

**IN THE SUPREME COURT OF BELIZE, A.D. 2016**

**CLAIM NO: 356 OF 2016**

**BETWEEN**

**MARILEE POU**

**CLAIMANT**

**AND**

**MINISTER OF NATURAL RESOURCES  
REGISTRAR OF LANDS  
COMMISSIONER OF LAND & SURVEYS  
THE ATTORNEY GENERAL OF BELIZE  
CONSTRUCTION DEPOT LIMITED  
SJ'S AIR SERVICE LTD  
BRETT FEINSTEIN**

**1<sup>st</sup> DEFENDANT  
2<sup>nd</sup> DEFENDANT  
3<sup>rd</sup> DEFENDANT  
4<sup>th</sup> DEFENDANT  
5<sup>th</sup> DEFENDANT  
6<sup>th</sup> DEFENDANT  
7<sup>th</sup> DEFENDANT**

**Keywords:** Section 3(d) & 17(1) of the Belize Constitution; Contravention of Rights Guaranteed by Constitution; Compulsory Deprivation of Property; Arbitrary Deprivation of Property; Guaranteed Constitutional Rights; Constitutional Reliefs; Rectification of Land Register due to Unconstitutional Acts;

National Lands Act; Section 2 of National Lands Act; Department of Lands & Surveys; Ultra Vires National Lands Act;

The Lands Surveyors Act; Licenced Land Surveyor;

Registered Land Act; Torrens System of Land Title; Absolute Title; Absolute Ownership; Indefeasibility of Title; Unimpeachable Title; Liabilities, Rights & Interest of Title; Rectification by Registrar; Rectification by Court; Rectification Obtained Made Or Omitted by Fraud or Mistake or Illegality; Knowledge of Omission Fraud or Mistake; Fraudulent Schemes & Designs; Error; Innocent Error; Deceit; Lack of Good Faith; Sale of Land by Purchase; Transfer of Land; Causation of or Substantial Contribution to Fraud or Mistake; Fraudulent or Corrupt Transaction; Cancellation of Registration; Mutation; Actual Fraud; Dishonesty; Illegal, Unlawful Corrupt & Dishonest Transfers; Transfers Null & Void; Certificate of Title; Re-Designation of Sale; Commissioner of Land & Surveys; Mutation; Land Rent Statement; Approval to Purchase Land; Land Purchase Approval Form; Parcels 5511 & 5311 & 11000;

Administrative Orders; Ultra Vires Powers of Minister; Abuse of Power by Minister by Assuming Ownership of Property of Claimant; Breach of Statutory Duty; Minister with No Power & authority to Sell Grant or Transfer National Land Which it did not Have; *Nemo Dat*

*Quod No Habet*; Non-administrative Orders & Declarations;  
Sufficient Interest;

Procedure; Administrative Orders; Civil Proceedings; Private & Public Law Claims; Strike Out of Claim; Application to Remove Party; Abuse of Process; Reasonable Grounds; Amendment; Counterclaim; Notice to Admit Facts; Pre-Trial Memorandum; Judgment on Admissions; Declarations; Specific Disclosure; Committal; Disobeying Order for Specific Disclosure; Disingenuousness of Defence;

Civil Procedure Rules; Overriding Objectives; Dealing with Cases Justly; Saving Expense; Possible Multiplicity of Claims; Participating in Proceedings; Disabling Defendant; Conduct of Defence; Counterclaim; Cross-Examination of Witnesses; Oral & Written Submissions; Witness Summons; Scandalous Allegations;

Parties; Interested Parties; Ministry of Natural Resources; Registrar of Lands; Commissioner of Lands & Surveys; Head of Department Ministry of Natural Resources; Construction Depot Limited; Government of Belize; SJ's Air Services Limited; Brett Feinstein; Tropic Air Limited; Credibility of Witnesses; Destruction and Demolition of Credibility of Witnesses of Witnesses by Cross-Examination; Wild, Reckless, unfounded and unsubstantiated Allegations by Witnesses;

Costs; Security for Costs; Indemnity Costs.

**Before the Honourable Mr. Justice Courtney A. Abel**

**Hearing Dates:** 8<sup>th</sup> June 2017  
25<sup>th</sup> July 2017  
27<sup>th</sup> July 2017  
10<sup>th</sup> August 2017  
16<sup>th</sup> October 2017  
2<sup>nd</sup> November 2017  
1<sup>st</sup> December 2017  
6<sup>th</sup> December 2017.

**Appearances:**

Mr. Fred Lumor SC and Mr. Estevan Perera for the Claimant.

Mr. Nigel Hawke and Ms. Samantha Matute for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Defendants

Mr. Eamon H Courtenay SC and Ms. Iliana Swift for the 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> Defendants.

## WRITTEN JUDGMENT

### Of Oral Decision given on the 2<sup>nd</sup> day of November 2017 and draft Judgment given on 1<sup>st</sup> day of December 2017

#### Introduction

- [1] This disputed claim is about a parcel of land near to the San Pedro Airport, on the desirable tourist island of San Pedro Belize, (“Parcel No. 5511”).
- [2] The Claim is valued by agreement of the parties, for the purposes of costs, to be the sum of US\$137, 500.00. But from the way in which this dispute has been waged, it appears that much more is at stake than meets the eye.
- [3] The claim is brought both under the public law, against the 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> Defendants, being representatives of the Government of Belize (“GOB”) for administrative orders, including for reliefs and/or declarations against under the Constitution, and also in private law against the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants, private persons and an entity, for reliefs under the Registered Land Act.
- [4] Specifically the Claimant is alleging that she is entitled to constitutional redress essentially for the return of Parcel No. 5511 because of the contravention of her rights guaranteed under sections 3(d) and 17(1) of the Belize Constitution. But serious allegations, including fraud, have also been made against the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants and reliefs relating to Parcel No. 5511 have also been sought against them.
- [5] As the basis or ground for the present claim, the Claimant is contending that GOB, which was the previous owner of Parcel No. 5511<sup>1</sup>, contravened her rights by wrongly denying her title to Parcel No 5511, which she lawfully purchased from GOB, and in collusion with the Defendants, transferred, or caused to it be transferred to one of the last three related Defendants (one

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<sup>1</sup> By the 1<sup>st</sup> Defendant, the Minister of Natural Resources, the 2<sup>nd</sup> Defendant, the Registrar of Land, the 3<sup>rd</sup> Defendant, the Commissioner of Lands & Surveys, and the 4<sup>th</sup> Defendant, the Attorney General of Belize.

of whom now owns said Parcel No. 5511 while the others have or have had some interest in this Parcel of land).

- [6] To cap it all the Claimant is accusing the 1<sup>st</sup> to 4<sup>th</sup> Defendants, of not only having breached her constitutional rights, but also that their representatives have abused their statutory and other powers by assuming ownership of Parcel No. 5511, in order to dishonestly sell and transfer Parcel No. 5511 to the 5<sup>th</sup> to 7<sup>th</sup> Defendants.
- [7] The highly disputed facts and circumstances of this case concern the various and somewhat convoluted changes which have taken place to the title of this much coveted Parcel of land. It involve allegations by the Claimant against the Defendants that the first three Defendants are all implicated in fraudulent activities which took place within the land registry, which activities, it is alleged by the Claimant, have also been surrounded by fraudulent transactions in which the 7<sup>th</sup> Defendant (Brett Feinstein) and his companies (the 5<sup>th</sup> and 6<sup>th</sup> Defendants) are somehow implicated.
- [8] The 1<sup>st</sup> to 4<sup>th</sup> Defendants, are denying the claim and the many allegations against them and so are the other Defendants and all Defendants are arguing that the Claimant in fact purchased and paid for a different parcel of land (Parcel No. 5311 and not Parcel No. 5511) over which the Claimant is entitled to assert ownership, and has erroneously brought the present claim.
- [9] In order for the Claimant to succeed in having Parcel No. 5511, so the Claimant asserts, she must establish that her claim for constitutional redress has rendered the transfer to the 6<sup>th</sup> Defendant, null and void and by this process she hopes to get around, statutory provisions, the Registered Land Act, of having to implicate the 5<sup>th</sup> and 7<sup>th</sup> Defendants in alleged fraudulent activities of the 1<sup>st</sup> to 4<sup>th</sup> Defendants.
- [10] The central issue for determination of this Court is whether the Claimant can prove that she bought Parcel No. 5511. If she is correct in this assertion, and is successful in proving the Defendants have acted in a

fraudulent or unlawful way she would thereby have gone a significant way to establishing her entitlement to such constitutional redress.

### **Issues**

- [11] Whether the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants should be removed from the present proceedings?
- [12] Whether there were any fraudulent transactions as between the Defendants?
- [13] Whether the Minister acted ultra vires its powers in issuing title to Parcel No. 5511 to the 5<sup>th</sup> Defendant?
- [14] Whether there was any deprivation of the Claimant's right to property under the Constitution?

### **The Law**

#### **The Belize Constitution**

- [15] Under Part II of the Belize Constitution every person in Belize, including no doubt the Claimant, is declared to be entitled to the fundamental rights and freedoms of the individual guaranteed, including "*the protection from arbitrary deprivation of property*".
- [16] The right to protection from arbitrary deprivation of property is more fully set out in Section 17 of the Belize Constitution, and Section 17(1) provides as follows:

*"No property of any description shall be compulsorily taken possession of and no interest in or right over property of any description shall be compulsorily acquired except by or under a law that –*

- (a) Prescribes the principles on which and the manner in which reasonable compensation therefore is to be determined and given within a reasonable time; and*
- (b) Secures to any person claiming an interest in or right over the property a right of access to the Court for the purpose of*

- (i) *Establishing his interest or right (if any);*
- (ii) *determining whether that taking of possession or acquisition was duly carried out for a public purpose in accordance with the law authorizing the taking of possession or acquisition;*
- (iii) *determining the amount of the compensation to which he may be entitled; and*
- (iv) *enforcing his right to any such compensation.”*

### National Lands

[17] National Lands is defined by Section 2 of the National Lands Act<sup>2</sup>, in the interpretation section of this Act, as:

*“...all lands and sea bed, other than reserved forest within the meaning of the Forest Act, including cayes and parts thereof not already located or granted, and includes any land which has been, or may hereafter become, escheated to or otherwise acquired by the Government of Belize”*

[18] An Advisory Committee was also defined by Section 2 of the National Lands Act which was to be established under Section 5 of this Act.

[19] Such National lands are classed as “*town lands*”, “*suburban land*”, and “*rural, including pastoral, lands*”, “*mineral lands and beach lands*”<sup>3</sup>.

[20] Under Section 4(2) of the National Lands Act:

*“The Minister may, from time to time, define such classes of national lands and cause maps or plans to be prepared showing the above classification, and may vary such definition as seems advisable”<sup>4</sup>.*

[21] National lands could be sold at such prices and on such terms and conditions as to improvements and otherwise as the Minister may prescribe

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<sup>2</sup> Chapter 191 Revised Edition 2011, Laws of Belize

<sup>3</sup> See Section 4(1) of the National Land Act; Chapter 191 Revised Edition 2011, Laws of Belize.

<sup>4</sup> See Section 4(2) of the National Land Act; Chapter 191 Revised Edition 2011, Laws of Belize.

on the advice of the Advisory Committee<sup>5</sup> but such application had to be made in the form of the Second Schedule to the Act<sup>6</sup>.

### Land Surveyors

- [22] The regulation of Land Surveyors is governed by the Land Surveyors Act<sup>7</sup>. This Act makes provision for the establishment of the Land Surveyors' Board<sup>8</sup> with prescribed duties<sup>9</sup>, qualifications<sup>10</sup>, the granting of licenses to practice<sup>11</sup> as a land surveyor, a Register of licensed Surveyors<sup>12</sup>, and disciplinary powers by the Board<sup>13</sup>.
- [23] This Act also makes provisions for the conduct of surveys by such Licensed Surveyors. Such conduct of surveys (including liability and compensation issues, the depositing of survey plans with the Commissioner of Lands, rectification of errors in surveys, authentication of plans, cancellation of authentication, Aerial surveys and obstructions to surveys) are provided for by Part III of the Land Surveyors Act.
- [24] It is also clear that surveys under this Act are intended for the purposes of the Registered Land Act with which it is clearly in *para materia* with each other as numerous references are made to this latter Act.

### Registered Land

- [25] Section 26 of the Registered Land Act<sup>14</sup> provides that:

*“Subject to section 30, the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all*

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<sup>5</sup> See Section 13(1)) of the National Land Act; Chapter 191 Revised Edition 2011, Laws of Belize.

<sup>6</sup> See Section 13(2)) of the National Land Act; Chapter 191 Revised Edition 2011, Laws of Belize.

<sup>7</sup> See Land Surveyors Act; Chapter 187 Revised Edition 2011, Laws of Belize.

<sup>8</sup> Part II, Section 4 – 11 of the Land Surveyors Act; Chapter 187 Revised Edition 2011, Laws of Belize.

<sup>9</sup> Ibid see Section 5.

<sup>10</sup> Ibid see Section 6.

<sup>11</sup> Ibid see Section 7.

<sup>12</sup> Ibid see Section 11.

<sup>13</sup> Ibid see Section 9.

<sup>14</sup> Chapter 194, Revised Edition 2011, Laws of Belize.

*rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatever, but subject –*

*(a) To the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and*

*(b) Unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 31 not to require noting on the register:*

*Provided that –*

*(i) nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee*

*(ii) the registration of any person as the proprietor under this Act shall not confer on him any right to any minerals or any mineral oils unless the same are expressly referred to in the register.”*

[26] What this section (26) does is to provide a proprietor generally with an indefeasible, sometimes described as unimpeachable, title to property, subject to prescribed statutory exceptions<sup>15</sup>, or where there has been fraud by the registered proprietor<sup>16</sup>.

[27] Such indefeasibility is at the core of the Torrens System of land title which was established by the Registered Land Act<sup>17</sup>, under which a system of title by registration was established, and by which the title to land is certified, and would generally vest in the proprietor<sup>18</sup>.

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<sup>15</sup> See Sections 30 and 31 of the Registered Land Act below.

<sup>16</sup> See Section 143 of the Registered Land Act below.

<sup>17</sup> See *Tara Shire Council v Garner & Ors* [2002] QCA per Judgment of Atkinson J, paragraphs 48 & 49.

<sup>18</sup> *Ibid* Paragraph 48.



[28] With such indefeasibility, as a consequence, *“purchasers of land are able to rely upon the details of the register to confirm that the person from whom they are purchasing has the capacity to transfer the land.”*<sup>19</sup>

[29] Section 29 of the Registered Land Act states, in relation to national land, that:

*“The registration of land as national land shall, subject to any registered encumbrances, enable the Minister by a disposition registered under this Act to dispose of such land in accordance with the National Lands Act”.*

[30] Section 30 of the Registered Land Act then provides that:

*“Every proprietor who has acquired land, a lease or a charge by transfer without valuable consideration shall hold it subject to any unregistered rights or interest subject to which the transferor held it and subject also to the provisions of any law relating to bankruptcy and to the winding-up provisions of the Companies Act, but except as aforesaid such transfer when registered shall in all respects have the same effect as a transfer for valuable consideration.”*

[31] Section 31 of the Registered Land Act then goes on to provide some of the liabilities, rights and interests which may not need to be registered, in the following terms:

*“(1) Subject to subsection (2), unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interest as may for the time being subsist and affect it, without their being noted on the register –*

*(a) rights of way, rights of water and any easement or profit subsisting at the time of first registration under this Act;*

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<sup>19</sup> Ibid Paragraph 49.

- (b) *natural rights of light, air, water and support; rights of compulsory acquisition, resumption, entry, search, user or limitation of user conferred by any other law;*
  - (c) *leases or agreements for leases for a term less than two years, and periodic tenancies within the meaning of section 2*
  - (d) *any unpaid moneys which, without reference to registration under this Act, are expressly declared by any law to be charged upon land;*
  - (e) *rights acquired or in the process of being acquired by virtue of any law relating to limitation or prescription;*
  - (f) *the rights of a person in actual occupation of land or in receipt of the rents and profits thereof except where inquiry is made of such person and the rights are not disclosed;*
  - (g) *electric supply lines, telephones and telegraph lines or poles, pipelines, aqueducts, canals, weirs and dams erected, constructed or laid in pursuance or by virtue of any power conferred by any law.*
- (2) *The Registrar may direct registration of any of the liabilities, rights and interests hereinbefore defined in such manner as he thinks fit.*

[32] Section 142 of the Registered Land Act also, however, provides for rectification of the register in certain specified circumstances.

[33] Section 143 of the Registered Land Act goes on to provide for rectification of the register by the Court. It provides as follows:

*“(1) Subject to subsection (2), the Court may order rectification of the register by directing that any registration be made, cancelled or amended where it is satisfied that any registration, including a first registration, has been obtained, made or omitted by fraud or mistake.*

*(2) the register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents or profits and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.”*

[34] Thus, in relation to Section 143 of the Registered Land Act, where the Court is satisfied that any registration has been obtained by fraud the Court is permitted to cancel the registration. In this context it has been authoritatively determined that by fraud is meant:

*“..actual fraud, i.e., dishonesty of some sort, not what is called constructive or equitable fraud – an unfortunate expression and one very apt to mislead, but often used, for want of a better term, to denote transaction having consequences in equity similar to those which flow from fraud.....the fraud which must be proved in order to invalidate the title of a registered purchaser for value, whether he buys from a prior registered owner or from a person claiming under a title certified...must be brought home to the person whose registered title is impeached or to his agent. Fraud by person from whom he claims does not affect him unless knowledge of it is brought home to him or his agents. The mere fact that he might have found out fraud if he had been more vigilant, and had made further inquiries which he omitted to make, does not of itself prove fraud on his part. But if it be shewn that his suspicions were aroused, and that he abstained from*

*making inquiries for fear of learning the truth, the case is very different, and fraud may be properly ascribed to him.<sup>20</sup>*

## **General Background Facts**

### **Parties**

- [35] The 1<sup>st</sup> Defendant is the Minister of Natural Resources of Belmopan, Cayo District, Belize. He has statutory responsibility for the administration of national lands under the National Lands Act, and specific functions are assigned to the Minister under the Registered Land Act.
- [36] The 2<sup>nd</sup> Defendant is the Registrar of Lands in the Ministry of Natural Resources, Belmopan, Cayo District.
- [37] The 3<sup>rd</sup> Defendant is the Commissioner of Lands and Surveys in the Ministry of Natural Resources of Belmopan, Cayo District, Belize; he has statutory responsibility for all official or public surveys of the Government of Belize.
- [38] The 4<sup>th</sup> Defendant is the Attorney General of Belize of East Block Building, Belmopan, Cayo District, Belize. He is the statutory representative of the Government of Belize, the Minister of Natural Resources, the Registrar of Lands and the Commissioner of Lands and Surveys.
- [39] The 5<sup>th</sup> Defendant is a private company formed under the laws of Belize; its registered office is situate at International Free Zone, Ladyville, Belize District, Belize, owned by the 7<sup>th</sup> Defendant.
- [40] The 6<sup>th</sup> Defendant is SJ's Air Service Ltd.; a private company formed under the laws of Belize; its registered office is situate at Benny's Home Center at 2½ Miles on Philip Goldson Highway, Belize City, Belize, owned also by the 7<sup>th</sup> Defendant.
- [41] The 7<sup>th</sup> Defendant, being one Brett Feinstein, is a Businessman of Benny's Home Center at 2½ Miles on Philip Goldson Highway, Belize City, Belize. Mr. Feinstein is the Director of the two (2) companies, the 5<sup>th</sup> and 6<sup>th</sup> Defendants.

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<sup>20</sup> Assets Company Limited v Mere Roihi and others [1905] AC 176 Per Judgment of Lord Lindley at page 210.

Permission to Survey granted to and Survey of Land for the Claimant

- [42] On the 31<sup>st</sup> day of July, 2007, the Commissioner of Lands and Surveys issued a letter granting permission to the Claimant to survey a lot in San Pedro Town, Ambergris Caye. The reference number was BZ-R 187/2007 and it was an expressed condition of this permission to survey that the survey does not constitute a right of title. There is no Parcel number stated in relation to this permission.
- [43] It is submitted by the Claimant and this Court, for the purpose of this judgment, is willing to accept that it is possible that this permission was for Parcel No. 5511; but equally that it was possible that it was for Parcel 5311.
- [44] On the 13<sup>th</sup> August, 2007, the Claimant submitted to the Department of Lands and Surveys a survey plan bearing reference number BZR 187/2007 and Entry Number 10778 showing a survey of 314.715 square meters of land being a portion of Parcel No. 1448, Situate along the Southeastern Boundary of the San Pedro Airstrip, San Pedro Registration section, Block No 7, R.I.M Sheet No. 7/9780/NE, Belize District, which had been requested by the Claimant, and had been carried out by one Jaime A. Keith, a Licensed Land Surveyor.
- [45] This survey plan was subsequently authenticated on the 16<sup>th</sup> October 2007 by or on behalf of the Commissioner of Lands and examined for authentication on the 25<sup>th</sup> September, 2007.
- [46] This Court for the purpose of this judgment is willing to accept that this survey plan is more likely than not for Parcel No. 5511.

Permission to Survey granted to and Survey of Land for the 7<sup>th</sup> Defendant

- [47] On the 20<sup>th</sup> day of September, 2007, permission to survey was granted by the Lands and Surveys Department in favour of the 7<sup>th</sup> Defendant for a lot measuring 100 x 100 situated near the San Pedro Municipal Airstrip (“the “Airstrip”) in San Pedro Town, Ambergris Caye. This Court for the purpose of this decision is willing to accept that this permission to survey was likely not for Parcel No. 5511.

[48] On the 27<sup>th</sup> September, 2007, the 7<sup>th</sup> Defendant conducted a survey pursuant to permission No. BZ-R 744/2007, in relation to Survey Register No. 24 at Entry No. 7174, measuring 930.504 sm. Again this Court for the purpose of this decision is willing to accept that this survey plan was likely not for Parcel No. 5511.

Amendment of Parcel No. 5511

[49] It is undisputed that at all material times prior to 5<sup>th</sup> November 2007 the Government of Belize was the legal owner of Parcel No. 5511, being National Lands, and had the lawful authority, subject to law, to transfer title to it.

[50] On the 29<sup>th</sup> October, 2007 the Registrar of Land, 2<sup>nd</sup> Defendant, by Mutation Number 259/2007 instructed the Chief Surveyor, that he should amend a new Registry Index Map (RIM), so as to create a new parcel of land (a new parcel of land was therefore made) on the basis of Entry No 10778 which was attached.

[51] This (Entry No. 10778) is a Survey Plan dated 13<sup>th</sup> August, 2007 prepared by said Jaime A. Keith. This Survey Plan is now registered in the Lands Department in Survey Register No. 18 at entry No. 10778. The size of Entry No. 10778 is 314.715 square metres.

[52] The parcel of the land shown as Entry No. 10778 is a portion of Parcel 1448 situate along the Southeastern Boundary of the San Pedro Airstrip.

[53] This Survey Entry No. 10778 was requested by the Claimant, Marilee Pou. The Survey Plan Entry No. 10778 is Tab 21(5) exhibited in the Affidavit of Mr. Wilbert Vallejos. This Court for the purpose of this decision is willing to accept that this entry No. 10778 is more likely than not in respect of Parcel No. 5511.

[54] The Registrar of Land certified this Registry Map (Mutation Number 259/2007 being Survey Entry No. 10778) as having been amended on 31<sup>st</sup> October 2007.

[55] The Registrar of Lands on the 1<sup>st</sup> November, 2007 confirmed that the Registration for Entry No. 10778 and measuring 314.715 square metres, had been effected, which this Court considers was for Parcel No. 5511.

Parcel No. 5311: Payment and Approval for Sale

[56] Parcel No. 5311, measuring 930.504 square metres, mentioned in paragraphs 8, 9, 11, 12, and 31 of the Affidavit Mr. Wilbert Vallejos is situated at San Mateo Area of San Pedro Town on Ambergris Caye.

[57] As a matter of history this Parcel may have been leased to one Dafney Alvarez by GOB for a period of seven (7) years from the 3<sup>rd</sup> April 2006; and Ms. Alvarez subsequently applied to the Ministry of Natural Resources to have the lease transferred to one Mr. John Saki; and this application was approved by this Ministry; but this purported transfer of the lease, allegedly being not proper in law, was not registered, and in any event since April 2013, had expired.

[58] On the 5<sup>th</sup> November, 2007, the Claimant paid the full price of two thousand five hundred dollars (\$2,500.00), a certificate fee of fifteen dollars (\$15.00), and a registry fee of fifteen dollars (\$15.00) purportedly and in respect of the Parcel No. 5311 (not for Parcel No. 5511). The reference number was BZ-R 187/2007.

[59] Also on the 5<sup>th</sup> November, 2007, the Claimant was issued with a Land Rent Statement which reflected the payments made by the Claimant in respect of Parcel No. 5311. A visual inspection of the Land Rent Statement admitted into evidence reveals that beside the typewritten Parcel Number '5311' is a 'handwritten' Parcel Number '5511'.

[60] Critically this Court, on balance, accepts the typewritten and not the handwritten number as being the correct Parcel number for this Land Rent Statement and does not therefore accept the handwritten number as an actual rectification of this record – indeed this Court's views such handwritten number with some suspicion.

[61] Thus it would appear to this Court that the Claimant was, in fact and in law, granted approval to purchase Parcel No. 5311 in San Pedro Town, for which

she duly paid the purchase price of two thousand five hundred dollars (\$2,500.00).

#### Lease of Land Granted to 5<sup>th</sup> Defendant

- [62] On the 26<sup>th</sup> day of August, 2009, a lease bearing reference number LC 629/2009, was granted in favour of the 5<sup>th</sup> Defendant for a lot within the Airstrip boundary measuring 930.504 square meters.
- [63] On the 16<sup>th</sup> day of April, 2010, the 5<sup>th</sup> Defendant applied to purchase Entry No. 7174, which measured 930.504 square meters.
- [64] On the 11<sup>th</sup> day of May, 2010, approval was granted to the 5<sup>th</sup> Defendant to purchase Entry No. 7174.
- [65] On the said 11<sup>th</sup> day of May, 2010, a Land Purchase Approval Form was executed in favour of the 5<sup>th</sup> Defendant, and reflected a purchase price of five thousand dollars (\$5000.00) for the parcel. Entry No. 7174 was then assigned Parcel No. 10959.
- [66] On the 13<sup>th</sup> day of May, 2010, the 5<sup>th</sup> Defendant subsequently paid the price of four thousand nine hundred and ten dollars (\$4,910.00) for the said Parcel No. 10959.
- [67] On the said 13<sup>th</sup> day of May, 2010, the 5<sup>th</sup> Defendant was also issued a Land Rent Statement in respect of lease LC 629/2009.

#### Error, Rectification and Transfer of Parcel No 5311

- [68] On the 30<sup>th</sup> day of July, 2010 a Land Certificate was issued to the 5<sup>th</sup> Defendant for Parcel No. 5311, which the 1<sup>st</sup> to 4<sup>th</sup> Defendants allege was in error, as it had already been sold to the Claimant.
- [69] In or around January 2012, the error in registering Parcel No. 5311 to the 5<sup>th</sup> Defendant, was brought to the attention of the Lands Department by the 7<sup>th</sup> Defendant and director of the 5<sup>th</sup> Defendant and a request was made to rectify this error.
- [70] The Registrar of Lands, 2<sup>nd</sup> Defendant, on the 30<sup>th</sup> day of January 2012, rectified the land register for Parcel No. 5311 by cancelling entries on the register for Parcel No. 5311 and created a new register for Parcel No. 5311



and creating new registers for Parcel No. 5511 so that transfer of Land could be entertained for Parcel No. 5511.

- [71] Apparently the Registrar of Lands learned that Parcel No. 5511 was issued in error to the 5<sup>th</sup> Defendant, it being smaller than that which the 5<sup>th</sup> Defendant had purchased and the certificate for this parcel was surrendered to the Lands Department by the 5<sup>th</sup> Defendant.
- [72] On the 26<sup>th</sup> day of November, 2013, the GOB as legal owners of Parcel No. 5311, executed a land transfer to the Claimant in favour of the said Parcel No. 5311 upon which the apparent signature of the Claimant, witnessed by a JP, appears, and of which Parcel (No. 5311) the Claimant is now the registered proprietor.
- [73] On the 4<sup>th</sup> day of December, 2013, the Claimant was issued with a Certificate for the said Parcel No. 5311 as the registered proprietor with "TITLE ABSOLUTE".
- [74] The 6<sup>th</sup> Defendant, as evidenced by the register of title which was exhibited in evidence is now the registered and legal owner of Parcel No. 5511, as well as being the beneficial owner of the same with absolute title.

#### Litigation between 5<sup>th</sup> Defendant, Tropic Air Limited and GOB & Settlement

- [75] On the 12<sup>th</sup> day of June, 2014, the 5<sup>th</sup> Defendant instituted Claim No. 299 of 2014 for trespass to land in respect of Parcel No. 10959 against Tropic Air Limited.
- [76] On the 13<sup>th</sup> day of June, 2014, Tropic Air Limited instituted Claim 300 of 2014 against the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants with the 5<sup>th</sup> Defendant as an interested party in the Claim.
- [77] Both of these proceedings apparently resulted from a land dispute which had arisen because of some of the above errors in the land registry and which was existing at the time.
- [78] In or around July 2014, the matter was settled between Tropic Air Limited, the GOB and the 5<sup>th</sup> Defendant.
- [79] As a part of the settlement on the 14<sup>th</sup> day of August, 2014, the 5<sup>th</sup> Defendant surrendered title to Parcel No. 10959. Parcel No. 5511 was then

mutated to create Parcels Nos. 10999 and 11000 Block 7 and title to said Parcels were issued to the 6<sup>th</sup> Defendant. The size of Parcel No. 11000 is 314.715 square metres. There is now a survey register for Parcel No. 11000 (previously Parcel No. 5511 and re-designated Parcel No. 11000).

#### Sale of Parcel No. 11000

[80] In March 2015, SJ's Air sold Parcel No. 11000 to Zakir Husman.

[81] In October 2015, Zakir Husman sold Parcel No. 11000 back to SJ's Air.

#### The Court Proceedings

[82] The Claimant commenced the present proceedings by fixed date claim form on the 24<sup>th</sup> June 2016 in which she claimed that she is entitled to Parcel 5511 by purchase from the GOB by paying the sum of BZ\$2,503.00.

[83] This parcel, it is alleged by the Claimant in the claim form, has not been transferred to her despite repeated demands to do so, but was instead illegally and corruptly transferred to the 7<sup>th</sup> Defendant, Brett Fienstein, who then corruptly transferred it to the 5<sup>th</sup> Defendant, Construction Depot Limited, which company has unlawfully and dishonestly retained possession of it by means of sham transactions and schemes.

[84] The Claimant is in effect, indirectly, asking this Court to nullify and rectify these transactions, by cancelling them, as she alleges in her fixed date claim form, all of such transactions constitute and amount to an arbitrary deprivation of the Claimant's property (Parcel No. 5511) by GOB.

[85] Specifically the Claimant is claiming the following reliefs:

- 1) A declaration that the Defendants contravened the rights of the Claimant guaranteed in Section 3(d) and 17(1) of the Belize Constitution when they abused their powers, assumed ownership of the property of the Claimant, Parcel No. 5511 in Block 7 San Pedro Registration Section, and purported to sell, or transfer the same to the Interested Parties [now the 5<sup>th</sup> 6<sup>th</sup> and 7<sup>th</sup> Defendants].

- 2) A declaration that the transfer or sale by the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Defendants of Parcel 5511 (or Parcel 11000) to the Interested Parties [now the 5<sup>th</sup> 6<sup>th</sup> and 7<sup>th</sup> Defendants] and all transactions conducted in respect of the said property breached sections 3(d) and 17(1) of the Belize Constitution and contravened the rights of the Claimant guaranteed in the said provisions of the Constitution.
- 3) A declaration that the sale or transfer of Parcel 5511 (or Parcel 11000) to the Interested Parties [now the 5<sup>th</sup> 6<sup>th</sup> and 7<sup>th</sup> Defendants] is ultra vires the National Lands Act, Cap. 191 specifically section 2 of the Act.
- 4)
  - a) A declaration that the Registered Land Act, Cap. 194 having granted immunity to the Registrar of Lands and the staff of the Land Registry against all claims and liabilities in circumstances when they expropriated the property of the Claimant contrary to the provisions of the National Land Act, the Registered Land Act, sections 3(d) and 17(1) of the Belize Constitution and the Land Acquisition (Public Purposes) Act, to that extent the provisions of the Act granting the immunity is unconstitutional.
  - b) In any event, the Registrar of Lands and the Staff of the Lands Registry did not act in good faith.
- 5) A declaration that the Claimant is the owner of Parcel 5511 (or Parcel 11000) and ought to be registered as proprietor of the said Parcel.
- 6)
  - a) An order directing the Registrar of Lands to rectify the Land Register in respect of Parcel 5511 (or Parcel 11000) by cancelling the registration of SJ's Air Services Ltd. as proprietor pursuant to section 142(3) of the Registered Land Act, Cap. 194; and
  - b) An order directing the Registrar of Lands to register the Claimant as proprietor of Parcel 5511 (or Parcel 11000).

- 7) In addition, damages/compensation.
- 8) Interest on any amount or damages found to be due to the Claimant in accordance with section 166 of the Supreme Court of Judicature Act, Cap. 91.
- 9) Costs.
- 10) In addition or in the alternative, appropriate declarations and orders as would secure and enforce the rights of the Claimant guaranteed in section 3(d) and 17(1) of the Belize Constitution pursuant to section 20(2) of the Constitution, including an order of mandamus directed at –
  - a) the Registrar of Lands to rectify the Land Register in respect of Parcel 5511 (or Parcel 11000) by cancelling the registration of SJ's Air Service Ltd. as proprietors; and
  - b) the Registrar of Lands to register the Claimant as proprietor of Parcel 5511 (or Parcel 11000)

[86] It is interesting to note that the Claimant is also directly asking the Court to rectify the register, pursuant to Section 143 (1) of the Registered Land Act. This request to rectify the register by cancelling the registration of the 6<sup>th</sup> Defendant as the registered proprietor of Parcel No. 5511.

[87] The Claimant is asking the Court for a "*declaration that the Claimant is the owner of Parcel 5511 (or Parcel 11000) and ought to be registered as proprietor of the said Parcel*".

[88] The Claimant is also asking the Court to grant an "*order directing the Registrar of Lands to rectify the Land Register in respect of Parcel 5511 (or Parcel 11000) by cancelling the registration of SJ's Air Services Ltd. as proprietor pursuant to section 143(1) of the Registered Land Act, Cap 194*".

[89] These requests of the Court are not applications for administrative orders but, in the view of this Court, constitute civil proceedings or a private law

claim against the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants, commenced under the Registered Land Act.

- [90] On the 5<sup>th</sup> September, 2016, GOB (1<sup>st</sup> to 4<sup>th</sup> Defendants) filed the First Affidavit of Wilbert Vallejos, the Commissioner of Land and the Head of Department within the Ministry of Natural Resources and Immigration. This Affidavit has been deemed a Defence to the Claim and will stand as such, as well as a witness statement for such Defendants.
- [91] By the Affidavit of Wilbert Vallejos, these first four Defendants deny that there was any fraudulent activity by any Government officials and aver that there were errors with respect to the parcel numbers of certain lands (including the subject land) of which GOB was originally the owner and which have had to be rectified; and that the Government officials at all times acted in good faith and within their legal and constitutional powers by rectifying them.
- [92] There was an application filed on the 23<sup>rd</sup> September, 2016 by the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants for an order that the claim be struck out from the proceedings as the Claim was an abuse of process and that there was no reasonable grounds for bringing the claim against them.
- [93] On the 23<sup>rd</sup> of September 2016, the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants again filed a Notice of Application for the Claimant to be struck out against them as an abuse of process, which was subsequently, on the 11<sup>th</sup> December 2016, withdrawn on the basis of cost in the cause.
- [94] A large number of other case management directions have been given by this Court to bring this matter ready for trial.
- [95] On the 10<sup>th</sup> January, 2017, the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants filed a Defence in which they disputed the claim against them.
- [96] In compliance with case management conference (“CMC”) directions on the 27<sup>th</sup> of January 2017 the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants filed an Amended Defence and a Counterclaim in which they disputed the claim and further counterclaimed the Claimants for:
- a. Damages in the sum of US\$137,500.00;

- b. Interest pursuant to sections 166 and 167 of the Supreme Court of Judicature Act; and
- c. Costs.

- [97] In the Amended Defence the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants deny that the Claimant is the owner of the subject land. These Defendants allege that the Claimant is in fact the owner of another parcel of land (Parcel No. 5311). They also allege that the allegations of the Claimant are deceitful, an abuse of the process of the Court and that there was an innocent error in the land registry in which a land certificate for the subject land was mistakenly issued to the Claimant and which had to be rectified; that there was not any fraudulent or corrupt transaction involved as between officials of the GOB and the last three Defendants; and that the Claimant did not at any time have an interest in the subject land.
- [98] On the 28<sup>th</sup> February, 2017, also in compliance with CMC directions, the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants filed a Reply to Amended Defence and Defence to Counterclaim in which the Claimants largely joins issue with the claim.
- [99] On the 20<sup>th</sup> April, 2017, the Claimant filed and served a Notice to Admit Facts against the GOB in which a request was made to the Attorney General to admit some 18 listed facts.
- [100] On the 22<sup>nd</sup> April, 2017, the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants filed the Witness Statement of the 7<sup>th</sup> Defendant.
- [101] On the 24<sup>th</sup> April, 2017, the Claimant filed two Witness Statements of herself and her brother Pedro Vasquez.
- [102] On the 28<sup>th</sup> April, 2017 the GOB filed and served a Reply to Notice to Admit Facts in which the Solicitor General diligently replied to each request.
- [103] There was an application filed on the 24<sup>th</sup> May 2017 by the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants for an order that they be given security for costs in the sum of \$60,000.
- [104] On the 31<sup>st</sup> May, 2017, the Claimant filed and served a Pre-Trial Memorandum.

[105] On the 2<sup>nd</sup> June, 2017, the Claimant filed and served a Notice of Application for judgment on Admissions in which it was claimed that based on admissions made by GOB the claimant is entitled to the following reliefs:

- 1) A declaration that the Government Defendants contravened the rights of the Claimant guaranteed in Section 3(d) and 17(1) of the Belize Constitution when they assumed ownership of the property of the Claimant, Parcel 5511 in Block 7 San Pedro Registration Section, and purported to sell, or transfer the same to the 6th Defendant.
- 2) A declaration that the transfer or sale by the Government Defendants of Parcel 5511 (or Parcel 11000) to SJ's Air Service Ltd. and all transactions conducted in respect of the said property breached sections 3(d) and 17(1) of the Belize Constitution and contravened the rights of the Claimant guaranteed in the said provisions of the Constitution.
- 3) A declaration that the sale or transfer of Parcel 5511 (or Parcel 11000) to SJ's Air Service Ltd. is ultra vires the National Lands Act, Cap. 191 specifically section 2 of the Act and therefore null and void.
- 4) A declaration that the Claimant is the owner of Parcel 5511 (or Parcel 11000) and ought to be registered as proprietor of the said Parcel.
- 5) a) The Registrar of Lands shall within 7 (seven) days rectify the Land Register in respect of Parcel 5511 (or Parcel 11000) by cancelling the registration of SJ's Air Services Ltd. as proprietor.  
b) The Registrar of Lands shall within 7 (seven) days register the Claimant as proprietor of Parcel 5511 (or Parcel 11000).
- 6) The Government Defendants shall pay to the Claimant costs.

[106] The Grounds of the Application for judgment on Admissions are:

1. The Application for judgment on admission of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants is made pursuant to CPR 11, 14.1(2) and 14.4(1).
2. The Government Defendants in paragraph 28 in Exhibit Tab 21(4) of the Affidavit of Wilbert Vallejos sworn on 2<sup>nd</sup> September, 2016, their defence, admitted –

- i) that Registry Index Map (RIM) or a new parcel of land was made on the basis of Entry No. 10778.
  - ii) That Mutation Number 259/2007 was made on the basis of Entry No. 10778.
  - iii) That Exhibit Tab 24(5) Entry No. 10778 is Survey Plan dated 13<sup>th</sup> August, 2007 prepared by Jaime A. Keith, Licensed Land Surveyor, registered in Survey Register No. 18 at Entry No. 10778.
  - iv) That the Survey Plan Entry No. 10778 was prepared on the request of the Claimant based upon the written permission to survey Reference No. BzR-187/2007 dated 31<sup>st</sup> July, 2007 issued by the Commissioner of Lands and Surveys.
  - v) That Entry No. 10778 measures 314.715 square metres and is situate near the San Pedro Airstrip.
3. The Government Defendants in their response to the notice to admit facts dated 27<sup>th</sup> April, 2017 admitted that –
- i) Parcel No 5511 was registered on 1<sup>st</sup> November, 2007 on the basis of Entry No. 10778.
  - ii) Entry No. 10778 is Parcel No. 5511 measuring 314.715 square metres.
  - iii) Parcel No. 5511 was “re-designated” as Parcel 11000 and measures 314.715 square metres.
  - iv) Parcel No. 5311 is situate in San Mateo Area in San Pedro and measures 930.504 square metres.
  - v) Parcel No. 5311 was leased by the Government to Ms. Dafney Alvarez for a term of seven (7) years in April, 2006. Ms. Alvarez obtained the permission of the Minister of Lands to transfer the lease to John Saki.



4. That the land sold to the Claimant is Parcel No. 5511.

[107] On the 8<sup>th</sup> June, 2017, a consent order was made for security for the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants costs in the sum of \$20,000, with which the Claimant complied.

[108] On the 6<sup>th</sup> June, 2017, the Defendants filed and served an Agreed Pre-Trial Memorandum of the Defendants.

[109] On the 7<sup>th</sup> June, 2017 the Claimant filed a Notice that subject to certain specified paragraphs of the Defendants Pre-Trial Memorandum, the Claimants were prepared to agree such Pre-Trial Memorandum.

[110] The witnesses for the Claimant was the Claimant herself, a Businesswoman of San Pedro Town on Ambergris Caye, and her brother Pedro Vasquez, a businessman also of San Pedro Town, Ambergris Caye.

[111] The witness for GOB was Mr. Wilbert Vallejos the Commissioner of Lands and the Head of Department within the Ministry of Natural Resources and Immigration.

[112] The remaining Defendants (5<sup>th</sup> to 7<sup>th</sup> Defendants) did not call any witnesses and their witness statement of their witness was not admitted into evidence.

[113] On the 8<sup>th</sup> June, 2017, the Court ruled on the Claimant's application dated 2<sup>nd</sup> June 2017 for judgment on Admissions and decided that this application would be stood down and taken as part of the substantive claim.

[114] The Court received the evidence of the witnesses in the case on the 8<sup>th</sup> June, 25<sup>th</sup> July and 27<sup>th</sup> July, 2017.

[115] In the meantime, on the 10<sup>th</sup> day of July, 2017, the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants filed an application for specific disclosure of the financing by a non-party of the Claimant's litigation.

#### Application for Specific Disclosure

[116] On the 25<sup>th</sup> July, 2017, the application by the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants for specific disclosure was heard and an order made granting specific disclosure of certain information by 1<sup>st</sup> August, 2017.

### Application for the Committal of Claimant

[117] On the 15<sup>th</sup> August, 2017, the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants filed an application for the Committal of Claimant for disobeying the order for specific disclosure.

### Ruling on Application of Witness Summons and for Security for Costs

[118] On 16<sup>th</sup> day of October, 2017, this Court noted the Application and supported evidence for witness summons and concluded that this is a side or collateral issue neither germane nor central to any of the main issues in the case and therefore considered that it was not necessary for the just conclusion of the case.

[119] This Court also observed that there was a previous application for a witness summons and by Order dated 25<sup>th</sup> July, 2017 that application was refused by this Court. This therefore considered it was an abuse of process for this application to be renewed at this stage of the case after both parties have closed their cases. On that occasion the case was adjourned to allow the parties to file and exchange closing submissions which was due to take place on 2<sup>nd</sup> November, 2017. Both parties have filed such closing submissions.

[120] The Court therefore considered that the effect of granting the order applied for would result in a further adjournment of this case which had already, in this Court's view, been adjourned beyond that which was necessary, thereby further delaying the timely and just conclusion of the proceedings.

[121] Finally, this Court considered that the question or questions relating to costs and security thereof for the Defendants had been resolved by consent order dated 23<sup>rd</sup> June, 2017.

[122] This Court could not preclude the Applicants from making any appropriate oral submissions in relation to the alleged refusal to obey the order of specific disclosure in relation to the subject of this application, and ordered that Costs of this application is reserved to be dealt with at the closing submissions when the Court will hear the parties on such matter.

**Whether the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants should be Removed from the Present Proceedings & There is a Case Against Them?**

**Ruling In Relation to Application to Remove the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants as Parties from the Claim**

- [123] On the 24<sup>th</sup> July 2017 the Claimant filed an application that the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants be removed as parties from the claim along with the documents filed by them.
- [124] On the 23<sup>rd</sup> September 2016, the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants applied that the Court strike out the claim against them as an abuse of process.
- [125] Given the nature of the allegations which have been made by the Claimant against the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants, and the relief for rectification which has been sought against them, this Court now rules that it has jurisdiction to make the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants parties (as private parties and/or entities) to this mixed (public and private law) claim filed against all of the Defendants.
- [126] This Court also had in terms and effect ruled that the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants are, as a result of such a mixed claim, entitled to be full parties to this essentially mixed claims for administrative orders (including for breach of statutory duty, public order declarations and for constitutional reliefs) as well as for ‘non-administrative orders or declarations’ (under the Registered Land Act).
- [127] Being such full parties to this claim brought by the Claimant against the Defendants, initially against the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants (merely as ‘Interested Parties’) this Court by its ruling to make them full parties had determined that the latter parties are persons/entities with a sufficient interest in the subject matter of the claim for administrative orders.
- [128] The decision of this Court to make the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants full parties had been made on the understanding that they had a sufficient interest in the subject matter of the proceedings, namely Parcel No. 5511 the title, right and interest in which the Claimant was claiming, and should be allowed to plead to (and counterclaim in), as they had a good standing in relation to

the claims against them. The Claimant at all material times acquiesced in these determinations.

- [129] As a result, this Court had determined that the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants are entitled to plead (and to counterclaim) to the allegations made against them, as well as to fully participate in the proceedings, including by the cross-examination of witnesses and by making written and oral submissions.
- [130] Given the allegations which the Claimant had made against the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants this Court did not consider and does not consider that it would be in keeping with the overriding objective of this Court, to deal with this case justly, by disabling the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants in any way in the conduct of their defences, and by not putting them on an equal footing with the Claimant and the other defendants.
- [131] This Court also considered, and still considers, that it would indeed be disadvantageous to this Court in arriving at a fair and just resolution of the issues before it, for the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants not to be fully participating in the present case in which serious allegations have been made against them.
- [132] This Court also considered and still considers that it would also save expense and thereby would prevent a multiplicity of claims, for the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants to remain in the present claim.
- [133] This Court also considered and still considers that in all the circumstances of the case, given the allegations against the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants (including the amount of money involved, the importance of the case, the complexity of the issues and the financial position of the parties) that it would be disproportionate and unfair to such Defendants not to allow them to take a full and active part in the proceedings.
- [134] Finally this Court considered and still considers that it would therefore be an expeditious way of dealing with the claim and all of its issues, and would be making a good use of the Court's resources, for the claim brought against GOB, as well as the allegations being made against the other

parties (initially named as Interested Parties); to be fully an actively participating in the present proceedings in which they had all originally been joined. Also that these proceedings ought to continue to finality with the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants participating as full parties.

Decision on the 2<sup>nd</sup> November on the Submission of 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants that the Claim be dismissed against them

[135] This Court considered, given the way in which the case had developed, that it was convenient to first deal with this issue.

[136] The submission, essentially that there was no credible case against the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendant, was made by their Counsel after all the witnesses had been called and the cases for all the parties had closed.

[137] The Court observed that it had first considered, upon reading the Claim against the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants, that the Claim appeared to have been brought against such defendants primarily under the Registered Land Act, for rectification based on fraud; and was for cancellation of the title to Parcel No. 5511 which was vested in one or the other of them.

[138] The Court also noted that it observed that the conduct of the proceeding against such Defendants, including the cross examination of the Claimant and her witness against such Defendants, appeared to be on basis of this case.

[139] The first determination this Court made was that it had looked at all the evidence and that in the Court's view of the Claimant and her witness, it considered that they were totally discredited in relation to any and all claims which the Claimant had brought against the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants in relation to fraud by any of them.

[140] The Court did not consider it necessary to go through, line by line, the extract from the transcript, to show that the Claimant and her Witness were effectively demolished under cross-examination in relation to the allegations of fraud. The Court simply stated that it accepted the list of matters or allegations in relation to which the Claimant and her witness had been

discredited as presented by Counsel for 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants, which he had itemized, and with which this Court totally agreed.

[141] In sum in relation to the credibility of the Claimant's witness and of the case brought against the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants, the Court reached the conclusion that the allegations against such Defendants for any misconduct were scandalous and without any basis, and that in the Court's view the conduct of the witnesses, and indeed of the case against them, was entirely misplaced and may have been overbearing or even oppressive.

[142] The Court expressed the view that it had been interested to see what Defence would be raised by the Claimant's Counsel in his submissions, following the poor performance of the Claimant's witness under cross-examination, and had concluded that, as it happened, such Counsel did not seem to provide any kind of support and neither did he point to any evidence in support of the allegations or claims for fraud or misconduct. Instead the Court held that Counsel for the Claimant, rather had disingenuously, completely shifted his position to what appears to this Court to be a somewhat novel argument, based purely on the unconstitutionality of actions of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants (wholly disregarding his earlier pleaded allegation of fraud under the Registered Land Act), resulting in any transfer to the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants of Parcel No. 5511, being null and void.

[143] The Court considered that Counsel for the Claimant by this attempt to revise his case by this revised submission, was, in its view, somewhat disingenuous. In this Court's view, it was an entire shift from the case which had been pleaded and presented, which had clearly become a wholly unsustainable position as a result of the cross-examination of the Claimant's witness.

[144] The Court considered that the revised position, as then presented by Counsel for the Claimant, as already noted, is that once a decision of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants contravened the constitutional rights of the Claimant, which was being advanced, that such decision would be null and

void, and as such, GOB had nothing to pass, and therefore any transfer of Parcel No. 5511 to the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants was a nullity.

[145] This Court observed that it had then specifically asked Counsel for the Claimant to bring to its attention any legal authorities for those, now revised, submissions; but that in this Court's view, no such support was to be found in any of the authorities presented by him.

[146] As a result of the failure of Counsel for the Claimant to support his submissions, this Court accepted the submissions by Counsel for the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants, that the Claimant never had any title to Parcel No. 5511. That in fact the Claimant indeed had a title to another parcel of land, Parcel No. 5311, in which she has a vested title, and which she was only now, in these proceedings, asserting she doesn't want.

[147] This Court considered that the Claimant by conceding that she is now no longer claiming any right to Parcel No. 5311 under the Registered Land Act, in the Court's view, has conceded the merits of the cause of actions on which she had grounded her claim against the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants, and in substance and effect, is thereby also conceding that the Claimant has no private law remedy against the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants.

[148] The Court therefore went on to consider whether the Claimant had any claim or question against the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants for this Court to consider in public law.

[149] The Court then concluded that it has not seen nor heard anything, in public law, which supports a claim against the 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> Defendants and in the Court's view, in any event, the Claimant has not done so to its satisfaction.

[150] The cases to which this Court had been referred, dealing with compulsory acquisition<sup>21</sup>, and the facts and circumstances set out in the decision of the Court of Appeal case to which the Court was referred<sup>22</sup>, was decided

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<sup>21</sup> Civil Appeal No. 30 of 2010 *British Caribbean Bank Limited v AG & Minister of Public Utilities & Civil Appeal No. 31 of 2010 Dean Boyce v AG & Minister of Public Utilities*

<sup>22</sup> *Ibid.*

differently, and none of them in this Court's view, is relevant to nor equal to the situation that is at present before this Court. Neither, in this Court's view, does it support the revised submission which the Claimant's Counsel had cited as its position.

[151] As a consequence, this Court found the revised submission wholly without merit and frankly disingenuous.

[152] The Court further considered that even the position taken by the Counsel for Claimant on the previous application to strike out the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants, contradicts the argument which he was now raising and that as a result, and because the Court finds no merit whatsoever in the revised submission, this Court would dismiss with costs any and all claims against the 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> Defendants, based on any alleged constitutional contravention by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants.

[153] This Court now considers that in any event this attempt, in a roundabout, almost backdoor (outside of the Registered Land Act, as pleaded but under the Constitution), way of attempting to obtain a rectification of the register by cancelling the registration of the 6<sup>th</sup> Defendant as proprietor of Parcel No. 5511, based on the alleged contraventions of the constitution, and not for fraud, simplicitor, is disingenuous and not permissible – and is motivated by the simple and palpable fact that the allegations of the Claimant and her witness, as they were themselves, totally discredited under cross-examination.

[154] On the question of costs, the Court looked at the agreement of the parties that the value of the Claim which was by agreement, valued at US\$137,000; and the Court had been asked to reconsider the matter.

[155] The Court having found that the claim against the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants baseless, and accepting that the Court had an inherent jurisdiction where costs is concerned, even a wide discretion, and having considered all the facts and circumstances, had concluded that the 5<sup>th</sup> 6<sup>th</sup> and 7<sup>th</sup> Defendants' rights would be sufficiently vindicated if the Claimant should pay prescribed costs on the substantive claim based on the agreed amount, and that this



Court would resist the great temptation, for which indeed there is a very strong argument, to grant costs on an indemnity basis.

[156] The Court therefore determined that the application to remove the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants is refused, but would dismiss the claim against them, but would order costs to them on indemnity basis on the said application. No costs is awarded on the counterclaim which was in any event abandoned quite early in the present proceedings, by the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants.

**Whether There Were Any Fraudulent Transactions as between The Defendants?**

[157] In this issue the Claimant is alleging that she is the legal owner of Parcel No. 5511 which she obtained by purchase in November 2007; and in respect of which private persons (non-governmental bodies and/or entity), namely the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants, now have an interest in this parcel.

[158] The Defendants all deny the Claimant's claim, in relation to this issue, on the basis that as a result of all the highly contentious facts and circumstance of this somewhat involved claim, that the Claimant has never been the owner of Parcel No. 5511, and neither is she now its owner, nor was she or is she entitled to it.

[159] As already noted this Court has concluded that the Claimant and her witnesses had been totally discredited in relation to the allegation of fraud or fraudulent schemes and designs or having done anything unlawful which the Claimant alleged against each or many of the Defendants.

[160] This Court in relation to this issue specifically considered that the Claimant had been totally discredited as a witness of truth of or as having any reliability in relation to the allegation which she made against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants. This Court likewise considers that and in the present context, in relation to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants, any and all such allegations of fraud or unlawfulness to be equally discredited.

- [161] This Court considers that all such allegations were unsupported by the evidence of the Claimant's witnesses and were therefore wild, reckless, totally unfounded and unsubstantiated by her in her testimony.
- [162] Indeed this Court might have been more inclined to attach a little more credibility to the allegations or accusations against the Defendants if a licensed surveyor, perhaps even the licensed surveyor whose services the Claimant had engaged, had been called by her to explain to this Court the nature and basis for her allegations. Instead the Claimant called her far from disinterested and non-objective brother, who was also discredited under cross-examination, and who could not explain, much less substantiate, to this Court's satisfaction, the allegations which the Claimant and he were making against the Defendants.
- [163] To the extent therefore that the evidence of the Claimant or her witness are required to support or substantiate any of her claims or allegations this Court would not rely on anything said or done by her or her witness as testified by them, for such support.
- [164] The case for the Claimant against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants, will therefore stand or fall entirely on the admissions which the Claimant, and her lawyers were able to obtain from such Defendants on the Notice to Admit Facts, and upon the considerable legal or creative skills that her lawyers sought to expend to persuade this Court that there was a basis in Answers to such Notice, to support or substantiate the allegations which the Claimant made against the Defendants or any of them – something of a tall order given the discredited allegations by the Claimant and her witness.
- [165] This Court has very carefully gone through the uncontested or admitted facts and evidence presented to it, and has attempted to penetrate the considerable smoke which has been fanned amidst the same by the voluminous written submissions of her learned Counsel using the error which the Registrar of Lands testified had to be rectified, which this Court accepts.

- [166] From such evidence, including from the general background facts already found, including from the land register for Parcel No. 5511, it is abundantly clear to this Court, on the evidence before it, that the 1<sup>st</sup> to 4<sup>th</sup> Defendants, are correct in asserting that at all material times, prior to the title of Parcel No. 5511 being issued to the 5<sup>th</sup> to 7<sup>th</sup> Defendants that this property was National Land belonging to GOB.
- [167] It is also abundantly clear to this Court, on the evidence before it, that the Claimant, at all times may have been interested in lands in San Pedro, and almost certainly paid, and in any event on balance did in fact pay the purchased price for Parcel No. 5311, situate in San Pedro, and not Parcel No. 5511 also situate in San Pedro.
- [168] In relation to Parcel No. 5311 there is in evidence, a certificate of title, evidencing that the Claimant is now the registered owner of Parcel No. 5311, and of which she is now registered as the owner with absolute title.
- [169] As a result of the findings of this Court, it has concluded that the Claimant and GOB agreed for the Claimant to purchase Parcel No. 5311 upon which agreement the Claimant performed by paying the agreed purchase price.
- [170] There is no similar evidence of a concluded sale of Parcel No. 5511 by GOB to the Claimant or the payment of any additional monies to GOB in relation to any parcel of land other than Parcel No. 5311.
- [171] The Claimant has therefore at law and by virtue of Section 26 of the Registered Land Act, indefeasible, or unimpeachable, title to Parcel No. 5311 (and not Parcel No. 5511).
- [172] It is also absolutely clear to this Court that on the evidence in relation to Parcel No. 5311 the Claimant has never taken any or any real or effective step to renounce such title or ownership of this parcel of land.
- [173] It therefore follows, from a determination of the uncontested facts as already found by this Court, and all the facts and circumstances of the case that it is unable to yield, and this Court is unable to conclude, that there was indeed a sale of Parcel No. 5511 to the Claimant.

- [174] There is no evidence before this Court that the 1<sup>st</sup> Defendant under Section 29 of the Registered Land Act, by any disposition registered under this Act, of Parcel No. 5511, disposed of this Parcel to the Claimant.
- [175] This Court is therefore unable to find, on the facts and circumstances of the present case, that there was a disposition or contract or agreement of sale of Parcel No. 5511 constituted by any approval of the Claimant's application to purchase, and/or any Minister's Approval of the Claimant's application to purchase and/or any Statement of Purchase Price followed by the Claimants payment of any purchase price and stamp duty, and/or that the Claimant had a concluded agreement and/or contract with the GOB and/or duly performed the terms of any such agreement or contract.
- [176] On the contrary this Court has concluded that on the clear evidence before it that there is instead only evidence of a sale by GOB to the Claimant of Parcel No. 5311, which was followed by a legally, effectual, binding and enforceable sale and an indefeasible transfer of this Parcel No. 5311 to the Claimant.
- [177] It follows that this Court is unable to find, as alleged by the Claimant, that there was a "re-designation" of any sale of the Parcel No. 5511 as Parcel No. 11000 to the 6<sup>th</sup> Defendant.
- [178] This Court has therefore determined that the Claimant had never had a legal nor beneficial ownership interest in or of Parcel No. 5511.
- [179] In conclusion, in relation to this issue, this Court is not able to determine that the Claimant has even begun to, or even come close to discharging, the heavy burden and high standard of prove required of the Claimant, to proof fraud by any of the Defendants; or indeed any unlawfulness by the Defendants or any of them.
- [180] Indeed this Court considers any and all such allegations of fraud, illegality and misbehavior were not only without basis, but indeed wild and scandalous.

**Whether the Minister acted ultra vires its powers in issuing title to the 5th Defendant in relation to Parcel No. 5511?**

- [181] The Claimant has sought a declaration that the Government Defendants “abused their powers” by assuming ownership of the property of the Claimant, Parcel 5511 Block 7 San Pedro Registration Section, and sought to sell or transfer the property to the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants.
- [182] This issue and submission is premised on the proposition that Parcel No. 5511 was National Land when it was allegedly sold to the Claimant, and that once sold, or granted or “located” it ceased to be National Land; and as such the Minister responsible for lands has no legal authority to sell, grant or transfer the same parcel of land to the 6<sup>th</sup> and/or the 7<sup>th</sup> Defendant, as such Minister could not grant what they did not have<sup>23</sup>.
- [183] The Claimants submissions was based on a somewhat convoluted and involved, though somewhat creative, if not ingenious, series of arguments and interpretations by Counsel for the Claimant, based on alleged or mere survey of Parcel No. 5511, statutory duties of the Commissioner of Lands, various registrations (including an error and rectification thereof) which have taken place on the Land Register with respect to Parcel No. 5511, as well as alleged admissions of the Government Defendants, all to show that there has been a sale of this parcel to the Claimant.
- [184] GOB submits that as the registered owners of Parcel No. 5511 and having indefeasible proof of ownership, it did not act ultra vires its powers in transferring title to Parcel No. 5511 to the 5<sup>th</sup> Defendant – which it did and not to the Claimant. That Parcel No. 5511 was in fact and in law duly sold to the 5<sup>th</sup> Defendant and is at present owned by the 6<sup>th</sup> Defendant under its present title number.
- [185] Based on the facts as found by this Court and the determination which I have already made about the credibility of the Claimant and her witnesses,

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<sup>23</sup> On the basis of: “*nemo dat quod no habet*” – “According to this maxim, no one gives a better title to property that he himself possesses”.<sup>23</sup> No one gives what he does not have; no one transfers (a right) that he does not possess.

this Court unhesitatingly finds, and is quite satisfied, that Parcel No. 5511, started out being National Lands, and as such the Minister responsible for lands had all legal authority to sell, grant or transfer the same parcel of land to the 6<sup>th</sup> and/or the 7<sup>th</sup> Defendant, which he in fact and in law did, ,and that there was never at any time a sale of this parcel to the Claimant.

[186] This Court reiterates that upon review of all of the evidence and the facts and circumstances of shis case, that there was never a sale of Parcel 5511 by the 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup> Defendants to the Claimant; but there was evidence of a sale of Parcel No. 5311 to the Claimant.

[187] This Court has therefore concluded that the Claimant is not entitled to the declarations sought by her against the Government Defendants.

[188] This Court has also concluded that neither the Government nor any of its agents or representatives “abused their powers” by assuming ownership of the property of the Claimant, Parcel No. 5511, Block 7 San Pedro Registration Section, and sought to sell or transfer the property to the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants.

[189] Indeed this Court considers that the claim by the Claimant for abuse of power more resembles or amounts to an abuse of the Court’s jurisdiction and of its process to hear and determine a judicial review application and/or to grant declarations in relation to the same.

[190] This Court considers therefore that there is no merit whatever in the Claimant’s claim in relation to this issue.

[191] This Court considers that the Claimant continues to hold and has not renounced in any way her title to Parcel No. 5311; and that if the Claimant is indeed granted the reliefs which she seeks, she would continue to have absolute title to Parcel No. 5311 as well as that of Parcel No. 5511 – which would be not only unjust, but would give her a potential windfall.

**Whether there was any deprivation of the Claimant’s right to property under the Constitution?**

[192] It follows from all that has been said and determined by this Court that this Court therefore finds and determines, having carefully examined all the

evidence in the case, and having carefully considered the testimony of all the witnesses, that there was never a sale of Parcel No. 5511 to the Claimant; and that therefore the GOB did not and could not compulsorily have taken any interest or right of the Claimant over this Parcel contrary to the Section 17(1) or any other provision of the Belize Constitution.

[193] As a result this determination of this Court finds and determines, having carefully examined all the evidence in the case, and having carefully considered the testimony of all the witnesses, that GOB did not arbitrarily deprive and could not have arbitrarily deprived the Claimant of any interest or right in or over Parcel No. 5511 contrary to the Section 3(d) of the Belize Constitution as alleged by the Claimant.

### **Costs**

[194] It therefore follows that the Claimant is not entitled to any of the declarations and orders sought, nor is she entitled to any damages or costs.

[195] Indeed this Court finds that the Claimant ought to pay the 1<sup>st</sup> to 4<sup>th</sup> Defendants' costs of this proceedings based on the agreed valuation of the claim.

### **Disposition**

[196] The Claimant's claims as well as her application for judgment on admissions, are dismissed in their entirety with costs on the prescribed scale to be paid by her to the 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> Defendants, on the one hand, as well as to 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants on the other, with the claim valued at the agreed sum of US\$137, 500.00.

[197] The Application for the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants be removed from the claim is refused with costs to the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants on an indemnity basis

[198] The 5<sup>th</sup> Defendant is released of its undertaking not to transfer or dispose of Parcel No. 11000.

[199] The 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants are permitted to immediately access the sum of BZ\$20,000.00 given by the Claimant as security for the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants costs.

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**The Hon. Mr. Justice Courtney A. Abel**

**6th December 2017**