accordingly, I find that by virtue of s.1(1) of the Merchant Shipping (Salvage) Act 1940, as applied to Gibraltar by s.221(1) of the Merchant Shipping Ordinance (*cap.* 106), the Crown is entitled to claim for salvage services rendered by one of Her Majesty's ships, and the present application is therefore dismissed with costs.

Application dismissed.

[1980–87 Gib LR 75]

**IN THE MATTER OF THE LAND (TITLES) ORDER and A
DEED OF AGREEMENT DATED NOVEMBER 30TH, 1978**

SUPREME COURT (Davis, C.J.): December 18th, 1981

Land Law—title—registration of deed affecting Gibraltar land—extension of time for registration under Land (Titles) Order, s.3(4) only if “good and sufficient reason” shown for failure to register in time—breakdown in contract for acquiring land and contemplation of legal proceedings not “good and sufficient reason”—inefficiency of solicitor similarly not enough

The applicant applied to the court for late registration of a deed after failure to register it within the six-month period specified by the Land (Titles) Order, s.3(1).

The parties (Oliver Heath & Co. Ltd. and International Properties (Gib.) Ltd.) had made an agreement which provided that Oliver Heath & Co. Ltd. (the applicant) would tender for the purchase of property in Gibraltar, on the basis that a mortgage for the full amount of the purchase price would be granted by the vendor. The parties planned that if the tender were successful, they would jointly subscribe to the formation of a new company and both would convey property to it; the applicant conveying the property for which it had earlier successfully tendered. Subsequently, however, negotiations between the parties broke down, allegedly because International Properties failed to perform its part of the agreement.

The applicant had, however, failed to register the agreement (a deed affecting land in Gibraltar) with the Supreme Court within six months of its execution, as required by s.3(2) of the Land (Titles) Order (*cap.* 82) and

had not obtained its approval by the Governor under s.4. It applied under s.3(4) of the Order for late registration of the agreement.

It submitted that (a) it had “good and sufficient reason” under s.3(4) of the Order for its failure to register the agreement in time, namely that it had been assured by the managing director of International that their part in the agreement would be finalized and therefore it had not previously had reason to consider the formal enforcement of the agreement; and (b) it was now contemplating commencing proceedings against International for breach of contract and granting the application would safeguard its position pending any such action.

The Crown submitted that (a) International should be given the opportunity to oppose the application if it so wished, as in view of the possibility of an action for breach of contract in relation to the agreement, it was unclear what effect registration would have on the position of the parties; and (b) the Governor’s approval, without which the agreement could not be registered under s.4 of the Order, had not been obtained.

Held, refusing application for the late registration of the deed:

The application for late registration of the deed could not be granted as the applicant had failed to show (as required by the Order) any “good and sufficient reason” for failure to register it on time. Despite International’s assurances that its part in the agreement would be finalized, the applicant should have protected itself by registering in time; that it now wished to safeguard its position, in contemplation of commencing proceedings against International for breach of contract, was not a “good and sufficient reason” for allowing late registration. The applicant’s solicitors had also clearly been aware of the provisions of the Land (Titles) Order and should have advised the applicant to apply for registration within the specified time frame. Further, the Governor’s approval to the deed, without which it could not be registered, had not been obtained (paras. 11–15).

Legislation construed:

Land (Titles) Order (Laws of Gibraltar, *cap.* 82), s.2: The relevant terms of this section are set out at para. 3.

s.3(1): The relevant terms of this sub-section are set out at para. 2.

s.3(2): The relevant terms of this sub-section are set out at para. 4.

s.3(4): The relevant terms of this sub-section are set out at para. 4.

s.4: “No such deeds shall be registered or have any legal operation or effect unless the same shall have been previously approved by the Governor . . .”

D.J.V. Dumas for the applicants.

1 **DAVIS, C.J.:** This is an application under the proviso to s.3(4) of the Land (Titles) Order (*cap.* 82) for registration, out of time, of an agreement relating to land in Gibraltar.

2 Section 3(1) of the Land (Titles) Order provides that all deeds which “in any wise affect or relate to any lands situate in Gibraltar shall be registered in the Supreme Court.”

3 In s.2 of the Order “deeds” are defined as including “all instruments in writing other than wills or testamentary writings,” and “lands” are defined as including “messuages, tenements and hereditaments of any tenure, and to any part, share, estate, right, title or interest therein.”

4 Section 3(2) provides that “deeds executed in Gibraltar . . . shall be registered within six months of the date and execution thereof . . .” Section 3(4) provides as follows:

“All . . . deeds which shall be so registered within such times as before mentioned, shall be absolutely void and of no effect, so far as the same relate to, or affect, or may be intended to affect, any lands in Gibraltar—

Provided that in any case where any such . . . deed shall not have been registered within the time hereinbefore appointed, the Chief Justice shall upon good and sufficient reason or cause being shown for the omission to register, have power to order the registration of such . . . deed notwithstanding that the time hereinbefore appointed for the registration shall have elapsed upon such terms as to costs and expenses as he in his discretion shall think fit.”

5 The agreement sought to be registered in the present application is an agreement made on November 30th, 1978, between International Properties (Gib.) Ltd. (“International”) and the applicant, Oliver Heath & Co. Ltd. It was drawn up by Messrs. Isola & Isola, Barristers, and is signed by Mr. John Risso on behalf of the applicant. The agreement provided that the applicant should tender for the purchase of freehold property No. 265 in Gibraltar on the basis that a mortgage for the full amount of the purchase price would be granted by the vendors. In the event of the applicant’s tender being accepted, the parties would jointly subscribe to the formation and registration of a new company; the applicant would then convey property No. 265, and International would convey freehold property No. 268, to the new company.

6 It appears from the affidavit filed in support of this application by George Benady, a director of the applicant company and a signatory of the agreement which is the subject of this application, that subsequent to the execution of the agreement, negotiations between International and the applicant broke down. When this happened, counsel’s advice in England was sought and the applicant was advised to apply for late registration of the agreement.

7 It appears that proceedings against International for breach of contract in respect of the failure by International to perform its part of the

agreement of November 30th, 1978 are contemplated by the applicant. Mr. Dumas for the applicant has submitted that it is desirable that the present application for registration out of time should be granted, in order that the applicant's position may be safeguarded pending the possible institution of proceedings.

8 In para. 5 of his affidavit, Mr. Benady stated that, having received an assurance from the managing director of International that "the transaction" (by which I understand him to mean International's part in the agreement) would be finalized, he had no reason previously to consider the enforcement of the agreement of November 30th, 1978.

9 It appears to me that the agreement was clearly a deed relating to land in Gibraltar falling within the scope of s.3(1) of the Land (Titles) Order and therefore registrable under that section.

10 The Order provides no penalty for failure to register under s.3(1), the sole sanction being that provided under s.3(4), that deeds not registered "shall be absolutely void and of no effect, so far as the same relate to, or affect, or may be intended to affect, any lands in Gibraltar." Clearly it is for the parties entering into an agreement in writing relating to land to decide whether or not to register the instrument. Usually, as Mr. Dumas has pointed out, an agreement of the sort entered into in this case would be superseded by deeds of mortgage and conveyance of the properties referred to which would presumably be registered under the Order.

11 In the present case it appears that Messrs. Isola & Isola were acting for both parties to the agreement, the subject of this application, and they must be assumed to be aware of the provisions of the Land (Titles) Order for registration. The fact that the applicant is now advised by its lawyers, many months after the time for registration of the agreement has expired, that the agreement should have been registered and that they should now apply for late registration is not a reason, *per se*, for granting this application. Under the proviso to s.3(4) the applicant must show "good and sufficient reason or cause for his omission to register" the deed required to be registered out of time.

12 The Crown opposes the present application on the grounds that in view of the possibility of an action for breach of contract in relation to the agreement, it is not clear what effect registration will have and that, consequently, International should be given an opportunity to oppose the application if it wishes to do so.

13 It also appears that the Governor's approval to the agreement, without which, under s.4 of the Order, the agreement could not be registered, has not been obtained.

14 While it appears to be open to me under s.3(5) of the Land (Titles) Order and O.32, r.1 of the Rules of the Supreme Court 1965, as applied to

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Gibraltar by r.8 of the Supreme Court Rules 1979, to order that the summons relating to this application be served on International as being a party concerned in order that it may have an opportunity to oppose the application should it so wish, this does not appear to me to be necessary in the present case.

15 I am also not satisfied that it is open to me to grant an application to register a deed out of time, as the Governor's approval to the deed has not been obtained. By virtue of s.4 of the Land (Titles) Order, until such approval has been received, the deed may not be registered.

16 However, having heard counsel and having read Mr. Benady's affidavit in support of this application, I find that the applicants have failed to show any good or sufficient reason or cause for this omission to register the agreement. Accordingly, this application must be refused and I so order.

Application refused.
