

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

CLAIM NO. 212 OF 2017

BETWEEN:

**(THE PLACENCIA LAND &
(DEVELOPMENT CO. LTD.**

FIRST CLAIMANT

**(MAYA RIO DEVELOPMENT LTD.
(SUNRISE BELIZE LTD.**

SECOND CLAIMANT

THIRD CLAIMANT

(

(AND

**(R & B CONSTRUCTION CO. LTD.
(REGISTRAR OF LANDS
(ATTORNEY GENERAL**

FIRST DEFENDANT

SECOND DEFENDANT

THIRD DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mr. Rodwell Williams, SC, of Barrow and Williams for the Claimants

Mrs. Samantha Matute Tucker, Crown Counsel of the Attorney General's

Ministry for the Second and Third Defendants

J U D G M E N T

[1] This is a claim for damages against the Registrar of Lands for breach of statutory duty and/or negligence for failure to note an encumbrance on the Land Register and on titles to property. By order of the Court on 12th June, 2017, R & B Construction Ltd., the Second Defendant, was granted summary judgment as against The Placencia Land & Development Co. Ltd., Maya Rio Development Ltd

and Sunset Belize Ltd, the Claimants in this matter. The present proceedings now involve the Claimants and the Registrar of Lands and the Attorney General, the Second and Third Defendants. The claim against the Defendants is on account of the failure, neglect or omission of the Registrar of Lands to duly note on the Land Register restrictive/protective covenants intended to run with the lands contained in Stage 1 of “The Plantation”, a development and building scheme located on the Placencia Peninsula. The Defendant resists the claim on the basis that the Registrar is immune from suits for anything done in the exercise of her duty in good faith. In addition, failure to note the encumbrance on the register was an oversight on the part of the Registrar. The Defendant says that no damages should be allowed because the error can be rectified by the power of rectification of the register assigned to the Registrar and the Court under the Registered Land Act.

ISSUE(S)

[2] The issues as agreed by the parties for consideration by this Honourable Court are:

- i. Whether the Second Defendant breached her statutory duty when she failed, neglected or omitted to note on the register the incumbrances;

- ii. Whether the failure, neglect or omission of the Second Defendant caused damages to the Claimants. If yes, what quantum of damage is owed to the Claimants?

Evidence on behalf of the Claimants

[3] At trial, the Claimants presented one witness. Mr. Marco Caruso testified in his witness statement that he is a Director of the First Claimant Company and also of the Second Claimant Company and that he is duly authorized to give evidence on behalf of each company.

[4] The suit was brought for a declaration that Parcels 185,186, 187 and 188 Block 36 Placentia North Registration Section (“the Properties”) freehold lands on the Land Register under the Registered Land Act in the name of R & B Construction Company Limited, as registered proprietor are subjected to a Deed of Incumbrance dated July 28th, 1999, between Oceanview Properties Limited, of the one part and MacKinnon Belize Land & Development Limited, of the other part, constituting certain covenants, conditions, reservations, limitations and restrictions which are intended for the mutual benefit and burden of lands in “The Plantation” development and building scheme and to run therewith.

Background

[5] In or about 1999, MacKinnon Belize Land & Development Limited (hereinafter “the Declarant”) as registered proprietor of a certain tract of land comprising about 3,300 acres on the Caribbean Sea, Placencia Peninsula, in the Stann Creek District of Belize commenced a development project and building scheme called “The Plantation” by sub-dividing its lands into several parcels and the development was broken down into three stages, to wit, Stages I, II and III. Each Stage relates to one or more different survey and Sub-division plans and all stages were combined into a “Master Plan”. A true copy of said “Master Plan” is attached and marked ‘A’.

[6] In furtherance of the development of “The Plantation”, the Declarant entered into an Environmental Compliance Plan (“ECP”) by way of an agreement between the Declarant, of the one part, and the Department of the Environment, of the other part, pursuant to the provisions of the Environmental Protection Act (Chapter 328) of the Laws of Belize, a copy of the draft ECP between the Declarant and the Department of the Environment is attached and marked “B”.

[7] By Clause 11 of the ECP, the Declarant agreed to be responsible for ensuring that its customers agreed to sign and adhere to the code of covenants attached to the ECP therein referred to as “The Plantation at Placencia - Protective Covenants”, for the benefit and burden of all lot owners within “The Plantation”

regardless into whosoever's hands they came. A copy of "The Plantation at Placencia - Protective Covenants" is attached and marked "C".

[8] "The Plantation at Placencia - Protective Covenants" in the ECP provide as follows:

- (a) Clause 1.01 *"Residential Use: All resident lots as delineated in the Master Plan and improvements located thereon, shall be used, improved and devoted exclusively for single family use"*
- (b) Clause 1.04 *"Building Plans: All building plans must be approved in writing by the developer prior to the construction of any building, walls, fences or docks and must be of equal or higher standards as set by the Housing and Planning Department"*
- (c) Clause 1.05 *"Height, Lot Coverage: No residential building shall exceed two (2) stories in height and in no case shall the ground floor area of the house, garage and any out buildings cover more than thirty-five percent (35%) of the lot area."*

Registration of Restrictive Covenants on the Properties

[9] The Declarant then executed Stage I of "The Plantation" by the Sub-division and survey of about 250 acres of the property as shown on Register No. 21 Entry No. 3697 divided exclusively into several residential lots and several hotel and or

commercial lots. A true copy of the Plan of Sub-division and survey in Register No. 21 Entry No. 3697 is attached and marked “**D**”.

[10] A copy of the Declarant’s Certificate of Title dated July 3rd, 1997, recorded in Land Titles Register Volume No. 32 at Folio No. 77 for the land comprised in Stage I of “The Plantation” is attached and marked “**E**”.

[11] The Declarant then declared and registered a comprehensive scheme of protective and restrictive covenants against all the lands in Stage I, II and III of “The Plantation” by way of a Deed of Incumbrance that was noted on all subsequent transfer of lots for the benefit and burden of each lot owner in “The Plantation”, and which was expressly intended to run with all the lands for the benefit of the whole and each other. A true copy of the Deed of Incumbrance comprising the Restrictive Covenants is attached and marked “**F**”.

[12] On or about July 13th, 1999, the Declarant transferred to one Oceanview Properties Ltd., a number of lots including Lot Nos. 31, 32, 33 and 34 as shown on plan of Sub-division and survey in Register No. 21 Entry No. 3697, designated exclusively for single family homes, and noted the Restrictive Covenants on the Certificate of Title of Oceanview Properties Ltd. by way of an incumbrance to the intent that they shall run with the title into whosoever’s hands they may come.

[13] A true copy of Oceanview Properties Ltd. Certificate of Title dated January 21st, 2000, recorded in Land Titles Register Volume No. 35 at Folio No. 103 with the Restrictive Covenants noted thereon by way of an incumbrance is attached and marked “G”. A true copy of the Deed of Incumbrance dated July 28th, 1999, between Oceanview Properties Ltd. and the Declarant with the Restrictive Covenants on the lots sold and transferred including Lot Nos. 31, 32, 33 and 34 is attached and marked “H”.

[14] By Clause 2 of the Restrictive Covenants, the covenants are to be in force for an initial period of ten (10) years and will automatically extend for further periods of ten years each, unless a majority of the members of the homeowners association by written instrument declare a termination thereof. There has not been any declared termination of the Restrictive Covenants by a majority of the homeowners association to date.

[15] The Restrictive Covenants do provide, *inter alia*, as follows:

“4. Setbacks No building shall be erected on any single family beach lot which is less than sixty-six (66) feet from the Caribbean Sea and not less than ten (10) feet from any side yard lot lines, and not less than fifteen (15) feet from said rear lot line, unless otherwise approved in writing by the Incumbrancee.

5. Architectural Control All building plans showing location of improvements must be approved in writing by the Incumbrancee prior to the construction of any buildings, walls, fences or docks.

6. Construction Once construction of any type of structure on a lot is started, it must be completed within 12 months. Prior to commencement and occupancy, all necessary government permits shall be obtained and all governmental requirements shall be met.

7. Height, Lot Coverage No residential building shall exceed two (2) stories in height and with a building guideline of ground floor area of house, garage and any outbuildings covering no more than thirty-five (35%) percent [sic] of the lot area.”

Registrar’s First Mistake

[16] On or about April 5th, 2002, the Placentia North Registration area was declared a compulsory registration area under the provisions of the Registered Land Act and as a result, Stage I of “The Plantation” came under the operation of the Registered Land Act.

[17] Consequently, the Declarant then applied for first registration of unsold lots remaining in its name and not yet transferred by April 5th, 2002, subject to notation of the Restrictive Covenants noted in the Certificate of Title. The Declarant was then duly registered as proprietor for the lots remaining in its name and the

Restrictive Covenants was duly noted in the Incumbrance Section of the Lands Register and on the proprietor's Land Certificate.

[18] A true copy of a Land Certificate in name of the Declarant for a lot in Stage I of "The Plantation" under the Registered Land Act, on first registration with the Restrictive Covenants noted in the Incumbrance Section thereon is now shown to me, hereto attached and marked "I".

[19] On or about April 27th, 2006, Oceanview Properties Ltd. as proprietors of Lot Nos. 31, 32, 33 and 34 Entry No. 3697 Register No. 21 as part of Stage I of "The Plantation" applied for first registration and was duly entered on the Land Register as registered proprietor of the corresponding parcels, to wit: Parcel 188 (Lot No. 31), Parcel 187 (Lot No. 32), Parcel 186 (Lot No. 33) and Parcel 185 (Lot No. 34). A true copy of the Land Register for each of Parcels 185, 186, 187 and 188 Block 36 Placentia North Registration Section is attached and marked "J".

[20] The Registrar of Lands, in breach of its statutory duty omitted in error or by mistake and or by negligence to note and enter in the Incumbrance Section of the Land Register, the Deed of Incumbrance with the Restrictive Covenants noted on the Certificate of Title in the name of Oceanview Properties Ltd.

The Registrar's Second Mistake

[21] On or about March 30th, 2016, Oceanview Properties Ltd. transferred the Properties, being Parcel 185 (Lot No. 34), Parcel 186 (Lot No. 33), Parcel 187 (Lot No. 32) and Parcel 188 (Lot No. 31) Block 36 Placentia North Registration Section to R & B Construction Company Limited, the First Defendant.

[22] Once more, the Registrar of Lands compounded the mistake and error and or was negligent in failing or omitting to enter the Restrictive Covenants in the Incumbrances Section of the Land Register against the Properties.

[23] R & B Construction Co. Ltd. is now the registered proprietor of the Properties and the Restrictive Covenants are not noted on its title documents or in the respective land registers. In support of this, Mr. Caruso makes reference to the First Affidavit of William Deyesso dated 11th May, 2017, and the Second Affidavit of William Deyesso dated 7th June, 2017, which were filed with the Court in support of the R & B Construction Co. Ltd.'s Notice of Application for summary judgment. According to the evidence provided in these Affidavits, R & B Construction Co. Ltd. in fact was the owner of the lots stated herein, was in the process of constructing buildings as stated herein, and was without notice of the covenants and/or restrictions because none were noted in the register. These Affidavits and their exhibits are collectively marked "**J-2**".

[24] R & B Construction Co. Ltd. and the Department of the Environment entered into an Environmental Compliance Plan pursuant to the Environmental Protection Act (Chapter 328) of the Laws of Belize dated September 27th, 2016 for the construction of “Divine Cove Oceanside Resort & Residences”, that is, “*two (2) five-story buildings, each with seventeen (17) apartments and livable roof top*” on Parcels 185, 186, 187 and 188 Block 36 Placentia North Registration Section, in Stage I of “The Plantation” as shown in Entry No. 3697 Register No. 21, for the performance of the “Works”.

[25] R & B Construction Co. Ltd. commenced the works in breach and flagrant violation of the Restrictive Covenants which do bind and run with the Properties notwithstanding the Registrar’s omission to note them on the Land Register. Pictures of R & B Construction Co. Ltd.’s structure are marked Exhibit J-3.

[26] The violations include the following breaches of covenant, to wit:

- (a) Proceeding with construction of residential buildings in excess of two (2) stories in height and in excess of ground floor area of house, garage and outbuildings covering more than thirty-five (35%) percent of lot area in “The Plantation” development and building scheme.
- (b) Proceeding to erect buildings on single family beach lot which is less than sixty-six (66) feet from the Caribbean Sea and not less than ten

(10) feet from any side yard lot lines, and not less than fifteen (15) feet from said rear lot line without the incumbrancee's approval.

- (c) Proceeding with the construction of two (2) five-story buildings, each with seventeen (17) apartments and liveable roof top, in excess of the two-story limit on single family beach lot.
- (d) Proceeding with the construction of hotel and commercial buildings on lots exclusively designated as single family residential use in "The Plantation" development and building scheme.
- (e) Proceeding with construction without the written approval of the incumbrancee thereby triggering the right in other owners including the Declarant, of designated residential and or hotel/commercial lots in "The Plantation" to be aggrieved as the violation will result in loss, damage and diminution in the value of their property and its use and enjoyment.

[27] The First and Second Claimants are registered proprietors of lands exclusively designated for hotel and commercial use in Stage I of "The Plantation" development project as shown on plan of Sub-division survey Register No. 21 Entry No. 3697.

[28] Placencia Land & Development Co. Ltd., the First Claimant, is the registered proprietor of Parcels 3310, 3311 and 3312 Block 36 Placencia North Registration Section as shown in a copy of the Land Registers for the First Claimant's lands collectively marked "K".

[29] Maya Rio Development Co. Ltd., the Second Claimant, is the registered proprietor of Parcels 1495, 1496, 1498, 1499, 167, 1276, 1500, 1501, 1502 and 1519 Block 36 Placencia North Registration Section as shown in a copy of the Land Registers for the Second Claimant's lands marked "L".

[30] The parcels owned by Placencia Land & Development Co. Ltd and Maya Rio Development Co. Ltd. are all designated hotel and or commercial use lots under Stage I of "The Plantation" development and building scheme on Register No. 21 Entry No. 3697, and the First and Second Claimants are intended, by the Declarant, to be the exclusive beneficiaries of lands in Stage I of "The Plantation" designated for hotel and or commercial development use.

[31] Therefore, to allow R & B Construction Co. Ltd. to pursue hotel and commercial development on lands exclusively designated for residential use in Stage I of "The Plantation" will be injurious to the interest of the First and Second Claimants who paid a premium for their lands and the privilege of being the only hotel and or commercial use owners in Stage I of "The Plantation".

[32] Further, as far as Mr. Caruso is aware, the Restrictive Covenants are still valid and subsisting and run with all lands in “The Plantation” for the benefit and burden of all the lands, and that there has not been any declared termination of the Restrictive Covenants by a majority of the members of the homeowners association.

[33] On January 27th, 2017, a few days after the Works commenced, the Claimants, by their attorneys-at-law, wrote to the First Defendant cautioning them not to proceed in breach of the Restrictive Covenants and specifically requested from them, a written undertaking not to proceed in violation of the said Restrictive Covenants. In reply by way of their attorneys-at-law, the First Defendant rejected the Claimants’ request and the merits of their claim. A copy of the Claimants’ counsel’s letter and the First Defendant counsel’s reply are attached and collectively marked “M”.

[34] On or about March 15th, 2017, the Claimants duly filed cautions pursuant to Section 130 of the Registered Land Act (Chapter 194) of the Laws of Belize to cause the Registrar to note the Restrictive Covenants in the Incumbrances Section of the Land Register against the Properties, but the Registrar is yet to dispose of the matter.

[35] On account of the Registrar's omission and failure to note the covenants on the Land Register, the First and Second Claimants have no remedy as against the First Defendant because the Registered Land Act makes it clear that the First Defendant cannot be forced to abide by a covenant that is not noted on the Land Register. The First Defendant, therefore, obtained summary judgment in its favour since the commencement of these proceedings.

[36] As a result of the Registrar's omission and failure the First and Second Claimants' use of its properties have been adversely affected and diminished. The structure erected by the First Defendant, intended for commercial use, has significantly undermined the exclusivity which the First and Second Claimants were to have as developers of hotel and commercial properties.

[37] The Claimants therefore seek a declaration that Parcels 185, 186, 187 and 188 Block 36 Placentia North Registration Section, in the name of the First Defendant are subjected to incumbrances, a rectification of the land register and alternatively, damages to be assessed.

Cross-examination of Mr. Caruso by Ms. Samantha Matute Tucker on behalf of the Second and Third Defendants

[38] At trial, Mr. Caruso was cross-examined briefly. He stated that he was the Director of the Placencia Land Development Company Ltd. He was asked whether

the Claimant companies had purchased these properties from MacKinnon Development and he said yes. He said they were aware of the restrictive covenants before they purchased the lands. They were also aware of the ECP (Environmental Compliance Plan) when the companies decided to purchase the lands. The Declarant MacKinnon would be responsible to ensure that the new purchaser is aware of the restrictions. The Government under the Declarant would be notified of the covenant.

Evidence of Registrar of Lands, Mrs. Patricia Robateau-Blackett for the Second and Third Defendants

[39] Mrs. Robateau-Blackett states that she is the Acting Registrar of Lands within the Ministry of Natural Resources. As Registrar, she is charged with the general administration of the registered land system and she gives her evidence in support of the Defendants in this claim.

[40] By Transfer Certificate of Title (the “Transfer Certificate”) dated the 21st day of January, 2000, and in favour of Oceanview Properties Ltd (“Oceanview”), duly registered, Oceanview became the registered proprietors of all those parcels of land known as Blair Atholl Estate situate on the sea coast at False Bight on the Placencia Peninsula, Stann Creek District, namely Lots No. 31, 32, 33, 34, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 50 and 51. On the Transfer Certificate the

incumbrance was noted having been lodged for registration on the 13th day of October, 1999 in Volume 8 folio 29.

[41] On the Transfer Certificate an incumbrance was noted having been lodged for registration on the 13th day of October, 1999 in Volume 8 folio 29. A copy of the Deed of Incumbrance is attached hereto and marked “**P.R-B2**”.

[42] The said deed of incumbrance was made between Oceanview and MacKinnon Belize Land & Development Limited (“MacKinnon”), in which MacKinnon became incumbrancee, and which the Second Schedule set out the certain covenants which touch and affect the parcels of land being the eastern portion of land known as Blair Atholl Estate situate on the sea coast at False Bight on the Placencia Peninsula, Stann Creek District, as listed in the First Schedule, namely Lots No. 31, 32, 33, 34, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 50 and 51.

[43] On or around April 2002, the Placencia North Registration Section was declared a compulsory registration area. Under the Registered Act, where an area is declared a compulsory registration area, the Registrar is required to prepare a register in relation to all those parcels of land registered under the General Registry Act, showing all the subsisting particulars registered on the old title. However, in

practice, it is not feasible for the Registrar to carry out this exercise due to the lack of resources.

[44] Subsequently, Oceanview made an application for first registration of parcels 185 (Lot No. 34), 186 (Lot No. 33), 187 (Lot No. 32) and 188 (Lot No. 31) all in Block 36 of the Placentia North Registration Section. Oceanview was issued with Land Certificates dated the 27th day of April, 2006. A copy of the application is attached hereto and marked “**P.R-B3**”.

[45] At the time of Oceanview’s application, it did not disclose on the application form any incumbrance which touch or affected the parcels of land. As a consequence, and because of an oversight of not seeing it on the Transfer Certificate, there was no notation on the land certificates, nor on the land registers. On the 30th day of March, 2016, Oceanview then transferred title for parcels 185 (Lot No. 34), 186 (Lot No. 33), 187 (Lot No.32) and 188 (Lot No. 31) all in Block 36 of the Placentia North Registration Section to R&B Construction Company Limited (“R&B Construction”). Consequently, R&B Construction was issued with Land Certificates for those parcels dated the 30th day of March, 2016.

Cross-examination of Registrar Robateau-Blackett by Mr. Williams SC for the Claimants

[46] Mrs. Robateau-Blackett explained that on “PB1” the Transfer Certificate of Title (TCT) lots were registered under the General Registry Act. Notings were made on the right side of the TCT. Charge noted of incumbrance in favor of Mackinnon Belize Land & Development. “PB 2” is the Deed of Encumbrance. At the time of First Registration of this property, these were all the documents that the Land Registry had. She agreed that it would be reasonable to assume that the TCT with the notations and the Deed of Encumbrance would come to the attention of the Registrar. The witness also agreed that she was aware of the duty of the Registrar, once there was a Declaration of a new area, to transfer existing information from the General Registry to the Registry under the Registered Land Act. She agreed that this was the duty of the Registrar but she said that that was not the practice; the reality was that the Registrar waits until somebody applies for First Registration. When they apply, they surrender their mortgage etc. and then the Registrar registers the land. With respect to this specific First Registration, this title referred to 4 or more lots.

Legal Submissions on behalf of the Claimants

[47] This claim centers on the 2nd and 3rd Defendants’ (collectively referred to as “**the Defendants**”) breach of statutory duty and/or in negligence. The Claimants

say that the 2nd Defendant omitted by mistake and/or by negligence to record in the Incumbrance Section of the Land Register and on the titles to the resulting parcels of land, to wit: Parcel 185, 186, 187 and 188, Placentia North Registration Section, the existence of the Deed of Incumbrance containing certain restrictive covenants of which the Claimants are the beneficiaries.

[48] The Registrar of Lands (“**the Registrar**”) had an automatic statutory public duty arising upon the declaration of the compulsory registration area which it failed/neglected to exercise. This breach of statutory duty and/or negligence is a continuing one that is causing direct damage and loss to the Claimants.

[49] The 3rd Defendant is included as a party to the proceedings under section 42(5) of the Belize Constitution which mandates that civil proceedings for or against the State shall be taken in the name of the Attorney General.

The Framework of the Registered Land Act

[50] The claim against the 2nd and 3rd Defendants should be scrutinized in the context of the Registered Land Act. Notably, the primacy of the Land Register as the pillar of the registered land system which the Registered Land Act (“**the Act**”) governs. The Registrar testified in cross-examination that, “*in practice*”, the Land Register is not updated upon the declaration of the compulsory registration area. Under the Act, the Registrar is mandated to so do. It appears that the particulars

under the General Registry Act are only transferred to the Land Register of the Registered Land Act after an application for First Registration is made to the Lands Registry. This is a blatant admission by the Registrar of her negligence and breach of statutory duty. That is, the Registrar admitted non-execution of her tasks under the Act.

[51] The gravity of the breach of duty and/or negligence becomes apparent on an examination of the Act.

Purpose of the Registered Land Act

[52] The essential purpose of the scheme created by the Act is to provide a system of state-guaranteed registered land. Subject to exceptions, the register is intended to provide a comprehensive and accurate reflection of the state of the registered land at any given time, so that it is possible to investigate title to land in line with the minimum of additional enquiries and inspections. The Registrar is **bound by the Registered Land Act** as to the keeping of the Land Register and her **duties are circumscribed by the said Act**. The Registrar of Lands is appointed under section 6 of the Act¹ and is **responsible for overseeing the administration of the Land Registry following the provisions of the Act.**²

¹ Registered Land Act, R.E. 2011, s 2. [Tab 1]

² Registered Land Act, R.E. 2011, s 6. [Tab 1]

Legal Submissions on behalf of the Defendants

[53] These submissions are prepared in response to the written submissions of the Claimants dated the 10th day of August, 2020.

Breach of Statutory Duty

[54] *Halsbury's Laws of England, Volume 97 (2015) at paragraph 500* [TAB 1]

states:

“In order to succeed the claimant must establish a breach of a statutory obligation which, on the proper construction of the statute, was intended to confer private rights of action upon a class of persons of whom he is one; he must establish an injury or damage of a kind against which the statute was designed to give protection; and he must establish that the breach of statutory obligation caused, or materially contributed to, that injury or damage, or (exceptionally) to the risk of that injury or damage.”

[55] It is the Defendants humble submission that the Claimants have failed to satisfy the above requirements in order to establish that there has been a breach of statutory duty by the Second Defendant. This is so as the Claimant has failed to show that on a proper construction of the Act, there was no intention to confer private rights of action to those in “The Plantation” as a distinct class. Instead, on a true construction of the Act, the intentions of the framers of the Act is to regulate

all registered title holders in Belize. This proposition is supported by Lord Browne-Wilkinson said in *X (minors) v Bedfordshire CC* (1995) 3 All E R 353, where he stated at 364-365 [TAB 2]:

“The basic proposition is that in the ordinary case a breach does not, by itself give rise to any private law cause of action. However, a private law cause of action will arise if it can be shown, as a matter of construction of the statute that the statutory duty was imposed for the protection of limited class of the public and that parliament intended to confer on members of that class a private right of action for breach of the duty.”

[56] Lord Cairne LC in *Atkinson V Newcastle Waterworks Co* 2 Ex D441 (1874-1880) at page 761 [TAB 3] noting his disagreement with:

“The broad general statement that wherever there is statutory duty imposed, and any person is injured by the non-performance of the duty an action can be maintained. It must depend upon the particular statute and where it is /like a private legislative bargain, into which the undertakers the works have entered, it differs from the case were a general duty is imposed.”

[57] The Defendants further submit that there is no proximate relationship between the Second Defendant and the Claimants to justify the existence of statutory a duty owed. It is a general duty owed to the public at large.

[58] Further, the Courts have adopted a narrow construction test to the imposition of civil liability for breach of statutory duty. A common law action for breach of statutory duty arises only when the Claimant can establish that Parliament intended that breach and that the breach would be actionable in damages. We submit that Parliament did not intend this, as the statute is silent to this effect.

[59] However, if the Second Defendant did not breach her statutory duty, can she still be liable in negligence?

Lord Browne-Wilkinson said in *X (minors) v Bedfordshire CC*:

“It is clear that a common law duty may arise in the performance of statutory functions. But a broad distinction has to be drawn between (a) cases in which it is alleged that the authority owes a duty of care in the manner in which it exercises a statutory discretion; and (b) cases in which a duty of care is alleged to arise from the manner in which the statutory duty has been implemented in practice.”

[60] Further, in *Halsbury's Laws of England, Volume 78 (2018) at paragraph 16 [TAB 4]* states:

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

[61] The Defendants respectfully reiterate their submissions made above that there is insufficient proximity between the Claimants and the Second Defendant to justify the existence of a duty owed, as it is a general duty owed to the public at large and not those in “The Plantation” as a distinct class.

[62] Moreover, the Defendants respectfully submit that it is unreasonable in the circumstances, as there is a responsibility placed on a person who is doing a first registration after an area has been declared a compulsory registration area, to disclose on his application the status of the land, including any incumbrances. In the instant matter, it is the evidence that Oceanview's application did not disclose

on the application any incumbrance which touch or affected the parcels of land. As such, the incumbrances were not noted on the registers.

Registrar acted in good faith

[63] By virtue of *Section 8 of the Registered Land Act*, Chapter 194 of the Laws of Belize [TAB 5], the Defendants are immune from any action, suit or proceeding for or in respect of any act or matter done or omitted to be done in good faith in the exercise or purported exercise of the functions conferred by or under the Act or any regulations made thereunder. The Section specifically provides:

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

[64] What can be gleaned from this section is that the Registrar, and by extension to any officer in the Registry, who has acted, at all material times, in good faith will be protected by statutory immunity as prescribed by the legislature of Belize.

[65] The Defendants submit that while there is no finite definition of “bad faith”, there is the underpinning element of dishonesty or some impropriety attached to an action for it to be done in bad faith.

[66] The Defendants also respectfully submit that bad faith connotes a willful act that amounts to a gross dereliction of duty on the part of a statutory authority, which results in serious harm to a person or a class of persons. The Canadian Court referred to the abuse as a flagrant violation of the office. The case of *Garrett v The Attorney General* [1997] 2 NZLR 332 at p. 350 [TAB 6] the New Zealand Court of Appeal stated:

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

[67] The Defendants humbly contend however, that on the face of the given, there is nothing to suggest in the circumstances of this case that there was a flagrant violation of public function by the Second Defendant. However, there is evidence that suggests that the Second Defendant, at all material times, acted in accordance with her statutory duties under the Registered Land Act, as best as possible in the circumstances.

[68] It is the evidence of the Second Defendant in her witness statement that when the Placentia Registration area was declared a compulsory registration area, the “*Registrar is required to prepare a register in relation to all those parcels of land registered under the General Registry Act, showing all the subsisting particulars registered on the old title. However, in practice, it is not feasible for the Registrar to carry out this exercise due to the lack of resources.*”³

[69] She further states that “*At the time of Oceanview's application, it was not disclose on the application any incumbrance which touch or affected the parcels of land. As a consequence, and because of an oversight of not seeing it on the Transfer Certificate, there was no notation on the new land certificates, nor on the land registers.*”⁴

[70] The Registrar also stated in cross-examination that when the First Registration for any parcel of land is being done, it is being done in good faith, and accepting that what is stated on the Application is the true status of the land. And, when it came to her attention that the registers as it relates to the Parcels failed to reflect the incumbrances, she attempted to update the respective registers to reflect the incumbrance.

³ Paragraph 6 at Page 145 of the Core Bundle

⁴ Paragraph 7 at Page 145 of the Core Bundle

[71] In the case of *Juanita Lucas & Anr v Chief Education Officer et al*, [2015] CCJ 6 (AJ) [TAB 7] it was said by Justice Saunders, that “*Good faith is to be measured... by what is done.*” This case concerned the suspension of the Principal and Vice Principal of a government-aided school. Justice Saunders went on to say that “*the actions of the Ministry officials, to my mind, ran counter to ... statements [made] and those actions undermine completely any conclusions that refer to an absence of arbitrariness and to the existence of good faith.... The Ministry of Education here decided, deliberately, recklessly or negligently, to disregard an Act of the Legislature to the undoubted prejudice of two citizens. In my view, courts fail in their duty if they do not underscore the impropriety of such conduct and afford the victims who have been prejudiced redress that is meaningful.*”

[72] The Defendants humbly submit that based on the evidence that has been presented there is nothing to suggest that the Second Defendant acted in gross dereliction of her duties as the Registrar. The Office of the Registrar does what it is able to do in the circumstances, given the resources made available to do the work. And, when it came to the attention of the Second Defendant that the registers failed to reflect the incumbrances, she attempted to update the respective registers to reflect such.

[73] Therefore, the Defendants humbly submit that in the circumstances of the case the Claimants have failed to show on a balance of probabilities that the Second Defendant was not acting bona fide in the execution of her duties. There is no evidence of mala fides the actions of the Second Defendant.

No entitlement to damages

[74] The Defendants respectfully submit that if it is that this Honourable Court should find that there has been a breach of duty of care either by negligence or a breach of statutory duty, the Claimants are not entitled to any damages, as a rectification of the registers would be sufficient to uphold the rights claimed to be secured in this claim.

[75] Moreover, while it is true that damages in tort is to compensate the person had the tort not been committed, in the case at bar the Claimant is asking this Honourable Court “to consider not less than \$400,000.00 in general damages”; however, the Claimant has failed to provide this Honourable Court with any proof of this sum loss. Therefore, the Defendants humbly ask this Honourable Court to not grant any damages.

Conclusion

[76] In light of the foregoing, the Defendants humbly submit that the Claimant has failed to show, on a balance of probabilities, that the Second Defendant has

breached her statutory duty. Even if the Court should find that there has been a breach, the Second Defendant has immunity pursuant to Section 8 of the Registered Land Act for acts done or omitted to be done once done in good faith. As such, in the circumstances, the Defendants humbly ask that the Claim be dismissed in favour of the Defendants with costs. All of the above are most respectfully submitted.

Decision

[77] I am grateful to both counsel for their written submissions which have assisted me in determining the issues in this case. I agree that with the submissions of Mrs. Matute-Tucker for the Defendants that the statutory duty only arises where the Claimant is part of a protected class as determined by the legislature. I also agree with the submissions of Mrs. Matute-Tucker that on the evidence in this matter there has been no proof of bad faith on the part of the Second Defendant, and that the Second Defendant is therefore immune from suit for acts committed in the execution of her duties under Section 8 of the Registered Land Act.

However, I do agree with the submissions of the Claimant that the actions of the Registrar of Lands amounted to negligence. On the facts of this case, the Registrar has admitted that she failed to register these restrictive covenants as incumbrances on the land register. To my mind, that failure clearly amounted to a breach of the general duty of care owed to the public. In my view, this failure

clearly compromised the integrity of the land register by rendering an inaccurate picture of the status of the lands in question. This failure goes to the very heart of the indefeasibility principle which is supposed to govern the Torrens system under the Registered Land Act.

In her evidence, the Registrar has pointed to the lack of resources in the Ministry of Natural Resources as the reason for the oversight which led to this grave error. When one looks at the nature of the restrictive covenants in this case, it is clear that these covenants were specifically designed to protect the massive financial investment of landowners in this development by strict regulation of the type of construction on the land, delineating such specific elements as distance of each building from the sea and height of each building on each lot.

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

Judgment for the Claimant.

Costs awarded to the Claimant to be agreed or assessed.

Dated this 11th day of February, 2022

Michelle Arana
Chief Justice (Ag)
Supreme Court of Belize