

IN THE SUPREME COURT OF BELIZE, A.D. 2007

ACTION NO. 254 of 1998

**JOHN THEODORE MARSDEN
Administrator of the Estate of
Teresita Marsden
Administratrix of the Estate of
John Theodore Marsden**

Plaintiff

BETWEEN AND

**VICTOR WILLIAM CARROLL
HENRY WILLIAM CARROLL
JOHN WILLIAM CARROLL**

**First Defendant
Second Defendant
Third Defendant**

—
BEFORE the Honourable Abdulai Conteh, Chief Justice.

Ms. Lois Young S.C. for the plaintiff.
Ms. Deshawn Arzu for the defendants.

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JUDGMENT

1. This is, in a way, a sorry case that does not reflect well on the memory or heritage of Mr. Thomas William Carroll who is said to have come into possession of De Carey Island, the subject of this dispute, by a Colonial Grant in the 1880s.
2. The heart of this case is about the progeny of Mr. John William Carroll. He is said variously to have had three children or eight children, depending on which side you believe and he died intestate without

expressly devising De Carey Island to anyone of his progeny; but the fact is undisputed that he had several children.

3. On the 21st October 1991, in Action No. 155 of 1990, Mr. Ponnambalam J. of this court, was persuaded by a Petition presented by Mr. Kenneth Collins Dunn as attorney for the defendants in this case, pursuant to section 42 of the Law of Property Act, to grant a declaration of title in fee simple in respect of De Carey Caye which is now the subject of these proceedings. Pursuant to the grant of declaration, on the 21st June 1993, a First Certificate of Title for De Carey Caye was issued to Kenneth Collins Dunn as administrator of the Estate of Thomas William Carroll deceased. Mr. Kenneth Collins Dunn in turn on 28th July 1993 by a Transfer Certificate of Title from himself purported to vest or transfer De Carey Caye to the defendants in this matter; but that was not the end of the story, for on the 28th July 1998, an action was commenced in this court by Mrs. Teresita Marsden, who was claiming as the administratrix of the Estate of John Theodore Marsden, that the Order be set aside granting title to the defendants. Unfortunately, before the conclusion of the matter, Mrs. Marsden passed away and her son, John Theodore Marsden was, by an Order of the court dated 28th December 2005, substituted as administrator for the estate of the late Mrs. Marsden as the claimant in this case and the action was continued in his name.
4. Such was the state of play when on the 20th day of March 2007, with the consent of the parties, the issue to be tried was formulated as follows: “Ought the court to have granted the declaration of title in respect of De Carey Caye by Order dated 21st October, 1991?”
5. From the documents that have been filed in this case and having listened to the witnesses who testified, I am left in no doubt that there was not any full disclosure to the court in the pursuit of the Petition by Mr. Dunn to

grant title to De Carey Caye. For example, the exact children, for there were other children of the original John William Carroll, *the pater familia*, if you will, of the Carroll family. But they seem to have been overlooked in the Petition presented to the court. Also, there were certain material irregularities; such as, for example, the payment for land taxes of De Carey Caye; the continued possession of De Carey Caye for the requisite period of upwards of 30 years and more as required by section 42 of the Law of Property Act; and also, I am not satisfied that other possible claimants were alerted to the prospect or the intention of the Petition; namely, to grant by an Order of the court, title only in the name of the defendants in this matter.

6. I am confident that if the court had been appraised of all these facts it would not have granted the Order it did. I do not lightly set aside an Order granted by a judge of this court but I am convinced, on the state of the evidence, that the judge ought not to have granted that Order.
7. Consequently, I regret to vacate that Order and set it aside. I am, however, unable to declare that the plaintiff is entitled as administrator of his late mother's estate who had claimed as the administratrix of the Estate of John Theodore Marsden to have the said island declared as part of the estate of the said John Theodore Marsden. I have no conclusive evidence to convince me that at the time of John Theodore Marsden's death the island formed part of his estate. There is, of course in evidence, reference to a purchase of the said island in correspondence from Vivian Fryatt who was originally a Carroll; but this evidence is not conclusive enough for me to warrant the declaration sought by the plaintiff.
8. In the upshot, I therefore declare that the Transfer Certificate of Titled dated 28th July, 1993 in the names of the defendants is hereby set aside

and accordingly direct the Registrar of Lands to void the register and delete the defendants' names as owners of De Carey Caye.

9. In the event, I order no costs in this matter. Either side to bear its own costs.

A. O. CONTEH
Chief Justice

DATED: 29th May 2007.