

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF JUSTICE

CLAIM NO. 744 of 2021

BETWEEN:

ALEX ROQUETA

1st CLAIMANT

BEATRIZ FERRER VALENTINE

2nd CLAIMANT

AND

A.B. #8601 ACB LTD

1st DEFENDANT/ANCILLARY CLAIMANT

REGISTRAR OF LANDS

2nd DEFENDANT/ANCILLARY DEFENDANT

COMMISSIONER OF LANDS

3rd DEFENDANT/ANCILLARY DEFENDANT

ATTORNEY GENERAL OF BELIZE **4th DEFENDANT/ANCILLARY DEFENDANT**

Appearances: Mr. Rene Montero for the Claimants

Ms. Alifa Elrington and Ms. Agnes Segura- Gillett for the 1st Defendant

Ms. Alea Gomez and Mr. Sheldon March for the 2nd 3rd and 4th Defendants.

2026: 5th March

14th April

JUDGMENT

**Registered Land Act, Cap. 194- General Registry Act, Cap. 327- Rectification of the Register-
Land Ownership- Torrens System of Land Registration- Declaration in relation to lot 320 Parcel
#8601- Transfer Certificate of Title 2007 –Land Certificate 2014- Damages- Loss of Use- Loss of
Opportunity-Breach of Statutory Duty- Negligence- Fraud- Mistake.**

[1] SYLVESTER J: The genesis of this claim arose due to the dual sale of the same lot of land

referenced; Lot No. 320 comprising 913.26 square meters situate in the Subdivision known as Ambergris Bay, Ambergris Caye, Belize District, more particularly shown on Plan No. 1019 of 2006 at the Land Titles Unit, Belmopan, and attached to Minister's Fiat (Grant) No. 1019 of 2006, (**hereinafter called the said lot**) to the Claimants in 2007 and subsequently to the 1st Defendant in 2014. The Claimants title emanated from the **General Registry Act, Cap. 327**, (hereinafter referred to as **the GRA**) which was unregistered land. Subsequently, the First Defendant purchased the said lot and secured a title through compulsory registration under the **Registered Land Act, Cap. 194** (hereinafter referred to as **the RLA**). This process is referred to as the Torrens System of land registration¹. By virtue of the above, the Claimants instituted a claim against all the Defendants alleging various breaches.

- [2] Consequently, the 1st Defendant filed an ancillary claim against the 2nd - 4th Defendants claiming indemnity, compensation, loss and damages in respect of all Orders and Judgments made by the Court in respect of the substantive claim between the Claimant and the 1st- 4th Defendants.

Claimants Case/Jose A. Paz Jr. (1st Sale)

- [3] By Deed of Conveyance dated the 21st day of November 2006 Jose A. Paz Jr. (hereinafter referred to as Jose A. Paz) sold and transferred the said lot to David Mitchell. Jose A. Paz utilized a Minister's Fiat Grant #1019 of 2006 dated the 25th October 2006 to effect the sale. On the 19th day of October 2007 David F. Mitchell, by Deed of Conveyance, sold and transferred the said lot to the Claimants.

Jose A. Paz (2nd Sale)

- [4] On or about the 15th day of December 2011, Jose A. Paz, utilized the same Minister's Fiat Grant # 1019 of 2006 which was used to sell and transfer the property to David Mitchell, and thereafter applied for a 'first registration of title' for the said lot.

¹ Registered Land Act 1974

- [5] On the 24th day of February 2012, Jose A. Paz was issued by the Land Registry with a 'Land Certificate' bearing Instrument Number: LRS-201202441 for the said lot, identified as Parcel 8601, Block 7, San Pedro Registration Section.
- [6] On the 4th day of June 2014 the said lot was sold and transferred to the 1st Defendant bearing Instrument Number: LRS-201406706 in consideration for the sum of Sixty Thousand United States Dollars (\$60,000.00 USD).
- [7] The Claimants therefore alleged fraud and/or mistake as against the 2nd and 3rd Defendant, breach of statutory duty and negligence as against the 2nd Defendant. The Claimants alleged that the failure of the 2nd Defendant to have a register of titles pursuant to **RLA** section (12) was the genesis of the statutory breach of duty, coupled with Jose A. Paz's fraud when he attempted and succeeded in applying for and being granted first registration, which resulted in the grant of a certificate. The Claimants also assert that any mistake, error, false or inaccurate information in the Lands Register was due to the failure of the 2nd Defendant to discharge her statutory duties as set out in the **RLA**. These acts and/or omissions are tantamount to Breach of Statutory Duty, gross negligence and recklessness, which in turn amount to bad faith in the execution of her duties.
- [8] The statutory breach is compounded firstly, by the failure to accurately prepare the Land Register, thereby showing all the subsisting particulars registered under the **General Registry Act, Cap. 327**, in respect of the said lot to reflect the true proprietor thereof, in accordance with Section 10 of the **Registered Land Act, Cap. 194**. Secondly, there has been a statutory breach of duty by failing to give written notice to the proprietors of the said lot, that their registration had been transferred to the Land Register in accordance with the **Registered Land Act, Section 12 (2)**.

First Defendant's Defence & Ancillary Claim

- [9] The 1st Defendant (hereinafter referred to in this section as the Defendant) filed its defence

and ancillary claim form as against the 2nd - 4th Defendants and strenuously disputed the claim in its entirety and asserted that the transaction was an arm's length transaction. A thorough search was conducted at the Land Registry and there was no discovery of any documents that proved there was a prior title holder for the property.

The Defendant further contends that on the 24th of February 2012, Jose A. Paz was issued a Land Certificate with Instrument Number: LRS-201202441 for the said lot and on the 4th day of June 2014, the said lot was transferred to the Defendant in consideration for the sum of Sixty Thousand United States Dollars (\$60,000.00 USD). The purchase of the lot from Jose A. Paz was conducted via a reputable real estate agent, and the Defendant was a bona fide purchaser for value.

- [10] Section 41 of the **Registered Land Act, Chapter 194** of the Laws of Belize, R.E. 2000 provides for indefeasibility of title, in that "No person dealing or proposing to deal for valuable consideration with a proprietor shall be required- (a) to inquire or ascertain the circumstances in or the consideration for which such proprietor or any previous proprietor was registered or the manner in which any such consideration or part thereof was utilized; or (b) to search any register kept under the **General Registry Act.**"
- [11] Furthermore, even if the Claimants are able to prove their allegations of mistake or fraud, the Defendant maintains that the Claimants are still not entitled to any relief as against the Defendant, since the action is barred by virtue of section 32 of the **Limitation Act, Chapter 170** of the Laws of Belize, R.E. 2000.
- [12] Finally, if the Claimants' have suffered loss, it is as a result of the negligence, and / or breach of Statutory Duty of the 2nd Defendant, in failing to discharge her statutory duties, acting in bad faith and failing to keep a proper record of all transactions touching and concerning the property, in the Land Register. As such, compensation should be in the form of an order for damages or compensation from the 2nd, 3rd and 4th Defendants.
- [13] The Defendant asserted that it fully discharged its due diligence obligations prior to purchasing the property and it should be indemnified in respect of any Judgments made by

the Court in respect of the substantive claim, and that compensation should be paid in respect of all losses and damage suffered thereby. Negligence and/ or breach of statutory duty should be attributed to the 2nd and 3rd Defendants, and compensation should be in the form of an order against the 2nd -4th Defendants.

Second 2nd – Fourth 4th Defendants’ Defence

- [14] The 2nd, 3rd and 4th Defendants (hereinafter referred to as the Defendants in this section) admitted that Jose A Paz applied for first registration of the subject property. That on the 24th day of February 2012, he was issued a Land Certificate with Instrument Number: LRS- 201202441 for the property identified as Parcel 8601, Block 7, San Pedro Registration Section. The Defendants deny that there was any mistake or fraud in the transaction, since Jose A. Paz submitted to the Registrar a copy of a Minister’s Fiat Grant. The Registrar thereafter accepted the application and issued a Land Certificate to Jose A. Paz acting in good faith. The Defendants also aver that should the court find any modicum of fraud as alleged, that it should be imputed to Jose A. Paz without any knowledge of the Defendants.
- [15] The Defendants further stated in their pleadings that the Claimants’ title has not been cancelled as alleged.
- [16] Further, the Claimants’ action is statute-barred, since the cause of action arose on the 24th February 2012, and the claim as filed exceeds the six (6)-year limitation period. Therefore, the claim should be struck out. Also, the 2nd Defendant is immune from liability by virtue of Section 8 of the **RLA**, having acted in good faith in the performance of her duty.
- [17] The Claimants have not properly pleaded the issue of fraud, and any allegations of fraud should be brought against Jose A. Paz who applied for a Land Certificate based on a Minister’s Fiat Grant for which the interest had already been transferred. The 2nd Defendant acted in good faith and should not be held liable for any action or proceeding in respect of any act done or omitted to be done in

good faith in the exercise of her statutory powers and duties.

The Trial

[18] At the trial of this matter the Claimant called two witnesses, Alex Roqueta and Robert Colon. The 1st Defendant's witnesses were Megan Elizabeth Chun and Dennis James Kay II, and the 2nd 3rd and 4th Defendants called one witness being the Registrar of Lands, Ms. Patricia Robateau Blackett. There was one court appointed Expert, Herman Castillo who is a 'Real Estate Appraiser' and a member of the Belize Association of Valuation Surveyors.

[19] The substance of the evidence of the respective cases of the Claimants and Defendants shall be paraphrased herein. However, the court will take all the evidence into consideration, in its deliberation, even if not specifically mentioned.

The Claimants' Evidence (Alex Roqueta and Robert Colon)

[20] The evidence of Alex Roqueta states that he purchased together with the Second Claimant Beatriz Valentine in 2007 a portion of beach front property in Ambergris Caye, the subject matter of this dispute. The price of the property was seventy thousand United States Dollars (USD \$70,000.00). He utilized the services of an attorney at law to conduct the title search and prepare a transfer of title which was completed. That in 2007, the property was transferred to the Claimants, and a Transfer Certificate of Title (**TCT**) was issued to them. They therefore became the registered owners of the said lot.

[21] The Claimant purchased the said lot for investment purposes. In 2020, he entered into a listing agreement with RE/Max Island Real Estate, in San Pedro, Ambergris Caye, to list the said lot for sale. The services of a Land Title Investigator were sought through Robert Colon, who then discovered that the property was recorded in another owner's name, being the 1st Defendant. It was then that Jose A. Paz or someone purporting to be him, utilised a copy of the Minister's Fiat Grant #1019 of 2006 dated 25th day of October 2006 (which was used to transfer the property to David Mitchell), had applied for first registration of title. The application for first registration was filed on the 16th December 2011 by Ardet Smith and not Jose A. Paz,

despite the signature attached to the application stated Jose A. Paz. Further, the signature of Jose A. Paz on the letter attached to the application² was patently and obviously different from the signature of Jose A. Paz on the Conveyance³. This the Claimant asserted, he needs no expertise to decipher the obvious difference in signature.

- [22] In cross-examination he stated that since he bought the property, he never paid taxes because it was never sent to him on the address he had on the conveyance. Further, he was told that the tax would be a very small amount. The property was bought for investment purposes, for his retirement, as he expected the property to increase in value. He stated in the cross-examination by Ms. Gomez that he was neither aware of, nor was he looking for a notice in the gazette regarding the property being in a compulsory registration area. If he was aware he would have acted on it. However, he is aware that the Registrar of Lands must go through the same property search as himself as purchaser.

Robert Colon

- [23] The evidence of Robert Colon was that he was a real estate broker and owner of RE/Max Island Real Estate in San Pedro Town, Ambergris Caye. In the year 2020 the Claimants contacted him to list their property for sale; he was provided with the Transfer Certificate of Title (TCT) showing proof of ownership and he encouraged them to list the property for one hundred and eighty-nine thousand United States Dollars (USD\$189,000.00). The Claimants also provided him with a title search from Julio C. Valdez showing that the Claimants were the registered proprietors for the said property, and that the property now falls within a declared area defined as Registration Section: San Pedro, Block 7, Parcel 8601. Further, in the year 2021, he was informed by his land agent that the property was registered in another name, and he immediately contacted the Claimants.
- [24] In cross examination, which was very succinct, he stated he did not provide any evidence that there were buyers who withdrew their offers and reaffirmed that the property was no longer in

² Trial bundle page 226 [Letter attached to the application for first registration]

³ Trial bundle page 161 [Conveyance]

the Claimants' name.

First Defendant's Evidence

Megan Chun

[25] The evidence of Megan Chun states that she is the Managing Director of the First Defendant Company, her father Terence Alen Bunch is the other Director, and beneficial owner of the shares therein. Her father is unable to testify due to his health condition, and she is his duly appointed Power of Attorney. That her father purchased the said property from Jose A. Paz in 2014 for the sum of sixty thousand United States Dollars (USD \$60,000.00). A land certificate was issued to the Defendant bearing #LRS-201406706, evidencing the ownership of Parcel # 8601. A copy of the land register from the Land Registry was obtained which showed that there was no encumbrance lodged against the title, the taxes for the property confirmed Jose A. Paz as the owner of the property.

[26] The property was purchased through RE/Max which is an international real estate brokerage franchise and a title search was conducted. The title search confirmed the title was free and clear of all liens and encumbrances. She also testified that her father invested his retirement funds for the purchase of the said lot, and he has suffered tremendous financial hardship, which is continuing.

[27] In cross-examination she stated that she was recently appointed a director of the first Defendant. There was neither an exhibit submitted for the consideration of USD\$60,000.00 for the purchase of the property nor for the payment of stamp duty. The property was purchased because the 2nd Defendant would have determined that Jose A. Paz was the registered owner of the said property.

Dennis James Kay II

[28] The evidence of Dennis James Kay II, states that he was a former Director of the 1st Defendant. In 2014 he was employed as a Real Estate Agent with RE/Max situate in San Pedro Town, Ambergris Caye. Jose Paz who was a pilot with Tropic Air and approached him to sell the said lot. The initial price was eighty thousand United States Dollars

(USD\$80,000.00), however Jose Paz returned requesting a quick sale as he was in dire need of money and reduced the price to sixty thousand United States Dollars (USD\$60,000.00) and informed him that he had updated his title at the Lands Department. He was aware that some of his other clients were also upgrading their titles to a Land Certificate since Ambergris Caye was made a compulsory registration section. He conducted his due diligence by checking the Land Register and confirmed that Jose Paz was the owner and there were no encumbrances, liens or taxes owed on the property. He acquired title to the property, then eventually sold it to another party, wherein he acted as agent and re-sold it to Terence Allen Bunch, the father of Megan Chun, who is now the Director of the First Defendant.

[29] That he has always acted in good faith throughout the transaction, from the time he acquired the property as purchaser and even when he acted as realtor.

[30] In cross-examination he confirmed that he did his due diligence and he had 'Capital Title Services' conduct a full search in relation to the property.

Second 2nd , Third 3rd and Fourth 4th Defendants' Evidence (Patricia Robateau Blackett)

[31] The evidence of the Registrar of Lands, Patricia Robateau Blackett (hereinafter referred to as the Registrar) gave evidence on behalf of the 2nd to 4th Defendants⁴, stated that her duties as Registrar are enshrined in the **Registered Lands Act, Cap. 194.**

[32] The records show that Jose A. Paz sold the said lot to David Mitchell who then sold it to the Claimants. Subsequently, Jose A. Paz was able to apply for First Registration and thereafter sold the said lot to the First Defendant.

First and Second Sale of Lot # 320

[33] The circumstances of the sale to the Claimants were such that Jose A. Paz by virtue of a Minister's Fiat Grant # 1019 of 2006 dated the 15th day of December 2011, sold the said lot to David Mitchell by Deed of Conveyance dated 21st day of

⁴ Witness statement of Patricia Robateau-Blackett par. 3 [Trial bundle page 222]

November 2006. Thereafter, David Mitchell sold the property to the Claimants on the 19th day of October 2007, by way of Transfer Certificate of Title (**TCT**).

[34] The sale to the Defendants was made possible for the same property, when Jose A. Paz on the 15th day of December 2011, applied for First Registration of said property by submitting a letter dated 13th December 2011, with a certified copy of the Minister's Fiat Grant # 1019 of 2006, alleging he was unable to locate the original. In the letter he stated he will be liable to compensate any person who sustained damage by lodging a 'wrong' First Registration.

[35] The Registrar's evidence was always that she acted in good faith in relying on Jose A. Paz representation above, and a land certificate with Instrument No. LRS 201202411 for the said property was issued to him. On the 4th day of June 2014, the records revealed that the said property was transferred from Jose A. Paz to the First Defendant who was issued with a Land Certificate.

[36] In cross-examination the Registrar stated she was first Deputy Registrar of Lands and in 2016 she was appointed Registrar. That she has worked thirty-six (36) years in the public service and most of those years were spent at the Lands Registry, and she knows the process from the ground up, under the **General Registry Act**. That the letter from Jose A. Paz prior to being accepted had to go through an approval process, wherein approval could only be granted by the Registrar, Deputy Registrar or Assistant Registrars. She agreed that it is only recently a sworn statutory declaration is requested for application for First Registration; prior a letter was accepted. That, under the **General Registry Act** there had to be a compilation of a Register for the Transfer Certificate of Title (**TCT**). However, during her twenty-five years (25) in the Lands Registry she has not given a directive or manpower to compile a Register. She agreed that it is a requirement pursuant to Section 12 of the **Registered Lands Act**. The lack of the **TCT** register has caused issues with respect to more than one person holding title for the same land.

- [37] She further stated that there is a duty on the intended purchaser to conduct a title search; that under the **GRA** the buyer is not secured, the principle is buyer beware. She admitted that there are a lot of things in the **Registered Lands Act** that are impossible to do, hence she depends on the publication of notices in the gazette, out districts and newspaper. Consequently, when an area is declared 'compulsory registration', the relevant notices above-mentioned are published. That for the last ten (10) years her office no longer accepts a copy of a **TCT**, it must be the original to enable first registration approval.
- [38] The Registrar lamented that a register cannot be created because some of the titles do not have an area or plan. Further **TCT** consists of 1500 to 2000 other titles, which makes it impossible to search thousands of pages. That the work being undertaken to rectify anomalies is policy driven. However, the legal team is working assiduously so that policy will come into law. In conclusion she disagreed that neither her failure to create a register nor follow the procedure under the **Registered Land Act, Section 12** resulted in the breach of her statutory duty nor was she negligent.
- [39] She also stated that this is the seventh time she has been in court dealing with matters of the like. She emphasized that they are matters that predated ten (10) years ago, and that a proper system was put in place thereafter, so, as to avoid the issues that are before the court in this case.

Legal Issues

- [40] The parties herein have filed a Joint Pre-trial Memorandum dated May 30th, 2025, and on the morning of the trial the Parties agreed that the issues hereunder are germane to the determination of the matter before the court. The issues are as follows:

- (i) Whether the Claimants or the 1st Defendant are the rightful owners of Parcel 8601, Block 7, San Pedro Registration Section.

(ii) Whether the Land Register for Parcel 8601 ought to be rectified by deleting the name of the 1st Defendant and replacing the Claimants as proprietors, on the basis of fraud and/or mistake.

(iii) Whether the 2nd Defendant breached her statutory duties. If so, are the Claimants entitled to damages.

(iv) Whether the 2nd Defendant's acts and/or omissions are tantamount to negligence, recklessness or bad faith in the execution of her duties. If so, are the Claimants entitled to damages.

(v) If the Court decides to alter the Land Register for Parcel 8601 in favor of the Claimants, are the 2nd, 3rd and 4th Defendant's liable to the 1st Defendant in damages for the 2nd Defendant's breach of her statutory duties **OR** for the 2nd Defendant's negligence or recklessness in the execution of her duties and in what sums.

(vi) Whether the Claimants are entitled to damages for loss of use and/or opportunity against the 2nd, 3rd, and 4th Defendants.

Law and Analysis

Issues I and II :

[I] Whether the Claimants or the 1st Defendant are the rightful owners of Parcel 8601, Block 7, San Pedro Registration Section.

[II] Whether the Land Register for Parcel 8601 ought to be rectified by deleting the name of the First Defendant and replacing the Claimants as proprietors on the basis of fraud and/or mistake.

[41] The Court will deal with issues [i] and [II] together, due to the comingling of the respective issues.

General Registry Act, Cap. 327 vis a vis the Registered Land Act, Cap. 194

[42] To enable a fulsome appreciation of the issues plaguing this matter, the **General Registry Act**, Cap. 327 (hereinafter referred to as the **GRA**), and the **Registered Land Act**, Cap. 194 (hereinafter referred to as the **RLA**), their imports, application and *raison d'être* must be examined.

[43] The **GRA** provided a statutory regime for the registration of **unregistered lands**, wherein a title would be issued to the applicant. The certificate of title issued pursuant to section 14 of the **GRA** may either be a Transfer Certificate of Title (**TCT**) or First Certificate of Title (**FCT**)⁵. Section 3 of the **GRA** provides for the establishment of a General Registry for the purpose of registering and recording certificates, preserving all records and transacting, performing and exercising other powers connected thereto. Further, it provides for the Registrar of Lands to be in charge of the Registry. Thus, sections 3 (1) and (2) statutorily mandate as follows:

“3.-(1) The office of the “Registrar General for the colony” provided under section 2 of the General Registry Act, Chapter 213 of the Consolidated Laws 1924, together with all its books, registers, records and equipment is hereby established a “General Registry” hereafter to be maintained and administered for the purposes defined, and in accordance with the provisions contained, in this Act, with such branches in other parts of Belize, as the Attorney General may from time to time consider necessary, the said purposes being—

- (a) the registering and recording of certificates of title, legal charges and incumbrances, leases, deeds and other documents required by law to be registered or recorded;
- (b) the preserving of all records in the General Registry maintained in Belize City at the commencement of this Act; and
- (c) the transacting, performing and exercising thereat by the Registrar and other

⁵ General Registry Act Cap 327 Section 14: A certificate of title may be a First Certificate of title or a Transfer Certificate of title.

officers of the several matters, duties and powers prescribed under and in accordance with this or any other Act.

(2) The Registry shall be under and in the charge of the Registrar who shall be a fit and proper person appointed by the Judicial and Legal Services Commission.”

[44] The power of the Registrar is exhaustive and at section 5 (3) of the **GRA**, her power included but is not limited to checking the accuracy of all titles, preservation of records, examining, certifying, registering leases and to issue certificates of title, to provide an efficient system of registration and to permit the public upon payment of the prescribed fee to inspect the registry records and take copies if needed. The section states as follows:

“5 (3) Subject to this Act and the rules, the Registrar shall have the following duties–

(a) to take charge of and preserve the records in the possession of the Registrar in the General Registry at the commencement of this Act;

(b) to examine, certify and register or record transfers or leases and to issue certificates of title;

(d) to examine and check and to satisfy himself as to the sufficiency and correctness of all titles relating to registered land tendered in support of any transfer, mortgage charge, lease or any other dealing provided for in this or any other Act;

(e) to examine all descriptions of registered land dealt with so as to ensure that they are definitely and clearly set out especially with regard to locality, boundaries, area or any condition or limitation attached thereto, and to see that each description has reference, if the Court or Registrar so requires, to a plan, map or diagram thereof recorded in the Department of the Commissioner of Lands and Surveys or in the Registry, and to do everything necessary to obtain a full and complete identification of the property or right therein forming the subject of the dealing;

(f).....

(g)

(h).....

(i).....

(j).....

(k) to keep all such registers, including the Land Titles Register and the Land Charges Register, as may be necessary for the due performance by him of any of his duties aforesaid and for the establishment of an efficient system of registration and recording and the securing of the proper registration of titles to, and incumbrances on, land;

(l)

(m)

(n) to permit members of the public upon payment of the prescribed fees to have any inspection of records and to obtain from the Registry any copies of and information concerning them allowed by law, rule or regulation under this or any other Act;”

[45] The **GRA** also provides per Section 15⁶ for the issuing of certificates of title which must be prepared in duplicate by the Registrar and shall be registered, by placing one duplicate in the order of its date in the current volume of the register which shall be bound annually. The other duplicate certificate of title shall be issued and delivered to the registered proprietor, who shall **be bound to produce it** whenever he desires thereafter to transfer or otherwise deal with the land.

Registered Land Act , Cap. 194

[46] Subsequently, the Government of Belize (GOB) embarked upon a process of registration in accordance with the Torrens System, which was governed by the **Register Land Act, Cap. 194**. By this process certain areas were designated compulsory registration areas by order of the Minister of Lands⁷. A Land Registry department was created similarly to that of the **GRA**, thus section 5 states:

“5. For the purposes of this Act, there shall be established and maintained a
Department of Government to be called the Land Registry in which there shall be kept–

⁶ 15.–(1) Every certificate of title shall be prepared in duplicate by the Registrar in the prescribed form and shall be registered by placing one duplicate in the order of its date in the current volume of the register which shall be bound annually or at such other times as the Registrar, with the approval of the Chief Justice, may determine. (2) The other duplicate certificate of title shall be issued and delivered to the registered proprietor, who shall be bound to produce it whenever he desires thereafter to transfer or otherwise deal with the land.

⁷ Registered Land Act section 4.

- (a) a register, to be known as the Land Register, in accordance with sections 10 to 17;
- (b) a map to be known as the Registry Map, in accordance with sections 18 to 25;
- (c) parcel files containing the instruments which support subsisting entries in the Land Register and any filed plans and documents;
- (d) a book, to be known as the application book, in which shall be kept a record of all applications numbered consecutively in the order in which they are received at the Registry;
- (e) an index in alphabetical order of the names of proprietors of land, leases and charges and showing the numbers of the parcels in which they are interested.”

[47] The Registrar has a duty pursuant to Section 10⁸ to maintain a Register in respect of every parcel which is prepared pursuant to Section, 12. This was prescribed to ensure accuracy with recording, when transaction are being conducted, either by sale, transfer, mortgage, lease, lien or any transaction or encumbrance affecting the subject property.

[48] Importantly, Section 12 provides for the transitional registration of lands that were registered under the **GRA** as unregistered, to be brought under the **RLA** as being registered with absolute title. Section 12 provides as follows:

“12.-(1) On the declaration by the Minister of a compulsory registration area under section 4, the Registrar shall, in relation to every parcel of land situated in that area the title to which is already registered under the General Registry Act, prepare a register in the prescribed form showing all the subsisting particulars registered under that Act.

(2) Any person having an interest in any parcel of land registered under the General Registry Act, shall be given notice in writing by the Registrar that the particulars of the said registration have been transferred to the Land Register compiled under this Act and thereupon the General Registry Act shall cease to apply to such parcel and this Act shall apply thereto.

⁸ 10.-(1) The Land Register shall comprise a register in respect of every parcel for which a register is prepared under sections 12, 13 and 14 and a register in respect of each lease required by this Act to be registered.

(3) On receipt of notice issued under sub-section (2), the proprietor of land or of a lease registered under the General Registry Act shall within thirty days of the date of such notice surrender his certificate of title to the Registrar and shall, if he so requests, be given a land certificate or certificate of lease under this Act without payment of any fee therefor.

(4) Any person who after due notice and without reasonable cause fails to surrender his certificate of title commits an offence.

(5) Every certificate of title surrendered under sub-section (3) shall be filed.”

[49] Finally, provision was made at section 15⁹ for the first registration of any parcel of land, in accordance with the preparation of a register in accordance with section 10¹⁰, to be signed by the Registrar, however any encumbrances must be listed thereon.

[50] There is no demur that in 2007, the Claimant purchased the property being unregistered land via a conveyance from David Mitchell who bought from Jose A. Paz, for the sum of sixty thousand United States Dollars (USD60,000.00). He therefore received a valid Transfer Certificate of Title (TCT) issued under the hand of the Registrar pursuant to Section 3 of the **GRA**. The statutory duty of the Registrar to maintain and keep a register for titles, (Land Titles Register)¹¹, was to ensure transparency in transaction enabling full disclosure to the public, which includes intended purchasers. The pith and substance of Section 5 (3) of the **GRA** was to avoid the very scenario that is presented in this case. The presence of a register with the public record of transactions including encumbrances and liens, is a duty owed to the public and preserved by Sections 3, 5, 14 and 15 of the **GRA**. Other than a duty to keep accurate and precise records there is also the requirement to request production of the **original documents** upon the conducting of any transaction, which includes sale as in this case.

⁹ 15.-(1) The first registration of any parcel shall be effected by the preparation of a register in accordance with the provisions of section 10 and the signing by the Registrar of the register.

¹⁰ 10.-(1) The Land Register shall comprise a register in respect of every parcel for which a register is prepared under sections 12, 13 and 14 and a register in respect of each lease required by this Act to be registered.

¹¹ GRA section 12

[51] In cross-examination the 2nd Defendant admitted that it was not possible to comply with the statutory requirement of having a detailed register, since there were instances where there were no plans and there were between 1500-2000 titles to be dealt with, which created the present scenario. The court concluded in essence that administratively the performance of the task prescribed under the **RLA** posed tremendous challenge for the 2nd Defendant¹². Evidently due to the above failure, the Claimants were not protected through the first registration process resulting in the second sale of the said lot by Jose A. Paz when he sought and succeeded in applying for and receiving approval for first registration under the **RLA**, while utilizing the same Minister's Fiat which he used when he sold the said lot prior to David Mitchell. He also utilized a photocopy of the **TCT** and a letter, to have his application approved by the 2nd Defendant, the former being contrary to Section 15 (2) of the **GRA**¹³.

[52] The Claimants title was first in time and they received the **TCT** in 2007. To date the title has not been cancelled as confirmed by the Registrar in the amended defence¹⁴. Both the Claimants' and Defendants' titles are presently subsisting as per the evidence. This situation presented itself due to there being no Register at the Land Registry pursuant to the **GRA**, which should have been made available to the public for inspection and viewing. This was not possible due to the administrative hurdle the 2nd Defendant faced in performing her function or inability to so perform, abovementioned.

[53] The failure to have a register as prescribed in the **RLA**, has resulted in the Claimants lot having a duplicated title. The **RLA** made provision for a process of registration wherein the unregistered title holders under the **GRA** would have received their certificate of title through a process of voluntary registration upon an area being designated a compulsory registration area by the Minister per Sections 3 and 4 of the **RLA**. There was no evidence in this case that the requirements of the **RLA**, **Section 12 (2)** which mandated the Registrar to notify any person having an interest in any parcel of land registered under the **GRA** was given due notice in writing, specifying the particulars of the registration have been

¹² See Quinto and another v Castillo [2009] UKPC 15 par. 52

¹³ 15.-(1) Every certificate of title shall be prepared in duplicate by the Registrar in the prescribed form and shall be registered by placing one duplicate in the order of its date in the current volume of the register
(2) The other duplicate certificate of title shall be issued and delivered to the registered proprietor, who shall be bound to produce it whenever he desires thereafter to transfer or otherwise deal with the land.

¹⁴ Trial bundle page 13 par. 9 of the defence.

transferred to the Land Register compiled under this **RLA**, and that thereupon the **GRA** would thereafter cease to apply. The Claimants therefore would not have had notice or any prior knowledge that the land that they had purchased was resold and now subject to the provision of the **RLA** as part of a compulsory registration scheme.

- [54] The first Defendant submitted that the registered proprietor with title absolute as a matter of law should be prima facie accepted by this court as the title holder being a bona fide purchaser for value, since the **RLA** provides at Section 26 as follows:

*“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
...*”

- [55] It is not in dispute that the First Defendant statutorily has an absolute title by virtue of first registration under the **RLA**, but the important proviso is subject to any prior encumbrance. The Claimants having a prior title is indeed a prior title holder, this title should have been listed on the register and would have prevented a second sale of the said lot. Unfortunately, the failure of the production of the appropriate register at the Registry has created the present sequence of events. Had the Registrar's office complied with the provisions of the **GRA, Sections 3 and 5**, upon a search of the register it would have revealed the prior title of the Claimants. The issue of registration where a prior title had existed as in this case would not have occurred. This failure obliterated the protection afforded to a bona fide purchaser for value without notice. The prior title would have been discovered by the Registrar at the point of the application for registration by Jose A. Paz, who subsequently sold to the Second Defendant.

- [56] The First Defendant was also under a duty to ensure the property being purchased is free and clear of all encumbrances which included mortgages and liens since Section 30 of the **RLA** guarantees absolute ownership. However, a search at the registry did not reveal any encumbrances. Despite the above,

Section 41¹⁵ of the **RLA** does not require an intended purchaser to search the register or inquire into the circumstances of a previous proprietor. This section naturally presupposes the Registrar would have fulfilled her duty under the **Act** and therefore the discovery of any prior encumbrances would have been disclosed prior to the grant of an absolute title pursuant to the **RLA**. The Registrar had therefore failed in her duty to have the register as prescribed, which resulted in the granting of the title to Jose A. Paz, while there existed a prior certificate under the **GRA**.

[57] The First Defendant's assertion of being a bona fide purchaser for value without notice, is premised on the basis that they neither had knowledge of a previous title, nor could they have reasonably discovered it without the availability of the Register. This Court holds, that the failure of the Registrar to perform her statutory function under the **RLA**, has resulted in the issuance of the title to the First Defendant in the face of the Claimants prior title. This court concludes that due to the Registrar's failure to conform with the **RLA**, the process resulting in the issuance of the first certificate to Jose A Paz was void ab initio. This was due to the non-adherence to the statutory prerequisite before issuing a grant of an absolute title in accordance with Sections 26, 30 and 41 of the **RLA**. Further, the Defendants pleading stated that the Claimants' title was never cancelled or subsisted.

[58] The issue of whether the Claimants' title needs to be rectified by deleting the name of the First Defendant from the Register and cancelling the certificate or declaring the validity of the certificate of the First Defendant, would be considered in the ensuing section.

Rectification Based on Mistake or Fraud

[59] The court is empowered by the statute to rectify the register when the registration has been obtained made or omitted by mistake or fraud. The **RLA** at Section 143 provides the parameters wherein the court can order rectification of a Register. Section 143 states thus:

“143.-(1) Subject to sub-section (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**.

¹⁵ See par. 10 (above)

(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.”

[60] The central issues are whether there was a mistake or fraud by the 2nd Defendant, or a failure to adhere to the **RLA** requirements or both, and whether the Second Defendant was ever in possession. It was accepted at trial that none of the parties were ever in possession of the said lot. There is no dispute on the evidence that the Second Defendant mistakenly accepted the registration of Jose A. Paz application, in that she accepted his application and issued the certificate without adhering to the statutory requirements and procedure mandated above, under the mistaken belief that it was a first registration. The **RLA**, however, does not make provision for the automatic first registration of land which is already registered under the **GRA**. However, in Section 13 of the **RLA** it provides for new applications to be made. Thus, in **Ostrov Island Inc. v Attorney General of Belize**¹⁶, the Court posited and confirmed the position that the **RLA** does not provide for the First Registration of land which was already registered under the **GRA**. At paragraph 24, Justice Sonya Young stated the position as follows:

[24] “.....More importantly, the Act (RLA) does not allow for any such (first registration) application to be made for land which is already registered under the General Registry Act. Such an application can only be made pursuant to section 13 where the land is not so registered. In any event, why should such a burden be placed on an already registered owner (albeit under another Act). In fact, the RLA is not applicable to land already registered under the General Registry Act until that land is transferred to the land register by the Registrar.”

¹⁶ Ostrov Island Inc. v Attorney General BZ 2017 SC 34; Claim No. 694 of 2016.

NB: Ostrov Island Inc. was appealed but the central issue of the appeal was regarding the occupation /physical possession of the land.

[61] The above clearly epitomizes the unfortunate position the Claimants found themselves, due to the lacunae in the legislation coupled with the mistaken first registration of the lot to Jose A. Paz, resulting in the subsequent sale to the First Defendant. Further, pursuant to Section 13 (2) (c) of the **RLA Act**, the Registrar had a duty to examine the title and to decipher whether there was any deed recorded under the **GRA**. Section 13 (2) of the **RLA** states:

“13 (2) **On receipt of an application for the first registration, the Registrar shall–**

(b) **examine the title and for that purpose may examine any deed recorded under the General Registry Act** or summon any person to give evidence, if he considers such evidence likely to be relevant to the application.”

[62] This court accepts that if the 2nd Defendant had prepared the register in accordance with the **RLA** it would have been discovered that the Claimants were the owners of the property having a **TCT** and registered in accordance with the **GRA**. A similar failure was evident in another authority from this jurisdiction, and highlighted by Justice Sonya Young in **Ostrov Island Inc.** where she opined at par. 23 and 25 thus:

“23. The Registrar proceeded to give first registration to the Parcels as national lands. She seemed not to have realized that the Parcels had already been registered, and certificate of title issued to Bracilette under the General Registry Act. Now, the Registrar is under a statutory duty, on the declaration of a compulsory registration area, to immediately prepare a register showing all the subsisting registered particulars under the General Registry Act. She clearly failed to do this although the area was so declared on 14th March 1990. Had this been done, Bracilette would have been automatically registered, given notice to surrender its Certificate of Title and issued with a Land Certificate on compliance.”

“25. To my mind what has occurred here could well have been avoided

had those mistakes not been made. They are mistakes which could very easily occur again if the situation in the Land Registry is not adequately addressed.”

- [63] In a decision from the Privy Council emanating from Belize, in the matter of **Santiago Castillo Ltd.**¹⁷, the court accepted Chief Justice Conteh’s findings that the mistake of not recognizing a previous owner under the **GRA** was an enduring mistake, which coloured and affected the second registration. At par. 33 the UKPC stated:

“Conteh CJ started by finding that 'at the very least' the first registration in favour of Ann Williams was by mistake. The mistake was the failure to realise that the Quintos were the registered owners of the land under the General Registry Act. That was an enduring mistake that applied equally in the case of the second registration in favour of Santiago. The mistake 'ineluctably coloured and affected the subsequent registration' of Santiago (para 31). The mistake was fraudulently procured by Ann Williams when she secured the registration in respect of Parcel 869 by producing papers that had nothing to do with it (par.45).”

- [64] The Privy Council concluded at par. 39, that an interpretation of Section 143 (1) of the **RLA** as coined in the Belize legislation diminishes the indefeasibility of title as a feature of the Torrens System, but that was the legislative intent. Par. 39 states as follows:

“[39] The Board differs from the conclusion of the Court of Appeal in relation to the construction of Section 143(1) of the **Act**. It would have been easy and natural for the draftsman to use the phrase "such registration" in place of the second "any registration" if that is what he had intended the phrase to mean. He did not, and the addition of the words "including a first registration" after the second "any

¹⁷ [2009] UKPC 15

registration" is a further indication that the registration in respect of which there has been a mistake or error need not necessarily be the registration in respect of which rectification is sought. We accept that this significantly diminishes the element of indefeasibility of registered title that is a feature of the Torrens System, but this is the manner in which the legislation of Belize has decided to balance the desirability of a simple system of land transfer with the interests of justice. The remedy of rectification lies within the discretion of the court and is subject to the protection given to the *bona fide* purchaser in possession by Section 143(2). The Board does not consider that it is irrational to strike the balance in this way, particularly having regard to the fact that the **Act**, despite the title of the relevant Part, makes no provision for indemnification of a person unfairly prejudiced by the operation of the system.

[65] The distinguishing feature of the Santiago case is the fact that 'W's' (acronym) application for First Registration of Parcel 869 was procured by fraud, and Castillo (the Respondent before the UKPC) had actual knowledge of the fraud. Thus, his knowledge of the fraud resulted in the rectification in the Respondent's favour pursuant to **RLA, Section 143 (2)**¹⁸. In this case, the First Defendant was neither a party to the mistake or the alleged fraud nor was he in possession of the said lot¹⁹. At this juncture the court notes that Jose A. Paz was joined as an Ancillary Defendant. However, the court was notified during the trial that he was never located to be served and has not been seen for a very long time.

[66] The Court concludes based on the evidence that the Registrar mistakenly issued the first certificate of registration to Jose A. Paz.

Was There Fraud as Against the Defendants

[67] The elements of fraud as pleaded were specifically in relation to the conduct of Jose A. Paz who is not a party to these proceedings. There are no pleadings that have been proven that the Second Defendant

¹⁸ See par. 67 *infra*

¹⁹ See par. 59 *supra*

was a participant or engaged in any fraudulent activity. The Claimants claimed that the issuance of a Land Certificate (**Registered Land Act**) to Jose A. Paz was done by fraud. The 2nd – 4th Defendants in their Amended Defence admits that on or about the 24th of February 2021 Jose A. Paz was issued a Land Certificate. The Claimants submit that, Jose. A Paz fraudulently obtained the Land Certificate for the property. The evidence before this court indicates that Jose A. Paz relied on a copy (not original) of a Minister's Fiat Grant to apply for the First Registration of the property under the **RLA**. Therefore, the First Registration process was not applicable to the property in issue because it was already registered under the **GRA**. The evidence before the court showed that the Application for First Registration presented to the Registrar was signed by "Ardette Smith" and not Jose A. Paz,²⁰ and the purported signature of Jose A. Paz on a letter dated the 13th of December 2011²¹, which accompanied the application for first registration, with signature variations²². Any fraud as alleged therefore would have been in relation to Jose A. Paz.

[68] A similar situation arose before our Apex Court, the Caribbean Court of Justice in **Chee Kwang v. Tsui Cheek**²³, albeit dealing with the interpretation of fraud under Section 22 (1) of the **Deeds Registry Act** of Guyana, where the same purchaser sold a lot to different persons. The Court explained fraud thus:

"In this appeal this Court has considered two important issues for Guyanese land law. The first is what is required to establish fraud under section 22(1) of the Deeds Registry Act (the Act).¹ This question arises by virtue of successive sales of a parcel of land located in Bartica, Guyana. By section 22(1) of the Act every transferee vests in the transferee full and absolute title. The proviso to section 22(1) contains an exception for fraud in the hands of all parties or privies to the fraud once an action

²⁰ Exhibit AR5 of the Amended Claim Form Page 780 of 806 of the record

²¹ Trial bundle page 226 letter of 13th December 2011

²² Trial bundle page 161 Conveyance dated 21st November 2006 from Jose A. Paz to David Mitchell.

²³ [2016] CCJ 9

is commenced within twelve months of the discovery of the fraud. The Act does not provide either definitions of the word 'fraud' or the phrase 'privies to the fraud' or what is required to establish fraud. **We are of the view that where a vendor agrees to sell land to a purchaser and then subsequently agrees to sell the same land to a second purchaser, the vendor will clearly have committed fraud as long as the prior agreement for sale is subsisting. Where the second purchaser agrees to purchase the land with actual knowledge of the prior sale, this will make him or her privy to the fraud. Both the conduct of the vendor and the subsequent purchaser will fall within section 22(1) of the Act.** The second issue is whether the failure of a first purchaser of immovable property to oppose the passing of transport to a subsequent purchaser bars the first purchaser from seeking to set aside the transport on the basis of fraud under section 22(1) of the Act. **We are of the view that the first purchaser's claim in fraud cannot be barred if he did not have actual notice of the passing of transport."**

[69] The Registrar therefore was not a party or privy to fraud as above stated, but the fraud was in relation to Jose A. Paz who had full knowledge of his fraudulent engagement, when he sought to apply for first registration, being cognizant that he had already sold the property to David Mitchell.

[70] The Court is therefore satisfied and concludes that there is no fraud sufficiently pleaded or proved as against the 2nd Defendant. The alleged fraud is in relation to Jose A. Paz. However, in relation to mistake the Second Defendant mistakenly issued the First Registration to Jose A. Paz under the circumstances stated in the preceding section above.

[71] Pursuant to the **RLA, Sections 143 (1) and (2)**, in order for the register to be rectified to **affect the title**, it must be shown that there was knowledge of the omission, fraud or mistake **and** that the party is in possession of the property or is in receipt of the rents or profits. The evidence before this court was that neither Claimant nor 1st Defendant had any knowledge of the omission, fraud or mistake

and as per Alex Roqueta witness statement²⁴ at paragraph 34, the property was unoccupied. As such, the use of the word 'and' makes the requirement cumulative, therefore the proviso that prohibits rectification, if the person with title is in possession, or is in receipt of the rents or profits, would not apply. The register could therefore be rectified.

Procedure for Titles Under the GRA to be Brought Under the RLA

- [72] There is a procedure to be followed by the Registrar in relation to existing titles under the **GRA** to be regularised under the provisions of the **RLA**. The Registrar is mandated pursuant to Section 12 (1) (2) et seq of the **RLA**, that upon a declaration by the Minister of a compulsory registration area under Section 4, the Registrar shall, in relation to every parcel of land situated in that area **the title to which is already registered under the General Registry Act**, prepare a register in the prescribed form showing all the subsisting particulars registered under that Act. The Registrar also has to give notice in writing to any person having an interest in the said registration, informing that the registration is now transferred to the land register compiled under the **RLA**. The above was not done in relation to the Claimants.
- [73] The failure of the Registrar to do that which was mandated above severely prejudiced the Claimants. The conduct of the Registrar has resulted in the Claimants' head being buried in the legal sand of oblivion, likened unto the proverbial ostrich. The Claimants had no way of knowing that the property was in a compulsory registration area, or that there was another registered owner until the moment when the search was conducted to sell the property in or about the year 2021²⁵.
- [74] The issues in relation to limitation, breach of statutory duty and negligence will be considered chronologically.

²⁴ See par. 34 of the Witness statement [Trial bundle page 135]

²⁵ Witness Statement of Alex Roqueta par. 20 [Trial bundle page 134]

Limitation Point

[75] The First Defendant submits that the Claimants' claim should be struck out and is statute barred as it violates Section 4 of the **Limitation Act**²⁶ which provides that actions founded in simple contract or tort shall not be brought after the expiration of six years since the cause of action arose. The **Limitation Act, Section 32** states:

"Where in the case of any action for which a period of limitation is prescribed by this Act, either,

- a) the action is based upon the fraud of **the defendant** or his agent or of any person through whom he claims or his agent;
- b) the right of action is concealed by the fraud of any such person as aforesaid; or
- c) the action is for relief from the consequences of a mistake.

The Period of Limitation Shall not Begin to run Until the Plaintiff has Discovered the Fraud or the Mistake, as the Case may be, or Could with Reasonable Diligence have Discovered it.

Provided that nothing in this section shall enable any action to be brought to recover, or enforce any charge against, or set aside any transaction affecting any property which,

- i. in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of purchase know or have a reason to believe that any fraud had been committed; or
- ii. **in the case of mistake, has been purchased for a valuable consideration, subsequently to the transaction in which the mistake was made, by a person who did not know or have reason to believe that the mistake had been made.**

²⁶ Chapter 170 of the Laws of Belize, R. E. 2020

[76] The **Act** clearly states that the period of limitation shall not begin to run until the plaintiff has discovered the fraud or mistake. The evidence of the Claimants' witness Alex Roqueta was that the anomaly was only discovered on the 7th January 2021 by Robert Colon. The Claimants had no way of knowing that the property was sold to the First Defendant, since there was no public record provided to facilitate it, as discussed previously. Therefore, the time has not expired pursuant to the **Limitations Act**. Finally, the 2nd Defendant did not provide the relevant statutory notice to the Claimants notifying them of the compulsory registration process pursuant to Section 12 (2) of the **RLA**. The **Limitations Act** was therefore not breached by the Claimants.

[77] In sum, the Court is therefore empowered and will rectify the register in relation to the Claimants and the consequential orders and directions will follow *seriatim*. The Court having determined the Claimants claim will now examine the other issues.

ISSUES III and IV

Whether the 2nd Defendant breached her statutory duties. If so, are the Claimants entitled to damages?

Whether the 2nd Defendant's acts and/or omissions are tantamount to negligence, recklessness or bad faith in the execution of her duties. If so, are the Claimants entitled to damages?

Breach of Statutory Duty

[78] The court will deal with issues iii and iv together as their determination will result in corollary issues and consequential orders that are intertwined. The Court will first determine whether the 2nd Defendant breached her statutory duty and secondly whether her acts and/or omissions are tantamount to negligence, recklessness or bad faith in the execution of her duties.

[79] By virtue of the previous discourse, the 2nd Defendant's statutory duties pursuant to the **RLA** are outlined in Sections 10-15 of the **RLA**, abovementioned. The 2nd Defendant has not followed the statutory requirement as follows:

a. to provide a detailed register of every title under the **GRA** wherein an area is declared a compulsory registration area by the Minister in accordance with Section 12.

b. To give notice in writing to every person who has a title or interest in land registered under the **GRA** and which has been transferred to the **RLA**.

c. Issuing of the first registration certificate to Jose A. Paz when he already had a title under the **GRA**, wherein that information ought to have been in the domain of the 2nd Defendant.

[80] Further, pursuant to Section 12 (2) of the **RLA**, the act criminalizes the title holder who receives notice and within thirty (30) days fails to surrender his certificate to the 2nd Defendant. The 2nd - 4th Defendants assert that notice was given in accordance with Section 149 of the **RLA**, by publication in the Gazette, which copy was listed as an item of standard disclosure. Further, it was submitted that the Claimant cannot be absolved from lack of notice or not having knowledge of the compulsory registration process pursuant to the **RLA**.

[81] This court notes that the **RLA** at Section 149 provide for the service of notice under the **Act**, and states that service must be one of the following; personal service, service on an Attorney having Power of Attorney, via registered post at the last known address, and if service cannot be effected as prior listed then the notice should be displayed in a prominent place on the land or it should be published in three (3) issues of the Gazette²⁷. Despite, there was evidence of a

²⁷ 149. A notice under this Act shall be deemed to have been served on or given to any person— (a) (b) (c) (d) if served on him personally; if served on an attorney holding a power of attorney where under such attorney is authorised to accept such service; if sent by registered post to him at his last known postal address in Belize or elsewhere;

publication notice on the 21st January 2012²⁸ in the gazette, there was no evidence before the court that there was an attempt to serve the Claimants personally or the other means contemplated above. Also, there was no evidence before the court of there being publication of three (3) consecutive notices in the Gazette as prescribed. The requirement of notice therefore has not been met in relation to the Claimants.

Negligence/ Recklessness/Bad Faith

- [82] The principles governing the tort of negligence comprise three distinct elements, legal duty to take care which is foreseeable and owed by the Defendant to the Claimant, breach of that duty by the Defendant; and damages and loss to the Claimant flowing from the breach²⁹.
- [83] The duty of care is owed in circumstances where it is foreseeable and states that if the Defendant does not exercise due care, the claimant will suffer loss or damage. There is no universal test to establish a duty of care, however the principles enunciated in **Caparo Industries PLC v Dickman & Anor**,³⁰ are that the Claimant must establish (i) that harm was reasonably foreseeable; (ii) that there was a relationship of proximity; (iii) that it was fair, just and reasonable to impose a duty of care.
- [84] The 2nd Defendant undoubtedly owed the Claimants a duty of care in creating the Land Register, making entries and notifying existing title holders under the **GRA** as well as future title holders thereof. This is further heightened by the fact that the **RLA** provides that once a person is registered as the proprietor of a parcel of land, the prospective title holders are deemed to have an absolute and

or if service cannot be effected in one of the above-mentioned ways, by displaying it in a prominent place on the land affected and by publishing it in three consecutive issues of the Gazette.

²⁸ Trial bundle page 121 [# 12 2nd 04th Defendant List of Documents]

²⁹ *Glasgow Corporation v. Muir; Donoghue v. Stevenson; and Fardon v. Harcourt Livingston*.

³⁰ [1990] 2 A.C. 605

indefeasible title³¹, and that the titles can be relied on in the land register as a record of all registrable interests touching and concerning that parcel of land. It is evident that it was reasonably foreseeable that loss or damage would result to the 1st Defendant if the Land Register did not exist, contained wrong information, and if no notice was given to the previous title holder under the **GRA**. A duty was therefore imposed on the 2nd Defendant, which was not complied with.

[85] In the local authority of **Placencia Land & Development Co. Ltd et al v R & B Construction Co. Ltd**³² Justice Michelle Arana (as she then was), was confronted with the issue wherein the Registrar of land had failed to register the restrictive covenants on the register as an encumbrance. This affected the integrity of the register and amounted to a breach of the duty of care owed to the public, albeit bad faith was not proved. At par. 77 the Learned Justice opined as follows:

“[77]...there has been no proof of bad faith...

However, I do agree with the submissions of the Claimant that the actions of the Registrar of Lands amounted to negligence. On the facts of this case, the Registrar has admitted that she failed to register these restrictive covenants as incumbrances on the land register. To my mind, that failure clearly amounted to a breach of the general duty of care owed to the public. In my view, this failure clearly compromised the integrity of the land register by rendering an inaccurate picture of the status of the lands in question. This failure goes to the very heart of the indefeasibility principle which is supposed to govern the Torrens system under the Registered Land Act.”

...

I find that the failure of the Registrar to register these incumbrances on the land register have led to substantial loss to the Claimant company in

³¹ Registered Land Act Cap 194 section 30

³² Supreme Court of Belize Claim 212 of 2017

that those landowners who have no notice of and are not bound by the restrictive covenants are now free to commit acts with impunity which substantially diminish the value of other lots in the same development.....’ I agree with the Claimant’s argument that the negligence of the Registrar has caused a substantial loss and that that loss must be compensated in damages. I therefore award damages to the Claimant, quantum to be assessed at a separate hearing”.

- [86] The duty of care and principles are equally applicable to public bodies, pursuant to their statutory powers, foreseeability, proximity and reasonableness, and are all co-existing factors to be taken into consideration. In **Halsbury’s Laws of England**³³, paragraph 16 states thus:

“Where a public body has acted in a negligent manner when implementing its statutory duties or decisions taken under its statutory powers, it may owe a duty of care based on the normal principles of foreseeability, proximity and justice and reasonableness. In some situations a duty may be denied on the grounds of lack of proximity or unreasonableness... The statutory framework within which the service is provided is another important factor in determining the reasonableness of a duty...”

- [87] In summary, the court concludes that the 2nd Defendant owes a duty of care to the public including the 1st Defendant, by breach of her statutory duty³⁴. This Court is cognisant that the inability of the 2nd Defendant to perform her function statutorily was due to the administrative impossibility, being the lack of resources, and incapability of the department. However, this uncanny situation doesn’t absolve the breach. This Court considered the following elements, in its determination and finding of negligence. The undermentioned has resulted in this court accepting the 2nd Defendant negligent as follows:

- a. Issue of certificate of first registration for a compulsory registration

³³ Volume 78 [2018]

³⁴ See paragraphs 79-81 above.

- area without an effective register to titles pursuant to the **RLA**.
- b. failure to give notice to the previous title holders under the **GRA**.
- c. The acceptance of a copy of the certificate from Jose A. La Paz when the law requires only originals should be submitted.
- d. Issuing a certificate of first registration with the knowledge that the above statutory duty was not performed.
- e. The risk of loss and damage to the First Defendant was proximate and foreseeable.

[88] This issue as to loss and damage will be considered later in this judgment.

Bad Faith

[89] The Caribbean Court of Justice in **Kent Herrera et al v Alma Gomez et al**³⁵ explicated on what amounted to a lack of good faith (albeit dealing with the **Insurance Act**) as being so irresponsible as to be recklessly indifferent to the occurrence of foreseen risks, and whether the acts done were protected by immunity by virtue of Section 4(3) of the **Insurance Act**. At paragraph 63 the court opined as follows:

“(63) We agree that public officials should properly be held accountable for meeting reasonable, basic standards of performance commensurate with the office they hold. If, flippantly or recklessly, they disregard those standards then it is impossible to hold that they are acting in good faith. If, on the other hand, a public official makes genuine, honest attempts to meet such standards but fails to achieve them, then she should be able to rely on the good faith immunity. The essence of the statutory shield is to offer protection to public officials who are not fraudulent, or in wrongful collusion with the impugned company, or dishonest, or so irresponsible as to be recklessly indifferent to the occurrence of foreseen risks. Recklessness in this context is simply another way of establishing a

³⁵ [2018] CCJ 6

lack of good faith.

...

- [90] This court accepts the 2nd-4th Defendants submission on what amounts to “bad faith” in that it connotes a wilful act that amounts to a gross dereliction of duty on the part of a statutory authority, which results in serious harm to a person or a class of persons. The authority of **Three Rivers District Council v Bank of England (No. 3)**³⁶ which cited the New Zealand Court of Appeal in the case of **Garrett v The Attorney General** [1997] 2 NZLR 332 where the court discussed misfeasance in public office, stated at paragraph 350, in respect of bad faith, as follows:

“The purpose behind the imposition of this form of tortious liability is to prevent the deliberate injuring of members of the public by deliberate disregard of official duty.”

- [91] The definition of bad faith as per **Black’s Law Dictionary**, is defined as the opposite of “good faith” and generally implies or involves actual or constructive fraud or a design to mislead or deceive another, **or a neglect or refusal to fulfill some duty** or some contractual obligation.”

- [92] In the authority of **Ian Haylock v The Prime Minister of Belize et al**,³⁷ Justice Westmin James accepted the definition of bad faith coined by the Australian Court in **SCA v Minister of Immigration** (2002) FCAC 397 to be a “**lack of an honest or genuine attempt to undertake the task.**”

- [93] The 2nd Defendant’s omission or failure can be summarized as follows:

³⁶ [2003] 2 AC 1

³⁷ Supreme Court Claim No. 43 of 2021 (unreported)

- a. to transfer the particulars of the property from the General Registry system to the Land Register that was created under the **RLA**, a task that she was mandated by statute to perform.
- b. By accepting Jose A. Paz application for first registration in respect of the property which he no longer owned.
- c. The issuing of a land certificate to Jose A. Paz without first verifying his claim of ownership and thereby inserting inaccurate information in the Land Register.

[94] The 2nd Defendant's nonadherence to the provisions of the **RLA**, which she admitted, was patent. The 2nd Defendant, due to administrative impediment resulted in her violating her public function by failing to perform her duty as enshrined in the **RLA**.

[95] The gravamen as to whether bad faith can be imputed to the 2nd Defendant's failure, by being so irresponsible as to be recklessly indifferent to the occurrence of foreseen risks has to be examined in the context of her non-adherence to Sections 10-15 of the **RLA**. Was the 2nd Defendant so recklessly indifferent to the foreseeable risks attendant to intended property purchasers including not following the process of first registration under the **RLA**, that her inaction can be summarised as 'bad faith'. The 2nd Defendant did not provide any evidence that genuine attempts were made by her to fulfil the statutory mandate of notice inter alia which could have averted the first Defendant's registration under the **RLA**. The 2nd Defendant did however, state administrative impossibility as a hindrance in fulfilling of her statutory duty.

[96] The cumulative effect of the above breaches demonstrates a pattern of negligence, disregard for the duties and responsibilities which resulted in the systemic failure, and the 2nd Defendant derogation of the provision of the **RLA**. This court concludes that the 2nd Defendant's negligence did amount to dereliction of her duties but did not reach the threshold of bad faith. The 2nd Defendant is

therefore not immune from liability pursuant to Section 8 of the **RLA**³⁸, despite her actions did not cross the threshold of bad faith, her negligence cannot absolve her of her statutory responsibility. She omitted to fulfill her statutory obligation, there was no evidence that she sought to ensure she fulfilled her statutory duty, by notifying the authorities that she could not perform her mandated statutory function. She continued in her role unabated as to the consequences.

[97] The issue of damages shall be dealt with later in this judgment.

ISSUE V:

If the Court decides to alter the Land Register for Parcel 8601 in favor of the Claimants, are the 2nd, 3rd and 4th Defendant's liable to the 1st Defendant for the 2nd Defendant's breach of her statutory duties OR for her negligence or recklessness in the execution of her duties, and in what sums.

[98] The Court having concluded that the Register ought to be amended to enable the Claimants to secure a registered title pursuant to the **RLA**, the issue of the 1st Defendant's remedy now comes for consideration.

[99] In **Placencia Land & Development Co. Ltd et al v R & B Construction Co. Ltd**³⁹ Justice Arana opined that where there was a breach of the Registrar's duty pursuant to the **RLA**, in failing to record the restrictive covenant⁴⁰, damages must

³⁸ '8. The Registrar shall not, nor shall any other officer of the Registry, be liable to any action or proceeding for or in respect of any act or matter done or omitted to be done in good faith in the exercise or supposed exercise of the powers and duties under this Act or any regulations made thereunder.

³⁹ Supreme Court of Belize Claim # 212 of 2017 (Per Arana J)

⁴⁰ See par. 85 supra

flow therefrom. The purchasers were bound by the restrictive covenants and had no notice and therefore were entitled to damages.

[100] The 2nd – 4th Defendant submitted that there is no proximity between them and the 1st Defendant and that any purported loss suffered by the 1st Defendant was not caused by the 2nd Defendant's alleged conduct. Further, the 2nd Defendant acted reasonably and should be indemnified by Jose A. Paz letter indemnifying anyone who would have suffered any loss due to his application. Further, 2nd -4th Defendants were not privy to the contract between the 1st Defendant and Jose A. Paz. Therefore, no obligation can be imposed upon them. They rely on the doctrine of privity of contract and submit that there was privity of contract between the 2nd Defendant and the 1st Defendant.

[101] There exists a direct statutory connection between the 2nd Defendant and Jose A. Paz, and the 1st Defendant. In that, firstly, Jose A. Paz was able to apply for and successfully receive first registration pursuant to an application he filed with a copy of his certificate, and a prior Minister's Fiat for the said lot. The operation of the Register under the **GRA** would have prevented this occurrence. Secondly, the search by the 1st Defendant at the Registry of Land did not disclose any encumbrance, liens or charge on the said lot. This duty fell squarely at the feet of the 2nd Defendant who cannot be relieved of that statutory duty to provide the register. Jose A. Paz is not before this court; however, his alleged fraud could have been averted had it not been for the 2nd Defendant's statutory failure. The 2nd Defendant dropped the ball on two occasions, at the point of first registration to Jose A. Paz and at the point of the sale of the said lot to the 1st Defendant.

[102] The 2nd - 4th Defendants are therefore liable to compensate the 1st Defendant in damages.

[103] The Court appointed expert, Herman Castillo, who is a Real Estate Appraiser, and member of Belize Association of Valuation Surveyors provided a market value of

the property as of the 3rd April 2025. The sum of seven hundred and seventy thousand dollars (\$770,000.00) was presented as the fair market value of the property. This court notes that the expert was a joint expert appointed by the Court with the consent of the parties.⁴¹

- [104] This Court will therefore bifurcate the issue of liability and assessment of damages and deal with the latter at a separate hearing, wherein the parties can address this issue in a fulsome matter. There are lurking questions for the court in relation to the assessment that cannot be addressed at this stage.

ISSUE VI:

Are the Claimants entitled to damages because of the 2nd -4th Defendants negligence, breach of statutory duty thereby resulting in the Claimants loss of use and or opportunity.

Damages for Loss of Use and/or Opportunity (Claimants)

- [105] The Claim for damages for negligence, breach of statutory duty and loss of use and or opportunity was premised on the fact that the Claimants have suffered loss due to the 2nd Defendant's negligence and breach of statutory duty when they attempted to sell the property since 2021 but was unable to do so. Further they seek damages for loss of use and/or opportunity.
- [106] The jurisdiction to award these damages was highlighted in **Lenore Rosalie Verson et al. v Minister of Natural Resources et al.**⁴² In this authority the Minister rectified the title, resulting in the change of ownership of the property. The court ruled that the Minister could not do so and the title was void ab initio. In relation to damages for loss of opportunity and use, Justice Sonya Young opined as follows:

- a. "Damages for loss of opportunity are awarded for breach of contract,

⁴¹ Trial Bundle pages 245-246 [Court Order see par. 3 of the order]

⁴² High Court of Belize Claim 700 of 2018 Lenore Rosalie Vernon et al v Ministry of Natural Resources et al.

personal injury, negligence, and deceptive conduct.”

2. And:

“damages for loss of use ... is compensatory in nature. It is intended to compensate for wrongful conduct which results in the temporary unavailability of property for use. This includes real property.

While the Court accepts that the Claimants ought to be compensated for the loss of use occasioned by the Minister’s decision, there is a problem. The Claimants have offered no means by which the Court is to assess these damages. This matter had not been bifurcated so there is no opportunity to put any further evidence before the Court in this regard.

At best the Court can offer a nominal figure for damages. **This is set at BZ\$20,000.00 per year from the date of filing of the Claim to the date of this decision.** This sum shall attract interest at the rate of 6% per annum from the date of the filing of the Claim until payment in full. Claimants in effect would have lost the property.”

[107] This Court is clothed with the authority to award damages, however the Claimants have neither provided any evidence to support its claim for quantification of loss nor was there pleadings to justify the award of damages claimed. Further, considering the Court’s ruling in relation to the Claimant, the court declines to award damages for loss of use and/or opportunity.

Conclusion

[108] In conclusion the Claimants and First Defendant succeed on the claim and ancillary claim respectively to the extent stated hereunder:

ORDER

[109] In relation to the Claimant’s claim the Court orders as follows:

- I. A Declaration that the Claimants are the proprietors of all that Lot, Piece of Parcel, of land being Lot No. 320 comprising 913.26 square meters situate in the Subdivision knowns as Ambergris Bay 3.5 Miles North of San Pedro Town, Ambergris Caye, Belize District, being more particularly shown on Plan No. 1019 of 2006 at the Land Titles Unit, Belmopan, and attached to Minister's Fiat (Grant) No. 1019 of 2006, and at the Lands and Survey Department on Plan of survey registered in Register 16 Entry 7378 now identified as Parcel 8601, Block 7, San Pedro Registration Section.
- II. An order that the Registrar of Lands do rectify the register for Parcel 8601 Block 7 San Pedro Registration Section by deleting the name of the First Defendant, A.B # 8601 ACB Ltd, and replacing the name with that of the Claimants, Alex Roqueta and Beatriz Ferrer Valentine.
- III. The Claimants claim for Loss of use and/or opportunity against the 2nd, 3rd, and 4th Defendants are dismissed.

[110] In relation to the 1st Defendant/ Ancillary Claimant claim, the court orders as follows:

- I. Damages are awarded to the 1st Defendant as against the 2nd -4th Defendants, to be assessed.
- II. The 1st Defendant/Ancillary Claimant and the 2nd -4th Defendant (hereinafter referred to as the defendants) shall within thirty [30] days of the receipt of this judgment hold discussion to amicably resolve the issue of compensation to be paid to the 1st Defendant.
- III. The parties are at liberty of filing a consent order for approval by the Court if an agreement has been reached.
- IV. In the absence of an agreement the Case Management Conference for the assessment of damages shall be heard on the **2nd day of June 2026 at 8:45am.**

[111] The 2nd – 4th Defendants shall pay the Claimants and 1st Defendant costs in the sum of five thousand dollars (BZD \$5,000.00) each.

Derick F. Sylvester
High Court Judge
April 2026