

**IN THE COURT OF APPEAL OF BELIZE A.D. 2008**

**CIVIL APPEAL NO. 8 OF 2007**

**BETWEEN:**

**FIRST CARIBBEAN INTERNATIONAL BANK  
(BARBADOS) LIMITED**

**Appellant**

**AND**

**THE REGISTRAR OF LANDS**

**Respondent**

**BEFORE:**

|                                      |          |                          |
|--------------------------------------|----------|--------------------------|
| <b>The Hon. Mr. Justice Sosa</b>     | <b>-</b> | <b>Justice of Appeal</b> |
| <b>The Hon. Mr. Justice Carey</b>    | <b>-</b> | <b>Justice of Appeal</b> |
| <b>The Hon. Mr. Justice Morrison</b> | <b>-</b> | <b>Justice of Appeal</b> |

**Mr. E. Andrew Marshalleck for the appellant.  
Mr. Arthur Saldivar for the respondent.**

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**23 October 2007 & 13 March 2008.**

**CAREY JA**

1. We are concerned in this appeal with section 130(4) of the Registered Land Act, Cap 194 which provides as follows:-

“The Registrar may refuse to register a caution which he considers unnecessary”

The appellant on 30 November 2004 lodged a caution in the prescribed form pursuant to the provisions of section 130 (1) of the Registered land Act (the Act) with respect to parcels 2528 and 2531, Block 7, San Pedro Registration Section. Section 130 (3) of the Act is in these terms:

“...A caution shall be in the prescribed form and shall state the interest claimed by the cautioner and the Registrar may require the cautioner to support it by a statutory declaration”.

The appellant (the cautioner) claimed an interest as equitable chargee of the parcels. The Registrar refused the registration on the ground that it was unnecessary. The cautioner appealed to the Supreme Court as is allowed under section 145(2) of the Act. Chief Justice upheld the Registrar’s decision and dismissed the appeal which now comes before this court by way of further appeal from his decision. It is a matter of regret that his decision was some nearly two years in the making. We heard submissions on 23 October 2007 when we allowed the appeal and set aside the order of the Chief Justice with costs both here and below to the appellant to be taxed, if not agreed. We intimated that we would give our reasons at a later date. My contribution is set out below:

2. The Registrar set out her reasons for refusal to register the caution as “unnecessary” in this way:

“7. Following a perusal of the said caution lodged for registration, the document submitted in support of, and the registers in respect of the said parcels, which registers shows (sic) that at the time the caution was lodged for registration there was (and still) no first legal mortgage or other incumbrance registered against the parcels that may prevent the registration of a legal mortgage in favour of First Caribbean International Bank (Barbados) Limited, I

concluded that the caution was unnecessary and refused the registration thereof under the said section 130(4).

8. I concluded that, in light of paragraphs 2 and 3 of the said Memorandum of Deposit of Title Document (Land Certificate), while the said Memorandum is in itself an unregistrable document, the interest which First Caribbean International Bank (Barbados) Limited acquired in the parcels can be protected by the execution and registration of a legal mortgage and that therefore the caution was registered proprietor shall whenever called upon to do so execute a legal mortgage in favour of the Bank and empowered the Bank to execute such legal mortgage on her behalf..”

The Chief Justice held that there was no wrongful exercise of the Registrar’s discretion because the documents sent along with the proposed caution clearly show that the Bank is entitled to legal mortgage and that it should execute one with the proprietor for registration. He also held that “to utilize a caution in a case that clearly granted the right to a legal mortgage is to circumvent the clear provisions of the Registered Land Act and defeat the objective of the Stamp Duties Act. The latter would result in loss to the Consolidated Revenue”.

3. The solution to this appeal must, in my opinion, lie on the true meaning of “unnecessary” in the context of the Act. This term is not defined in the Act and is therefore not a term of art. It should accordingly, be given its ordinary grammatical dictionary meaning. The Oxford English Reference Dictionary defines it as “not needed”. It defines “necessary” in relation to an action as needed for a purpose and it would follow that the antonym would be “not needed for any purpose”. The Registrar says that the Bank has a legal mortgage which is enforceable and it should do so. The Chief Justice found evidence of conduct by the Bank which circumvented the

Registered Land Act and the Stamp Duty Act. It is not altogether clear to me what provisions of either Act have been breached. So far as circumventing Revenue Acts are concerned, it is, in general, a criminal offence to evade the payment of tax liability but it is not illegal to avoid such payments. The Stamp Duty point was not an issue in the case before the Chief Justice. Counsel who appeared below expressly stated that she did not propose to argue the point. With all respect to the judge, it was not relevant to a determination of whether, the caution was or was not “necessary” for purposes of the Act. Mr. Saldivar who appeared before us did not suggest in any shape or form that the caution did not serve the purpose for which it was used, namely to protect the interest of the appellant as an equitable chargee of the parcels of land, the subject of the appeal.

4. It seems to me that the power given to the Registrar to refuse to register a caution which he considers unnecessary does not in my judgment, extend to determining legitimate choices that are open in law or in equity to a mortgagee or chargee in protecting his or her interest. In my judgment, once it has been or can be shown that the caution serves a useful purpose, a refusal to register can only be characterized as unreasonable. The caution was being registered by the appellant to achieve a legitimate object of a caution which was “to give notice to the world of the existence of the agreement to create a charge and thereby protect the priority of the appellant’s interest in the parcels charged”. This point made by Mr. Marshalleck in his skeleton arguments, is well founded and is correct in point of law. I am constrained to conclude that this court is entitled to interfere by allowing the appeal.

## **SOSA JA**

5. The question posed by the Registrar of Lands in this case is “Whether in light of the provision made in the [relevant] Memorandum of Deposit of Title Document (Land Certificate) for the execution of a legal mortgage, the [relevant] caution is necessary to protect the priority of First Caribbean International Bank (Barbados) Limited’s interest in the [relevant] parcels [of land]. “ I consider it important to make clear that both parties to this appeal are of the view that that question properly assumes that the creation of an equitable charge is legally possible under the system of land registration established by the Registered Land Act. Whether that assumption is correct in law was not, therefore, a question for decision before this Court. This is the second appeal to reach this Court within the last two years in which we have come across an effort to create an equitable charge by the deposit of a land certificate issued by the Land Registry, the first having been *Celene Cleland Gómez v Warren Coye*, Civil Appeal No. 14 of 2005, in which we similarly found it unnecessary to decide whether an equitable charge had properly been created.
  
6. On 23 October 2007 I agreed with the other members of this Court that the appeal should be allowed, that the decision of the court below should be set aside, that the question of the Registrar of Lands set out above should be answered in the affirmative and that the appellants should have their costs, here and in the court below, to be taxed if not agreed. I concur in the reasons for judgment given by Carey JA in his judgment, which I have read in draft.

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**SOSA JA**

**MORRISON JA**

7. I have had the advantage of reading in draft the judgment to be delivered by Carey JA, with which I am in full agreement, and there is nothing that I can usefully add to it.

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**MORRISON JA**