

**IN THE SUPREME COURT OF BELIZE A.D. 2017**

**IN THE MATTER OF Section 3(d) and 17 read together with the other provisions of the Belize Constitution, Chapter 4 of the Substantive Laws of Belize relating to the taking of property rights, including riparian rights**

**AND**

**IN THE MATTER OF the National Lands Act, Chapter 191 of the Substantive Laws of Belize in relation to reserve areas**

**AND**

**IN THE MATTER OF Section 138 to 141 and 143 of the Registered Land Act, Chapter 194 of the Substantive Laws of Belize relating to the Acquisition of Title by Prescription and the Rectification of Land Register**

**AND**

**IN THE MATTER OF Section 122 of the Limitation Act, Chapter 170 of the Substantive Laws of Belize relating to the extinction of title**

**BETWEEN:**

**(ARTURO MATUS**

**CLAIMANT**

**(AND**

**(ATTORNEY GENERAL OF BELIZE**

**FIRST DEFENDANT**

**(REGISTRAR OF LANDS**

**SECOND DEFENDANT**

**(NEW DEAL LIMITED**

**THIRD DFENDANT**

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***BEFORE THE HON. MADAM JUSTICE MICHELLE ARANA***

**Mr. Darrell Bradley for the Claimant**

**Ms. Samantha Matute Tucker for the First and Second Defendants**

**Ms. Naima Barrow for the Third Defendant**

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

**Facts**

[1] The Claimant, Arturo Matus, is the registered proprietor of all that parcel of land described as Parcel No. 4105, Block 16 in the Caribbean Shores/Belize Registration Section (hereinafter called Parcel “4105”). He has occupied the land from around 2002 onwards to the current date and he has exercised full occupation, possession and control of all the land described as Parcel 4105. There was a reserve of 44 feet in front of Parcel 4105 as noted on the survey plan. In or about the early part of 2014, the Second Defendant, the Registrar of Lands, purported to create a parcel, Parcel 5031, Block 16 in the Caribbean Shores/Belize Registration Section (hereinafter called Parcel “5031”). This parcel purported to include the reserve in front of Parcel 4105 along the Belize River and title to Parcel 5031 was sold to the Third Defendant, New Deal Ltd. This company then constructed a fence which blocked off Mr. Matus’s access to the Belize River through parcel 5031 and to any other access to the area denoted on the survey as the reserve.

## Issues

[2] i.) Whether at all material times the area denoted as a 44 feet statutory reserve formed part of Parcel 4105 and constituted part of the Claimant's title which was subject to the reserve requirement.

ii.) Whether the Claimant's Parcel 4105 abutted the water's edge thereby creating riparian rights of regress and egress to which the Claimant is entitled as an owner of waterfront property.

iii) Whether the creation, issue and sale to the Third Defendant of Parcel 5301 and construction of a fence by the Third Defendant resulted in the taking away of the Claimant's riparian rights as contained in Section 3 (d) and 17 of the Belize Constitution, and is accordingly null and void and of no effect, and whether the Claimant is entitled to an injunction and damages.

iv) Whether by virtue of Section 143 of the Registered Land Act, the creation of Parcel 5031 and the issue and transfer of that parcel to New Deal Ltd, as proprietor, was obtained by fraud, mistake or in contravention of the law.

v) Further, or alternatively, whether an easement of necessity was created in favor of the Claimant through the reserve area to permit public entry and exit.

vi) Whether the creation and issue of Parcel 5031 was void and ultra vires Section 12(8) of the National Lands Act, read together with the other provisions of

the legislation, which requires that all surveys of National Lands be subjected to a reserve not exceeding 60 feet.

### **The Evidence of the Claimant**

[3] The first witness for the Claimant was Arturo Matus. The witness said that he is a Businessman who resides at Mile 5, along the Philip Goldson Highway, Belize City, Belize District, Belize. Mr. Matus says that he was at all material times the registered proprietor of a parcel of land described as Parcel 4105, Block 16 in the Caribbean Shores/Belize Registration Section (hereinafter called “**Parcel 4105**”). A copy of his Land Certificate together with the map for Parcel 4105 is attached as “**AM1**”. He has occupied the land that later became known as Parcel 4105 for a continuous period from around 2002. The witness came to acquire a lease of this land because he also owns Parcel 4106, which is a much smaller parcel of land located immediately adjacent to Parcel 4105 on the opposite side away from the Belize River. He obtained his lease of Parcel 4106 in 1999, and so sometime thereafter he began making inquiries about acquiring the land that later became known as Parcel 4105. When Mr. Matus obtained his lease for Parcel 4105 the Lands and Surveys Department completed a form entitled “*Report on Land Inspection*” and this form describes the land in this area as “*flat swamp.*” This was in respect of Parcel 4106, but the description of land in this area as swampland was descriptive of all surrounding lands, including what was then Parcel 4105. The witness also attached

a map he had from that time showing that the adjacent Parcel 164, which is now also owned by the New Deal Ltd., was once an island and that the Belize River came in between what later became known as Parcel 4105 and Parcel 164. This map also shows that the land receded inwards. The Report on Land Inspection and the map are attached as “AM2” and “AM3” respectively.

[4] Mr. Matus said that he received permission from the Commissioner of Lands and Surveys to survey what later became Parcel 4105 in about 2002. After receiving permission he engaged C.B. Samuels, Licensed Surveyor, to carry out a survey, and C.B. Samuels produced a survey of what later became Parcel 4105. This survey done by C.B. Samuels included a reserve area of approximately forty feet, as required for national lands abutting water, and it is Mr. Matus’s claim that he has an ownership interest or right in the area noted as a reserve located immediately in front of and abutting Parcel 4105 being the river bank, and that the Government of Belize, through the Registrar of Lands, cannot lawfully sell this reserve area and take away his interest therein. This is because he was the one who commissioned the survey, pursuant to his request for permission to survey, and this reserve was included on his survey as a lawful requirement denoting that his land was made subject to this reserve. The survey plan commissioned by Mr. Matus and done by C.B. Samuels is exhibited as “AM4”.

[5] From about the year 2000 onwards to the current date Mr. Matus has occupied the area of land that later became Parcel 4105. He had first occupied this land, after the survey was done by C.B. Samuels, under lease from the government of Belize, and then as titled owner. He attached as “**AM5**” a Land Purchase Approval Form submitted by him to the Government of Belize dated 21 February, 2003, which refers to Parcel 4105 which was then held by him under Lease No. 366/2002. He had to surrender his lease when he was purchasing the land from the Government of Belize.

[6] Even though the survey from C.B. Samuels includes an area of reserve on his plan, from 2000 to a date in 2017, the witness says that he has always occupied all the land up to and immediately abutting a body of water called the Belize River, and his land was always river frontage in that the land went all the way to the water’s edge as existed then based on the ebb and flow of the river, or depending on the high and low watermark. So, the land that he used and occupied as owner of Parcel 4105 abutted the Belize River. Parcel 4105 was always riverfront and the reserve was simply the distance between the high water mark and the low water mark as measured by the surveyor. At high tide the water from the river came all the way up to the edge of Parcel 4105 and sometimes the water from the river went into Parcel 4105 as much as ten feet, and at low tide the water receded and more of the riverbank was exposed. But at all times Mr. Matus states that he had unimpeded access to the Belize River directly from Parcel 4105.

[7] Since carrying out of the survey Mr. Matus has exercised full occupation, possession and control of all the land described as Parcel 4105 up to and including the water's edge, and this land has always been river frontage. He had constructed a dwelling house on Parcel 4105, where he still lives to this day with his family, and he filled that entire parcel of land, which was originally swampland. He also filled a portion of the area noted as a reserve to better utilize the river access and prevent erosion of Parcel 4105. He erected a docking facility and pier along the water's edge in the reserve area to moor his boats, and he maintained this entire area by regularly cleaning the river bank reserve and repairing the dock. He also use to fish frequently from his land using the Belize River. Mr. Matus says that he has always considered the area noted as a reserve in front of Parcel 4105 and going into the Belize River as being part of his title, but only subject to the restriction of the reserve, meaning that he understood that he could not block this area or bar access from other users. He also enjoyed riparian rights of access into the Belize River from Parcel 4105. Pictures of the dock built and maintained by the witness showing the water on the reserve area is attached as "**AM6**".

[8] In early 2017 Mr. Matus discovered that a Parcel 5031 was created out of the entire reserve area and that this parcel was sold by the Government of Belize to the Third Defendant. He first discovered this because he saw construction going on in

the area of the reserve. No one told Mr. Matus that this parcel was going to be created and he was not notified or consulted when it was being surveyed. He just simply observed that the Third Defendant commenced the construction of a fence to block off Mr. Matus's entry and exit to the reserve area. This fence was substantially completed by the ending of 2017 and since that time Mr. Matus says he has been prevented from having access to the reserve area and he could no longer access the Belize River. He attached as "AM7" a picture showing the casting for the fence built by the Third Defendant with one piece of steel exposed and in the short distance there is the Belize River. The water came all the way up to and including where this casting is placed and this was the case but for the fact that the Third Defendant put more filling, as seen in the picture, at that point of the reserve to block the water. He also attached as "AM8" pictures showing the other castings for the fence and the distance from the Third Defendant's fence and the water and pictures of the fence itself. Looking at these pictures, Mr. Matus claims that the Registrar of Lands created a parcel of land that does not even have twenty feet of actual land in the area denoted as the reserve.

[9] When Parcel 5031 was created Mr. Matus states that he then had no public access to enter or exit Parcel 4105. This is because from sometime after 2002 he had been using the reserve area as a land access along the river bank to enter and exit



Parcel 4105. This reserve area was, up until the creation of Parcel 5031, the only public access to enable the witness to enter and exit Parcel 4105. This is because Parcel 4105, as shown on all the maps, including the one attached unto his Land Certificate, is land locked and the reserve also served as an easement by necessity. When Parcel 5031 was created, Mr. Matus then had to start using Parcel 4106, which is also owned by him, as an entry and exit point for Parcel 4105. So, he claims that the creation of Parcel 5031 has had the effect of completely shutting off his access to the reserve, taking away his riparian rights, and taking away the only public access to Parcel 4105.

[10] After Mr. Matus discovered that Parcel 5031 was created he immediately went to see the Commissioner of Lands and Surveys to complain about the issue. The Commissioner said to him that this was a mistake and that he would call for the surrender of the Land Certificate for Parcel 5031. Mr. Matus said that he waited for this to be done, but nothing progressed, and so he thereafter engaged an Attorney.

[11] Through his attorney Mr. Matus wrote to the Third Defendant asking them to cease and desist from blocking the reserve area and from blocking his public entry and exit to parcel 4105. He also received a letter from the Commissioner of Lands and Surveys stating that the issue of a Land Certificate for Parcel 5031 was done in error and that a portion of Parcel 5031 was Mr. Matus's land. The cease and desist

letter is attached hereto as “**AM9**” and the letter from the Commissioner is attached hereto as “**AM10**”.

[12] Mr. Matus then made certain inquiries concerning this matter and he also obtained a Transfer of Land Form together with an attached map from the Government of Belize to the Third Defendant selling the land and showing that title to Parcel 5031 was transferred for \$3,500.00. This is a gross undervalue if that could be sold as a parcel of land, which runs along the entire Belize River. The Transfer of Land Form is exhibited as “**AM11**”.

[13] Since his complaining to the Commissioner of Lands and Surveys Mr. Matus said he thought that this matter would have been fixed and that the Third Defendant would have surrendered their Land Certificate for Parcel 5031, but this was not the case and so he felt that he had to proceed to court.

[14] Mr. Matus claims that he has an ownership interest in the reserve area in front of Parcel 4105, as shown and delineated in the survey of done by C.B. Samuels, and that this reserve area formed part of his proprietary interest in Parcel 4105. In the circumstances Mr. Matus says that it was wrongful for the Government of Belize to sell this portion of the reserve and to deprive him of his interest therein. He also claims an easement of necessity because the reserve was the only public access way to enable him to enter and exit Parcel 4105. Additionally, the witness also says that

the creation and sale of Parcel 5031 has deprived him of his riparian rights to use and access the Belize River. These actions of the Government of Belize, through the Registrar of Lands, constitute breach of Sections 3(d) and 17 of the Belize Constitution, and he claims an injunction to prevent the Third Defendant from blocking his access to the reserve area in front of Parcel 4105 and from enjoying his riparian rights. He asks for a rectification of the Register to restore the reserve. He also claims damages and certain other declarations as set out in the claim form.

**Cross-examination of the Claimant by Mrs. Tucker for the First and Second Defendants**

[15] Mr. Matus was asked whether he acquired this property, or whether he was in possession of the property from 2000 or from 2002. He said he has had this property for a long time; he could not recall which year but that was the period around which he got it. He was then shown his Land Certificate, Exhibit “AM 1” after which he agreed that he acquired title in 2003. He said he had been living on this land long before 2003. The witness said he started living on the property in 2001. His house is constructed on Lot 4106 and a portion of it also falls on Parcel 4105. Mr. Matus said that he also owns Parcel 4105 which he uses to park his boat; he also parks all his cars and trucks there. He asked how much he paid for Parcel 4105 and he said he could not remember.

[16] Mr. Matus was asked to indicate the properties that border Parcel 4105 on the Parcel Index. He said Lot 149 is on the West side of his Parcel 4105, and Lot 164 is on the East side; he then said that Parcel 4106 borders Parcel 4105 on the South.

[17] Mr. Matus was then asked about the properties that border his Parcel 4106. He said that two properties, Lots 149 and 1335, border Parcel 4106 on the West. He also owns Lot 1335. The witness then agreed that looking at the map, that since he owned Lot 1335, he had access from Parcel 4105 through 1335 to a public road. He said that that was the only access he now had to a road. Mr. Matus agreed that he is the owner of Parcels 4105, 4106 and 1335. There is no separation between these properties. The properties are enclosed by fence and by sea. He had built a fence on 1335, after which Mr. Quinto built a fence. He could not remember the dates. He indicated, in the second photo after Exhibit **AM 8**, that there is fence around his property (Lot No 4105) which had been built not by him, but by Mr. Quinto. When asked by counsel about the location of the bushy area from his property Parcel 4105, the witness said it is right on the edge, it kisses it; the bushy area kisses the fence. He said the distance of the fence from the bushy area from the river is around 10 feet in the photo before Exhibit **AM 9**. In the photo, Mr. Matus indicated the fence and his pier with the pillars as part of his dock. He said the space between that is about 5 to 8 feet; when high tide comes all that becomes water. He agreed that the distance

was about 5 feet from the fence to the dock, and that the dock is right on the river's edge.

[18] Mr. Matus agreed that the survey at **WV9** highlighted a 40 foot reserve between his property and the river edge, and that that survey was the same as the survey attached to his **Exhibit AM 4**. He said he agreed, based on what the surveyor Mr. Samuels had told him, with counsel's suggestion that there is a 40 foot reserve between his property and the river's edge. The witness agreed that Mr. Samuels was not an agent of the Ministry, but he insisted that Mr. Samuels told him he could not survey that portion because it is reserve land. Mr. Matus disagreed with the suggestion that, based on the admission that there is a 40 foot reserve between his property and the river's edge, his property 4105 does not touch the river's edge. Mr. Matus said that with high tide, the water comes right up to the fence. He also disagreed that his property does not touch the river's edge because of this 40 foot reserve. He said he does not think that he obtained permission from the Ministry of Natural Resources to construct a dock on the river's edge. He explained that he was under the understanding that since it was his property he did not need permission and that since the reserve was his he could use it. He said that he did not know if he had riparian rights. The witness said that he has not applied for the exercise of his right to use the 40 foot reserve between his property and the river's edge. He said he had been using that edge for over 10 years and nobody ever complained to him. He

said he wanted the property but he did not apply for it because he was told that it was a reserve.

**Cross-examination of the Claimant by Ms. Barrow for the Third Defendant**

[19] The Claimant was asked to refer to Exhibit **WV1**, the Land Register Report for Lot 5031. He said not all of 5031 is his property because it is a long piece, part of which comes over to his piece. He said 5031 according to this document belongs to New Deal Ltd. which got the title on 28<sup>th</sup> May, 2014. He was then asked to look at Exhibit **WV2**, the Land Register Report for Parcel 148; he agreed that the original registration date for that property as shown in that document was 24<sup>th</sup> June, 1983. Having looked at Exhibit **WV8**, the witness was asked whether 148 abutted or “kissed” 5031. Mr. Matus agreed; he also agreed that 148 kissed 149 and that the original registration date for 149 is January 1982. New Deal Ltd received title to 148 in 1983, title to 149 in 1982 and title to 164 in 1982. Mr. Matus was then asked to look at Exhibit **WV7** and he agreed that this Land Register Report showed that he received title to Parcel 1335 in 1997. He said that Parcel 4105 was accreted land, and when he got there he could have walked from his parcel to the river. Some areas were wet and swampy, but mostly he could walk. When asked whether when he got 4105, New Deal Ltd. could no longer go from its Parcel 149 to its Parcel 164, he said he understood that that was what the reserve was for, for people to access the land

on the river's edge. He did not agree that he thought the reserve belonged to him; it belonged to the public. Mr. Matus said that when he got 4105, Parcel 164 was an island, so New Deal Ltd. had no access to it. While he agreed that he had just said that he was able to walk from his property, he said that land changes over time. He said before New Deal Ltd. built a fence around Mr. Matus's property, New Deal Ltd. was able to traverse directly from 149 to 164 after Mr. Matus had gotten 4105. The witness agreed that the Third Defendant was able to go from 149 to 164 if he used the reserve which belongs to the Government of Belize. At the time Mr. Matus got 4105 in 2003, it was partly land and partly swamp. Parcel 4105 accreted directly in front of New Deal Ltd.'s 149 and also in front of Matus's 4106. He said that looking at Exhibit **WV8**, this map shows that Parcel 4105 kisses his Parcel 4106 on North, and kisses New Deal Ltd.'s Parcel 149 on the East. The witness said he could not recall how long ago he built his pier, nor could he recall what date he filled the land.

[20] Mr. Matus was re-examined briefly by Mr. Bradley. In answer to the question whether he had access for Parcels 4105, 4106 and 1335, the witness had replied that "The parcel does not have access." He explained that what he meant was that Parcel 4105 does not have public road access. After the creation of Parcel 5031, the only access was the reserve. To access Parcel 4105 by road, one would now have to go through Parcel 1335 and Parcel 4106. He was then asked about a picture previously shown to him under cross-examination by Mrs. Tucker. The witness said the fence

in this picture was built by Mr. Quinto, and the land to the west as well as to the north of that fence belonged to Mr. Quinto. Mr. Matus was then asked where from the border northward of his Parcel was the 40 feet reserve; he replied it was deep down in the water in the Belize River from the edge of his property. He said he built the pier and filled up the property over ten years ago.

### **Evidence of Wilbert Guardado for the Claimant**

[21] Mr. Guardado says he is very familiar with the Claimant Arturo Matus. He has known Arturo for about fifteen years since he moved to his present location at Parcel 4105 as shown on the attached plan marked “WG1”. Arturo and the witness became neighbours at this time. Mr. Guardado said that he lives almost immediately behind Arturo’s house away from the Belize River along what they call Oasis Street near Oasis Bar. He would see Arturo on a regular basis and he remembers when Arturo built his house on Parcel 4105 about fifteen years ago. Mr. Guardado also would visit Arturo at his house very frequently, almost every weekend since he has lived at Parcel 4105, and they have become friends ever since that time. There was also a time when Mr. Guardado worked along with Ricardo Marin on Arturo’s land, Parcel 4105. This was for about six months in 2012 and the witness says he was on Arturo’s land every day during this time.

[22] This witness said that he is very familiar with Arturo’s land. He said that he cannot talk about reserves and boundary markers because he is not a survey person,



but what he can say is that he has always regarded Arturo's land as going right up to the Belize River and that his land runs directly to the river's edge. Mr. Guardado also knows that Arturo built a wooden dock on the side of the river's edge (a picture of this dock is attached hereto as "WG2") and they use to moor Mr. Matus's boats on that dock and they would fish and swim from the dock into the Belize River. This area always appeared to Mr. Guardado to be connected to Mr. Matus's land and there was never a time when anyone interrupted his open use and access to the Belize River. This witness can also recall that frequently when tide was high that the area around the dock was submerged and the water would rise and go into Arturo's land.

[23] This area has also developed and changed a lot over the years since Arturo moved there. Originally, a lot of the land was swampland, but more and more it has been filled up. At one point the area known Parcel 164 was an island and separated from Arturo's land. But gradually this was filled up and Arturo's only access to the waterway was through the Belize River. The bank of the river also has moved and when the tide is high the water comes quite a bit into what is regarded as Arturo's land.

[24] Within 2017 Mr. Guardado said that he noticed that a fence was built restricting Arturo's access to the water. Attached hereto as "WG3" are pictures of the fence, including one showing the water a short distance beyond the fence. Since the building of the fence Arturo and Mr. Guardado have been unable to access

Arturo's dock and they can no longer fish or swim because the access to the river is entirely cut off.

**Cross-examination of Mr. Guardado by Ms. Barrow**

[25] Under brief cross-examination by Counsel for the Third Defendant, Mr. Guardado said that his date of birth was 16<sup>th</sup> November 1992 and that he has been a fisherman for the past six years. Prior to that date, he was a Pump Attendant for two years. He finished high school at age 17.

Mr. Guardado was not re-examined.

**Evidence of Wilbert Vallejos on behalf of the First and Second Defendants**

[26] Mr. Vallejos stated in his Affidavit filed in Answer to this Amended Fixed Date Claim of September 18th, 2018, that he is the Commissioner of Lands and Survey in the Ministry of Natural Resources ("the Ministry"). He said that he has examined the Land Register for Parcels 5031, 148, 149 and 164 all located in Block 16, Caribbean Shores, Registration Section registered in the name of the New Deal Ltd. And certified copies of the land registers for these parcels are attached to his affidavit as Exhibits **WV1**, **WV2**, **WV3** and **WV4**, respectively. The witness says

that he has also examined the land registers for Parcels 4105, 4106 and 1335 all located in Block 16, Caribbean Shore, Registration Section, registered in the name of Arturo Matus and certified copies of the land register for Parcels 4105, 4106 and 1335 are attached as Exhibits **WV5**, **WV6** and **WV7**, respectively. Mr. Vallejos says that Parcels 5031, 148. 149 and 164 belonging to New Deal Ltd. And Parcels 4105, 4106 and 1335 belonging to Arturo Matus are in general proximity to each other. A copy of a cadastral map (a technical term for a map showing the extent, values and ownership of land for the purposes of taxation) depicting the general layout where the parcels are located is attached as Exhibit **WV8**.

### **Riparian Rights**

[27] Mr. Vallejos as the Commissioner of Lands and Surveys stated that a review of Survey Plan Entry no. 6887, a survey for Parcel 4105, Block 16, Caribbean Shores, Registration Section, registered in the name of Arturo Matus, indicates that that parcel's boundaries do not abut the Belize River. Survey plan entry no. 6887 shows a space labeled on the survey plan as 40 feet reserve(hereinafter the "Open Space"), between the North boundaries of Parcel 4105 and the Belize River. This Open Space portion of land at the time was national land as defined by section 2 of the National Lands Act, Chapter 191 of the Substantive Laws of Belize, R. E. 2011.

A copy of the survey plan entry no. 6887 indication the open space is attached as Exhibit **WV9**.

[28] Mr. Vallejos states that the Minister is empowered by section 7 of the National Lands Act to grant leases on such terms and conditions as he may see fit. The Open Space between the north boundaries of Parcel 4105 and the Belize River is not a reserve within the meaning of section 6 of the National Lands Act. The Office of the Commissioner of Lands has not designated the Open Space as a reserve as required by law under provision 6(3) of the National Lands Act, Chapter 191, Substantive Laws of Belize, R.E. 2011. He declares that based on advice received from the legal representatives of the First and Second Defendants, and from the learned Solicitor General, that he verily believes that Mr. Matus's constitutional riparian rights under section 3(d) and 17 of the Belize Constitution have not been breached.

### **Fraud/Mistake**

[29] On July 26<sup>th</sup>, 2011, New Deal Ltd. was issued with a Permission to Survey a portion of land of what became known as Parcel 5031. Licensed land surveyor Leonard Ysaguirre conducted the survey and the survey was authenticated and registered as entry no. 15380 dated 28<sup>th</sup> October 2013; a copy of Permission to Survey and copy of the survey are attached as Exhibits **WV10** and **WV11**, respectively. This witness says that at all relevant times the Minister was empowered

by section 7 of the National Lands Act to grant a Lease for Parcel 5031 to New Deal Ltd. By way of application to purchase (Ref. BZ-C-67/2013) New Deal Ltd. Applied for the purchase of Parcel 5031, and by Instrument Number 201406355 dated May 28<sup>th</sup>, 2014 the Government of Belize transferred Parcel 5031 to New Deal Ltd; a copy of Application to Purchase and Transfer Instrument are attached as Exhibits **WV12** and **WV13**, respectively.

[30] The Purchase price of Parcel 5031 was established in accordance with the standard practices and procedures based on the National Lands Act, Chapter 191 of the Laws of Belize R.E. 2011. The purchase price was paid, the transfer of land was executed in favour of New Deal Ltd. And land certificate was issued to New Deal Ltd pursuant to the Registered Land Act, Chapter 194 of the Substantive Laws of Belize, R.E. 2011. The Commissioner says that Mr. Matus has failed to give particulars of any fraud or mistake in the issuance of Parcel 5031 to New Deal Ltd, and in this regard, based on legal advice from the Legal Representatives from the First and Second Defendants and the Learned Solicitor General, he verily believes that the Application for a declaration that Parcel 5301 was obtained by fraud and/or mistake will fail.

**Ultra Vires Section 12(8) of the National Lands Act**

[31] The Commissioner of Lands states that Parcel 5031, Block 16 of the Caribbean Shores Registration Section falls within the boundaries of Belize City as enacted by the Belize City Council Act Chapter 85 of the Subsidiary Laws of Belize, R.E. 2003. He states that he has been advised that since Parcel 5031 falls with the boundaries of Belize City, section 12(8) of the National Lands Act, Chapter 191 of the Laws of Belize is inapplicable; the witness also says that he verily believes that the creation and issue of Parcel 5031 is not void and ultra vires section 12(8) of the National Lands Act and is not subject to a reserve not exceeding 66 ft.

### **Easement**

[32] Mr. Vallejos testified that Mr. Matus is the registered proprietor of Parcel 4106, Block 16 of the Caribbean Shores Registration Section which is immediately adjacent to Parcel 4105. Parcel 1335, Block 16, Caribbean Shores Registration Section is immediately adjacent to Parcel 4106 which has access to a public road. He has been advised by his legal representative that Mr. Matus has access to a public road through Parcel 4106 and Parcel 1335. Three Parcels (4105, 4106 and 1335) are not separated by fences and houses Mr. Matus's business and machinery. It is Mr. Vallejos's belief that an easement of necessity is not one which is merely necessary for the reasonable enjoyment by Mr. Matus of his property; it is also his belief that

Mr. Matus's application for an easement of necessity despite having access to a public road through his property Parcels 4105, 4106 and 1335 does not meet the legal threshold and will fail.

[33] The Commissioner of Lands further states that the Ministry's records do not indicate that Mr. Arturo Matus registered any concern regarding road access when he applied for or obtained Parcel 4105. The witness also states that the letter issued from the Ministry of Lands reference LR/C2/2016(38) to Clinton Gardiner, the Agent of Mr. Matus, was issued prematurely and in error. He says that letter was issued before a thorough analysis of the facts and circumstances was ascertained.

**Cross-examination of Mr. Matus by Mr. Bradley**

[34] Mr. Vallejos was questioned as to whether he had referred to certain searches conducted by him and his office which determined who owns what land in the area relevant to this claim as shown in Exhibit **WV8**. He agreed. He also agreed that the document showed Parcels 148, 149,164, and 5031 and that he found out that all those properties were owned by New Deal Ltd. The witness also agreed with counsel's suggestion that his research had shown that Parcels 4105, 4106 and 1335 were all owned by Arturo Matus, and that New Deal Ltd. only acquired title to Parcel Parcel 5031 in 2014. Mr. Vallejos also agreed that Exhibit **AM4** is a letter written to Mr. William Quinto, Director of the Third Defendant by the Ministry of Natural

Resources informing him that there had been an error in the size of the portion issued to his company; the letter read as follows in the second paragraph:

*“We write to inform you that research was carried out by the Ministry of Natural Resources and Immigration and it was discovered that the recording was erroneous in that New Deal was issued a portion of land comprising 520.418 square meters which belongs to Arturo Matus. The size of Parcel 503` should be 1.67 acres and not 1.709 acres as stated on the Land Register and on your corresponding Land Certificate.”*

[35] The Commissioner of Lands agreed that this letter indicates that a portion of New Deal Ltd.’s land was issued by the Ministry in error. He then agreed that the portion referred to is approximately 520.418 square meters located directly in front of Parcel 4105, between that Parcel and the Belize River; it is the area shaded and highlighted on Exhibit **WV8**. He then agreed with the suggestion that the intention of this letter Exhibit **AM4** was to communicate that the government wanted to sell this area to New Deal Ltd., but not the area in front of Arturo Matus’s property.

[36] The witness was asked about a 40 foot reserve which he had termed an “*open space*”; he agreed with learned counsel’s suggestion that he did not know whether this 40 feet area is land or river or a combination of land and river. This was the area between Mr. Matus’s land and the Belize River. On the survey of the property shown in Exhibit **WV9**, the witness agreed that the 40 feet on that survey would have been



put in by the surveyor. He was then questioned about the high water mark and the low water mark under Section 28 of the National Lands Act, and agreed that this is based on the tides; he also agreed that this section says that a person's boundary shall be the high water mark. He agreed that one of the reasons that a surveyor puts in a 40 ft. or 66 ft. reserve on a survey may be to compensate for the high and low watermark and for the fact that the water recedes then comes back. Mr. Vallejos agreed that while it was Mr. Matus's surveyor who put in that reserve area on Exhibit WV8, his department at the Ministry of Natural Resources accepted this survey plan; there was no evidence that his Ministry had written to Mr. Matus or to the surveyor indicating that anything was wrong with this survey plan.

[37] The Commissioner of Lands and Surveys was then questioned about an easement. He agreed that all parcels of land must have access to a public road, and that the access to Parcel 4105 shown on Exhibit WV8 was through Parcels 4106 and 1335. Parcel 4105 had no direct access to a public road.

**Cross-examination of Mr. Vallejos by Ms. Barrow**

[38] Mr. Vallejos was asked whether Parcels 5031, 4105 or 164 have direct access to a public road and he said no. He was also asked when the Lands Department receives a survey with a reserve marked on that survey whether it is contemplated that that reserve includes water, he agreed.

[39] In answer to a question by the Court, Mr. Vallejos said that some of the other reasons why a surveyor puts in a reserve (in addition to compensating for the high and low watermark on that property) may be that the Government is not yet prepared to dispose of the land as yet and so it marks out a reserve. The other reason has to do with erosion... rather than the person's land being eroded, Government makes some space for that to happen before the person's property erodes. He agreed that Parcel 5031 was a Government reserve before it was given to New Deal Ltd.

**Witness Statement of David Quinto for the Third Defendant**

[40] David Quinto, Businessman, of 11 Queen's Street, Belize City, Belize states that he is a director of the Third Defendant and that he is personally familiar with the history of the Company's ownership of the property involved in this claim. He also stated that he is duly authorized to make this witness statement on behalf of the Company.

**Land ownership in the area**

**The Company's properties**

[41] On 20<sup>th</sup> May 2014 the Company secured title to Parcel 5031, Block 16, Caribbean Shores/ Belize Registration Section ("Parcel 5031"). Parcel 5031 is bounded on the east and southeast by Parcel 148, on the south by Parcels 149 and on the southwest by Parcel 4105. Prior to securing title to Parcel 5031, and from as early

as 1983, the Company owned over sixteen (16) acres of land in the area by virtue of its ownership of three other parcels.

[42] Those three (3) other parcels are Parcel 148 which contains 1.13 acres, Parcel 149 which contains 13.6 acres and Parcel 164 which contains 1.43 acres (“together the original property”). When the Company acquired the original property in 1983, Parcel 149 was bounded on the north and east by national land. On the south of Parcel 149 there was national land along the bank of the Belize River and on the east there was a small creek branching off the mouth of the Belize River running into the sea. Parcel 164 was a small island at the mouth of the Belize River separated from Parcel 149 by the sixty-six (66) feet reserve and the small creek running from the Belize River mouth to the sea.

#### **The Claimant’s properties**

[43] Over time the creek separating Parcels 149 and 164 silted up and the creek ceased to exist. As a result of the silting, Parcel 164 ceased being an island. The land formed by the silt became Parcels 4105 and 4106. In 2003 the Claimant secured title to Parcel 4105 and in 2005 he secured title to Parcel 4106. As a result of the Claimant securing title to Parcels 4105 and 4106, the Company lost land access to Parcel 164.

#### **Company’s land use**

[44] In the 1980s the Company opened Rio Haul Motel on Parcel 149 and operated that hotel until 2004 when the hotel closed. Throughout the operation of the Rio Haul Motel and up until 2007, the Company maintained all the property surrounding the motel which included Parcels 148, 149, 164 and what is now Parcels 4105, 4106 and 5031. In 2007 the Company learned, through one of its trusted employees, that someone had placed obstructions in the area which prevented free access to the tractor used to maintain the land. Upon doing some research, Mr. Quinto learned that Parcels 4105 and 4106 had been formed and title had been issued to the Claimant.

[45] The obstruction created by the Claimant prevented the Company's land access to Parcel 164. After years of writing the Government of Belize about the interruption and denial created by the issuing of title to the Claimant of Parcels 4105 and 4106, they agreed to sell the Company Parcel 5031.

**Cross-examination of Mr. Quinto by Mr. Bradley**

[46] Mr. Quinto agreed that his company acquired Parcels 148, 149 and 164 much earlier than it did 5031. He also agreed that Parcel 164 was an island when he first acquired it, but it is presently no longer an island. The witness agreed that all the adjacent Parcels 164, 149, 148 and Mr. Matus's 4105 and 4106 which were formerly river or swamp became land over time; when Parcel 164 was an island, there was a

creek running between that parcel and the main land. He agreed that the 66 feet of reserve or national land would have run all the way along what would have been the Northern Border of Parcel 149 and all the way down and then to this creek. The area which had been designated as a reserve, the northern portion which is between Parcel 149 and the Belize River was the area that his company applied for and which later became Parcel 5031. The witness agreed that when he spoke of the obstruction created by the Claimant he was referring to Parcel 4105 and Parcel 4106 belonging to the Claimant because there was actual land there now. Mr. Quinto agreed that he does not live in this area. He only learnt of Mr. Matus's title to Parcels 4105 and 4106 in 2007 when they did some investigation; he explained that his company did some research because of the obstruction and because of Mr. Matus's denial that his company had been maintaining the whole property (Parcels 148, 149, 164, 5031, 4105, and 4106) since the 1980s. Mr. Quinto agreed that he nor his company never applied for ownership of Parcels 4105 or 4106; he agreed that he did not attach any letter showing that he ever wrote to the Government nor did he bring any claim against the Government regarding the problems of obstruction he experienced due to the issue of Parcels 4105 and 4106 to the Claimant. The witness conceded that there is an area of reserve in front of his company's Parcel 149 and in front of Mr. Matus's parcel 4105. Mr. Quinto said he did not see a wooden dock when they acquired title to Parcel 5031 in 2014; he denied that he and his company interrupted

Mr. Matus's access to the Belize River through that slither of land when they acquired that portion of the reserve between Mr. Matus's Parcel 4105 and the Belize River.

**Cross-examination of Mr. Quinto by Mrs. Tucker**

[47] Mr. Quinto was asked about the creek and the 66 feet reserve that over time became land that would have filled in, and the reserve would have remained. He agreed that Mr. Matus's land would have formed part of that 66 feet reserve. He said that he applied for title to Parcel 5031 because the issue of title to Parcels 4105 and 4106 to Mr. Matus, denied his company access to traverse from their Parcel 149 to their Parcel 164.

**Evidence of Mr. Marcelo Benavides for the Third Defendant**

[48] Mr. Marcelo Benavides of 5 Plantation Road, Ladyville, Belize District, Belize states that over the period 1993 to June 2004, he was the part-time manager and maintenance supervisor of the Rio Haul Motel which was situated on property belonging to the Company, which he now knows is Parcel 149, Block 16, Caribbean Shores/Belize Registration Section ("Parcel 149"). As maintenance supervisor for the Rio Haul Motel, he was also tasked with cutting and maintaining all the land surrounding the Motel, up to the riverbank. This witness said that he thought the

Company owned the entire area that he had been maintaining. Mr. Benavides states that he now knows that the property that he was maintaining was property belonging to the Company under title to Parcel 148, Block 16, Caribbean Shores/ Belize Registration Section (“Parcel 148”), Parcel 149 and Parcel 164, Block 16, Caribbean Shores/ Belize Registration Section (“Parcel 164”) as well as a portion of land then belonging to the Government of Belize which is now Parcel 5031, Block 16, Caribbean Shores/ Belize Registration Section (“Parcel 5031”).

[49] Upon the closing of the Rio Haul Motel in 2004, Mr. Benavides continued to manage all the property in the area of Rio Haul Motel which included keeping the property cut and clean. In early 2007 he was no longer able to gain access to Parcel 164, which he then knew only as the island, because Mr. Arturo Matus Sr. placed old piles in the soft, low lying area the tractor used to pass to Parcel 164. When Mr. Benavides inquired of Mr. Matus Sr., who was the only other person that frequented that area at the time, about his ability to gain access to the island Mr. Matus jokingly told him that Mr. Benavides would need to build a bridge.

[50] After having the access to the island restricted, Mr. Benavides continued to cutting all the property he was then able to access which he now knows includes Parcel, 148, 149 and 5031 until 2016. In 2016 the Company started construction on Parcel 149 and Mr. Benavides was transferred to work at Quinto Industry located at 1½ Miles Philip Goldson Highway, Belize City, Belize.

### **Cross-examination of Mr. Benavides by Mr. Bradley for the Claimant**

[51] Mr. Benavides agreed that he had referred to Parcels 148, 149 and 5031 in his witness statement, but that he had not referred to Parcels 4105 or 4106. He said he did not know that the company only acquired title to Parcel 5031 in 2014. Looking at AM2 and AM3 shown to him by counsel, the witness agreed that Parcel 148 as shown on the map is the parcel of land closest to the Northern Highway, Parcel 149 is the large area in the centre right and Parcel 164 is the area which is shown as an island. He agreed that when he used to maintain these properties he would have maintained Parcel 149 all the way up to the Belize River. He also agreed that at that time when Parcel 164 was an island, he had believed that the property belonging to Mr. Quinto and New Deal Ltd. extended all the way to that Northern Belize River as shown on the map. Mr. Benavides admitted that he does not know of any reserve, and that he only knew of Mr. Quinto's land and that it goes to the Belize River. He agreed that Parcels 148, 149 and 164 have changed much over time since 1993 to now and that Parcel 164 was at one point an island. He also agreed that since the time when he maintained this area in 1993 to now, the land boundary where the water and land would have changed.

There was no cross-examination by Ms. Tucker and no re-examination by Ms. Barrow; the Third Defendant closed its case.

### **Legal Submissions on behalf of the Claimant**



[52] Mr. Darrel Bradley on behalf of the Claimant submits that this case includes claims for constitutional redress, declarations, rectification of the land register, damages and a permanent injunction. The case concerns rights to a small portion of land referred to as the reserve area described below and for riparian rights to the Belize River. The Claimant, by his amended Fixed Date Claim Form dated 18 May, 2018, seeks the following orders from this Honourable Court:

- (1) A declaration that the purported taking away of the Claimant's riparian rights by the creation, issue and sale to the Third Defendant of Parcel 5031 Block 16 in the Caribbean Shores/Belize Registration Section (hereinafter called Parcel 5031) other than by legislation which provides for adequate compensation payable within a reasonable time contravenes the constitutional rights of the Claimant as contained in Sections 3(d) and 17 of the Belize Constitution and is accordingly null and void and of no effect, and further, or alternatively, that the Claimant is entitled to substantial damages.
- (2) A declaration that at all material times the reserve area, shown and delineated in the survey of the Claimant's land, done by Licensed Surveyor C.B. Samuels, formed part of the Claimant's land and belonged to the Claimant, or that the Claimant has a proprietary or beneficial interest therein.

- (3) A declaration that the Third Defendant's title to a portion of Parcel 5031 is extinguished by virtue of Section 22 of the Limitations Act or at least the portion of Parcel 5031 directly in front of the Claimant's land.
- (4) A declaration pursuant to Section 143 of the Registered Land Act that the creation of Parcel 5031 and the issue and transfer of that parcel of land to New Deal Limited as proprietor was obtained, made or omitted by fraud of mistake and in contravention of law.
- (5) A declaration that the creation and issue of Parcel 5031 was void and ultra vires Section 12(8) of the National Lands Act, read together with the other provisions of the legislation, which requires all surveys of National Lands be subjected to a reserve not exceeding 66 ft.
- (6) A declaration that the creation and issue of Parcel 5031 was void and ultra vires the powers of the Second Defendant because Parcel 5031 was previously designated as a reserve area and constituted the only access way by way of public lands for the Claimant to access the Claimant's Parcel 4105, which is immediately adjacent to Parcel 5031.
- (7) A declaration that an easement, including an easement of necessity, is created over and through Parcel 5031 in favour of the Claimant and permitting the Claimant to access the Claimant's Parcel 4105, which is immediately adjacent to Parcel 5031.

- (8) An order directing the Registrar of Lands to rectify the register in respect to Parcel 5031 by cancelling the register in respect to Parcel 5031 and or cancelling the registration of New Deal Limited as current registered proprietor of Parcel 5031 and further that the Registrar of Lands be directed to issue title to a portion of Parcel 5031 to the Claimant, if this register is not closed.
- (9) A permanent injunction restraining the Third Defendant by itself or by its servants, agents, workmen or otherwise, howsoever, from coming unto Parcel 5031 or from commencing or continuing any development or construction thereon, including commencing or continuing the erection of a fence or other structure or from interfering in anyway with the Claimant's interest or right to Parcel 5031, including the Claimant's riparian rights, or at least to the portion of Parcel 5031 directly in front of the Claimant's land.
- (10) Damages against New Deal Limited, either directly or through its servants and or agents, for trespassing or interfering with the Claimant's property rights, including riparian rights.
- (11) Damages by way of compensation for infringement of the Claimant's constitutional rights for the taking away of the Claimant's property rights, including riparian rights.

(12) Such further or other orders or directions or consequential relief as this Honourable Court may consider appropriate for the purpose of enforcing or securing the enforcement of the aforementioned declarations or orders.

(13) Costs.

(14) Such further or other relief as this Honourable Court deems just.

The claim is disputed by the Defendants.

### **Background Facts**

[53] The facts in this case are straightforward and are largely not in dispute. The proximity of certain parcels of land are shown by a cadastral map “**Exhibit WV8**” unto the Second Affidavit of the Commissioner of Lands, Wilbert Vallejos. The Third Defendant owns Parcels 148, 149, 164 and 5031. The Claimant owns Parcels 4105, 4106 and 1335. The Claimant says, at Paragraph 4 of his witness statement, that he received permission from the Commissioner of Lands to survey what later became known as Parcel 4105 in or about 2002. After receiving permission, the Claimant proceeded to engage Licensed Surveyor, C.B. Samuels, to carry out a survey, and the surveyor created what later became known as Parcel 4105. The surveyor included in the survey plan a reserve area of approximately forty feet. The survey plan is attached unto the Claimant’s witness statement as “**AM4**”.

[54] The Claimant goes on to say, at Paragraph 6 of his witness statement, that, even though the survey plan from C.B. Samuels includes a reserve area, from since

he was in occupation around 2002 to a date in 2017 the Claimant has always occupied all the land up to and immediately abutting a body of water called the Belize River. He says that his land always had river frontage and that the land went all the way up to the water's edge as existed then based on the ebb and flow of the river or depending on the high water mark. So, his land abutted the Belize River. The Claimant goes on to say in that same paragraph that Parcel 4105 was always riverfront and the reserve area was simply the distance between the high water mark and the low water mark as measured by the surveyor. At high tide the water from the river came all the way up to the edge of Parcel 4105, and sometimes the water from the river went into Parcel 4105 as much as ten feet. At low tide the water receded and more of the riverbank or seabed was exposed. But at all times, the Claimant says, he had unimpeded access to the Belize River.

[55] The Claimant goes on to say, at Paragraph 7 of his witness statement, that since his carrying out of the survey in 2002 he has exercised full occupation, possession and control of all the land described as Parcel 4105 up to and including the water's edge. The Claimant says that he constructed a dwelling house on part of Parcel 4105 and 4106, where he still lives today, and that he filled up the entire parcel of land, which was originally swampland. He also filled up a portion of the reserve area to better access the river and to prevent erosion, and he erected a docking facility and pier along the water's edge to moor his boats. The Claimant also

maintained the entire area by regularly cleaning the riverbank and he speaks of activities, including fishing, and he says that he always considered the reserve area part of his land. The Claimant attaches as “**AM6**” pictures of the docking facility.

[56] On 20 May, 2014 the Third Defendant obtained title to Parcel 5031. The entire Parcel 5031 was originally a reserve made up of the original reserve area in front of the Third Defendant’s Parcel 149 and the reserve area in front of the Claimant’s Parcel 4105. The Claimant says, at Paragraph 8 of his witness statement, that he discovered that Parcel 5031 was created because he saw construction going on in the area of the reserve. He says that no one told him that this parcel was going to be created and he was not notified or consulted when it was being surveyed. He simply observed the Third Defendant constructing a fence and blocking off his entry to the reserve area and access to the Belize River. The fence was substantially completed by the ending of 2017, and since that time the Claimant could no longer access the reserve area and the Belize River. At Paragraph 9 of his witness statement, the Claimant speaks about Parcel 5031 interrupting his only public access way and he claims for the creation of an easement owing to his access through the reserve area. The Claimant attaches unto his witness statement as “**AM7**”, “**AM8**” and “**AM9**”, pictures showing the fence being casted and completed and pictures of the proximity of Parcel 4105, the reserve, and the river.

[57] The Claimant, in the remaining parts of his witness statement, speaks about his efforts to complain about the interruption of his access to the Belize River and to seek redress, including going to the Commissioner of Lands, and having his lawyer write to the Third Defendant, and the response from the Lands Department. Notably, the Assistant Registrar of Lands wrote to the Third Defendant's William Quinto by letter dated 24 March, 2016 (see "AM10"). The entire letter is reproduced below:

*"Mr. William Quinto  
New Deal Limited  
Mile 2 Northern Highway  
Belize City  
Belize District*

*Dear Sir:*

*Re: Registration Section Caribbean Shores/Belize, Block No. 16, Parcel No. 5031 (1.709 Acres)*

*On 28<sup>th</sup> May, 2014 New Deal Limited was registered as proprietor for the captioned parcel of land by virtue of a Transfer of Land No. LRS-201406355 dated 28<sup>th</sup> May, 2014 from the government, and Land Certificate bearing the same Instrument No. and date were issued.*

*We write to inform you that research was carried out by the Ministry of Natural Resources and Immigration and it was discovered that the recording was erroneous in that New Deal Limited was issued a portion of land comprising 520.418 s.m., which belongs to Arturo Matus. The size of Parcel 5031 should be 1.67 acres, and not 1.709 acres, as stated on the Land Register and on your corresponding Land Certificate.*

*A resurvey bearing Entry No. 16074 dated 31 March, 2015 was done at the request of Arturo Matus.*

*Kindly note that your written consent to amend the size of Parcel 5031 in the Caribbean Shores/Belize Registration Section is being sought. You are also*

*being asked to surrender Land Certificate LRS-201406355 in order for the rectification process to commence.*

*The Ministry anticipates a favourable response within thirty (30) days from the date of this correspondence.*

*Yours Respectfully,*

*Yvette Price (Ms.)  
Assistant Registrar of Lands  
For Registrar of Lands  
Belize Lands Registry”*

[58] The Commissioner of Lands, Wilbert Vallejos, was cross examined on this letter. He pointed out that the area referred to in the letter as 520.418 square meters was the piece of land immediately in front of the Claimant’s Parcel 4105 and between Parcel 4105 and the Belize River. He shaded this area unto the court’s copy of “**Exhibit WV8**”. He was then asked by the Claimant’s counsel whether or not this letter purports to say that the Government of Belize had intended to give the Third Defendant title only to the reserve area in front of the Third Defendant’s Parcel 149, but the Government of Belize never intended to give the Third Defendant the portion of reserve in front of the Claimant’s Parcel 1405. The Commissioner agreed that the letter does say this was the intention of the government.

[59] The Commissioner of Lands was then asked by the Claimant’s counsel if he knew what was the high water mark and the low water mark. He said yes. He was then asked if this was in relation to high tide and low tide, and he said yes. The



Claimant's counsel then asked him to comment on whether or not a surveyor puts in a reserve unto a survey plan to compensate for the fact that the water may rise and recede based on the ebb and flow of the water dependent on the tide. He said yes, but he added that this was not the only reason for the inclusion of a reserve. The court then intervened and asked: what are other reasons for the inclusion of a reserve on a survey plan? The Commissioner said that it could be, as the Claimant's counsel said, to compensate for the rise and lowering of the water levels based on the tides, but it could also be to compensate for erosion so that if water caused erosion the reserve serves as a buffer. The Commissioner also said that a reserve may be required if the government wanted to keep a portion of land for use later on. But, it is to be noted that the Commissioner of Lands, at Paragraph 9 of his second affidavit, stated clearly that this reserve buffering Parcel 4105 was not designated by the Commissioner as a reserve. So, it follows that the purpose of this particular reserve was not to keep land for later use by the government, because it would have been reserved by the government. The purpose of this particular reserve was always to compensate for the ebb and flow of the water and to protect Parcel 4105 from the water, and this is why the Claimant's surveyor included this reserve area in the survey plan.

[60] The Claimant's counsel also asked the Commissioner of Lands whether or not boundary markers for reserve land is sometimes located in the water. So that, where

a reserve is included on a survey plan and marked out as being “forty feet” the end of that forty feet may be located in the water. The Commissioner said yes. This coincides with the Claimant’s evidence that the actual area of land for the reserve unto Parcel 4105 was small and that the high tide caused the water to cover the reserve entirely and at times the water came into the Claimant’s Parcel 4105.

[61] The Claimant invites this Honourable Court to consider that there is no evidence to contradict this fact testified to by the Claimant that based on the tides, the waters from the Belize River actually washed the edges of Parcel 4105 and came into Parcel 4105. All the witnesses for both sides, including the Claimant and the Third Defendant’s William Quinto, spoke of the fact that the land in this area, including all the relevant lands and Parcel 4105, was originally swampland. William Quinto said that his Parcel 164 was originally an island, and that the Claimant’s Parcels 4105 and 4106 were originally entirely comprised of a stream of water, and that this stream eventually silted up through the process of accretion, or was reclaimed and later became the Claimant’s land, as Parcels 4105 and 4106. It is, therefore, quite easy and reasonable to draw the inference that Parcel 4105 abutted the water’s edge.

## **THE LAW AND SUBMISSIONS**

### **Issue One: Whether or not the existence of the reserve area debars the Claimant from claiming riparian rights**

[62] Much of this case turns on one legal contention of the parties, that is, whether the existence of the reserve area between the Claimant's land and the Belize River debars the Claimant from claiming riparian rights. Because this is a central legal contention of the Defendants, the Claimant proposes to deal with this question first. The Claimant submits, as a foundational point, the importance of appreciating conceptually what the reserve area is. The reserve area, included in the survey plan by the Claimant's surveyor, represents the area between the high water mark and low water mark. This is the area of the riverbank, or the area of the foreshore or beach, all of which terms are synonymous, where water may rise and recede. Note from the cases referred to below, which deal with riverbanks, the term 'foreshore' is used interchangeably to denote that these terms mean the same thing. A foreshore is defined in the interpretation section, Section 2, of the Registered Land Act, Chapter 194 of the Substantive Laws of Belize, Revised Edition 2000 (**TAB1**), as follows:

*“‘Foreshore’ means the part of a shore between the high-water and low-water marks.”*

[63] The National Lands Act, Chapter 191 of the Substantive Laws of Belize, Revised Edition 2003 (**TAB 2**), incorporates reference to the high and low-water marks. Section 28 says:

*“In any grant, lease or other document where the sea, or any sound, bay, or creek or any part thereof, affected by the ebb or flow of the tide, is described*

*as forming the whole or part of the boundary of the land to be disposed of, such boundary or part thereof shall be deemed and taken to be the line of the high water mark at ordinary tides.”*

[64] This section of the National Lands Act takes into consideration that in any land that adjoins a body of water, there is a bank or shore affected by the tides, and this section makes it clear that the boundary of the land is the high water mark at ordinary tide. This is the situation of the Claimant’s Parcel 4105. The reserve area was included by the Claimant’s surveyor merely to compensate for the ebb and flow of the water, and at high tide the waters of the Belize River covered the entire reserve area and washed unto Parcel 4105, as the Claimant’s evidence describes. This is sufficient in law to make Parcel 4105 subject to riparian rights.

[65] The English House of Lords case of *Lyon vs. Fishmongers’ Company* 1 App. Cas. 662 (TAB 3) is at point. This case was followed in the below cited Belize Supreme Court case of *National Fishermen Producers Co-operative Society vs. Brown Sugar Market Place Limited (formerly River Front Duty Free Limited)* Claim No. 540 of 2006. This Belize case goes into extensive detail on the nature of riparian rights, and is relied upon heavily. In the *Lyon vs. Fishmongers’ Company* case, there was a bank or inlet located between the Plaintiff’s land and the River Thames. This notwithstanding, Lord Selborne said at Page 683:

*It is true that the bank of the tidal river, of which the foreshore is left bare at low water, is not always in contact with the flow of the stream, but it is in such contact for a great part of every day in the ordinary and regular course of nature, which is an amply sufficient foundation for a natural riparian right.*

[66] Halsbury's Laws of England (**TAB 4**) contains the following extract regarding riparian rights:

*“An owner of land abutting on water (called a “riparian owner”) is entitled ex jure naturae to access and regress from that water, whether it is a tidal or non-tidal river, a lake or the sea, where it is in contact with his frontage, provided his land is in actual daily contact with the water, either laterally or vertically. In the case of land abutting on a tidal river or the sea, where the foreshore is left bare at low water so that there is no continuous contact between the riparian land and the water, there is sufficient contact to support a right of access, for there is actual contact for much of the day.*

*If in the course of time the water recedes from the riparian land owing to natural silting up or artificial reclamation, the riparian owner may exercise his right of access over the accreted or reclaimed land.”*

(Emphasis mine)

[67] At note 9 for this section of Halsbury's Laws of England it says:

*“A-G of Straits Settlement vs. Wemyss (1889) 13 App Cas 192, PC; Hindson vs. Ashby [1896] 2 Ch 1, CA, where a riparian owner was held entitled to a right of access over land formerly part of the riverbed belonging to the owner of a fishery; Mercer vs. Denne [1904] 2 Ch 534 (affd.) [1905] 2 Ch 538, CA); Mellor vs. Walmesley [1905] 2 Ch 164, CA, where the land between the medium and high water mark and that described in a conveyance was held to be an accretion subsequent thereto so that the grantee under the conveyance had a right of access to the sea over the land, the grantor being estopped from saying that it was not seashore; A-G of Southern Nigeria vs. John Holt & Co. (Liverpool) Ltd [1915] AC 599, PC, where it was held that reclamation of the foreshore by the Crown or a third person would have no effect on the frontager's riparian rights, so their rights may exist even after the land has ceased to be the subject to the flow and reflow of the tide.”*

[68] In the English case of *Attwood vs. L Lay Main Colliers* [1926] Ch. 444 (**TAB 5**), the Defendant was using the River Alyn as the source water for its company's factory and machine operations. The factory complex was located one mile away from the riverbank. The Plaintiff sought declarations and an injunction to restrain

this usage, and the Defendant claimed that its land was a riparian tenement. The court made the following applicable statement of law:

*“The question of whether a particular piece of land sustains the character of a riparian tenement or not, is a question of fact and must be determined according to the special circumstances... In my judgment, the occupation of the strip of land upon which the mineral railway had been constructed does not have the effect of converting the site of the Defendant company’s works, which is at least a mile away from the river, into a riparian tenement, an expression which in my opinion connotes, in addition to contact with the river, a reasonable proximity to the riverbank.” (See page 459)*

[69] In the Belize Supreme Court case of *National Fishermen Producers Co-operative Society vs. Brown Sugar Market Place Limited (formerly River Front Duty Free Limited)* Claim No. 540 of 2006 (TAB 6), a case extensively referred to below, the Belize Supreme Court applied the Canadian Privy Council case of *North Shore Railway Company v Pion and Others* 14 App. Cas. 612. In that Canadian case, the facts included that there was a riverbank separating the Plaintiff’s land from the River St. Charles in Quebec, but this notwithstanding the Plaintiff’s land still remained a riparian tenement. The facts were that the Defendant built a railway on the riverbank extending along the entire river front of the Plaintiff’s riparian land,

on the bank of the River St. Charles. The riverbank did not belong to the Plaintiff but the Plaintiff had access to the river through the embankment. The Defendant left a fifteen feet opening directly opposite the land for access, and another opening outside the Plaintiff's frontage at a public road. The claim of the Plaintiff for damages (indemnity) for injury to its land was upheld by the Privy Council. Their Lordships said that the two openings were no answer to the claim for indemnity for a private right. The Privy Council applied the above referred to case of *Lyon vs. Fishmongers' Company*. (See paragraph 27 page 20)

[70] At Paragraph 23 of the *National Fishermen Producers Co-operative Society vs. Brown Sugar Market Place Limited (formerly River Front Duty Free Limited)* the court outlined the bundle of rights associated with riparian rights, and made the following statement (emphasis mine):

*Over the years, the commonly identified rights in the bundle of riparian rights have been these... 2. The right to land and depart from his bank, and pass and repass over the shore or bed at all times even if the shore or bed is not vested in the riparian owner – Macey v Metropolitan Board of Works (1864) 3 New Rep 669; Marshall v Ulleswater Steam Navigation Company (1871) 7 Q.B. 166; and Attorney General*

[71] Then again, at the same Paragraph 23 of this case, the court says the following:



*“... Furthermore, the riparian owner must not construct or put down anything which disturbs the foreshore or riverbed, which he does not own, or which will interfere with the right of the public to navigation.”*

[72] The English Court of Appeal case of *Hindson vs. Ashby* [1894 H. 3703] (TAB 7) is also relevant. In that case the Plaintiffs were entitled to a piece of land bounded on one side by the River Thames. The land ended in a bank of 5 to 6 feet high, and the bed of the river reached to its foot, the water often reaching some height above the foot. The Defendant was entitled to a fishery in the river and to the bed of the river. The water of the river, owing to the removal of a weir, sank, and at the foot of the bank a deposit of soil was made forming a strip of land on which some large trees grew, and which during some part of the year was left dry, it was overflowed during a considerable part of the year. At the foot of the bank the Defendant dug a ditch which he regularly cleaned out for more than twelve years, and afterwards filling it up with concrete so as to make a footpath. The Court of Appeal said that the strip of land had not ceased to form part of the bed of the river and that, when it was dry, the Plaintiffs, as riparian owners, were entitled to access over it and through the Defendant's land as if it had remained seabed.

[73] The English Court of Appeal case of *Port of London Authority vs. Caney Island Commissioners* [1932] 1 Ch. 446 (TAB 8) concerns ownership of certain lands adjacent to the River Thames. But in the same case the Plaintiff sought, and

obtained, a declaration that the Plaintiff was a riparian owner, notwithstanding the fact that there was a ditch, seawall and embankment located between the River Thames and the Plaintiff's land. The embankment had been expanded over the course of time to include a strip of land as a foreland or foreshore of some sixteen acres located between the river and the new embankment. The court stated:

*“But it is contended that even if this be so, the Plaintiffs are not riparian owners, with a right of access to the Thames. It is said that the river was their foe, and that the ditch and wall served as a rampart to ward off its incursions and effectually stood between the landowners and the tidal water, with the result that all riparian rights belonging to an owner of the soil washed by a river have been lost. On this point an observation must be made at once, arising out of the decision which I have already expressed. The wall or ditch which has been maintained and built, does not interpose a strip of land belonging to a separate landowner between the estate of Colonel Dalbiac and the river. There is a bulwark which renders the riparian land more valuable, but it does not sever the estate from the river. On this point it is to be noticed that the survey made in May, 1792, contains upon it the representation of a gate which provides access from the bank or road upon it to the sea.*

*There is no indication that Colonel Dalbiac's land has been enclosed and separated from the water.*

*It is abundantly clear from the speeches of the noble Lords in Lyon vs. Fishmongers' Co. (2) that a riparian owner on a public navigable and tidal river has the ordinary riparian rights. His rights do not depend on the ownership of the soil over which the stream flows. As Lord Selborne says, it is necessary for the existence of a riparian right that the land should be in contact with the flow of the stream, and he adds that lateral contact is as good as vertical. It seems that provided there is access, the rights accrue to the adjacent owner. I have already pointed out that the means of contact are clearly indicated in 1792, and the bank and ditch were not made to sever the riparian owner from the stream, but to enhance the value of the land to which the riparian rights are attached." (See page 481)*

[74] In the same way that the ditch, wall, and embankment was made to enhance the value of the land in the above cited case of *Port of London Authority vs. Caney Island Commissioners*, the reserve area in the instant case was included on the Claimant's plan by the Claimant's surveyor to enhance the value of the Claimant's estate. The inclusion of the reserve was never intended, and did not in law, sever the Claimant's estate from the Belize River, so as to deprive the Claimant from his

riparian rights. The un-contradicted evidence shows that the Claimant at all material times enjoined open and free access to the Belize River from Parcel 4105.

**Issue Two: If Parcel 4105 is a riparian tenement then what rights flow to the Claimant?**

[75] The second issue for determination is: if Parcel 4105 is a riparian tenement, as the Claimant submits, then what rights flow to the Claimant from this finding?

Much reliance is placed on the above cited Belize Supreme Court case of *National Fishermen Producers Co-operative Society vs. Brown Sugar Market Place Limited (formerly River Front Duty Free Limited)*. The following passage from Paragraph 21 is applicable:

*“I understand the principle of riparian right to be this. By the fact that his land abuts on a river, lake or sea, a riparian owner is entitled ex jure naturae to a bundle of rights known as riparian right. The right is incidental to the ownership or possession of the riparian land, and is a private right, not owned together with the public – see Rose v Groves (1843) 5 Man & 613; Miner v Gilmour 12 Moe P.C. 131; William Lyon v The Warden & Co of the Fishmonger’s Co. and the Conservators of the River Thames (1876) 1 App. Cas. 662 H.L; and Michael Feinstein and Others v Carlos Romero and Laura Thompson, Civil Appeal No. 10 of 2003. The last case is a case in which I granted an interlocutory*

*injunction order based on riparian right. The Court of Appeal confirmed my decision.”*

[76] At Paragraph 23 of the same judgment, the court goes on as follows to describe the rights associated with a riparian tenement:

*“Over the years, the commonly identified rights in the bundle of riparian rights have been these. 1. The right of the riparian owner of egress to and regress from the water to the riparian land. It is separate from the public right of navigation that the riparian owner may enjoy together with the public – the William Lyon v The Fishmongers’ case, 2. The right to land and depart from his bank, and pass and repass over the shore or bed at all times even if the shore or bed is not vested in the riparian owner – Macey v Metropolitan Board of Works (1864) 3 New Rep 669; Marshall v Ulleswater Steam Navigation Company (1871) 7 Q.B. 166; and Attorney General of Southern Nigeria v John Holt and Company (Liverpool) Limited [1915] A.C. 599; 3. The right to moor vessels adjacent to his land for such period as is necessary to load and unload, but the riparian owner must not interfere with the right of access of another riparian owner, or with the public right of navigation – the Mercey v Metropolitan Board of Works case, and Original Hartlepool Collieries Co. v Gabb (1877) 5 Ch D 713. Furthermore,*

*the riparian owner must not construct or put down anything which disturbs the foreshore or riverbed, which he does not own, or which will interfere with the right of the public to navigation – Iveagh (Earl) v Martin and Another [1960] 2 All ER. 668. 4. The right to have the water of the river flow in its natural state and flow without sensible diminution or increase, and further, the right to take and use the water that abuts on his land for ordinary use, and for restricted extraordinary use, subject to the same rights of other riparian owners.”*

[77] At Paragraph 24 of the same judgment the following was said:

*“The above specific rights were identified in a case by case manner in typical common law way. As early as the year 1843, in the Rose v Groves case, the right of egress and regress of an owner of riparian land was firmly established as a private right, together with the rule that interference with the right was actionable without proof of special damage occasioned.”*

[78] At Paragraph 34 of the same judgment His Lordship Justice Awich, as he then was, recognizes that riparian rights are “property rights of a very great value”. He says:

*“In my view, the three judgments in the Lyon v Fishmongers’ Co. case (which is referred to in these submissions) were and are still the most important developments in the right of egress and regress and the right of navigation. In their judgments, their Lordships made many extensive statements of the law regarding riparian right and the right of navigation. Right in the opening paragraph of his judgment, Lord Chancellor (Lord Cains) stated that:*

*‘It is to be observed that the possession by the appellant of a west frontage to his wharf and of the power of loading and unloading there as well as on the south was to him property of very great value’*. (Emphasis mine)

[79] The same *National Fishermen Producers Co-operative Society vs. Brown Sugar Market Place Limited (formerly River Front Duty Free Limited)*, at Paragraphs 25 and 26, recognizes that the taking away of riparian rights constitutes a breach of the Belize Constitution:

*“25. In 1859, in Duke of Buccleuch v Metropolitan Board of Works, Law Rep. 5 H.L. 418, and later in Metropolitan Board of Works v McCarthy, Law, Rep. 7. H. L. 243, it was confirmed that riparian right was a private right to property, and it was held further that, taking it away required legislation that provided for compensation. The latter principle of law is*

*a constitutional principle in Belize. Right to property is protected in s: 3 of Belize Constitution Act, Cap 4, in these words:*

*'3 Whereas every person in Belize is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, ... to each and all of the following, namely -*

*(a) life, liberty, security of the person, and the protection of the law;*

*(b) freedom of conscience, of expression and of assembly and association;*

*(c) protection for his family life, his personal privacy, the privacy of his home and other property and recognition of his human dignity; and*

*(d) protection from arbitrary deprivation of property;*

*the provisions of this Part shall have effect for the purpose of affording protection to those rights and freedoms, subject to such limitations... being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.'"*

**[80]** The above provisions in s:3 are complemented by s:17 which lays down the details of the protection afforded to the right to property. The details are the following:



*“17-(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired except by or under a law that –*

*(a)prescribes the principles on which and the manner in which reasonable compensation therefor is to be determined and given within a reasonable time; and*

*(b)secures to any person claiming an interest or right over the property a right of access to court for the purpose of - ...”*

[81] Because of the foregoing principle that riparian rights are constitutionally protected in Belize, the only way that such a right can be taken away is by a law enacted by the legislature to provide for reasonable compensation. This is recognized at Paragraph 35 of the *National Fishermen Producers Co-operative Society vs. Brown Sugar Market Place Limited (formerly River Front Duty Free Limited)*. If there was no such law providing for compensation then the Commissioner of Lands in creating Parcel 5031, which essentially deprived the Claimant of his riparian rights, acted unlawful. The Commissioner of Lands acted in a manner to deprive the Claimant of his riparian rights without lawful authority.

**Issue Three: Have the Defendants interfered with the Claimant’s riparian rights?**

[82] The third issue is, have the Defendants interfered with the Claimant's riparian rights? The answer is yes. The Second Defendant created Parcel 5031, and a portion of Parcel 5031 admittedly has deprived the Claimant of his access through Parcel 4105 to the Belize River. This is not in dispute. The Third Defendant, for its part, has constructed a fence and has thereby blocked off the Claimant's access to the Belize River. The Claimant details the actions of the Second and Third Defendant in obstructing his river access in his witness statement, including speaking specifically of the creation of Parcel 5031 in 2014 and the construction of the fence and the Claimant shows pictures of the fence.

#### **Issue Four: What remedies flow to the Claimant?**

[83] If the court concludes, as the Claimant submits, that the Defendants have deprived the Claimant of his riparian rights, the question arises: what remedies flow?

1. Section 26 of the Registered Land Act (**TAB 8a**) says as follows:

*“Subject to Section 30, the registration of any person as the proprietor with absolute title of a parcel of land 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...”*

2. The foregoing section of the Registered Land Act says that a proprietor of land is entitled to his parcel and to all rights appurtenant to his parcel. The

term “*appurtenance*” was discussed in the Tennessee Court of Appeal case of *The Pointe, LLC vs. Lake Management Association, Inc.* (TAB 8b) as follows:

*“Black’s Law Dictionary describes an appurtenance as something which “is by right used with the land for its benefit, as in the case of a way, or watercourse, or of a passage for light, air, or heat from or across from the land of another... The Tennessee Supreme Court has defined an appurtenance as:*

*‘That which belong to something else; adjunct; appendage; an accessory; something annexed to another thing more worthy; ... in common parlance and legal acceptance, something belonging to another thing as principal and passing as incident to it, as a right of way or other easement to land.’...*

*Whether an appurtenance is treated as an incident of ownership of property, or as an easement passing with the property, it is clear that the grant of an appurtenance in a deed is meant to enhance the value and enjoyment of the property. The United States Supreme Court, in *Hardin vs. Jordan*, 40 U.S. 371 (1891), noted that the inherent value in riparian land is in its proximity and accessibility*

*to the water. This inherent value gives rise to a presumption that, when a grantor conveys property adjacent to water, the right to use and enjoy that water passes with the grant. As the Court observed in addressing the issue of ownership in property underneath and Illinois Lake:*

*‘When land is bounded by a lake or pond, the water... is appurtenant to it; it constitutes one of the advantages of its situation, and a material part of its value, and enters largely unto the consideration for acquiring it. Hence the presumption is that a grant of land thus bounded is intended to include the contiguous land covered by the water.’”*

[84] The Claimant therefore is entitled to his riparian rights, including unfettered access to the water, as an incident of his ownership of Parcel 4105, and this right cannot be taken away, and in the circumstances, should and must be restored.

**Rectification for mistake**

[85] The Claimant seeks, firstly, a rectification of the register to restore the reserve in front of Parcel 4105. Section 143 of the Registered Land Act (**TAB 9**) says as follows:

*“(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.”*

[86] The Claimant says that the foregoing section gives this Honourable Court power to order the rectification of the register in respect of Parcel 5031 to restore the reserve in front of the Claimant’s Parcel 4105. The mistake here is evident by the above referenced letter dated 26 March, 2016 sent to the Third Defendant’s William Quinto by the Deputy Registrar (attached as “AM10” unto the Claimant’s witness statement). The letter says that the government never intended to give the Third Defendant the portion of reserve directly in front of the Claimant’s Parcel 4105. The letter requests that the Third Defendant come in to the offices of the Commissioner of Lands and surrender his Land Certificate for it to be rectified to remove 520.418 s.m., which as the Commissioner of Lands admitted under cross-examination, is the area of the Claimant’s reserve for Parcel 4105, and that Parcel 5031 will then be

made up of 1.67 acres of land and not 1.709 acres of land. The Commissioner of Lands sought to say that this letter was erroneously issued and that research was done to show it was not correct. But no explanation was had about the error in the letter and there was nothing to research. The letter simply reflects a basic fact, that the intention of government was not to give the Third Defendant the entire reserve, but only that portion of the reserve in front of the Third Defendant's Parcel 148, and that he was mistakenly given the entire reserve, including the portion of reserve in front of the Claimant's Parcel 4105. This can be rectified by order of this Honourable Court and the reserve in front of the Claimant's land can be restored, as per the plan from Licensed Surveyor, C.B. Samuels.

[87] The rectification is further supported by the cases referred to above, which make the point that riparian rights are private property rights of a riparian owner, and that these rights "have a very great value to property" and constitute a constitutional right in Belize. The Second Defendant, then had no lawful authority, and was acting under a mistaken authority, that he could simply create Parcel 5031 and take away the strip of reserve in front of the Claimant's land.

**Easement, injunction and damages**

[88] All the authorities make the point that a riparian owner does not cease to be a riparian owner simply because land has been developed either through the natural process of accretion or reclamation. The above cited English Court of Appeal case

of *Hindson vs. Ashby* [1894 H. 3703] makes this clear, where land accreted, and the Plaintiffs were held to have access through private lands to the river. The Privy Council case of *Attorney General of Southern Nigeria vs. John Holt & Co. (Liverpool) Ltd.* [1914-15] All ER Rep 444 (**TAB 10**) makes a similar point. This is a case of reclaimed land. The Respondents in that case had for many years occupied land on the shore of the island of Lagos, Nigeria, for their business as merchants and had built stores, wharves and jetties by the water side. But this use and possession could not be established for the period of prescription to form an easement. The area of the shore was expanded considerably through reclamation, and the government proposed to construct a road along the waterside and to obstruct the Respondent's access to the shore. The government sought an injunction to stop the Respondent from using the shore for their business. The Privy Council found that, even though the land between the Respondent's property and the water was reclaimed, the Respondent had riparian rights and could not be prevented from access to the shore, and the court granted damages and an easement for the Respondent to continue to use the reclaimed land for storage. The English Court of Appeal case of *Mellor vs. Walmsley* [1905] 2 Ch 164, CA (**TAB11**), is also relevant. This was a case where the land between the medium and high water mark and that described in a conveyance was held to be accreted land so that the grantee under the conveyance

had a right of access or easement to the sea over the land, and the grantor was estopped from saying that it was not seashore.

[89] Based on the foregoing legal principle, the Third Defendant cannot prevent access to the Belize River through his land, and the right of access flowing to a riparian owner could be enforced through an easement through Parcel 5031.

[90] In all the authorities cited in these submissions, including the Belize case of *National Fishermen Producers Co-operative Society vs. Brown Sugar Market Place Limited (formerly River Front Duty Free Limited)* the courts have recognized that riparian rights are private property rights, which can be vindicated in damages and which can sustain an injunction.

[91] The Claimant says that the Third Defendant knew that the Claimant was maintaining an interest in the reserve area in front of his land, and challenging the creation of Parcel 5031. The Third Defendant was written to by the Deputy Registrar (as referenced to herein) and was also written to by the Claimant's attorney. So, the Third Defendant was put on notice from 2016 and knew that there was an issue with this portion of Parcel 5031. The Third Defendant furthermore has not carried out any substantial developments on this portion of Parcel 5031, which would make it unequitable to grant injunctive relief, or the other orders claimed herein, including the rectification. The portion of Parcel 5031 is still only a narrow area and is undeveloped.



### **Conclusion**

[92] In all the circumstances the Claimant seek, *inter alia*, rectification of the register to restore the portion of Parcel 5031 constituting his reserve, and for the permanent injunction, and damages.

### **Legal Submissions on behalf of the First and Second Defendants**

[93] Mrs. Samantha Matute-Tucker submits on behalf of the Attorney General and the Registrar of Lands that looking at the facts presented in the instant matter, Parcel 4105 was bordered on the North by an open space, which the Claimant acknowledged under cross-examination belonged to the Government of Belize, before title was issued to the Third Defendant. This confirms that at all material times, the Claimant's property did not abut the Belize River, or in the alternative, the Claimant's property was never bordered by a body of water, but by an open space. Further, it is contended that the Claimant has not obtained title to this open space by prescription to establish the Claimant's riparian rights. The Claimant makes inconsistent assertions in his affidavit and witness statement about the period within which he has been in occupation of the said open space. In his affidavit, he says it has been since 2002 to 2017, and in his witness statement he states that he has been in occupation of the open space since 2000 to 2017. Despite this

inconsistency in the Claimant's evidence, it is submitted that he does not satisfy the years of occupation to allow to make a claim for entitlement to property through prescription.

[94] As the property in issue falls within a registered area, Section 138 of the Registered Land Act, Chapter 194 applies:

*“(1) Subject to subsection (2) of this section, the ownership of land may be acquired by open, peaceful and uninterrupted possession for a period of twelve years and without the permission of any person lawfully entitled to such possession.*

*(2) In the case of national land other than the foreshore, the period of such possession shall be 30 years. Prescription shall not lie with regard to the foreshore.*

*(3) Any person who claims to have acquired the ownership of land by virtue of subsection (1) of this section may apply to the Registrar to be registered as proprietor thereof.”*

[95] It can be gleaned from this section that since the open space is national land, the Claimant can only claim title to it once he is in occupation for thirty (30) years. If it is that the Court should accept that the Claimant has been in uninterrupted occupation of the open space, it is submitted that the Claimant has not satisfied the requisite period of occupation under the Registered Land Act, as he has only been

in occupation for approximately fifteen to seventeen years. Further, when asked in cross-examination whether the Claimant had taken any steps to obtain title to the open space, he said no, and as such he is **not** the registered proprietor of the open space. Additionally, the Claimant submits that the open space between his Parcel 4105 and the Belize River is foreshore. It is submitted that it is clear and unambiguous is Section 138 of the Registered Land Act that one cannot claim prescription to the foreshore. Therefore, even if it is that the Claimant has been in occupation for the thirty years, he would not be able to claim ownership of the open space. This is also evident from the Claimant's submissions as he has not made any submissions on his entitlement to the foreshore by prescription. It is therefore contended that the Claimant has failed to establish that he has riparian rights and as such there has been no interference by the said Defendants with those rights.

### **Remedies for Breach of Riparian Rights**

[96] While the Claimant contends that he is entitled to damages for breaches of his constitutional rights including riparian rights, the First and Second Defendants maintain respectfully that the Claimant has not derived any such riparian rights and therefore he is not entitled to any such damages. However, if the Court were to find that the Claimant has riparian rights, and that there has been a breach of such rights, then the First and Second Defendants submit that there is no evidence that the

Claimant has suffered any loss as a consequence of this breach and a declaration vindicating such rights will suffice.

[97] **Section 20(1) and (2) of the Constitution of Belize reads:**

**“(1) If any person alleges that any of the provisions of sections 3 to 19 inclusive of this Constitution has been, is being or is likely to be contravenes in relation to him** (or, in the case of a person who is detained, if any other alleges such a contravention in relation to the detained person), then, without prejudice to any other *action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the Supreme Court for redress.*

*(2) The Supreme Court shall have original jurisdiction -*

*(a) to hear and determine any application made by any person in pursuance of subsection (1) of this section...*

*And may make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 3 to 19 inclusive of this Constitution.” (Emphasis added)*

[98] In *Maharaj v The AG of Trinidad and Tobago*, the Privy Council held that damages are an appropriate relief in a claim for redress for breach of fundamental

right entrenched in the Constitution of Trinidad and Tobago; Lord Diplock defined redress as meaning '*satisfaction or compensation for a wrong sustained or the loss resulting from this*'.

[99] In *Maya Leaders Alliance et al v The AG* (2015) CCJ 15 (AJ), the Court stated that there were three requirements which must be satisfied for an award of damages to be made under section 20 of the Belize Constitution as follows:

*“(1) the existence of a constitutional right (2) the contravention of that right and (3) that a monetary award is the appropriate remedy or redress for the contravention.”*

[100] It is noted that an award of damages pursuant to Section 20 of the Constitution is not automatic; it is a discretionary award which should only be awarded on a case by case basis and where the court thinks it fit to do so. It is submitted that to make such an award automatic would undermine the discretion given to the Court under this section. This was established in *James v AG of Trinidad and Tobago* where the Board found that a declaration was sufficient to vindicate the Appellant's right, as the Claimant did not suffer any material disadvantage from the violation of its constitutional rights. It was also noted that since an award of damages is not automatic, it must be contemplated on what grounds the Court will make such an order since damages must be proven. The First and Second Defendants submit that

it is trite law that loss has to be specifically proven. As stated by Kangaloo JA as cited by Lord Kerr at the Privy Council in James:

**“It must first be shown that there has been damage suffered as a result of the breach of the constitutional right before the court can exercise its discretion to award damages...”**

[101] It is submitted that the cases on which the Claimant has sought to rely to justify his entitlement to damages deals only with matters of private law between private individuals, and therefore these cases are of no relevance on public law matters especially where there is an allegation of breach of constitutional rights. The principle in James should therefore prevail.

*Whether the creation of Parcel 5031 was done by fraud or Mistake*

[102] The Claimant contends in his submissions that the creation of Parcel 5031 was done by fraud or mistake, and he seeks a rectification of the Register.

Section 143 of the Registered Land Act prescribes:

*“Subject to subsection (2) of this section, 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.”*

[103] The First and Second Defendants submit that the Claimant has not provided any evidence to substantiate his allegations, save and except for a letter of 24<sup>th</sup> March, 2016. The court is also invited to carefully examine this letter to note that at no place does it say that the creation of said parcel was done in error. In any event, the uncontested evidence of the Commissioner of Lands is that this letter was issued prematurely and in error.

**Easement of Necessity**

[104] The First and Second Defendants submit that there was no easement of necessity created through Parcel 5031, since the Claimant has access to his Parcel 4105 through Parcels 4106 and 1335 which he owns. The Claimant admitted under cross-examination that:

- i) Parcel 4105 is bordered to the south by Parcel 4106, and 4106 is bordered on the south by Parcel 1335, all owned by the Claimant;
- ii) There is no separation by a fence or other obstruction between Parcels 4105, 4106 and 1335, and as such, the Claimant can move freely between his properties; and
- iii) Parcel 1335 has access to a road.

**Whether Parcel 5031 is subject to a 66 feet reserve**

[105] The First and Second Defendants humbly submit that Parcel 5031 is not subject to the sixty six feet reserve prescribed in 12(8) of the National Lands. Section 12 deals with the terms and conditions of leased land. The First and Second Defendant submit that Parcel 5031 is not leased land therefore it is not subject to section 12(8).

Section 12(8) states:

*“Where the land approved to the lessee is situate outside a city, town or village and adjoins any running stream, river or open water, a sixty six feet wide strip of land along such running stream, river or open water shall be left in its natural state unless otherwise approved by the Minister to be used in a specified manner.”*

It is the uncontested evidence of the Commissioner of Lands that Parcel 5031 falls within the boundaries of Belize City and therefore Section 12(8) does not apply. The First and Second Defendants ask that this claim be dismissed with costs to the First and Second Defendants.

**Legal Submissions on behalf of the Third Defendant**

[106] Ms. Barrow argues that the Third Defendant disputes the claim on the following grounds:



(a) The Claimant had no riparian rights which the creation, issue and sale to the Third Defendant of Parcel 5031 could have infringed

(b) Prior to the Sale to the Third Defendant of Parcel 5031, the land comprised in 5031 was national lands including foreshore. Foreshore cannot be acquired by prescription and the period for the acquisition of ownership of national lands by prescription is (30) years and not twelve (12) years.

(c) An easement can only be acquired by prescription after twenty years (20)

(d) Section 12(8) of the National Lands Act pertains to the lease of national lands and not to Parcel 5031 which is not leased national land.

(e) Section 13 of the National Lands Act permits the sale of national lands

(f) The Second Defendant is not satisfied that the title to the Third Defendant was issued in error and as such the letter to the Third Defendant dated 24<sup>th</sup> March 2016 was issued prematurely.

(g) The central issue for the determination of this court is whether the Claimant was a riparian owner prior to the issue of Parcel 5031 to the Defendant.

[107] It is trite law that riparian rights belong to a riparian owner and that a riparian owner is the owner of land abutting on water (Halsbury's Laws of England/Water and Waterways (Volume 100 (2018)Volume 101 (2018) paras. 563-930/4. Inland Waters/(4) Riparian Rights /(i) Rights of Access/128. Rights of access of riparian owners. It is submitted that whether the Claimant was a riparian owner is a question of fact which is answered by determining whether the Claimant owned land abutting water.

**Digest of the Claimant's Authorities**

[108] Ms. Barrow argues that none of the six cases referred to by the Claimant in his submissions offers any authority for a claim to riparian rights by persons whose property does not abut water. In *William Lyon v the Warden* (1 App. Case 662), there was no dispute as to the physical location of the Appellant's property which fronted a river on the southside and west.

[109] In *Attwood v Llay Man Collieries* [1926] Ch. 444, the persons claiming riparian rights were unsuccessful as they were determined to be too far from the bank of the river to sustain the character of a riparian tenement. In that case, the river to which the defendant was claiming riparian rights did not flow through or alongside the described lands.

[110] In the *National Fishermen Producers Co-operative Society v Brown Sugar Management* (Claim 40 of 2006), there was no dispute that the Claimant's land abuts on the river to the south.

[111] In *Hindson v Ashby* [1894 H. 3703] the Plaintiff's property was bounded on one side by the Thames River, and on the other side the land ended in an almost perpendicular bank 5 feet or 6 feet high and the bed of the river reached to its foot. The persons found to have riparian rights in the *Port of London Authority v. Coney Island Commissioner* [1932 1 Ch 446] had title to land connected to the river.

[112] In *AG of Southern Nigeria v John Holt & Co* [1914-15 All ER 444], it was held that properties described as abutting on the seashore and specifically measured or described in their conveyances or delineated on a plan are not excluded from the rule which adds to riparian lands the increment which is caused by natural and gradual accretion from the sea.

[113] It is submitted that the Claimant, recognizing the importance to his case of establishing ownership of land abutting water, has made several contradictory claims:

- (i) that Parcel 4105 had river frontage and that there is property forty feet wide ("the Open Space") which separates the Claimant's Parcel 4105 from Haulover Creek/Belize River;

- (ii) to have acquired prescriptive title to the Open Space through his occupation of the same from 2002 to a date in 2017;
- (iii) that the 40' wide Open Space was the distance between the high water mark and the low water mark as measured by the surveyor;
- (iv) that at high tide the water from the river went into his Parcel 4105 as much as ten feet;
- (v) that he used the Open Space as a road access; and
- (vi) that he filled apportion of the Open Space to better access the river.

The Third Defendant submits that the existence of the 40 feet wide Open Space makes it impossible for the Claimant's Parcel 4105 to have ever abutted on water.

**Does the Claimant's land abut water**

[114] The primary issue for the determination of this court is whether the Claimant owned land abutting the river. If (i) the Open Space formed a part of the Claimant's Parcel 4105 and/or the Claimant's Parcel 4105 abutted the water's edge, then the Claimant would be the owner of land abutting the river. The thrust of the Claimant's pleaded case is that the Open Space was a reserve and that he had acquired title to that Open Space by prescription because he had peaceful and open possession and control of this Open Space for over 15 years.

[115] The Claimant's Second Affidavit in support of the Amended Fixed Date Claim alleges that since 2002 and up to a date in 2017, he has occupied all the land up to and immediately abutting a body of water called the Haulover Creek located immediately in front of his Parcel 4105. He alleges that he has ownership interest or rights in this Open Area. He makes another assertion in his Witness Statement that he has occupied the Open Area since 2000. The Claimant has not provided any legal authority in support of his assertion that he acquired prescriptive title to this Open Space. The evidence on behalf of the First and Second Defendants which the Claimant accepts is that the Open Space was never designated a reserve. In response to the Claimant's assertion that he occupied the property that later became 5031 from 2000 or 2002, the Third Defendant directs this Honorable Court's attention to the uncontested evidence of Marcelo Benavides that he maintained the Open Area (which later became Parcel 5031) from 1993 to 2016 on behalf of the Third Defendant.

[116] While the Third Defendant disputes that as a matter of fact the Claimant used and controlled the Open Space for as long as he has alleged, its position is that, even if the Claimant did use and control the Open Space for as long as he asserts:

- (i) By virtue of section 138(2) of the Registered Land Act, the right of prescription cannot lie with regard to the portion of the Open Space that formed the foreshore; and

- (ii) Prescriptive title to the portions of the Open Space that is not a foreshore can only be acquired after 30 years because the same section 138(2) of the Registered Land Act prescribes that the period of possession to establish prescriptive title to national lands is 30 years.

[117] The Claimant submits that because the waters of the Belize River washed unto Parcel 4105 “at high tide”, the boundary of his Parcel 4105 is the Belize River. In his submissions the Claimant refers to evidence describing how at high tide the waters of the Belize River covered the entire “reserve” area and washed unto his Parcel 4105. The evidence referred to by the Claimant is glaringly missing from any of his affidavits or witness statement. The only written reference to the presence of the Belize River on the Claimant’s Parcel 4105 is found in the Claimant’s written submissions where he asserts that at high tide the water from the Belize River went into his Parcel 4105 sometimes as much as ten feet.

[118] The Claimant asserts that the provisions of section 28 of the National Lands Act are applicable to his Parcel 4105 because the waters of the Belize River washed unto his Parcel 4105 “at high tide”. The Third Defendant submits that the Claimant has provided inconsistent and therefore unreliable evidence as to the nature of the

Open Space. Contrary to the assertion that the Belize River rose onto the Claimant's Parcel 4105 at high tide, the Claimant has testified that:

- i) He filled a portion of the Open Space;
- ii) He used the Open Space as a road access; and
- iii) He used the Open Space to access the river.

It is submitted that as a matter of logic, it is hard to fathom that the difference between the high water mark and the low water mark during ordinary tides is forty feet which is the Claimant's stipulated width of the Open Space.

[119] The Third Defendant also submits that the Claimant has mis-applied the law in that Section 28 of the National Lands Act relied upon by the Claimant to support his submission is of no assistance. The provisions of section 28 are as follows:

*“In any grant, lease or other document where the sea, or any sound, bay, or creek or any part thereof, affected by the ebb or flow of the tide, **described as forming the whole or part of the boundary of the land to be disposed of, such boundary or part thereof shall be deemed and taken to be the line of high water mark at **ordinary tides.****” (Emphasis added)*

[120] It is critical to appreciate that section 28 of the National Lands Act applies to lands which are described as being bounded by the sea, sound, bay or creek or any part of those bodies of water. By the Claimant's own evidence, Parcel 4105 was

surveyed with an area between Parcel 4105 and the Haulover Creek (or Belize River); therefore Parcel 4105 was not described as being bounded by the Haulover Creek or the Belize River. Given that Parcel 4105 is not bounded by the river but by the Open Space, section 28 of the National Lands Act does not apply to the Claimant and his Parcel 4105. In addition, section 28 of the National Lands Act provides that the boundary is to be “deemed and taken to be the line of high water mark at **ordinary tides**”; yet the Claimant makes reference to the presence of water on his property during **high tides**. Even accepting (though the Third Defendant does not) that the Belize River was present on the Claimant’s land during high tides, section 28 of the National Lands Act is inapplicable to the Claimant’s Parcel 4105 because it provides for boundaries in reference to ordinary tides.

**Whether the creation, issue and sale to the Third Defendant of Parcel 5031 and construction of fence by the Third Defendant resulted in the taking away of the Claimant’s riparian rights as contained in section 3(d) and 17 of the Belize Constitution, and is accordingly null and void and of no effect, and whether the Claimant is entitled to an injunction and/or damages.**

[121] It is submitted that this Honorable Court need not engage on this issue as the Third Defendant has failed to establish any riparian rights. The Third Defendant says



that without establishing his ownership of property abutting water, the Claimant has no riparian rights for this Honorable Court to protect.

**Whether, by virtue of section 143 of the Registered Land Act, the creation of Parcel 5031 and the issue and transfer of that parcel to New Deal Ltd, as proprietor, was obtained by fraud or mistake and in contravention of law.**

[122] Section 143 of the Registered Land Act provides as follows:

*“Subject to subsection (2) of this section, the court may order rectification of the register by directing that any registration, including a first registration, has been obtained, made or omitted by fraud or mistake.”*

[123] The Third Defendant submits that the Claimant has failed to establish that there has been any fraud or mistake in the issuing of title to Parcel 5031 to the Third Defendant. The evidence that the Claimant relied on to support this assertion of mistake is a letter of March 24<sup>th</sup>, 2016 issued and signed by the Assistant Registrar of Lands which the Commissioner of Lands has testified was issued prematurely and in error.

**Whether an easement of necessity was created in favor of the Claimant through the reserve area to permit public entry and exit.**

[124] It is submitted that Section 141(1) of the Registered Land Act provides that, subject to the Prescription Act, easements may be acquired after 20 years, not 12. There is nothing in the Prescription Act which assists the Claimant. Even based on the Claimant's own evidence (which the Third Defendant does not accept) he has not been in occupation of the area long enough to have acquired any easement to his property.

**Whether the creation and issue of Parcel 5031 was void and ultra vires section 12(8) of the National Lands Act, read together with the other provisions of the legislation, which requires that all surveys of National Lands be subjected to a reserve not exceeding 66 feet.**

[125] It is submitted that quite apart from the fact that the Claimant is claiming prescriptive title to a portion of this same parcel of land, section 12(8) applies to lease of national lands which are located outside a city, town or village. The portion of land claimed by the Claimant falls within city limit of Belize City. Parcel 5031 is not a lease. Finally, section 13 of the National Lands Act allows the sale of national lands at such price and on such terms and conditions as the Minister prescribes.

In conclusion, the Third Defendant asks that the claim be dismissed with costs.

### **Decision**

[126] I thank all counsel for their submissions which have been invaluable in assisting this court in determining these issues. It is indeed unfortunate that these

parties, the Claimant and the Third Defendant could not find an amicable solution to the resolution of this dispute, considering the fact that they are owners of neighboring properties. Mr. Matus finds himself in the unenviable position of no longer having access to his property at Parcel 4105 through the Belize River, once title to Parcel 5031 was issued by the Ministry of Natural Resources to Mr. Quinto's company New Deal Ltd. in 2014.

[127] Prior to purchasing Parcel 5031 in 2014, Mr. Quinto also found himself in the difficult position of no longer having access to his Parcel 164 as it was obstructed by Mr. Matus's Parcel 4105. In the 1980s and 1990s when New Deal Ltd. first purchased and developed several parcels of land in this area, Parcel 164 was an island, and swamp water separated these parcels from that island. Mr. Quinto says it was Mr. Matus's development of Parcel 4105 in 2002 which prompted him to seek ownership of Parcel 5031 from the Government of Belize; Parcel 4105 which was formerly swamp water had now morphed through the natural process of accretion at the mouth of the Belize River, and also filled up with landfill by Mr. Matus changed into a solid piece of land which then blocked Mr. Quinto from accessing his Parcel 164. Having considered all the evidence and the legal submissions in this case, I find myself in agreement with the Defendants. I do not find, based on the evidence before me, that the Claimant has established that he had any riparian rights over the Open Space (that portion of land between Parcel 4105 and the Belize River)

as Parcel 4105 does not abut the Belize River or Haulover Creek on its northern boundary. The Commissioner of Lands has testified that this Open Space was never designated a reserve by the Ministry of Natural Resources under the National Lands Act Section 6(3). The Claimant has asserted that he is entitled to this Open Space in front of his Parcel 4105 by prescription, having occupied and utilized this space since 2000 or 2002, but I agree with Ms. Tucker's legal submission that the Claimant has not occupied this property for the requisite period of 30 years under Section 128 of the Registered Land Act. The Open Space therefore remained national lands until it was sold by Government to New Deal Ltd. in 2014. As rightly pointed out Ms. Tucker for the Defendants, the Claimant did not, and has never owned the Open Space in front of Parcel 4105. He has only owned Parcel 4105 since 2002 when he acquired title for that Parcel from the Government of Belize and Parcel 4105 abuts the Open Space on its northern boundary; it does not abut the Haulover Creek or the Belize River. As ably argued by Ms. Barrow in her legal submissions, even accepting (though the Third Defendant does not) that the Belize River was present on the Claimant's land during high tides, section 28 of the National Lands Act is inapplicable to the Claimant's Parcel 4105 because it provides for boundaries in reference to ordinary tides.

[128] Mr. Matus therefore has no riparian rights over his property for this court to protect. I also agree that there is no easement of necessity that would arise in these

circumstances as such easements arise after 20years under section 141 of the Registered Land Act. In addition, I agree with the submissions that since Mr. Matus already has access to his Parcel 4105 through his Parcels 1335 and 4106, an easement of necessity for Parcel 4106 would not arise. Having decided the case on this critical issue, the other issues fall away.

[129] The claim is therefore dismissed with costs to the Defendants to be paid by the Claimant to be agreed or assessed.

*Dated this \_\_\_\_\_ day of April, 2021*

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**Michelle Arana**  
**Chief Justice (Acting)**  
**Supreme Court of Belize**