

IN THE SUPREME COURT OF BELIZE A.D. 2003

Action No.80

(ROBERTA RICHMOND	Claimants
(CHARLES MacKINNON	
(SANDRA MacKINNON	
(
(AND	
(
(BELIZE AQUACULTURE LIMITED	Defendant

Before:

The Honourable Madam Justice Minnet Hafiz- Bertram

Appearances:

Mr. Rodwell Williams S.C. of Barrow & Williams for the Claimants

Mr. Derek Courtenay S.C. along with Vanessa Retreage
appearing for the Defendant

JUDGMENT

Background

- 1, This is a retrial of a boundary dispute. The first claim was filed on 21st February, 2003 for recovery of possession of land, damages and an injunction as a result of the Defendant's unlawful and continuing trespass upon the Claimants' land situated on the Eastern portion of Blair Athol Estate, False Bight, Stann Creek District of Belize.
2. On 5th May, 2006 the trial judge entered judgment for the Claimants. In Civil Appeal No. 3 of 2006, the Defendant appealed the decision of the trial Judge on the ground that the court had no jurisdiction or power to order that the undated plan proposed by the Licensed surveyor, Kenneth Gillett be filed at the Lands and Surveys Department in substitution for the

survey plan by Mr. G. V. Bautista dated 26th September, 1996 (Bautista Plan).

3. On 13th March, 2007 the Court of Appeal allowed the appeal, set aside the judgment and ordered a retrial which is the matter before the court.
4. At the time of the first trial, Mr. Gillett had done a compilation map or plan without any physical survey on the ground. It was after judgment was given that the Claimants caused the Licensed Surveyor to conduct a survey of their land on the ground and register the plan of survey to establish the common boundary between the Claimants' land and the Defendant's land, in conformity with the undated proposed plan which was before the court in the first trial. Mr. Gillett's Plan is dated 8th December, 2008 and was recorded in Register No. 16 Entry No. 11781 (Gillett Plan). This Plan was subsequently cancelled by the Commissioner of Lands and Surveys by a letter dated 21st February, 2001.

Claimant's case

5. The Claimants, by an order made on 20th October, 2011 amended their Statement of Case for the retrial. This was issued on the 28th October, 2011. They claim that they are owners and entitled to possession of land comprised in Transfer Certificate of title dated 16th May, 1991 recorded in Lands Titles Register, Volume 23 at folios 141. They say the land is described in the Gillett's Plan.
6. The Claimants say that the Defendant is the proprietor of lands with common boundary to the west of the Claimants' property and they conducted shrimp farming and electrical power generation on its property. At paragraph 4 of their claim, they say that on 26th September, 1996 the Defendant wrongfully entered their land and has wrongfully taken possession of about 309 acres shown on the Gillett plan. Further, the Defendant erected structures, excavated a trench and laid underground

pipes three quarter of a mile long across the entire land from east to west.

7. As such the Claimants claim the following relief:
 - (1) An order directing the rectification of the common boundary line between the Claimants and the Defendant's land (western boundary line of the Claimants' land and the Eastern boundary line of the Defendant's land) by altering the same from that delineated by G.V. Bautista on plan of September 26, 1996, Register 8, Folio 2976 to that delineated by Kenneth Gillett, Licensed Surveyor along the line and points designated A, B, C, D, E, F, G, H and I on Entry No. 11781 Register No. 16 (Attachment III);
 - (2) Possession of the land;
 - (3) Mesne profits for the period of the Defendant's unlawful occupation;
 - (4) Damages on an aggravate or exemplary footing;
 - (5) An injunction to restrain the Defendant from trespassing the land;
 - (6) Cost.

Defendant's case

8. The Defendant in their amended defence issued on 5th December, 2011 denies the accuracy or authenticity of the Gillett Plan for two reasons:
 - (a) the authentication of the Gillett Plan was cancelled by a letter of the Commissioner of Surveys dated the 21st February, 2011 having been found to be inaccurate by reasons of errors or omissions and having regard to the Order of the Court of Appeal dated 13th March, 2007 in Civil Appeal No. 3 of 2006.

(b) By the said order of the Court of Appeal, the Supreme Court judgment which relied on the accuracy of the proposed Gillett Plan was set aside.

9. The Defendant says that by operation of law the land comprised in the Gillett's Plan cannot be considered to have been surveyed or resurveyed or defining the boundaries of the land in the absence of authentication and registration of the Plan thereof in the manner prescribed by the Surveyors Act, Chapter 187.
10. At paragraph 3 of their Defence they say that the western boundary of the Claimant's land is described in their Transfer Certificate of Title. It was surveyed and a plan delineating the same was drawn by G.V. Bautista, Licensed Surveyor dated 26th September, 1996 and the said plan was authenticated by the Commissioner of Lands and Surveys and registered in accordance with the provisions of the Surveyors Act, Register 8 at Entry No. 2976.
11. The Defendant further says that they are registered as the proprietor with absolute and indefeasible freehold title of land adjoining the Claimants' land under and by virtue of a Transfer Certificate of Title in its favour dated 15th September, 1998 which is registered at the General Registry in the Land Titles Register in Volume 34 at folio 9.
12. The Defendant admits it has entered upon and taken possession of the land and has erected structures and infrastructures and undertaken excavations and laid underground pipes and carried on shrimp farming but says that it has done so in the lawful exercise of its rights as the proprietor of the land.

The description in the Claimants' Title

13. Roberta Richmond at paragraph 3 of her witness statement said that title to the portion of the land that is in dispute is comprised in a Transfer Certificate of Title dated May 16th 1991 in the name of Roberta Richmond, Charles W. MacKinnon and Sandra Lori MacKinnon recorded in Lands Title Register Volume 23 Folio 141. The said Certificate of Title is exhibited as “**C-RB1**”. The description of the property is stated as:

*ALL THAT piece of parcel of land being the eastern portion of the land known as Blair Athol Estate situate on the sea coast at False Bight in the Stann Creek District of British Honduras more particularly described in the First Certificate of Title registered in the Land Titles Register Volume 1 Folio 194 **the said piece or parcel of land being a strip of land three quarters of a mile back from the West shore line of Placencia Lagoon and parallel to the said shore line of the Placencia Lagoon** bounded on the north by Crown land and Placencia Lagoon and land by Russell Stewart Grant on the South by the southern boundary of the said Blair Athol Estate on the East by the sea on the west by the remaining portion of the said Blair Athol Estate TOGETHER with all buildings and erections standing and being thereon.*

The Description in the Defendant's Title

14. The Description of the Defendant's title is stated as:

ALL THAT piece or parcel of land being a Mahogany Work situate on the sea coast at False Bight in the Stann Creek District of Belize comprising ten thousand eight hundred and fifty seven acresSAVE AND EXCEPT ALL THAT

piece or parcel of land being the eastern portion of the land known as Blair Athol Estate situate on the sea coast at False Bight in the Stann Creek District of Belize more particularly described in the First Certificate of Title registered in the Land Titles Register Volume 1 Folio 194 **the said piece or parcel of land being a strip of land three quarters of a mile back from the west shore line of the Placencia Lagoon and parallel to the said line of Placencia Lagoon** bounded on the north by Crown land and Placencia Lagoon and land of the Vendor on the South by the Southern boundary of the said Blair Athol Estate by the sea and on the West by the remaining portion of the said Blair Athol TOGETHER with all buildings and erections thereon.

Description of common boundary line

15. It can be seen from the description of the Defendant's Title that their parcel of land excluded the eastern portion of the land known as the Blair Athol Estate which is the property of the Claimants. The description of the Claimants' parcel of land in the Defendant's title is identical to that in the Claimants' Transfer Certificate of Title with the exception of the word "shore". The Claimants' title says "the said shore line" and the Defendant's title says "the said line". This however, makes no difference to the description as it is clear that line refers to shore line.
16. It is common ground based on the two Certificates of Title that the common boundary line between the parties is the strip of land **three quarters of a mile back from the West shore line of Placencia Lagoon and parallel to the said shore line of the Placencia Lagoon.**

Boundaries as shown on Bautista and Gillett Plans

17. The dispute arose between the parties because the Surveyor for each party in executing the survey using the same description in the Titles arrived at different boundary lines. Each of the parties claim that their boundary line is correct. The difference between the two boundaries is some three hundred acres. The Surveyor for the Claimants was Mr. W. Bautista and for the Defendant, it was Mr. Kenneth Gillett.
18. There is no dispute with regards to the coastline, the northern and southern boundaries. The parties agreed that the northern boundary is 87 degrees bearing and that the northern and southern boundaries are parallel. The dispute is solely in relation to the boundary which divides the Claimants' property and the Defendant's property. That is, the three quarters of a mile back from the west shoreline of the Placencia Lagoon and parallel to the said shoreline.

Witnesses

19. The witnesses for the Claimants are Ms. Roberta Richmond, Wilfredo Bautista and Mr. Kenneth Gillett who is an expert witness in surveying. The witnesses for the Defendant are Anthony Roque Marin and Mr. David J. Powell who is an expert in surveying.

Issue

20. Whether the Bautista Plan or the Gillett Plan depicts the true common boundary between the Claimants' property and the Defendant's property.

Expert evidence of Mr. Gillett

21. Mr. Gillett in his witness statement stated that he is a licensed Land Surveyor. He has a three year diploma in land survey, a Bachelor of Technology in Geodetic Sciences (Field of Surveying) from Ryerson University, Toronto Canada. Also, that he has a Certificate in Maritime Boundary Survey from the University of Toronto, Canada. He has worked as a Land Surveyor for over twenty five years and held post such as Senior Surveyor, Principal Surveyor, Deputy Commissioner of Lands and Commissioner of Lands.
22. Mr. Gillett stated that he was asked to conduct a survey of the land at Blair Athol to establish a common boundary between the Claimants and the Defendant's adjacent land and also prepare a report on this matter. He stated that he executed the survey, prepared a plan which was duly authenticated by the Commissioner of Lands and Surveys. The Plan is exhibited at "**C-KG1**".
23. The Report accompanying the Plan is exhibited as "**C-KG2**". The report which is the 'Expert report' explains the common boundary, survey methods and employment of survey method. There is agreement with the description of the common boundary. He stated that there are three survey methods but a combination of all three methods would be more effective in executing these types of surveys. The survey methods as stated in the report are: (1) Normal baseline method; (2) The straight baseline method; and (3) Closing line across the bay.

Normal baseline method

24. Mr. Gillett stated that the normal baseline method could be used depending on the configuration of the coastline that is normal in shape. Normal baseline simply means the normal shape of the coastline that is devoid of indentations and can be produced easily in parallelism.

Straight baseline

25. Mr. Gillett quoting from the **United Nations Convention on the Laws of the Sea** stated that this method is “*where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity the method of straight baselines joining appropriate points may be employed in the drawing of the baseline from which the breadth of the boundary is measured.*” He said that this method is employed in boundaries involving waterways and riparian ownerships.

Closing line across the bay

26. Mr. Gillett stated that it is acceptable to use closing line across the bay that has well marked indentation and more than one mouth. A closing line can be drawn across the mouth of the bay. Similarly the said method can be used to draw a straight baseline across the mouth of the river. He relied on the **Laws of the Sea Convention**.

Method applied by Mr. Gillett

27. Mr. Gillett stated that to execute the survey of the Blair Athol property, he used a combination of the methods as the coastline is deeply indented and has a large bay that would require a closing line. He said that he utilised the straight baselines methods coupled with the closing bay line to assimilate the lines to be surveyed. Therefore, the survey lines were derived from the use of straight lines and the use of closing bay line which are parallel to the coastline and at the same time maintain a perpendicular distance of three quarters of a mile.

Cross-examination on the methods used by Mr. Gillett

28. In cross-examination, Mr. Gillett explained that the three-quarter mile distance from the sea coast is a perpendicular distance going back from the sea coast. It is measured using the straight baselines from the coast and then measured perpendicular going westward, maintaining three

quarter of a mile. He explained that he arrived at the baseline by looking at the whole shape of the coast, chose various points to put the straight baseline, thereby creating a straight line.

29. Mr. Gillett was cross-examined about the word “perpendicular” since it does not appear in any of the title descriptions. He explained that “perpendicular” means “back” which appears in the description.
30. Mr. Gillett was asked to demonstrate on the plan, the three quarter of a mile perpendicular to the coastline from the northern boundary of the property. This demonstration as admitted by Mr. Gillett shows that three quarter of a mile back from the northern extremity goes out of the Blair Athol property.

Method of closing the bay by Mr. Gillett

31. Mr. Gillett explained that in closing the bay he chose the furthest point, meaning that he went less to the back, that is, less than three quarter of a mile back. In further cross-examination, he explained that Mr. Bautista did not use the acceptable closing bay method.

Evidence of Wilfredo Bautista

32. Mr. Bautista is a survey technician and land consultant. He stated that in 1996 he worked with his father Gustavo Valentin Bautista, Licensed Surveyor in their firm called Bautista Y Bautista, a land consultancy firm. He does not have any formal training in surveying but has been involved in the field of surveying since he was ten years old.
33. At paragraph four of his witness statement he said that he is familiar with a survey plan drawn by his father, G.V. Bautista, Licensed Surveyor, dated 26th November, 1996 recorded in Register 8 Entry No. 2976 which is the plan for the western portion of Blair Athol Estate which was prepared at the request of the late Mr. Barry Bowen for Belize Aquaculture Limited.

The Plan was signed by Mr. Bautista's father, G.V. Bautista, who is now deceased.

34. Mr. Bautista's witness statement was reduced significantly because of hearsay statements. He stated that he drew the plan which his father signed. Further, that in 1992 it was the opinion of the firm that the straight line surveying was the proper method. However, the plan was not drawn in accordance with the opinion given because of instructions given by the client, Mr. Bowen who is now deceased.

Evidence of Mr. Marin for the Defence

35. Mr. Marin is a surveyor by profession and has been practicing as a Surveyor in Belize since 1973. He said that he has walked the boundaries of the Defendant's land and has observed the concrete markers along the north and south boundaries of Blair Athol as shown on the Bautista Plan. He said that he observed that every point along the Defendant's eastern boundary line shown on the Bautista Plan was more or less a distance of three quarter of a mile from the west shoreline.
36. In cross-examination, Mr. Marin said that he has not done a survey of the Blair Athol. However, he lives on the property and he was asked by the late Mr. Barry Bowen to look at the description of the Claimants' property and the Defendant's property and make a suggestion. He came up with a survey sketch, not a survey plan.

Expert evidence of Mr. David J. Powell for the Defence

37. Mr. David John Powell is a Chartered Land Surveyor by examination. He received his professional training and early surveying experience in the Royal Engineers between 1964 and 1970. The training includes,

topographic surveying, Aerial Photographic Interpretation, Altimetry, Astronomy, Projections and Dimensional Control. Mr. Powell has a vast wealth of experience on boundary disputes as shown in his witness statement and report.

38. Mr. Powell's Report was prepared on 9th January, 2008 for the first trial. He has not prepared a new report for this matter as the dispute remains the same and he did not see anything in the amended Statement of Case that would cause him to amend his report.
39. Mr. Powell was given a file of documents and maps by the Defendant for the preparation of the report. However, he did not do a survey of the property but stated that he viewed the site on 10th and 11th December, 2007 during which time he saw the surveying equipment and examined the technical (surveying) methodology used by the Defendant's surveyor, Mr. A.R. Marin.
40. Mr. Powell has also identified the dispute between the parties as a boundary that is defined by the words "*... a strip of land a distance still to be determined but not more than ¾ mile back from the sea-coast or Placencia Lagoon, whichever applies...*"

The terrain

41. Mr. Powell stated that the lagoon which lies to the east of the shore line is complex in some places as shown by the photographs appended to his report. Further, the inland terrain is not difficult from a land surveying aspect but the fixing of the shore line presents a greater land surveying problem as the exact point where water meets land can be a matter of surveying judgment and is not an exact science. He however, recognises that a few feet one way or the other is not in dispute. The dispute is really how to replicate the shoreline inland.

42. Mr. Powell observed concrete markers on the original northern and southern extents of the overall site. The other markers were installed mostly by Mr. Marin along the Defendant's interpreted line of the disputed boundary.
43. Mr. Powell referred to three generations of plan in his report, which are Plans 1, 2 and 3. Plan 3 is an extract from the Survey Department of Belize dated 1952, which shows the northern and southern extent of the land in question is marked by a dashed (- - - - -). He stated that the grid bearing of the said lines appears by examination to be 267 degrees from the shoreline.

Method to reproduce the shoreline inland

44. Mr. Powell stated that the dispute is about two fundamentally different approaches as to how to transfer the shoreline inland.
45. According to him, there are traditional "straight line" methods of fixing the shore lines which originated in the days before electronic equipment and well before the introduction of GPS. He explained that by using tapes, chains and theodolites it was very difficult to survey shorelines in some parts of the world. As a result, a method was devised whereby the shore, which is rarely dead straight, could be made into a series of "straights" that a land surveyor could replicate inland.
46. Mr. Powell stated that in his analysis, he will reproduce the coast, with all its ins-and-outs, on a plan. He did say that he is not averse to using the "straight line" method in this dispute as he fully appreciates how that method had been adhered to over the years. However, using the 21st century equipment, he suggests that there is a better way of reproducing the shorelines inland.

Mr. Powell's analysis of the common boundary line

47. It is Mr. Powell's opinion that the northern and southern extents of the land in question are limited by the dashed lines on Plan 3 and metaphorically form a set of railway lines. That to establish three quarter of a mile back from the shore, he would measure that distance along each of the two railway lines and join up the gap, following the shape of the shore.
48. Mr. Powell on a plan, labelled as "Plan 4" which is based on Plan 2 given to him and similar to plan 1, transferred the north and south railway lines in blue ink and labelled them "Northern extent" and "Southern Extent", "shore", the two "three quarter mile" measurements, and the resulting "boundary."
49. He did this by following the description in the titles, that is, according to him, "I have simply drawn the boundary so that it is parallel to the shore and have not attempted to straighten it up.
50. Mr. Powell's opinion is that there is no need to impose surveying limitations onto the boundary by straightening it up as there is modern electronic surveying equipment which is in use in Belize and this will allow the exact shape of the shore to be reproduced. In his conclusion, he said that his own inclination would be for the boundary to follow the exact shape of the shore, however, if for reasons of on-site practicality, a series of straight lines is preferred then he would suggest, at the very minimum, seven lines should be used to ensure that the shape of the shore is reproduced inland as closely as possible.

Mr. Powell's analysis of Mr. Gillett's interpretation

51. Mr. Gillett's interpretation is that "back from the shore (or coast)" means that one should go inland in a manner that is perpendicular to the shore. Mr. Powell's opinion is that this method produces an anomaly in

that it would involve a considerable projection into land to the north which may not be owned by either of the parties and would leave a similar size gap at the southern end of the boundary where a shoreline belonging to someone else would need to be projected into the land being conveyed. Further, it would also lead to difficult surveying decisions as to “what is perpendicular?” all along the uneven coastline.

52. Mr. Powell further stated that he has not seen the word “perpendicular” used in any of the documents described in any of the conveyancing documents and if that was the intention, that word would have been inserted in the description of title. However, the word “parallel” is important as it is included in the description of title. He said that for one line to be parallel to another line it does not have to be perpendicular at its ends. That a parallelogram, which is his interpretation of the dispute before the court, does not have to be perpendicular at its ends. He referred to the Oxford Dictionary where the word is described as follows:

Parallelogram – a four-sided plane rectilinear figure with opposite sides parallel.

53. In Mr. Powell’s opinion, the disputed boundary is clearly meant to be three quarter mile back and then be parallel to the shore. As such, the shape of the shore is slid back along the railway lines for three quarter miles and the boundary is fixed. He stated that by sliding the shoreline back three quarter mile, along the northern and southern boundary lines, a parallel boundary to the shoreline is created. Further, that there will not be more than three quarter mile along the shore and it will not require incursions into anyone else’s land or any resolution of gaps.

The “closing bay” line across the mouth of the creek

54. In his report, Mr. Powell stated that the only subjective decision he had to make was in relation to the “closing bay” line across the mouth of the creek. He labelled the ends of the line as “X” and “Y” on Plan 4. He stated that Point Y coincides with the point selected by Mr. Gillett on Plan 1. However, he stated that Point X is different because the point that he selected gives a smooth transition from the shore line approaching from the south to the closing bay line passing through X. But, Mr. Gillett’s point resulted in a sharp deviation from a smooth line.

Cross-Examination of Mr. Powell

55. In cross-examination, Mr. Powell said that he did not see the Plan prepared by G.V. Bautista on 26th September 1996. (See also page 8 paragraph 13 of his report where he mentions this). In fact, Mr. Powell said that twelve days before the trial he saw the Bautista Plan and the Gillett Plan which is before the court. What he received from the Defendant for the preparation of his report is some base plan which looked like the Bautista plan but it was not the said plan. Further, he said that he had not seen the further amended statement of case. He also stated that though he visited the site, he did not conduct a physical survey of the property in dispute.
56. Mr. Powell was shown the Bautista Plan and the Gillett Plan and asked to give his opinion on same since he did not see them for the preparation of his report. He said that the Bautista Plan does not show any survey shorelines. However, the Gillett Plan has straight lines which follows the coast as closely as possible. He said that having seen Mr. Gillett’s plan where he used the straight line method, it is very close to what he got using the curve line. Mr. Powell’s opinion is that the curve line and the straight line is one and the same. The reason being that Mr. Gillett has many points on his plan and it is really as good as GPS. He said that he

is happy that the traditional method is as good as one would get using the GPS. Further, that the surveyor will get the exact shape of the coastline if he has many points.

57. As for closing of the bay, Mr. Powell said that it is acceptable to do so where there is an unusual shape. He said it is common practice to close the bay in the way it was done by Mr. Gillett. Now, that Mr. Powell had seen Mr. Gillett's plan, he said that he would have closed the bay exactly the same way. Further, he said that Mr. Gillett who is very knowledgeable in Belize has come up with the same closing bay line as himself although he does not know a lot about Belize.

Re-examination of Mr. Powell

58. In re-examination Mr. Powell said that he agrees with all the calculations on Mr. Gillett's plan. However, he is not happy with the method of going back perpendicular from the agreed baselines. He explained that if the northern and southern constraints were not present and there was an open countryside, then Mr. Gillett's method would have worked. But since there are boundaries, going perpendicular caused gaps. He pointed out on the map that two of Mr. Gillett's lines on his Plan are not parallel. Further, that Mr. Gillett's method is a mixture of mathematics and subjectivity and different surveyors will come up with different answers. Mr. Powell said that with his method as opposed to Mr. Gillett's method, a surveyor is constrained by the north and south boundary lines.
59. Mr. Powell further said that since he has seen Mr. Gillett's accurate plan, meaning the straight line method applied to the shoreline, it should be moved on railway lines, three quarters of a mile to create the exact shape. That with this method ten surveyors in different rooms would come up with exactly the same plan. Mr. Powell further stated that Mr. Gillett had to use some subjectivity because of the method used by him. However, with his (Powell) method there is no subjectivity. As for the

Bautista plan, Mr. Powell said that he is not sure what he has done because he cannot see the baselines.

60. In further re-examination, Mr. Powell said that with his method of closing the bay, it is slightly nearer to Mr. Gillett's line than Mr. Bautista's line.

Determination

61. The court has to determine whether the Bautista Plan or the Gillett Plan depicts the true common boundary between the parties. This has to be determined by the legal description which is stated in the Certificate of Titles of the Claimants and the Defendant. There is no material difference of the description stated in the said titles. The bone of contention is the method used in surveying three quarters of a mile back from the shore-line which has a meandering coastline and also a bay as can be seen by the Plans of the two Surveyors. This requires an application of acceptable surveying methods in executing the survey of the parcel of land described as ***“the said piece or parcel of land being a strip of land three quarters of a mile back from the West shore line of Placencia Lagoon and parallel to the said shore line of the Placencia Lagoon”***.

The Northern and Southern boundaries

62. The Northern and Southern boundaries are not in dispute. Plan 3 exhibited to Mr. Powell's report is an extract from the Survey department of Belize and it shows the land in question is marked by a dash (- - - - -).

Survey Method to fix the West Shoreline

63. The lagoon lies to the east of the Blair Athol property and is very complex as shown by the photographs appended to Mr. Powell's report hence the reason for this dispute. It is a meandering shore line with indentations forming a bay. This can be seen by Bautista's Plan, Gillett's Plan and Plan 4 attached to Mr. Powell's report. In order to make a determination on the three quarters of a mile back from the west shoreline it is necessary to begin from the shoreline itself. The first question for determination therefore, is the applicable survey method to be applied to the shoreline.
64. There is no evidence before the court as to which method was applied to the Bautista Plan in fixing the shoreline as there is no baselines shown on the Plan. Mr. Bautista nor Mr. Marin did not shed any light on the method applied in doing the surveying. Mr. Gillett who is the expert witness for the Claimant said he utilised the straight baseline method. This can be seen on his Plan which shows many points on the eastern side of the plan which he used to get the straight line.
65. The expert witness for the Defendant, Mr. Powell said that there are two ways of fixing the shorelines. They are: (1) The traditional 'straight line' methods which originated before electronic equipment and before the introduction of GPS and (2) Reproduction of the coastline with all its ins-and-outs on a plan. Mr. Powell in his report said that though he is not averse to using the straight line method, he would prefer to reproduce the coastline with all its indentations. In cross-examination, however, at which time he had seen the Gillett's plan, he said that the straight line method applied by Mr. Gillett is very close to what he got using the curve line and this is because Mr. Gillett had used many points, Further, that this is as good as GPS.

66. I have carefully considered the evidence of both Mr. Gillett and Mr. Powell, the two expert witnesses on the method to be applied to fix the shoreline and it is my view that the straight baseline method as applied by Mr. Gillett is more appropriate in this case because of the meandering shoreline. According to the **United Nations Convention on the Laws of the Sea** this straight baseline method is applied where the coastline is deeply indented and it is done by joining appropriate points.
67. Although there is modern electronic equipment available today, such as GPS, a shoreline with many ins-and-outs could be very challenging to any surveyor. Mr. Powell, the expert witness for the Defendant has also accepted that this method can be as good as GPS where there are many points. In fact, Mr. Powell's evidence which I accept is that in his opinion the curve line which was done by him and Mr. Gillett's straight baseline, is one and the same. As such, I find that the straight baseline method applied by Mr. Gillett's to fix the shoreline is acceptable in this case.

Closing line across the bay

68. The Plans before the court show the bay which is part of the west shoreline. As can be seen on the Plans, the bay has a very deep indentation, a large body of water, that goes inland. Therefore, a line has to be drawn across the bay, referred to as the 'closing bay line' and this line is joined to the other points to form the baseline of the shoreline. According to the **United Nations Convention on the Laws of the Sea**, it is acceptable to use a closing line across the bay.
69. The closing bay line on the Bautista Plan and the Gillett Plan are in different places. Mr. Gillett's evidence is that in closing the bay he chose the furthest point into the bay. Mr. Powell, the Defendant's expert in cross-examination accepted the method used by Mr. Gillett. In re-examination, Mr. Powell said that his method of closing the bay is slightly

nearer to Mr. Gillett's line than Mr. Bautista's line. Mr. Powell therefore, did not confine himself to his report which was prepared before seeing the Gillett plan.

70. Mr. Powell did not do a survey of the Blair Athol property and after having seen Mr. Gillett's plan which was displayed in the courtroom, he said that he would have closed the bay exactly the same way it was done by him. In fact, he said that Mr. Gillett who is very knowledgeable in Belize has come up with the same closing bay line as himself although he does not know about Belize. Mr. Powell who is the expert for the Defence has agreed with the expert for the Claimant in the method used to close the bay. I accept the evidence of both of these experts and find that the closing bay line applied by Mr. Gillett in the surveying of the Blair Athol property is the proper method to be applied in the surveying of the property.

Method to establish three quarters of a mile back from the west shoreline and parallel to the said shore line.

71. Since the baseline for the west shoreline has been established, the next question that follows is the method to be applied to measure three quarters of a mile back from the west shoreline. As mentioned before, this is really the bone of contention between the parties. There is a difference of about three hundred acres between the Gillett's survey and the Bautista's survey, hence the reason the Claimants brought an action for trespass.

Interpretation of 'back'

72. The word 'back' in the description has to be interpreted by the court as the Claimants' surveyor, Mr. Gillett has interpreted this word to mean 'perpendicular'. The word perpendicular does not appear in the

description of title. Mr. Gillett in cross-examination said that the three-quarter mile distance from the shoreline is a perpendicular distance going back from the shoreline.

73. Learned Senior Counsel, Mr. Williams for the Claimant contended and adopted the trial judge's view in the first trial, that Mr. Gillett merely stated one of the rules of basic geometry. That *it is a mathematical property, a reality, that the shortest distance between two parallel lines is a line at right angle or perpendicular thereto. Further, that there was no need to specifically say in the legal description, the perpendicular reality of the shortest distance between the boundary line parallel to the coastline and three quarter mile back is necessarily the shortest line. All other lines, especially the pre-existing and established Northern and Southern boundary are fixed at 87 degrees West and so will be longer as a matter of mathematical reality.*
74. Learned Senior Counsel, Mr. Dereck Courtenay submitted that the phrase "*back from the West shoreline of Placencia Lagoon and parallel to the said shoreline of the Placencia Lagoon*" in its ordinary grammatical sense is capable of only one interpretation and that is, it must refer to a landward direction. Learned Senior Counsel relied on **Halsbury's Laws of England, Fourth Edition, Vol 12 at paragraph 1463** which states:

Words to be taken in ordinary sense.The rule is that in construing all written instruments the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no farther. The instrument must be construed according to its literal import, unless there is something in the subject or

context which shows that this cannot be the meaning of the words.

75. I agree with Learned Senior Counsel, Mr. Courtenay that the word 'back' must be given its ordinary grammatical sense. The word "back" as used in the context of this sentence refers to a direction and the appropriate definition in my view is "in the opposite direction" as shown by the **Oxford Dictionary, Tenth Edition**. 'Back from the west shoreline' is therefore, the opposite direction of the west shoreline. The opposite direction of the west shoreline is the landward direction. This meaning would not lead to any absurdity.
76. Further, I respectfully disagree with the submission of the Claimants that Mr. Gillett merely stated one of the rules of basic geometry and *there was no need to specifically say in the legal description, the perpendicular reality of the shortest distance between the boundary line parallel to the coastline and three quarter mile back is necessarily the shortest line*. The two words have different meanings. 'Perpendicular' means *"at an angle of 90 degrees to a given line."* - **Oxford Dictionary, Tenth Edition**. The legal description will be completely different if the word 'perpendicular' was substituted for 'back'. Mr. Gillett erroneously interpreted 'back' to be 'perpendicular'. In my view, the word 'back' cannot be interpreted to mean 'perpendicular' as was done by Mr. Gillett. I find that the words 'back from the west shoreline' in the description of titles means the opposite direction of the west shoreline which is the landward direction.

Difficulties with the perpendicular method applied by Mr. Gillett

77. There are northern and southern boundaries as shown by the Plans before the court. The application of the perpendicular method applied by Mr. Gillett caused gaps because of these boundaries. Mr. Gillett during

cross-examination has seen the difficulty with the application of perpendicular lines. He was asked to demonstrate on his plan the three quarter of a mile perpendicular to the coastline from the northern boundary of the property and this showed that the three quarter of a mile from the northern extremity goes out of the Blair Athol property. Mr. Gillett has admitted during the demonstration that with this method, the three quarter of a mile takes him out of the northern boundary.

78. Mr. Powell's opinion which I accept, is that the application of the perpendicular method produces an anomaly as there is a considerable projection into land to the north and there is a similar size gap at the southern end of the boundary. I find that the perpendicular method applied by Mr. Gillett caused gaps as he was constrained by the northern and southern boundary.

Parallel to the shoreline

79. The description further says that the three quarter mile must be parallel to the said shoreline. The word 'parallel' means side by side and having the same distance continuously. The distance in this case would be between the shoreline and the boundary line which is three quarters of a mile inland. Mr. Powell's expert opinion which I accept is that for one line to be parallel to another, it does not have to be perpendicular at its ends.
80. Mr. Powell has also shown the court and I so find, that two lines on the Gillett plan were not parallel to each other. Mr. Gillett therefore, did not adhere to the description in the title in doing his surveying. The court however, acknowledges that at the time Mr. Gillett did his survey there was no GPS in Belize and the terrain consisted of a meandering coastline and a bay.

81. Summary of Findings

1. The northern and southern boundaries of the Blair Athol property is clearly defined as shown by an extract from the Survey Department of Belize.
2. There is no evidence before the court showing which method was applied to the Bautista Plan in fixing the shoreline as there is no baselines shown on the plan. Further, the Bautista plan did not apply the acceptable closing bay line.
3. The straight baseline method applied by Mr. Gillett to fix the shoreline is acceptable in this case.
4. Mr. Gillett applied the acceptable 'closing bay line' across the bay.
5. I find that the word 'back' cannot be interpreted to mean 'perpendicular' as was done by Mr. Gillett. The words 'back from the west shoreline' in the description of titles means the opposite direction of the west shoreline which is the landward direction.
6. The perpendicular method applied by Mr. Gillett caused gaps as he was constrained by the northern and southern boundaries.
7. Two lines on the Gillett Plan were not parallel to each other and therefore, the survey was not done in accordance with the description in the Certificate of Titles.

82. Conclusion

The Gillett Plan nor the Bautista Plan does not accurately depict the common boundary between the Claimants' property and the Defendant's property.

83. Accordingly, the following order is made:

Order

The reliefs sought by the Claimants are refused.

The Commissioner of Lands and Surveys is ordered to cancel the authentication of the G.V. Bautista plan dated September 26, 1996, as shown in Register 8, Folio No. 2976, as it does not establish the accurate common boundary between the Claimants and the Defendant's property.

A resurvey is to be done to establish the accurate common boundary between the Claimants and the Defendant's property.

The Claimants and the Defendant are to jointly appoint the surveyor(s) to do the surveying.

The Claimants and the Defendant must jointly pay for the cost of resurvey and any cost to complete and register the plan of resurvey.

The resurvey Plan, after authentication by the Commissioner of Lands and Surveys is to be registered showing common boundary between the Claimants and Defendant's property.

Each party is to bear its own cost in these proceedings.

Dated this 8th day of November, 2012

Minnet Hafiz-Bertram
Supreme Court Judge