

**IN THE SUPREME COURT OF BELIZE, A.D. 2005**

**CONSOLIDATED CLAIMS**

**CLAIM NO. 74 OF 2005**

**IN THE MATTER** of section 143 of the Registered Land Act, Chapter 194 of the Laws of Belize, 2000

**AND**

**IN THE MATTER** of an application for the Rectification of the Land Register

**BETWEEN**

**WILLIAM QUINTO  
JIMMY QUINTO**

**Claimants**

**AND**

**ANN WILLIAMS  
(Administratrix of the Estate of  
HERBERT LEOPOLD WILLIAMS)  
SANTIAGO CASTILLO LIMITED**

**Defendants**

**CLAIM NO. 96 OF 2005**

**IN THE MATTER** of section 143 of the Registered Land Act, Chapter 194 of the Substantive Laws of Belize, Revised Edition 2000 – 2003

**AND**

**IN THE MATTER** of an application by the Registrar of Lands for an Order for the rectification of the Register in respect of Parcel 869, Block 16, Caribbean Shores/Belize Registration Section

**CLAIM NO. 112 of 2005**

**IN THE MATTER** of section 143 of the Registered Land Act, Chapter  
194 of the Laws of Belize, 2000

**AND**

**IN THE MATTER** of an application of the Land Register

**WILLIAM QUINTO  
JIMMY QUINTO**

**Claimants**

**AND**

**SANTIAGO CASTILLO LIMITED  
MEDINA CONSTRUCTION LIMITED**

**Defendants**

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**BEFORE** the Honourable Abdulai Conteh, Chief Justice.

Mr. Fred Lumor S.C. for the claimants.  
Mr. Wilfred Elrington S.C. for defendants.  
Mrs. Agnes Segura-Gillett for Ann Williams, a defendant.  
Ms. Nicola Cho for the Registrar of Lands.

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### **JUDGMENT**

This judgment relates to three claims which were consolidated on 15<sup>th</sup> June 2005 for the purposes of trial as they all relate to the same parcel of land – Parcel 869 in Block 16 of the Caribbean Shores Registration Section. For the sake of brevity I shall hereinafter refer to this land as **Parcel 869**. The first of the claims in time was Claim No, 74 of 2005 by way of an Originating Summons by William Quinto and Jimmy Quinto against Ann Williams (administratrix of the Estate of Herbert Leopold Williams) and Santiago

Castillo Ltd. The second claim is Claim No. 96 of 2005, again by Originating Summons directed to Ann Williams, Santiago Castillo Ltd. and William and Jimmy Quinto. This summons was taken out by the Registrar of Lands. These two Originating Summonses in essence, sought an Order from this Court to rectify the register of land in respect of Parcel 869. The third claim is No. 112 of 2005, between the Quintos as claimants and Santiago Castillo Ltd. and Medina Construction Ltd. as defendants. The claim seeks damages for trespass by the defendants on Parcel 869. This claim was later ordered at a case management conference to await the outcome of the two applications for a rectification of the land register.

*Agreed Issues by the Parties for trial*

2. The parties agreed on 23<sup>rd</sup> November 2005, by their counsel including counsel for Ann Williams, the issues for trial in this matter. These are as follows:
  1. Whether the first registration of Ann Williams and the subsequent registration of Santiago Castillo Ltd. as the proprietor of Parcel 869 in Block 16 Caribbean Shores/Belize Registration Section was obtained at the very least by mistake.
  2. Whether Santiago Castillo Ltd. was in possession or in receipt of the rents and profits of the disputed parcel of land; and whether Santiago Castillo Ltd. acquired title to the said parcel of land innocently for valuable consideration without notice; and whether Santiago Castillo Ltd. had knowledge of the mistake aforementioned and or substantially contributed to the said mistake by its act, omission, neglect or default.

3. Whether Santiago Castillo obtained Land Certificate No. 12100/2004 dated 31<sup>st</sup> December 2004, in respect of Parcel 869 in Block 16 Caribbean Shores/Belize Registration Section by fraud, mistake or omission.
  
3. I can say from the outset that the issues agitated by these proceedings relate to the powers of the Court to order rectification of the register of land in the case of title registered under the provisions of the Registered Land Act – Chapter 194 of the Laws of Belize, Revised Edition 2000. Can the Court order a rectification of the land register so as to divest an already registered proprietor of land? If so, when and in what circumstances can the Court so order?
  
4. Both the Registrar of Lands and the Quintos are asking this Court to order a rectification of the Land Register. But Mr. Wilfred Elrington S.C., the learned attorney for Santiago Castillo Ltd. has strenuously argued that the Court cannot order a rectification of the register and that title of his client Santiago Castillo Ltd. as the registered proprietor of Parcel 869 is beyond reproach and the Court cannot order any rectification of the land register that may displace it as the registered proprietor of the said Parcel 869.

*Chronology of Events*

5. Perhaps some chronology or sequence of events leading up to this matter being brought to Court might help put things in focus and give some perspective to the issues that have arisen in this case. From the evidence, the following would seem to me to be a chronology of relevant events culminating in this case:

- 1) On 31<sup>st</sup> December 1973, William Quinto acquired title to land by First Certificate of Title recorded in the Land Titles Register Vol. 5 at Folio 1431
- 2) On 12<sup>th</sup> February 1981, William Quinto transferred title to the land to himself and Jimmy Quinto by Transfer Certificate of Title registered in the Land Titles Register Volume 14 at Folio 11.
- 3) On 20<sup>th</sup> October 1981, the area in which the land held under Transfer Certificate of Title in Volume 4 Folio 11 was declared a compulsory registration area under the Registered Land Act and the parcel of land became Parcel 869, Block 16 Caribbean Shores/Belize Registration Section.
- 4) On 19<sup>th</sup> June 1992, Ann Williams was as Administratrix granted Letters of Administration for the Estate of Herbert Leopold Williams which included Land Parcel 818, Block 16 Caribbean Shores/Belize Registration Section the late Herbert Williams had acquired by conveyance dated 17<sup>th</sup> August 1951 from one Louise Easy.
- 5) In July 1992, Ann Williams as Administratrix of Herbert Williams' Estate applied for First Registration as proprietress of Parcel 818, Block 16 Caribbean Shores/Belize Registration Section, as the land had become.
- 6) On 12<sup>th</sup> August 2004, Ann Williams applied for First Registration of Parcel 869, Block 16 Caribbean Shores/Belize Registration Section as the administratrix of the Estate of Herbert Leopold Williams, using inter alia, the Grant of Administration in her favour of 1992, and the Indenture dated 17<sup>th</sup> August 1951 having obtained certified copies of these in 2004, the same instruments she used in 1992 to obtain First

Registration for Parcel 818, Block 16 Caribbean Shores/Belize Registration Section in 1992 – see 5 above.

- 7) On 6<sup>th</sup> October 2004, Ann Williams was registered as proprietor of Parcel 869, Block 16 Caribbean Shores/Belize Registration Section.
- 8) On 24<sup>th</sup> December 2004, Ann Williams and Santiago Castillo Ltd. executed transfer of Land Instrument in respect of Parcel 869.
- 9) On 28<sup>th</sup> December 2004, Registrar of Lands gave instructions for the completion of First Registration of Ann Williams as proprietor of Parcel 869.
- 10) On 31<sup>st</sup> December 2004, William and Jimmy Quinto applied for First Registration of Parcel 869 as proprietors.
- 11) On 31<sup>st</sup> December 2004, Santiago Castillo Ltd. was registered as proprietor of Parcel 869.
- 12) On 3<sup>rd</sup> January 2005, the Transfer of Land Instrument dated 24<sup>th</sup> December 2004 between Ann Williams and Santiago Castillo Ltd. in respect of Parcel 869 lodged at the Land Registry.
- 13) On 6<sup>th</sup> January 2005, Santiago Castillo Ltd's registration as proprietor of Parcel 869 was completed.
- 14) On 14<sup>th</sup> January 2005, the application dated 31<sup>st</sup> December 2004, for the First Registration of William and Jimmy Quinto as proprietors of Parcel 869 brought to the attention of the Registrar of Lands.

- 15) On 24<sup>th</sup> January 2005, Restriction placed on the Register in respect of Parcel 869 by the Registrar.
  - 16) On 3<sup>rd</sup> February 2005, William and Jimmy Quinto took out Originating Summons against Ann Williams (as Administratrix) and Santiago Castillo Ltd. seeking rectification of the Register in respect of Parcel 869 – Action No. 74 of 2005.
  - 17) On 22<sup>nd</sup> February, the Registrar of Lands took out Originating Summons seeking rectification of the Land Register in respect of Parcel 869 – Action No. 92 of 2005.
  - 18) On 2<sup>nd</sup> March 2005, Action No. 112 of 2005 by Writ of Summons was commenced by William and Jimmy Quinto against Santiago Castillo Ltd. and Medina Construction Ltd. for trespass on Parcel 869.
  - 19) 3<sup>rd</sup> March 2005, Interim Injunction granted against Santiago Castillo Ltd. and Medina Construction Ltd. – Action No. 112 of 2005.
  - 20) On 15<sup>th</sup> June 2005, Actions Nos. 74, 92 and 112 were consolidated.
6. It is against the background of this chronology that the issues in this case have arisen for decision. But the details of the events are contained in the several affidavits with their annexures filed in this matter. All the parties agreed that the affidavits shall stand as the testimony in the case. In the event, only the Registrar of Lands at the material time was called in for cross-examination by Mr. Elrington S.C. for Santiago Castillo Ltd. Let me say right away that I found her an honest, consistent and truthful witness. She has since the events leading to this case retired as Registrar because she attained the age of retirement in the public service.

7. I believe the recital of the chronology of events leading up to the first registration of Ann Williams as the proprietor of Parcel 869 and the subsequent registration of Santiago Castillo Ltd. together with the evidence in this case put the issues involved in some clear relief.

*Issue 1: Was the first registration of Ann Williams and the subsequent registration of Santiago Castillo Ltd. as the proprietor of parcel 869 obtained at the very least by mistake*

8. The first half of this issue almost answered itself in the affirmative at the very start of the hearing of this matter. Mrs. Agnes Segura-Gillett the attorney who appeared for Ann Williams in answer to me as what she will be relying on in the course of the hearing stated that no affidavit had been filed because she was instructed not to file any affidavits. She frankly admitted that Ann Williams was conceding the claim. After several interjections by Mr. Elrington S.C. at this stage to the effect that the first registration in favour of Ann Williams had been cancelled, therefore in his own words *“You can’t kill the person again, he is already dead”* and that there was nothing to consider as far as Ann Williams’ first registration was concerned. I however put the question squarely to Mrs. Segura-Gillett whether Ann Williams was conceding. She unequivocally answered that *“Ann Williams concedes that a mistake may have occurred ... That a mistake may have occurred in the first issuance of the First Title, however since that title is no longer in existence, our client did not see fit to file an affidavit ... they will not contest the claim”*.
9. This, in my view, is an important concession that answers the first half of the question under consideration in the affirmative.
10. But this concession is in fact grounded in the evidence in this case.



11. The irrefutable evidence is that Ann Williams in July 1992 as the administratrix of Herbert Leopold Williams, obtained first registration in respect of Parcel 818, Block 16 Caribbean Shores/Belize Registration Section. In order to apply for the first registration in respect of this parcel of land she used the conveyance dated 17<sup>th</sup> August 1951 between Louise Easy as vendor and Herbert Leopold Williams as purchaser and the Letters of Administration for the estate of Herbert Williams – see Exhibit E.W. 8 – Ms. Enid Welch’s affidavit of 21<sup>st</sup> February 2005.
12. But for some reasons not readily apparent or explicable, Ann Williams used the same conveyance and Letters of Administration to apply in 2004 for the first registration as proprietor of Parcel 869 which number she had already identified: see in particular paragraphs 5 and 18 and 19 of former Registrar of Lands, Ms. Enid Welch’s affidavit.
13. I am therefore satisfied that at the very least, the first registration of Ann Williams as the proprietor of Parcel 869 was by mistake. She had already in 1992 obtained first registration as proprietor in the capacity of the administratrix of Herbert Williams in respect of Parcel 818 – the only piece of land he, Mr. Williams, was possessed of at his death.
14. The other half of the question that is, whether as on the evidence and the concession that Ann Williams’ first registration was a mistake, this was carried over to and coloured the subsequent registration in favour of Santiago Castillo Ltd. was at the heart of most of the argument in this case?
15. Mr. Elrington S.C., the attorney for Santiago Castillo Ltd. adamantly pitched his tent on the subsequent registration in favour of his client, and has vigorously contended that even in the face of the concession or admission by Ann Williams as to the mistake in her first registration in respect of Parcel 869 and the irrefutable evidence from the former Registrar of Lands, Ms. Enid

Welch, this does not in anyway prejudice the registration and therefore the title of his client. This is so, he contended, because by virtue of section 26 of the Registered Land Act, once a proprietor is registered it does not matter how that registration and the title it therefore confers was procured: the register, in Mr. Elrington's view, speaks always as to who a proprietor of a parcel of registered land is. He even engaged Ms. Welch in some forensic jousting as to who appears as the proprietor of Parcel 868 on the register. All that this established, in my view, was that Santiago Castillo Ltd. is shown as the proprietor. But Ms. Welch also stated that the register shows a Restriction on its face.

16. I think it is necessary not to lose sight of what the present proceedings are about. They are about applications by both the Registrar of Lands and William and Jimmy Quinto for rectification of the register of land.
17. The power to rectify the register of land is statutorily provided for in Part X of the Act headed "Rectification and Indemnity". This Part of the Act has two sections viz. sections 142 and 143: section 142 grants power to the Registrar of Lands in certain cases, to rectify the register or any instrument presented for registration. This section is not of any moment for the purposes of this case, as it concerns the "slip rule".
18. But section 143 expressly grants power to the Court to order rectification of the register. This section in terms provides:

*"143.- (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.”*

19. Mr. Elrington S.C. has sought, somewhat tenaciously I think, to resist the present application for rectification of the register on the strength, such as it is, of the registration of Santiago Castillo Ltd. as the proprietor of Parcel 869. Section 26 of the Act so far as material provides:

*“26. 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 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”*

The proviso to this section is immaterial to the application in this case.

20. Mr. Elrington S.C. therefore staked his position on the registration of Santiago Castillo Ltd. as the proprietor. This in his view is an impregnable redoubt in which nothing can assail the title registered in favour of his client, even in the face of the admitted mistake by which Ann Williams acquired First Registration in her favour. In his estimation therefore the application to rectify the register is misconceived.
21. I must confess to serious misgivings about the soundness of this position in the light of the evidence in this matter. I tried to point this out to Mr. Elrington S.C. during the course of his interjections during the hearing and later during his own submissions. If his position is tenable, then of course Part 10, in

particular section 143 of the Act, is redundant: for so long as a person is registered as the proprietor of registered land, that would be the end of the story. It matters not how that registration was procured, there can be no rectification. This would clearly set to naught the powers of rectification expressly granted to the Court by section 143, and in this case, even the admitted mistake attendant on the first registration of Ann Williams as proprietor of Parcel 869 in 2004.

22. This is not to diminish in any way the cardinal importance and effect of registration in the scheme of the Registered Land Act. Registration of title is, without doubt, central to and underpins the Torrens system of registration of title to land in Belize, whether under the Law of Property Act – Chapter 190 of the Laws of Belize or the General Registry Act or under the Registered Land Act. The inestimable value of registered title is the certainty or near conclusiveness of the register. But this conclusiveness of the register is not absolute under the Registered Land Act. Section 26 on the effect of registration is expressly subject to section 30 on voluntary transfers: a person who acquires an interest in land without valuable consideration takes it subject to any unregistered rights or interest to which the land was held by persons from whom it was acquired and to the provisions of bankruptcy laws and the winding-up provisions of the Companies Act (Chapter 250 of the Laws of Belize). Also section 31(1) of the Registered Land Act subjects the register to certain overriding interests which provide exceptions to the rule that only a registered right in land is enforceable. This is an important qualification on the conclusiveness of the register. These interests though not appearing on the register retain their validity and effect. Paragraph (g) of subsection (1) of section 31, addresses the rights of a person in actual occupation of land or in receipt of the rents and profits of the land except where inquiry is made of such a person and he fails to disclose those rights, but this person is not on the register as the proprietor.

23. Perhaps the most important qualification on the conclusiveness of the register as to the title under the Registered Land Act is the power of its rectification granted to the Court in section 143 of the Act. As S. Rowton Simpson in his work Land Law and Registration (Cambridge University Press, 1976) correctly, in my view, states:

*“The most important qualification on the conclusiveness of the register, however, arises from the fact that since the register is administered by human beings, it is necessarily subject to human frailty. It must be anticipated that mistakes will be made; also that fraud will be committed. It would be palpably wrong if the system were so inflexible that a title gained by fraud could not be restored to the person defrauded provided that could be done without adversely affecting an innocent third party. Again, it would not be merely wrong but manifestly absurd were it impossible to correct the register if, for instance, two different persons were by mistake each registered as the sole owner of the same piece of land, for there is no magic whereby both of them can have it. There can really be no doubt that machinery must be provided to enable the register to be rectified. Indeed, “no provisions in the Land Registration Act are more vital than those relating to rectification of the register and the provision for indemnity for error. The working practicability of the system depends largely upon them.”*

I note in passing that although Part X of the Registered Land Act is headed “Rectification and Indemnity”, there are at present no provisions for indemnification for erroneous registration as is available in some other countries.

24. It is however in my view, untenable to suppose that the effect of registration of any person as a proprietor of land in the register as provided for in section 26 of the Act is therefore immutable and sacrosanct and beyond the statutory powers of the Court, even in appropriate cases, to order rectification of the register.
25. However, this power to rectify the register granted to the court is not to be exercised lightly. Its exercise is premised on the court being satisfied that

any registration, including a first registration, was obtained, made or omitted by fraud or mistake – section 143(1) of the Act.

26. Section 26 of the Act on the effect of registration underpins the certainty of title that registration generally is meant to provide. This certainty, once title is registered, is what imbues registered title with the quality of indefeasibility that Mr. Elrington S.C. so insistently pitched his tent on. And this is without doubt correct, subject to rectification. Registered title in appropriate cases otherwise wards off any adverse claims to the land against the registered proprietor. But the register itself is not immune from rectification, and this is statutorily provided for in section 143 of the Act. I am therefore of the considered view that Mr. Elrington's position misconceives the very nature of the present proceedings. They are not adverse claims against the registered proprietor, his client, Santiago Castillo Ltd. by a third party. But rather, they are applications to the Court to determine whether to exercise the statutory power granted to it by the Act in respect of rectification of the register.
27. The power to order rectification of the register extends to every registration, including a first registration. But an application for rectification must satisfy the court that the registration in respect of which it is made was obtained, made or omitted by fraud or mistake. Even then subsection (2) of section 143 provides an important rider on the court's power to order rectification: the register shall not be rectified so as to affect the title of a proprietor who is in possession of the land in question in respect of which rectification is sought or is in receipt of the rents or profits of the land and acquired it for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in respect of which the rectification is sought or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.
28. More fundamentally in my view, on the facts of this case, the substantive and enduring mistake attendant on the registration of Ann Williams as proprietor in

respect of Parcel 869 in October 2004 and subsequently of Santiago Castillo Ltd. in December 2004, was the failure to realize that at the material time, whether in October 2004 when Ann Williams was first registered or December 2004 when Santiago Castillo Ltd. was registered, there was already extant and subsisting registered Transfer Certificate of Title in respect of the same land in favour of William and Jimmy Quinto dated 12<sup>th</sup> February 1981 issued by the General Registry pursuant to the General Registry Act – Chapter 327 of The Laws of Belize 2000, Revised Edition and section 41 of the Law of Property Act and this is contained in Lands Title Register Vol. 14 at Folio 11: see the affidavit of Mrs. Welch, in particular paragraphs 15, 16, 17 and 18 and the affidavit of Jimmy Quinto dated 14<sup>th</sup> February 2005; and the affidavit of Jimmy and Connie Quinto of 23<sup>rd</sup> February 2005. All these affidavits exhibit the registered Transfer Certificate of Title in favour of William and Jimmy Quinto and it is reproduced as Document A #1 in the Bundle of Documents.

29. Section 40(1)(a) of the Law of Property Act – Chapter 190 of the Laws of Belize, provides for the creation of legal title to land or interests therein by the registration of the certificate of title thereto in accordance with the General Registry Act. Section 41(2) of the Law of Property Act also provides that the Certificate of Title to the legal estate in or over any land shall confer upon the registered proprietor the right against all the world to peaceable possession of the land for the estate conferred by the certificate. And subsection (3) of section 41 of the Law of Property Act provides that registered title to land under Part III of the General Registry Act, subject to all estates, interests, charges and encumbrances noted on the certificate, shall be an absolute and indefeasible title. Subsection (4) of section 41 states that “absolute and indefeasible” implies that a Certificate of Title issued by the Registrar such as that possessed by the Quintos (see Document A1 of the agreed bundle of documents in this case) cannot be challenged in any court of law on the ground that some person other than the person named therein as the proprietor (in this case the Quintos) is the proprietor. This attribution of

absolute and indefeasibility to the registered title in favour of the Quintos is however qualified by a possible charge of fraud or prescription against them. I do not understand Mr. Elrington S.C. on behalf of Santiago Castillo Ltd. to be raising any such allegation in this case however.

On the principle and affect of registration of title to land generally, I do not think there is any conflict between section 41 of the Law of Property Act, Part III of the General Registry Act (in particular sections 20 and 25) and section 26 of the Registered Land Act. I do not have the benefit of argument or submissions by the attorney on this point and the purport of section 3 of the Registered Land Act. In any event, I have found that, on the evidence, the registration in respect of Ann Williams and the subsequent registration of Santiago Castillo Ltd. was at least by mistake. Therefore when in 1981, the Caribbean Shores Area where Parcel 869 is situated was declared a compulsory registration area, by the operation of section 12 of the Registered Land, the Registrar should have transferred the particulars of the Transfer Certificate of Title of the Quintos registered under the General Registry Act on to the Land Register, thereby bringing in Parcel 869 under the Registered Land Act. Mrs. Welch the former Registrar of Lands, has in her affidavit detailed some of the challenges and constraints plaguing the Land Registry. This could well be the cause of the failure to have transferred the Quintos' title to the register. This failure however, facilitated and was compounded by the mistake in granting certificate of first registration in respect of Parcel 869 to Ann Williams in 2004. She immediately purported to pass title to Santiago Castillo Ltd. in December 2004. A further mistake was to have accepted Ann Williams' application for registration in respect of Parcel 869 with documents (the grant of Letters of Administration to her as administratrix of Herbert Williams and the conveyance dated 17<sup>th</sup> August 1951), which had nothing to do with Parcel 869 – see paragraphs 2 and 33 of Mrs. Welch's affidavit.

30. This mistake, if mistake it was, in my view, almost borders on fraud. But this mistake, for what it is worth, was facilitated by the inaction of the Registrar or



the admitted inability to comply with section 12 of the Registered Land Act, after the declaration in 1981 of the area where Parcel 869 is situated as a compulsory registration area, to bring it in under the Act by inclusion in the register. This mistake or inaction in my view, does not however affect the Transfer Certificate of Title already registered under the General Registry Act pursuant to section 41 of the Law of Property Act in favour of the Quintos. The effect of this registration has been judicially reiterated over the years. See: Frazer v Walker (1967) 1 A.C. 569; British American Cattle Co. v Caribe Farm Industries and The Belize Bank Ltd. 3 B.L.R., 468; Halfmoon Bay Ltd. v Crown Eagle Hotels Ltd. 60 WIR 330 (2002).

31. I am therefore satisfied that on the evidence in this case, Ann Williams' first registration in respect of Parcel 869 in 2004 was, at the very least, by mistake. A mistake, in the light of her admission through her attorney at the start of the hearing in this matter, I cannot overlook. And this mistake, I find, ineluctably coloured and affected the subsequent registration of Santiago Castillo Ltd. I am therefore of the considered view that this registration, including the first registration in favour of Ann Williams, is as well susceptible to the court's power to order rectification of the register. I am satisfied on the evidence and the law that this should be done.
32. Mr. Elrington S.C. for Santiago Castillo Ltd. however, argued that on the authority of Re Leighton's Conveyance (1936) 1 All E.R. 667 even if the title to Ann Williams was defective and therefore liable to rectification, that liability to rectification did not pass with the land when Santiago Castillo Ltd. was registered as the proprietor of Parcel 869. I do not however think that case on the facts accords with Mr. Elrington's contention. Rectification was in fact ordered in respect of the fraudulent daughter's title and her mother was given back her house but subject to the three charges which she had, without reading or enquiring the contents of the documents, enabled her fraudulent daughter to obtain. In the instant case, Santiago Castillo Ltd. has not made

any disposition of Parcel 869 or charged it to a third party. There is in fact a restriction on the register against it placed by the Registrar herself. I can only therefore conclude that Parcel 869 stands affected by the mistaken first registration of Ann Williams as its proprietor which feeds into the subsequent registration of Santiago Castillo Ltd.

33. I now turn to the second issue agreed by the parties for determination.

*Issue 2: Whether Santiago Castillo Ltd. was in possession or in receipt of the rents and profits of the disputed parcel of land; and whether Santiago Castillo Ltd. acquired title to the said parcel of land innocently for valuable consideration without notice; and whether Santiago Castillo Ltd. had knowledge of the mistake aforementioned and or substantially contributed to the said mistake by its act, omission, neglect or default*

This issue engages the provisions of subsection (2) of section 143 of the Registered Land Act. That is to say, the circumstances which would preclude the Court from ordering a rectification of the register.

*Was Santiago Castillo Ltd. in occupation of Parcel 869 as a proprietor?*

34. Rectification as I pointed out earlier is not to be lightly ordered, especially where a person whose name is on the register is in possession of the disputed land or is in receipt of the rents or profits of the land and acquired it for valuable consideration. This is essentially a matter of evidence and a legal determination of what constitutes “possession” or “receipt of rents or profits”. This subsection it is clear, does not aid a volunteer. That is, someone who acquired the land in question by say a gift. It is not in contention that Santiago Castillo Ltd. paid valuable consideration for Parcel 869. I am satisfied that there is undisputed evidence of this – see paragraph 15 of Mr. Santiago Castillo Jr’s affidavit of 22<sup>nd</sup> April 2005, and Exhibit EW 5 – Transfer of Land Instrument to Santiago Castillo Ltd. mentioned in paragraph 5 of Mrs. Welch’s affidavit of 21<sup>st</sup> February 2005. From this, I find that

Santiago Castillo Ltd. paid the sum of \$130,000.00 to Ann Williams in respect of Parcel 869.

On the evidence in this case, I am not however satisfied that Santiago Castillo Ltd. was in possession or occupation of Parcel 869 within the contemplation of subsection (2) of section 143. Mr. Castillo Jr. avers in paragraph 16 of his affidavit in support of Santiago Castillo Ltd. that approximately eighteen months prior to its purchase of the land, the company had commenced occupying the southern one-third portion of it by parking its motor vehicles and those of its employees on it and continued to do so after the completion of the sale of Parcel 869 to it until the 3<sup>rd</sup> March 2005 when it was restrained by an interim injunction of this Court. I find that in law the temporary parking of the motor vehicles of Santiago Castillo Ltd. and its employees was not such, in the circumstances of this case, as to establish its occupation or possession of Parcel 869: Epps and another v Esso Petroleum Co. Ltd. (1973) 2 All E.R. 465.

35. I apprehend that “possession” for the purposes of subsection (2) of section 143 refers to and has in contemplation someone who has title paramount to the land by registration, hence its reference to “a proprietor who is in possession”. A “proprietor” means under the Act, the person registered as the owner of the land or lease or charge under the Act: see section 2 of the Act. I am afraid I cannot accept the interpretation of “possession” advanced by Ms. Cho on behalf of the Registrar that it is not used in the legal sense in section 143(2) but that it refers to physical possession. I however cannot accept that the occupation by parking motor vehicles on a part of Parcel 869 by Santiago Castillo Ltd. and its employees even “(a) approximately eighteen months prior to (its) purchase of the said land” satisfies subsection (2) of section 143 to warrant the Court not to order rectification of the register. As I found earlier, that Santiago Castillo Ltd’s name was on the register flowed directly and necessarily from the registration in favour of Ann Williams, which was in the circumstances of this case, at the very least, to put it no higher, a

mistake. So therefore, Santiago Castillo Ltd. could not be said to be a “proprietor” within the contemplation of subsection (2) of section 143.

I therefore find that Santiago Castillo Ltd. was not a proprietor in occupation. No evidence has been adduced either that it was in receipt of the rents and profits in respect of Parcel 869.

36. The sub-issue whether Santiago Castillo Ltd. innocently acquired title to Parcel 869 and without notice, and whether it had knowledge of the mistake attendant on Ann Williams’ registration or substantially contributed to that mistake by its act, omission, neglect or default is not, in my view, elegantly or precisely framed in the light of the provisions of subsection (2) of section 143. This subsection excludes from protection against rectification of the registrar, a proprietor who had knowledge of the omission, fraud or mistake in respect of which the rectification is sought or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.
37. The determination of this is again, a matter of evidence, from the facts of the case. The issue of any omission in this case, is conceivably the omission of the Registrar to have brought in the registered Transfer Certificate of Title in favour of the Quintos on to the Land Registry in fulfillment of section 12 of the Registered Land Act, when in October 1981 the area where the land is situated was declared a compulsory registration area. The Registrar has in paragraph 15 of her affidavit explained how and why this particular important section of the Act is not put into practice. I sympathize with the predicament of the Land Registry and urge the relevant authorities to provide every assistance to enable the Registry to fulfill its statutory duty in this respect. Properly registered title to land in accordance with the law, is vital to the economic development of the country and social peace and harmony of its citizens. It should not be left to the hazards of litigations as in this case. But this omission, I find, has facilitated the mistake or fraud that has necessitated this application before me. I am unable however, to ascribe this omission to

either Santiago Castillo Ltd. or the Quintos. But the Registrar was alerted to it by the diligence of Mr. James Hyde as an agent of the Quintos – see paragraphs 8, 9, 14 and 15 of the Registrar’s affidavit. To her credit, Mrs. Enid Welch the Registrar, took immediate action culminating in this action before me – see paragraphs 29 through to 36 of her affidavit.

38. However, did Santiago Castillo Ltd. have knowledge of the mistake in the first registration of Ann Williams as the proprietor of Parcel 869, or substantially contributed to that mistake by its act, omission, neglect or default?
39. From the evidence in this case and on a balance of probabilities, I am inclined to conclude that Santiago Castillo Ltd. through its officers (Mr. Santiago Castillo Jr., Mrs. Addy Castillo and Ms. Adelita Castillo, directors of Santiago Ltd.) had knowledge of the Quintos’ ownership of Parcel 869 which immediately abuts the land on which Santiago Castillo Ltd’s supermarket, Save-U, is located. The following facts are in evidence and stand uncontradicted or unchallenged:

- “i. On 12<sup>th</sup> February 1981, William and Jimmy Quinto became joint proprietors by Transfer Certificate of Title registered in Lands Title Register Vol. 14, Folio 11.*
- ii. On 20<sup>th</sup> October 1981, the area where parcel of land is located was declared to be a compulsory registration area and the parcel of land became Parcel 869.*
- iii. Sometime in 1990 Santiago Castillo Ltd. through Mrs. Addy Castillo and Adelita Castillo made an offer to Connie Quinto (a sister of Jimmy Quinto and daughter of William Quinto) to purchase Parcel 869. The offer was rejected.*
- iv. About the year 2000, Mr. Santiago Castillo Jr. (a director of Santiago Castillo Ltd.) approached David Quinto (son of William Quinto and brother of Jimmy Quinto) to rent a part of Parcel 869 to build a boat house. But the request was rejected.*

- v. *For many years the Quintos had placed and maintained a prominent billboard on Parcel 869 advertising Winston cigarettes of which they are agents in Belize.*
- vi. *Sometime in June or July 2004 a family friend of the Quintos, Mr. Winston Smiling, negotiated with Mr. Anthony Thurton as agent for the Castillo family for the purchase of Parcel 869 to expand its Save-U supermarket. But the negotiations failed over the price of the land.*
- vii. *Mr. Santiago Castillo Jr. the managing director and Chief Executive of Santiago Castillo Ltd. deposes in his own affidavit that "I also informed Mr. Elrington that the company had had discussion in the past with an agent and member of the Quinto family regarding the sale and purchase of the said land but that at no time had the Quintos or their agent produced any title to the land."*

Surely negotiating to buy land from someone must be based on the presumption that that person is either the owner of the land or the duly authorised agent of the owner.

*"viii. Mr. Castillo in paragraph 13 of his affidavit stated that Mr. Howell Longsworth had presented him with "a purported lease" in respect of a small hamburger stand on Parcel 869 when he Longsworth was threatened with eviction therefrom by Mr. Ellis Arnold who was then negotiating the sale of Parcel 869 with Santiago Castillo Ltd. This "purported lease" which is exhibit as document No. A11 is expressly stated to be made between Gonzalo Quinto & Sons as landlord, and one Gladys Longsworth.*

- 40. Surely in the face of this clear evidence, it would be ostrich-like for Santiago Castillo Ltd. to deny that it had knowledge of the ownership or claim thereto of the Quintos of Parcel 869. It is therefore on the evidence, reasonable to conclude and I so hold, that Santiago Castillo Ltd. had knowledge of the ownership or at least, a claim to ownership of Parcel 869 by the Quintos.

41. I find and hold as well that the disregard of this knowledge by Santiago Castillo Ltd. and its legal advisor facilitated and caused or substantially contributed to the mistake that resulted in the first registration of Ann Williams as proprietor of Parcel 869 and the subsequent registration of Santiago Castillo Ltd. as proprietor thereof. Any reasonable, honest and prudent person in the face of the evidence I have recounted at paragraph 39 above, would think twice before proceeding to purchase Parcel 869 from Ann Williams on the strength of a First Certificate that was, on its face, issued only in October 2004 shortly after the negotiations in July 2004 between a family friend of the Quintos and an agent of Santiago Castillo Ltd. collapsed over the sale price of the self-same Parcel 869 – see Winston Smiling’s affidavit of 14<sup>th</sup> February 2005. Surely, the timing and sequence of events must give a prudent and honest man some pause or concern about Ann Williams’ First Certificate of registration or even her bona fides.

42. I now turn to the third of the agreed issues in this case:

*Did Santiago Castillo Ltd. obtain Land Certificate No. 12100/2004 dated 31<sup>st</sup> December 2004, in respect of Parcel 869 in Block 16 Caribbean Shores/Belize Registration Section by fraud, mistake or omission?*

Fraud is a troublesome concept in law generally, although the law reports and statutes are replete with it; section 143 being just one example. By subsection (2) of the Act, knowledge of a proprietor of registered title of an omission, fraud or mistake in consequence of which rectification of the register is sought will not protect that registered proprietor’s title from being rectified. This is so because, the presumption against rectification of the register so as to affect the title of a proprietor who is in possession or receipt of profits or rents and who acquired the land, lease or charge for valuable consideration is an important qualification on the power of the Court to order rectification of the register.

But knowledge of the fraud is only one aspect, but it is sufficient to disentitle the registered proprietor of the presumption against rectification, if established. The other aspect is where in fact the registered proprietor caused the fraud or omission or mistake or substantially contributed to it by his act, neglect or default.

43. Therefore, although fraud has been specifically charged in this case by Mr. Lumor S.C. for the Quintos, against both Ann Williams and Santiago Castillo Ltd., it is important to note that subsection (2) of section 143 is intended to cover both knowledge of the fraud or causing it. The locus classicus of what constitutes fraud is, I think, to be found in decision of the English House of Lords in Derry v Peek (1889) 14 A.C. 337. It was decided that in order to establish fraud, it is necessary to prove the absence of an honest belief in the truth of that which has been stated; in the words of Lord Herschell:

*“[F]raud is proved when it is shown that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false”* at page 374.

44. Although the burden to prove fraud is not a light one, the burden is however on a balance of probabilities, the usual civil standard of proof.
45. I agree with Mr. Lumor S.C. for the Quintos when he submitted that Ann Williams knew, or ought to have known, that as personal representative of the estate of Herbert Leopold Williams, the Grant of Administration and the Inventory of the estate entitled her to deal with one and only one property, namely Parcel 818 in Block 16 of the Caribbean Shores/Belize Registration Section. She obtained this in 1992. Therefore she was fraudulent when she put forth papers in 2004 to procure her first registration in respect of Parcel 869. The supporting papers had nothing to do with Parcel 869. But as I have already said, her fraud or at least mistake, was facilitated by the omission or



inaction of the Registrar of Lands to have, pursuant to section 12 of the Registered Land Act, brought the registered Certificate of Transfer in favour of the Quintos on to the register since 1981 when the area Parcel 869 is situated was declared a compulsory registration area. Therefore, in my view, it ineluctably follows that Ann Williams acquired no title in 2004 which she could lawfully pass to Santiago Castillo Ltd only a short while later. Even if she did, her first registration and the subsequent one in favour of Santiago Castillo Ltd. are not beyond the statutory power of rectification of this court.

46. I am satisfied, on the evidence, that this is a proper, just and equitable case for the Court to order rectification of the register in respect of Parcel 869.
47. Mr. Lumor S.C. has additionally charged fraud by Santiago Castillo Ltd. In order to substantiate this charge, he gave instances about the discrepancies in the register regarding when Ann Williams became the first registered proprietor of Parcel 869; when she signed for the Transfer of Land Instrument by which she sold the land to Santiago Castillo Ltd. and various others. Mr. Lumor S.C. also relied on the dealings Santiago Castillo Ltd. or persons representing it, had with the Quintos by which, he submitted, that the former had knowledge that the latter were the owners or had claimed ownership of Parcel 869. He relied on the fact that sometime in 1990 Mrs. Addy Castillo and Ms. Adelita Castillo had approached the Quintos with an offer to purchase Parcel 869 for Santiago Castillo Ltd.; that in 1992 Santiago Castillo Ltd. got written permission from the Quintos to place an electric transformer on a portion of Parcel 869, and the fact that as recently as June or July 2004, agents representing the Quintos and Santiago Castillo Ltd., Mr. Winston Smiling and Mr. Anthony Thurton respectively, unsuccessfully negotiated the sale of Parcel 869 to Santiago Castillo Ltd.
48. I am therefore satisfied that on the evidence, even if Santiago Castillo Ltd. did not actually procure the fraud by which Ann Williams got the first registration

in her favour in respect of Parcel 869, it did actually have knowledge of it. Thus, by falsely and fraudulently representing to the Registrar that she was entitled to the first registration she got her name on the register. I cannot absolve Santiago Castillo Ltd. of knowledge of this given the history and relationship between it and the Quintos regarding Parcel 869. A more prudent and honest person would have ascertained the true position, especially in the light of the recent but inconclusive negotiations between its agent and that of the Quintos. Instead there was an indecent haste to have Ann Williams registered as a proprietor of the land and she in quick order, turned round to sell it to Santiago Castillo Ltd., who in turn knowingly without belief in the truth of the first registration in favour of Ann Williams and recklessly careless whether it be true or false, presented it to the Registrar in order to get its own name on the register as proprietor of Parcel 869.

49. Accordingly, I find and hold that on the evidence, Santiago Castillo Ltd. had knowledge of the fraud or, at the very least, the mistake by which the first registration of Ann Williams was procured, and certainly of the subsequent registration in its favour in respect of Parcel 869.
50. I am therefore of the considered view that the prayers of both the Registrar of Lands and the Quintos for a rectification of the register should be granted.

### Conclusion

51. This case is a sorry tale of guile and opportunism made possible by the problems that have bedeviled the Land Registry in Belmopan of which Mrs. Enid Welch, the former Registrar, spoke so pithily in her affidavit in this matter – see in particular paragraphs 4,, 9, 13, 15, 16, 17, 19 and 21.

The guile is exemplified by Ann Williams being able to obtain first registration as proprietor of Parcel 869, when from the evidence, she had already obtained registered title to Parcel 818 in 1992, as the administratrix of Herbert

Leopold Williams' estate, which was the only realty declared and for which Letters of Administration were issued.

The opportunism relates to how Santiago Castillo Ltd. acquired the suspect title from Ann Williams, facilitated by the constraints in the Land registry, when it full well knew or should have known that Parcel 869 belonged to the Quintos.

The upshot of all this is to have on the register proprietors who should not have been on it.

52. Mr. Lumor S.C. on behalf of the Quintos has asked for several reliefs including a number of Declarations, some in the alternative. Ms. Nicola Cho, on behalf of the Registrar of Lands, has asked simply for rectification of the register by cancellation of certain entries thereon relating to Parcel 869, Block 16, Caribbean Shores/Belize Registration Section. I find the reliefs simpler and would achieve the objective of both applications.

**Accordingly**, I therefore order and direct, pursuant to section 143(1) of the Registered Land Act, the Registrar of Lands to:

- i) Cancel the first registration of Ann Williams, as Administratrix of the Estate of Herbert Leopold Williams, as the registered proprietor of Parcel 869, Block 16 Caribbean Shores/Belize Registration Section;
- ii) Cancel the registration of Santiago Castillo Ltd. as current registered proprietor of the said Parcel 869, Block 16 Caribbean Shores/Belize Registration Section; and
- iii) Cancel the current register in respect of the said Parcel 869, Block 16 Caribbean Shores/Belize Registration Section.

53. The costs of these applications are awarded to the Registrar of Lands and Williams and Jimmy Quinto against Santiago Castillo Ltd. The costs to be agreed or taxed.

**A. O. CONTEH**  
**Chief Justice**

**DATED: 13<sup>th</sup> February 2007.**