

IN THE COURT OF APPEAL OF BELIZE, AD 2022
CIVIL APPEAL NO 11 OF 2018

BETWEEN

GABRIELA JIMINEZ, née GOMEZ
Administratrix of the Estate of
Emilio Gomez

APPELLANT

AND

MINISTER OF NATURAL RESOURCES
MING REN LI
REGISTRAR OF LANDS
THE ATTORNEY GENERAL

1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT

BEFORE:

THE HON MADAM JUSTICE MINNET HAFIZ-BERTRAM	PRESIDENT (AG)
THE HON MADAM JUSTICE WOODSTOCK-RILEY	JUSTICE OF APPEAL
THE HON MADAM JUSTICE MINOTT-PHILLIPS	JUSTICE OF APPEAL

A Sylvestre for the appellant.
A Finnegan for the 1st, 3rd & 4th respondents.
R Williams SC & D Muñoz for the 2nd respondent.

13 October 2021 and 7 April 2022

JUDGMENT

HAFIZ-BERTRAM, P. (Ag.)

[1] I have read, in draft, the judgment of my learned sister Minott-Phillips JA and concur in the reasons for judgment given, and the orders proposed, therein.

HAFIZ-BERTRAM, P. (Ag.)

WOODSTOCK-RILEY, JA

[2] I have read the draft judgment of Minott-Phillips, JA. I concur.

WOODSTOCK-RILEY, JA

MINOTT-PHILLIPS, JA

[3] At the heart of this appeal are the competing claims of the Appellant, Ms Gabriella Jimenez *née* Gomez, ("**Gomez**") and the 2nd Respondent, Ming Ren Li, ("**Ming**") to ownership of two parcels of registered land. The court below, in the person of the Honourable Mr. Kenneth Benjamin, Chief Justice (as he then was) decided the issue of ownership in favour of the 2nd Respondent, Ming.

[4] Gomez litigates in her representative capacity as the Administratrix of the Estate of her father, Emilio Gomez, on behalf of those beneficially entitled to his estate.

[5] The factual basis for the claim was, primarily, the co-existence of two titles to each of the parcels of land, one set issued in '98 and '99 in the name of Gomez's father, Emilio Gomez; and the other set issued in 2013 in Ming's name.

[6] The two parcels are properly described as Block 4 Parcel 1527 comprising 74.1 acres and Block 4 Parcel 1529 comprising 28.895 acres, both in the Tower Hill Registration Section. Following the court below this court also refers to the parcels as Parcel 1527 and Parcel 1529.

[7] The 1st Respondent, the Minister of Natural Resources, (*“the Minister”*) and the 3rd Respondent, the Registrar of Lands, (*“the Registrar”*), are Crown agents joined as Defendants to the action below for their respective roles in issuing the second set of titles to Parcels 1527 and 1529 to Ming.

[8] The 4th Respondent, the Attorney General, appears to have been joined as a Defendant to the action pursuant to the requirements of the Crown Proceedings Act.

[9] I hope I do it no injustice to say that, in short, the Appellant’s case was that:

- a. the co-existence of two registered titles for each of the two parcels of land, without more, meant that the second title for each parcel was issued by mistake (a legal ground for the issuing of a court order pursuant to section 143 of the Registered Land Act cancelling that registration) of the Minister and/or the Registrar.
- b. Ming’s acquisition of the land for valuable consideration was not sufficient to defeat the Appellant’s claim to retention of ownership of Parcels 1527 and 1529 because, in addition to that he also had to be in actual possession of the land or in receipt of its rents or profits.
- c. Furthermore, even if Ming could prove payment of valuable consideration and possession/receipt of the land’s rents and profits, the register should nevertheless be rectified so as to disentitle him upon Gomez establishing that Ming had knowledge of the Minister and/or Registrar’s omission, fraud or mistake in consequence of which the rectification was sought, or, if Ming, by his act, neglect or default, caused or substantially contributed to the omission/fraud/mistake.

[10] Ming, in his Defence, asserted the existence of a verbal agreement from 1994 between him and Emilio Gomez for him to acquire Parcels 1527 and 1529 from Emilio Gomez for \$67,500, which sum he paid to Emilio Gomez on 30 December 1994.

[11] Ming maintained that Land Transfer instruments for the two parcels were signed by Emilio Gomez and him and were lodged at the relevant department of the Ministry of Natural Resources and Agriculture in or about the year 1999. He produced documents he claimed were copies of those instruments.

[12] Ming said it was he who paid the Stamp Duty and costs for certificate issue and registration in 2002 incidental to the transfer of the parcels to him, and he produced the receipts issued to him by the Government of Belize for those sums.

[13] Ming claimed to have taken occupation of the two parcels of land in 1998 and to have remained in occupation of them since then and said that fact was known to the family of Emilio Gomez.

[14] Ming averred that Land Certificates in relation to Parcels 1527 and 1529 were issued to him, both dated 3 April 2013; and he produced them.

[15] Ming denied knowledge of any fraud or mistake and of the internal processes and procedures of the Ministry of Natural Resources and Agriculture.

[16] The Minister and the Registrar responded to the claim through the evidence of Wilbert Vallejos, the Commissioner of Lands and Surveys, of the Ministry of Natural Resources and Agriculture. Through him, those Respondents averred that two applications to transfer his lease of the two parcels of then Crown lands to Ming were submitted by Emilio Gomez on 3 January 1995. The applications bore reference numbers 770/88 and 763/88. He produced copy receipts for payment on account of

purchase price and payment of stamp duty for Grant Fiat re the 75 acres and the 25 acres. He was also able to produce a copy of the receipt of \$67,500 issued by Emilio Gomez to Ming for the two parcels of land. He verified that titles to the 2 parcels were issued to Emilio Gomez in 1998 and 1999 and also to Ming in 2013. He maintained that, as a result of the documents filed by Emilio Gomez, it was the honest belief of the Minister and/or Registrar that there was a sale of the two parcels of land by Emilio Gomez to Ming.

The Tale of the Documents Adduced in Evidence

[17] The documents adduced in evidence in the proceedings below, examined chronologically, tell their own tale. They include:

- a. A receipt for \$67,500 issued to Ming by Emilio Gomez on 30 December 1994 for payment in full for 25 acres and 75 acres G Grass witnessed on its reverse side by Uvaldemir Torres, Sr, Commissioner of the Supreme Court of Belize on 30th day December 1994.
- b. Application to transfer lease form 763/88 of 75 acres Guinea Grass area from Emilio Gomez to Ming dated 3 January 1995 in consideration of the sum of \$50,000
- c. Application to transfer lease form 770/88 of 25 acres Guinea Grass area from Emilio Gomez to Ming dated 3 January 1995 in consideration of the sum of \$17,500.
- d. Government of Belize Receipt No 322690 issued on 9 May 1995 to Emilio Gomez for \$3,020.76 for balance on 75 acres Guinea Grass Area 763/88.

- e. Government of Belize Receipt No 322689 issued on 9 May 1995 to Emilio Gomez for \$1,583.50 being balance on 25 acres Guinea Grass Area 770/88.
- f. Government of Belize Receipt No 6845 dated 12 January 1996 issued to Ming for Emilio Gomez for \$209.49 being stamp duty for title on 75 acres Guinea Grass Area – [referencing 763/88].
- g. Government of Belize Receipt No 6846 dated 12 January 1996 issued to Ming for Emilio Gomez for \$90.75 for Stamp Duty for Grant Fiat for 25 acres Guinea Grass Area – [referencing 770/88].
- h. Land Certificate Title 3816/98 for Parcel 1527 (74 acres) - Guinea Grass Village, Orange Walk District, certifying Emilio Gomez as its registered proprietor and dated 30 June 1998.
- i. Land Certificate Title 516/99 for Parcel 1529 (28 acres) - Guinea Grass Village, Orange Walk District, certifying Emilio Gomez as its registered proprietor and dated 27 January 1999.
- j. Copy undated Transfer of Land re Parcel 1527 signed by Emilio Gomez & Ming whose signatures were verified by Gregorio Novelo, Justice of the Peace on 5 November 1999.
- k. Copy undated Transfer of Land re Parcel 1529 signed by Emilio Gomez & Ming whose signatures were verified by Gregorio Novelo, Justice of the Peace on 5 November 1999.
- l. Government of Belize Receipt LSD-OW00008410 dated 24 Oct 2002 issued to Ming for \$2,400 Stamp Duty on 74 acres situated at Tower Hill, O/W.

- m. Government of Belize Receipt LSD-OW00008412 dated 24 Oct 2002 issued to Ming for \$950 Stamp Duty on 28 acres situated at Tower Hill, O/W.
- n. Government of Belize Receipt LSD-OW00008411 dated 24 Oct 2002 issued to Ming for \$30 for Cost of Cert and Reg Fee on 74 acres situated at Tower Hill, O/W.
- o. Government of Belize Receipt LSD-OW00008413 dated 24 Oct 2002 issued to Ming for \$30 for Cost of Cert and Reg Fee on 28 acres situated at Tower Hill, O/W.
- p. [Emilio Gomez died on 1 October 2005.]
- q. Land Certificate Title LRS201303155 for Parcel 1527 (74 acres) - Tower Hill Registration Section, certifying Ming Ren Li as its registered proprietor and dated 3 April 2013.
- r. Land Certificate Title LRS201303154 for Parcel 1529 (28 acres) - Tower Hill Registration Section, certifying Ming Ren Li as its registered proprietor and dated 3 April 2013.
- s. Land Register Report as at 8 May 2013 for Parcel 1527 showing the termination of Land Certificate Title 3816/98 on 3 April 2013 and issue of Land Certificate Title LRS 201303155 in favour of Ming on 3 April 2013.
- t. Land Register Report as at 8 May 2013 for Parcel 1529 showing the termination of Land Certificate Title 516/99 on 3 April 2013 and issue of Land Certificate Title LRS 201303154 in favour of Ming on 3 April 2013.
- u. Caution lodged by the Gomez's attorneys-at-law on her behalf on Parcel 1527 on 24 May 2013 forbidding the registration of dealings and the making of entries on the register relating thereto.

- v. Caution lodged by Gomez's attorneys-at-law on her behalf on parcel 1529 on 24 May 2013 forbidding the registration of dealings and the making of entries on the register relating thereto.

- w. Grant of Administration No 122/2014 in the estate of Emilio Gomez issued on 9 June 2014 to Gomez.

[18] The documents adduced in evidence, in the main, corroborate the Defendants' account of events.

[19] By way of a memorandum the parties in the court below agreed the following as the issues for determination by the court:

- a. Whether there was an agreement between the deceased Emilio Gomez and Ming for the sale and transfer of what are now parcels 1527 and 1529 to Ming?

- b. Whether titles of Ming to parcels 1527 and 1529 were obtained by fraud and/or mistake of the 1st, 2nd and/or 3rd Defendants?

- c. If it is found that there was in fact a legitimate sale of the two parcels of land from Emilio Gomez to Ming, does this cure the fraud and/or mistake of the Defendants and does it mean that the titles of the 2nd Defendant in parcels 1527 and 1529 are not defeated?

- d. If the fraud and/or mistake is not cured is rectification automatic?

- e. If the court finds that the titles to parcels 1527 and 1529 were obtained by fraud and/or mistake of the Minister, Registrar and/or Attorney General only but not as against Ming, what order is the Court to make?

[20] Having examined the documents and heard the witnesses the Honourable Chief Justice was unable to attribute fraud to the Minister or Ming or mistake to the Registrar. Accordingly, the trial judge's determination of the issues above was as follows:

- a. *... there existed an agreement between Emilio Gomez and Ming for the sale and purchase of the parcels. ... the existence of the two Land Certificates for the parcels does not without more mean a mistake was made.*
- b. *... the court is unable to attribute fraud to the first and second Defendants [the Minister and Ming, respectively] and mistake to the 3rd Defendant [the Registrar]. There is no basis for the rectification of the Land Register by the cancellation of the transfer of Parcel 1527 and Parcel 1529 to the second Defendant [Ming].*

That said, it was the view of the Honourable Chief Justice that the remaining issues did not require a determination. The end result was his dismissal of Gomez's claim with costs to be paid by her to the Defendants. The Honourable Chief Justice further ordered, consequentially, that the land certificates dated 30 June 1998 and 27 January 1999 in respect of Parcels 1527 and 1529 be delivered to the Registrar of Lands for cancellation.

[21] Additional relevant material/evidence adduced in the course of the trial included the following:

- a. There was no challenge to the existence of a transaction between Emilio Gomez and Ming in relation to the two parcels of land;

- b. Ming testified that he paid the money to convert Emilio Lopez's lease into a land title document. He also testified that it was Emilio Gomez who received the Land Certificates from the Lands Department.
- c. Gomez was unable to produce the Land Certificates issued to Emilio Gomez at the time she brought the action. It was in the course of testifying that she produced those titles, a development that took all other litigants and her own counsel by surprise.
- d. The Land Certificates issued to Emilio Gomez were documents that ordinarily would have been produced when stamp duty on the transfer of the parcels to Ming was assessed;
- e. Ming could not say whether Emilio Gomez lodged the Land Certificates for the parcels when they together submitted the transfer of land forms to the Lands Department at Orange Walk on 5 November 1999. He could only say that Emilio Gomez showed the Land Certificates to him prior to them submitting the transfer of land forms.
- f. It was the evidence of Ismael Cal in cross-examination by Mr Sylvestre that his handwriting appears on the back of the land transfer forms. He didn't sign the forms but he did witness all of the signing on the forms including the signing by the Justice of the Peace.
- g. The parcel pockets at the Land Registry relating to the relevant parcels could not be located at the time Mr Vallejos's affidavit was sworn on 19 February 2015.
- h. The contents of those parcel pockets could not, therefore, be discerned then, nor during the course of the trial.

- i. Government files refer to National Lands – transactions that involve National Land. Parcel pockets refer to private land for the most part.
- j. Upon Emilio Gomez being issued his certificates, that's the point when the parcel pockets would be opened for the first time (it being the point when the parcels cease to be government land and become private land).
- k. As a matter of policy the original Land Certificates ought to have been surrendered to the Registrar of Lands with the transfers, but there are cases where the original Land Certificates are not available or made available, and it is usual to declare the certificates lost, thus necessitating new certificates.
- l. Mr Vallejos testified that having not been able to review the file he was not in a position to say what occurred. He explained it was not unusual for a Land Certificate to be treated as lost and to be afterwards found.

[22] The Appellant, Gomez, has appealed the decision of the Honourable Chief Justice on the following grounds:

- a. The decision was erroneous in that the learned Chief Justice erred and misdirected himself in holding "*the existence of the two Land Certificates for the parcels does not without more mean a mistake was made*".
- b. The decision of the learned Chief Justice was unreasonable having regard to the totality of the evidence.
- c. The order of the learned Chief Justice directing that the original Land Certificates No 3816/98 and 516/99 be cancelled by the Registrar of Lands is erroneous as the Court did not find any of the titles were obtained or made by fraud or mistake as required by section 143 RLA, before such an order can be made.

[23] This Court heard the appeal on 13 October 2021 and reserved its decision.

Ground a

The decision was erroneous in that the learned Chief Justice erred and misdirected himself in holding “*the existence of the two Land Certificates for the parcels does not without more mean a mistake was made.*”

[24] I am of the view that the Honourable Chief Justice was correct when he stated that the existence of two Land Certificates for the parcels does not without more mean a mistake was made. It is clear that, in doing so, he accepted the evidence of Mr Wilbert Vallejos given in the course of his examination in chief by Ms Trienia Young, Snr Crown Counsel, as follows:

Vallejos: *I had indicated that there are instances when the original certificates would not be available or made available by the landowner upon requesting a transfer. But by the same good practice, the landowner would be required to declare the certificate lost. Then after processing a new certificate then such transfer is actually entertained and process [sic].*

Young: *So having not been able to review the files you are unable to confirm whether or not this did happen?*

Vallejos: *I am unable to say what transpired in this particular case.*

Young: *And the possibility certainly exist [sic.] that if a lost certificate application were made at the relevant time, perhaps the previous title could have been found by the owner?*

Vallejos: *In fact, there are cases like that, that eventually somehow or other the original comes up.*

[25] In giving his reasons for his decision, the Honourable Chief Justice said:

“... the receipt can be read along with the undated Transfer of Land Instruments executed in respect of the parcels. There is ample evidence from the second Defendant and from Ismael Cal that the Instruments were completed by Emilio Gomez. The Court was not impressed by the Claimant’s assertion that the Instrument bore the forged signatures of Emilio Gomez. In this regard, the evidence of the Expert was of no assistance.

The Claimant also took issue with the issuance of the new Certificates of Title for the parcels, while the original titles were still in existence. Learned counsel prayed indeed the provisions of section 34(1)(a) of the Registered Land Act¹.

It must be pointed out that Mr Vallejos posited that a transfer can be effected without the current original Land Certificate being surrendered. Although, best practice would be for there to be such surrender or the processing of a lost certificate. There being no evidence in the absence of the Parcel Pocket, it would be speculative to conclude that there was a contravention of section 34 (1) (a).

As I see it, there is ample evidence for the Court to arrive at a conclusion on a balance of probabilities, that there was an agreement between the second Defendant and Emilio Gomez. In addition, there is evidence of the second Defendant having taken up physical occupation of a portion of

¹ Section 34 (1) – The Registrar shall, if requested by any proprietor of land or a lease where no land certificate or certificate of lease has been issued, issue to him a land certificate or a certificate of lease, as the case may be, in the prescribed form showing all subsisting entries in the register affecting that land or lease,

Provided that,

- (a) Only one such certificate shall be issued in respect of each parcel of land or lease;

Parcel 1527. Somewhat disingenuously the Claimant tried to deny knowledge of the second Defendant's occupation. A fact which was plain to see when the Court visited the Locus. The Court unhesitatingly finds that there existed an agreement between Emilio Gomez and the second Defendant for the sale and purchase of the parcels."

[26] I am of the view that the statement in section 34(1) (a) that only one certificate shall be issued in respect of each parcel of land is directory. I agree with the Honourable Chief Justice that the evidence showed that there may be instances where, on account of a title being the subject of a lost title application and then found after the new title is issued, for example, more than one certificate may issue in respect of a parcel of land. I also agree with him that, without more, would not trigger a finding of fraud or mistake.

[27] The case at bar is factually distinguishable from that of ***William Quinto et al v Santiago Castillo Limited*** [2009] UKPC 15 in which the evidence established that the holder of the title to the land in consequence of which rectification was sought was not in actual possession of the land and knew (or ought to have known) that the title to the land was tainted by the fraud of its predecessor owner (who had applied for and obtained the title knowing she did not own it) and/or the mistake of the Registrar in issuing it. That was a case in which:

- a. the suspicions of the purchaser that something was amiss with the vendor's claim to ownership of the land ought to have been aroused (in the light of the purchaser's own long held belief and understanding that the land was owned by someone else);

- b. the purchaser had, prior to purchasing the land from the fraudster, made several unsuccessful efforts at acquiring the land from its legitimate owner; and
- c. the purchaser decided not to clarify the position as it knew it to be but to proceed regardless with the transfer from the fraudster.

The result was that the fraud of its predecessor in title was ascribed to Santiago Castillo Limited. In ***Quinto et al v Santiago Castillo Ltd*** the purchaser was, therefore, not entitled to the protection given to the *bona fide* purchaser in possession by section 143(2) of the Registered Land Act².

[28] In the instant case, and based on the Honourable Chief Justice's findings of fact, Ming is entitled to that protection.

[29] As regards the case at bar I also agree with the Honourable Chief Justice that he had, before him, ample evidence supporting his findings of fact. He was best placed to assess the credibility of the witnesses and clearly found Ming a more credible witness than Gomez. I see no flaw in his reasoning nor do I detect any legal or other basis for this court to interfere with his findings of fact.

[30] The first ground of appeal therefore fails.

² Section 143 – (1) 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.

(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.

Ground b **The decision of the learned Chief Justice was unreasonable having regard to the totality of the evidence.**

[31] The failure of the second ground of appeal follows inevitably from the failure of the first ground.

Ground c **The order of the learned Chief Justice directing that the original Land Certificates No 3816/98 and 516/99 by cancelled by the Registrar of Lands is erroneous as the Court did not find any of the titles were obtained or made by fraud or mistake as required by section 143 RLA, before such an order can be made.**

[32] I agree with the submission of counsel Finnegan for the 1st 3rd & 4th Respondents that the ancillary order of the Honourable Chief Justice that *“the Land Certificates dated June 30th, 1998, and January 27th, 1999, in respect of Parcel 1527 and 1529 are to be delivered to the Registrar of Lands for cancellation”* was, in fact, a directive to Gomez to deliver those original certificates to the Registrar in order for her to reflect the cancellation on them. In the ordinary course of things those Land Certificates would have been cancelled when the new ones for the transferred parcels were issued to Ming. This is apparent from the copy of the Land Register in respect of each parcel as at 8 May 2013. The failure to cancel the Land Certificates originally issued to Emilio Gomez was an omission capable of correction by the Registrar.

[33] Under section 142(1)(a) of the Registered Land Act the Registrar has a power to rectify the register or any instrument presented for registration in cases that include formal matters and in the case of errors or omissions not materially affecting the interests of any proprietor. The Register was rectified by the Registrar to reflect the

cancellation of the Land Certificates issued to Emilio Gomez on 3 April 2013 on account of the termination of Emilio Gomez's interest occasioned by his transfers of the parcels to Ming being entered in the Register on that day.

[34] Given the court's determination that the parcels were owned by Ming, the delivery up of the prior titles to the parcels that were in Emilio Gomez's name to the Registrar for cancellation would not materially, or at all, affect his interest in the parcels as proprietor as, following the transfer of the parcels to Ming, he had no interest in them.

[35] For that reason, the third ground of appeal also fails.

[36] I propose that the following order be made by the Court:

- a. The appeal is dismissed and the order of the trial judge affirmed;
- b. Costs of the appeal are awarded to the Respondents and are to be taxed if not agreed;
- c. The cautions that are contained in instruments:
 - i. LRS-201305493 filed on 24 May 2013 in respect of Tower Hill Block 4 Parcel 1527; and
 - ii. LRS-201305494 filed on 24 May 2013 in respect of Tower Hill Block 4 Parcel 1529;are to be removed.