

**IN THE SUPREME COURT OF BELIZE A.D.2011**

**CLAIM NO. 388 of 2011**

**BETWEEN**

**CARMINE EMY CABANAS**  
**(As the lawful attorney for Romel Cawich**  
**and Luciola Moreno de Cawich)**

**CLAIMANT**

**AND**

**JESUS COWO**  
**KENT HERRERA**  
**LISA BRACHACEK**

**FIRST DEFENDANT**  
**SECOND DEFENDANT**  
**THIRD DEFENDANT**

**REGISTRAR OF LANDS**

**INTERESTED PARTY**

**Before:** Hon. Mde Justice Rita Joseph-Olivetti

**Appearances:** Mrs. Magali Marin Young of counsel for the Claimant.  
Mr. Michael Peyrefitte of counsel for the Second and Third Defendants  
Mr. Herbert Panton of Solicitor General's Office of counsel for the Registrar of Lands.  
First Defendant unrepresented.

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**J U D G M E N T**

**Dated: 2014, January 21**

**(Hearing dates: 2013: December 3, 4, 13,)**

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**[Key Words- Property Law- Registered land- Court’s Power to order rectification of the register-Buyer agreeing to buy unregistered land on the basis that seller obtain first registration only without himself conducting a title search -Seller had sold land prior to that- Seller obtained first registration with help of buyer and buyer purchased land – Whether seller committed fraud in obtaining first registration - Whether buyer had knowledge of fraud –Whether buyer in possession of the land- Whether buyer gave valuable consideration for land-the Registered Land Act Cap. s.143 considered]**

1. **Joseph- Olivetti J:** Block 53 at the Progresso Agricultural Layout, Corozal District, Belize lapped on one side by the gentle, green waters of the Progresso Lagoon struck Mr. and Mrs. Romel Cawich as an ideal place for their retirement home so they bought it from the owner, Mr. Jesus Cowo. Block 53 was unregistered land at the time. After doing considerable development work on the land and enjoying its amenities they left Belize to enhance their prospects abroad. However, some years later they were perplexed to learn that Mr. Cowo had subsequently sold Block 53 to Mr. Kent Herrera and Ms. Lisa Brachacek (together, ‘the Investors’) who are now the registered proprietors .At issue here is the title to Block 53.
2. In essence, Mr. and Mrs. Romel Cawich (together “Family Cawich”) seek a declaration that the land certificate issued to the Investors on 5 May 2009 is null and void having been obtained by fraud and the rectification of the Land Register to have the Investors’ names removed and their names substituted as the registered proprietors of the land.

**The Main Facts.**

3. It is undisputed that the First Defendant, Mr. Jesus Cowo, was the owner of Block 53 and that he held same under a Minister’s Fiat Grant No. 64 of 1982 dated 17 February 1982. Block 53 comprised 3.39 acres and is situate along the Progresso Lagoon, Corozal District, Belize. It is also not disputed that Block 53 was unregistered land at the time and

that on 26 September 1989 Family Cawich bought the land from Mr. Cowo for \$6,500.00 and that on 12 February 1990 Mr. Cowo executed a Deed of Conveyance to them which was duly recorded on 16 February 1990 at the Land Titles Unit in the City of Belmopan as Instrument No. 365 of 1990 in Deeds Book Volume 5/ 1990 folios 1- 12.

4. Since becoming owners Family Cawich invested in excess of \$76,000.00 in developing Block 53.<sup>1</sup> They reclaimed a portion, graded the land, planted trees and constructed, among other things, an access road, a sea wall, together with a 50 feet pier, an open palapa 14 x 18 feet and a concrete bathroom. They also fenced the property with barbed wires. They purchased and installed an electrical transformer and fittings to supply electricity to the property. They used the property for family getaways and as a week-end retreat and also allowed friends and their church to use it. In October 2000, Hurricane Keith damaged the palapa and then it was wholly destroyed by the ministrations of Tropical Storm Chantal on 21 August 2001 and the electrical meter, fittings and cables were stolen. They did not rebuild the palapa and the electrical fittings were never recovered or replaced.
5. In December 2000, Mrs. Cawich, a former branch manager of the Belize Bank Limited migrated to the United States of America and in November, 2004 Mr. Cawich followed suit. Before he left, Mr. Cawich authorised Mr. Cowo to use the land to pasture his cattle and he also authorised his lifelong friend, Mr. Hector Manuel Galindo, to act as general caretaker of Block 53.

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<sup>1</sup> Mrs. Cabanas detailed the cost in her witness statement and see too the evidence of Mr. Horace Pascascio ( Tab 12) Civil Engineer that he assisted with some of the development on the land and that the cost of development and improvement was between \$50,000.00- \$75,000.00. Neither witness was challenged on these figures.

6. On 16 August 2006 the Minister responsible for lands declared the lands forming part of the Progreso area which included Block 53, a compulsory registration area under the Registered Land Act Cap 194 (“RLA”). Family Cawich took no steps to obtain first registration of Block 53 as being abroad they were not aware of the Minister’s declaration.
7. Sometime in 2008 Mr. Galindo discovered that Mr. Cowo had allowed one, Mr. Larry Flowers, to store his road construction equipment on Block 53 and he reported the matter to Family Cawich who instructed him to have Mr. Cowo remove the equipment and to cease to use the land as pasture for his cattle. Mr. Galindo did so but the equipment was only removed about six months later.
8. However, whilst Mr. Flowers’ equipment was still on Block 53, Mr. Cowo was approached by Mr. Herrera in December 2008 about selling Block 53 to him and Ms. Brachacek. It appears from Mr Herrera’s evidence that he learnt that the land was for sale and visited Mr.Cowo to make inquiries. Eventually in May 2009, unknown to Family Cawich, Mr. Cowo sold Block 53 to the Investors. The circumstances of that sale will be examined in more details subsequently when I consider the specific issues raised in relation to s. 143 (2) of the RLA.
9. Family Cawich only learnt of this sale about end of April 2011 when Mr. Galindo reported trespassers on Block 53. The trespassers were workers employed by the Investors to construct a fence. Family Cawich commissioned a title search, lodged a caution on 9 May 2011 and then applied for and obtained an injunction against the Investors on 16 September 2011. The court then granted permission to the Investors to remove their fence construction materials from Block 53. The investors did so and since that time Family Cawich and their children have enjoyed the exclusive use of Block 53.

**The Main Issue.**

10. The main issue here is whether the court can set aside the transfer to the Investors and rectify the register under s.143 of the RLA. In their defence the Investors rely on the indefeasibility of their title under s. 26 of the RLA and the fact that they had no notice that Family Cawich were the owners of the land and not Mr.Cowo and that in any event they had no knowledge of, neither had they assisted in, any fraud that Mr.Cowo might have been held to have perpetrated.

### **The Law**

11. Section 26 of the RLA provides that the registration of any person as proprietor with absolute title shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto free from all other interest and claims whatsoever.

12. However, this must be read subject to s. 143 which stipulates: -

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

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

**(Emphasis added)**

13. This section, to my mind, having regard to the specific words used, signifies that the person seeking rectification bears the onus of proof to establish that any registration in the chain of title was obtained by fraud or mistake. (See **Santiago Castillo Limited v. Quinto & Anr (Belize)** ([2009] UKPC 15) 74 WIR 217, Lord Phillips of Worth Matravers para.39 at p.230).
14. And, where fraud or mistake has been established the onus of proof shifts to the person opposing the rectification who must satisfy the requirements of s. 143(2) of the RLA. This translates in the circumstances of this case, to Family Cawich having to prove fraud or mistake in the first registration and if so proved then to the Investors satisfying the court of the factors required by section 143 (2).
15. In doing so they must establish **all** of three things-
- 1) That they are in possession of Block 53 or in receipt of the rents and profits, and
  - 2) That they acquired Block 53 for valuable consideration, and
  - 3) That they had no knowledge of the omission, fraud or mistake or did not substantially contribute to it by their act, neglect or default.
16. I am bolstered in this interpretation of s. 143 (2) that these factors are conjunctive and that the onus is on the person opposing rectification by comparing it with the common law defence of ‘bona fide purchaser for value without notice’ in relation to unregistered land where the onus is on the person raising the plea to establish it in its entirety. See **The Law of Real Property Megarry and Wade** 6th edn para.5-005 p.138 - **“It is a fundamental rule that a purchaser of a legal estate for value without notice is “an absolute, unqualified, unanswerable defence” against the claims of any prior equitable owner or incumbrancer. The onus of proof lies on the person putting forward this plea: it is**

**a single plea, and is not sufficiently made out by proving purchase for value and leaving it to the plaintiff to prove notice if he can**". (Emphasis mine). I now turn to the various issues raised.

17. **Firstly, did Mr.Cowo obtain the first registration by fraud and /or did the Registrar of Lands act under a mistake when he caused the first registration to be issued in the name of Mr. Cowo.**

18. **Fraud. Halsbury's Laws of England Vol 31 4<sup>th</sup> edn 1059 states the law succinctly- "What constitutes fraud. By the mid- nineteenth century it had been established that not only a misrepresentation known or believed by the representor to be false when made was fraudulent, but that mere non- belief in the truth was also indicative of fraud. Thus, whenever a person makes a false statement which he does not actually and honestly believe to be true, for purposes of civil liability, that statement is as fraudulent as if he had stated that which he did not know to be true, or knew or believed to be false. Proof of absence of actual and honest belief is all that is necessary to satisfy the requirements of the law... ."**

19. And, as already indicated, the onus of proof to establish fraud falls on Family Cawich and they must establish fraud on a balance of probability. For that last proposition see **Hornal v. Neuberger [1957] 1 Q.B. 247 –**

**" In a civil action where fraud or other matter which is or may be a crime is alleged against a party or against persons not parties to the action, the standard of proof to be applied is that applicable in civil actions generally, namely, proof on the balance of probability, and not the higher standard of proof beyond all reasonable doubt required in criminal matters; but there is no absolute standard of proof, and no**

**great gulf between proof in criminal and civil matters; for in all cases the degree of probability must be commensurate with the occasion and proportionate to the subject matter. The elements of gravity of an issue are part of the range of circumstances which have to be weighed when deciding as to the balance of probability.”** See Denning L. J. Pg 258

20. Mr. Cowo did not defend this action as he no doubt figured he had no defence. I note from TB Tab 6 that on 16 September 2011 at the injunction hearing, the court permitted **Mr. Arthur Saldivar** to represent Mr. Cowo **on his personal undertaking** to file a defence by October 21, 2011. He did not do so then or ever.
21. In my judgment, on the pleadings and the evidence, the case against Mr. Cowo has been made out. He sold the land to Family Cawich and then betrayed the trust Family Cawich had reposed in him by dishonestly claiming to be the owner and then knowingly and voluntarily entering into a transaction of sale with the Investors .To accomplish this, he applied for and obtained the first registration of Block 53 by dishonestly representing to the Registrar of Lands that he was still the owner in reliance on the Minister’s Fiat Grant. And the Registrar acted on his representation to the detriment of Family Cawich who were by a stroke of the pen, literally deprived of their land. For what it is worth, his subsequent explanation to Mrs. Cawich for doing so was that he was sick and in need of money.
22. There can be no doubt then that the first registration of Block 53 was obtained by Mr. Cowo’s fraud. Block 53 was then re-numbered Parcel 252 Block 1 Progresso Registration Section. (See TB Tab 8 letter from the Registrar of Lands dated 31 July 2013)
23. With respect to the Investors, Family Cawich’ case is that the Investors were parties to Mr.Cowo’s fraud. The Investors deny that and say further that they had no knowledge of



the fraud. Family Cawich, understandably in the circumstances, led no direct evidence of fraud against the Investors but asked the court to infer fraud from the evidence of Mrs. Moreno de Cawich as to what Mr. Cowo said to her when she met with him at his home after she returned to Belize in June 2011 to discuss how the Investors became the registered owners of Block 53. She claims to have recalled the conversation and recorded it **verbatim** in her witness statement of 23 August 2013 although she had not made a contemporaneous note of it.

24. However, I find, having regard to her cross examination, that this was not really so and that her statement amounts to her report of what Mr.Cowo had told her and do not consist of his **exact** words but it was **“pretty much what he said.”**

25. A further point was belaboured by Mr. Peyrefittee in cross examination that Mrs. Moreno de Cawich never said in her witness statement that Mr. Cowo had told her that he had informed Mr. Herrera that she was the owner of Block 53.She was directed specifically to para 5 of her witness statement. In relation to para 5 that is correct as para 5 speaks to what Mr. Cowo allegedly told her he said to **“the people from the Lands Department”**. However, in all fairness the witness statement must be read as a whole and although she did not say that in para 5, she made that point abundantly clear in the subsequent paragraph 7.

26. In essence, Mrs. Moreno de Cawich testified that Mr.Cowo told her that he had told Mr.Herrera about the situation with the arrears on taxes on the land, that Mrs Moreno de Cawich was abroad, that he could not pay the taxes, that he was sick and needed medical treatment, that Mr. Herrera said he would pay the taxes and help him with money for the treatment if he passed the property to him so he agreed to sell the property to him. Further that Mr. Herrera prepared all the documentation and he just signed and that he did not know what he signed.

27. The evidence of what Mr. Cowo is alleged to have said to Mrs. Moreno de Cawich amounts to no more than hearsay and it would not be right to find that the Investors or particularly Mr. Herrera acted fraudulently with Mr. Cowo merely in reliance on this evidence. I consider that Mr. Cowo himself would have had good reason to seek to implicate Mr. Herrera in his wrong- doing and so could have fabricated his explanation about the extent of Mr. Herrera's involvement in the transaction. I also note that he refused to make a statement and record it before a Justice of the Peace when Mrs. Moreno de Cawich asked him to do so. All this casts doubt on the honesty of his explanation. I also bear in mind that he did not appear at trial to afford the Investors the opportunity to cross-examine him. In these circumstances, the court is loathe to attribute fraud to the Investors. I am aware that fraud is not to be lightly charged and lightly attributed as, **“Good name in man or woman, dear My Lord, is the immediate jewel of their souls.”**<sup>2</sup>

**Was there a mistake?**

28. And, undoubtedly the Registrar of Lands made a mistake in issuing the first registration in Mr. Cowo's name and then in perfecting the transfer to the Investors as if the Registrar had followed the proper procedures stipulated for by s.13 of the RLA, and in particular the title search mandated by s.13 (2) (c) then the Registrar would have discovered the prior conveyance to Family Cawich and so have unearthed the fraud and avoided the mistake. Accordingly, both fraud and mistake tainted first registration and the current registration in the names of the Investors.

29. In summary then, Family Cawich have not established actual fraud on the part of the Investors as the evidence adduced is insufficient to do so. However, in my judgment fraud can be imputed to the Investors in all the circumstances of the case. I shall consider this

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<sup>2</sup> Shakespeare “Othello Act 3 Scene 3”

more particularly when I deal with the issue of whether the Investors had knowledge of Mr. Cowo's fraud.

30. Having found both fraud and mistake established in the obtaining of the first registration I now turn to the requirements of s.143 (2) of the RLA.

**Are the Investors in possession of the land?**

31. In **Castillo** two issues relating to the interpretation of s.143 were debated before Her Majesty's Privy Council. One concerned the meaning of '**possession**' in section 143 (2). The Board held that this means, "**actual physical possession.**" ( See para 40 pg. 231 Lord Phillips of Worth Matravers)<sup>3</sup>

32. On the evidence, I find that Family Cawich took possession of Block 53 after they bought it from Mr. Cowo and they developed it. When they left Belize they left a caretaker in charge of Block 53 and allowed Mr. Cowo to pasture his cattle there. They were not in actual physical possession then but certainly were entitled to the rents or profits as the owners.

33. On the other hand, the Investors only visited Block 53 on occasions after they bought it from Mr. Cowo. And, when they commenced to construct the fence at the end of April 2011 they were injuncted. Since that date Family Cawich have been using the land. I reject Mr Herrera's evidence that they maintained the land as this is simply a bald statement. See Tab 16 W/S para. 16. See also Defence para. 9 Tab 5 which speaks of development but no idea of that development is given. And, this is also contrary to the evidence of Mr. German Cabanas and his wife who testified to them returning to Belize after an absence of some 6 years, visiting the land, and then assisting with having it cleared. They at no time

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<sup>3</sup> "As for the meaning of 'in possession' in s.143 (2), the board is satisfied this means actual physical possession. Were this not so the addition of 'or is in receipt of the rents or profits' would make little sense."

encountered the Investors on the land. The Investors cannot therefore be said to be in actual physical possession of Block 53 or in receipt of its rents and profits, now or at any time prior to the injunction.

**Did the Investors give valuable considerations for Block 53?**

34. What is valuable consideration? The RLA defines this term at s. 4 –**“valuable consideration includes marriage, but does not include a nominal consideration.”**
35. In the absence of a statutory definition of nominal the ordinary meaning can be applied. **“Nominal”** means according to **Oxford Dictionaries Online** - **“of a price or charge very small; far below the real value or cost.”**
36. **And, Snell’s Equity 31<sup>st</sup> edn.** for comparison with the common law concept of valuable consideration states at para .4-26 p.67- **“A purchaser is a person who acquires an interest in property by grant rather than operation of law. ...The purchaser must have given value for the property. Although it need not be shown that the consideration was adequate, it seems that a nominal consideration is not sufficient.”**
37. Mr. Herrera is a **chartered accountant** and at the relevant time employed with Citrus Products of Belize Limited and readily admitted that he had a good deal of experience in transactions with real property and that he himself held real property investments. Thus, he can be taken to be very familiar with the value of land here and the process of buying and selling land.
38. In his witness statement, Tab 16 para. 20, Mr. Herrera said- **“The Third Defendant and I purchased the property from the First Defendant for good and valuable consideration and did make payment of such consideration to the First Defendant”**. However he did not elaborate on that.

39. I note he followed the same pattern in their Defence which refers to them giving valuable consideration or being bona fide purchasers for value without notice at least 5 times yet gives no details of that consideration. See TB Tab.5 paras. 11, 16, 21 and 28.
40. The transfer of land instrument to the Investors (TB Tab 7) records the consideration given by them as \$20,000.00. However, when taxed in cross-examination that he knew that the land was worth far more than they paid for it, Mr. Herrera reluctantly admitted that the value was indeed more and sought to explain that Mr. Cowo wanted \$60,000.00 but that they did not have the money so he had an arrangement with Mr. Cowo by which he would pay to Mr. Cowo a monthly stipend of \$1,100.00 to keep the property clean and to assist with anything he wanted doing on the property, for example, to construct the fence and that those payments ran up to 2011 so making up the price that Mr. Cowo actually wanted for the land.
41. The court rejects this explanation as untrue as Mr. Herrera was aware that the issue of consideration was important to his case and had every opportunity to explain what consideration they actually gave both in his Defence and in his evidence in chief and did not do so. And, in any event that arrangement, even if it existed, to my mind only equated to an agreement to hire Mr. Cowo in the future as a handyman and to pay him for his work, otherwise it would mean that Mr. Cowo did work gratis and the Investors took mean advantage of him as the additional monies Mr. Herrera said he paid him would have been for the land in reality and not for his work.
42. I find that Mr. Herrera knew that the land, having regard to its prime location and visible state of development, was worth considerably more than they paid for it and that the price they paid was a far cry from the true value of the land. Further, Mrs. Moreno de Cawich testified that she had been offered US \$150,000.00 for Block 53 and had refused to sell it.

In this light, the price the Investors paid (\$20,000.00 or US \$10,000.00 ) was so far below the market value of Block 53 that it can properly be said to be nominal value only and therefore does not amount to valuable consideration. Accordingly, the investors did not give valuable consideration for Block 53.

**Did the Investors have knowledge of the fraud or assist in it by their omission?**

43. In relation to knowledge of fraud within the context of s. 143 of the RLA the Board in **Quinto** applied Lord Lindley's dictum in **Assets Company Ltd v. Mere Roihi [1905] A C 176** at p. 210:-

**“ Further, it appears to their Lordships that the fraud which must be proved in order to invalidate the title of a registered purchaser for value, whether he buys from a prior registered owner or from a person claiming under a title certified under the native Land Acts, must be brought home to the person whose registered title is impeached or to his agents. Fraud by persons from whom he claims does not affect him unless knowledge of it is brought home to him or his agents. The mere fact that he might have found out fraud if he had been more vigilant, and had made further inquiries which he omitted to make, does not of itself prove fraud on his part. But if it be shown that his suspicions were aroused, and that he abstained from making inquiries for fear of learning the truth, the case is very different, and fraud may be properly ascribed to him.”** (Emphasis mine)

44. Mr. Herrera testified that he is familiar with the land registration system and knew that the land was located in a mandatory registration area. He said that when he learnt from Mr. Cowo that he held title by way of Minster's Fiat Grant he told Mr. Cowo he would only

purchase the property if Mr. Cowo applied for a first registration. He was also aware that the Lands Registry during the first registration process had to conduct a title search in the Land Titles Unit to determine any previous transactions on the land prior to granting first registration. He said he thus relied on the integrity of the first registration application system.

45. Mr. Herrera also testified that as Mr. Cowo lived on the land in a small wooden building and grazed cattle on it that he had no reason to question the true ownership of the property. In relation to Mr. Cowo living on the land I prefer the evidence called on behalf of the Claimants and in particular that of Mr. Hector Galindo that Mr. Cowo did not reside on the land. It also strikes the court as highly unlikely that he did so given that it is not disputed that Mr. Cowo used the land to graze his cattle and that at one time Mr. Cowo allowed Mr. Flowers to put his road construction equipment on the land. This, considering the evidence that only a part of the land was cleared, begs the question as to exactly where on the land Mr. Cowo and his family had resided.

46. Mr. Herrera acted as Ms. Brachacek's agent at all times during this transaction and therefore any actual or constructive notice that the agent acquired whilst acting as such will normally be imputed to his principal. See **Snell's op,cit** .para 4-40 p.75-“ **Imputed notice. Agency. It has long been settled that any actual or constructive notice which an agent has (e.g a purchaser's solicitor or counsel) will normally be imputed to his principal ...The notice must have been obtained by the agent in the same transaction, and it must come to the agent as such.**”

47. In other words, Ms Brachacek is considered in law as having all knowledge whether actual or constructive that Mr. Herrera acquired whilst acting as her agent in this transaction.

48. In my judgment, having regard to all the circumstances of the sale by Mr. Cowo to the Investors, and in particular the choice location and the extensive visible development of the

land in conjunction with the nominal price that they offered and paid, his suspicions ought to have been aroused and he was put on notice to make further inquiries about ownership. As a person familiar with investments in land he would have had a good idea of the costs of the development visible on the land and must have wondered why Mr. Cowo having made such a costly investment on the land would sell his land for a price considerably less than he had ostensibly paid to develop it. In fact, Mr. Herrera gave no evidence that he even inquired of Mr. Cowo as to who had made those improvements.

49. I note Mrs. Moreno de Cawich's evidence at paras.13-15 of her witness statement (Tab 11) which has not been rebutted. It is to the effect that she as former branch manger had experience with the bank's customers converting their title to registered title under the RLA before they could mortgage same and that the bank's lawyers had always advised her that a title search had to be done before an application for first registration was tendered and that this applied, even though the customer held a Minister's Fiat Grant as the Grant is not proof positive of ownership as it is not destroyed when the legal interest is transferred by deed of conveyance. This testimony I accept as evidence of the prevailing conveyancing practice and would consider to be the standard applicable to a reasonably competent conveyancer.

50. The Investors did not meet that standard. Most telling is that Mr. Herrera knew that Block 53 was unregistered land at the time he was considering buying it and he ought like any prudent and reasonable purchaser to have commissioned a title search to ascertain the true position existing at the time he negotiated the sale with Mr. Cowo and not simply rely on the Minister's Fiat Grant and instruct Mr. Cowo to obtain first registration and then seek to rely on the first registration and the search he did subsequently. He even assisted Mr. Cowo to present the applications for first registration and the transfer to the Investors at the same time, i.e. the transfer was lodged before first registration was obtained. In reality, Mr.



Herrera bought the land whilst it was still unregistered and failed to do all that was required of a reasonably competent conveyancer to ensure that the purported seller was indeed the owner.

51. And see too **Snell's op.cit** para.4-31(b) pg. 71 on constructive notice:-**"The principle.**

**The general principle is that a purchaser will be treated as having constructive notice of all that a reasonable prudent purchaser, acting on skilled advice, would have discovered. Constructive notice has been said to be "in its nature no more than evidence of notice, the presumptions of which are so violent that the court will not allow even of its being controverted. There are two main heads of constructive notice, namely:**

- i. Those where the purchaser had actual notice... and**
- ii. Those where the purchaser has, whether deliberately or carelessly, abstained from making those inquiries that a prudent purchaser would have made."**

52. I therefore find that the Investors had knowledge of the fraud perpetrated by Mr. Cowo or at the very least assisted him by omitting to carry out any title searches prior to the first registration in accordance with good conveyancing practice.

53. In summary then, the court is satisfied having regard to all the evidence that there was fraud on Mr. Cowo's part in applying for the first registration on the basis of the Minster's Fiat Grant and at the very least mistake on the part of the Registrar in the issuing of the first registration in Mr. Cowo's name with the end result being deprivation of Family Cawich of Block 53. Thus, both the first registration and the current registration were obtained as a result of both fraud and mistake. And, the court is also satisfied that the Investors are deemed to have had knowledge of the fraud by their neglect or default in omitting to carry

out title searches prior to him obtaining first registration or that the Investors substantially contributed to his fraud as if they had done title searches they would have discovered the conveyance to Family Cawich and thus realize that Mr. Cowo was no longer the owner and not assist him to obtain first registration and buy from him. Therefore, in relation to s.147 (2), the Investors cannot rely on it as they are not in possession of Block 53, did not give valuable consideration for it and what is more had knowledge of the fraud or contributed to it by omitting to carry out title searches prior to assisting Mr. Cowo to obtain first registration.

54. Finally, as can be seen from the use of the word “**may**” in s. 143 of the RLA the court’s power to rectify the Register is a discretionary one. (See also **Santiago Castillo**). Family Cawich spent considerable sums in developing Block 53 and over the years used it for their family outings and no doubt have built up a store of fond memories. They acted expeditiously as soon as they became aware of the Investors’ claim to ownership of Block 53. There is nothing in the circumstances of this case which militates against the discretion being exercised in their favour.

#### **Other Issues canvassed**

55. Ms. Marin Young in a very thorough approach raised several other issues pertaining to the various property regimes which exist in Belize but it is not necessary to consider those as in my judgment the issues dealt with under s.143 of the RLA are dispositive of the case.

#### **Disposition**

56. For the foregoing reasons judgment is given for the Claimant against all the Defendants. The Registrar of Lands is directed to cancel the certificate of title in the names of Mr. Herrera and Ms. Brachacek and to rectify the register by removing their names as the

registered proprietors of Block 53 now Parcel 252 Block 1 Progresso Registration Section under the Registered Land Act and substituting those of Mr. and Mrs. Cawich.

57. Mr. Herrera and Ms. Brachacek are to pay to the Claimants their prescribed costs.

58. Mr. Cowo shall pay general damages of \$10,000.00 to the Claimants in respect of the losses they have undoubtedly suffered by his fraudulent actions.

59. I thank both counsel for their very helpful written submissions which reflected their diligence in the conduct of this matter.

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Rita Joseph- Olivetti

Supreme Court Judge Ag.

Supreme Court of Belize, Central America