

IN THE SUPREME COURT OF BELIZE A.D. 2018

CLAIM NO 645 OF 2018

IN THE MATTER OF Section 3, Section 17 and Section 20 of the Belize Constitution Act, Chapter 4 of the Substantive Laws of Belize

AND

IN THE MATTER OF Section 3, Section 19 of the Land Surveyors Act, Chapter 187 of the Surveyors Act, Chapter 4 of the Substantive Laws of Belize.

BETWEEN (KUNDYSEK FAMILY INVESTMENTS L.P. CLAIMANT

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(THE MINISTER OF NATURAL RESOURCES DEFENDANTS

(THE COMMISSIONER OF LANDS & SURVEYS

(THE ATTORNEY GENERAL OF BELIZE

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

William Lindo and Rubiceli Perera of Glenn D. Godfrey & Co. LLP for the Claimant
Samantha Matute Tucker Acting Solicitor General and Lavinia Cuello Crown
Counsel for the Defendants

FACTS

1. The Claimant, Kundysek Family Investments L.P. (Kundysek) is the owner of Parcel No. 1012 and Parcel 1013, formerly Lots 44 and 45 situate in Block 12, Caye Caulker Registration Section, by virtue of Deeds of Conveyance duly recorded in the Land Titles Unit, dated the 5th day of November 2007 and recorded in Deeds Book Volume 44 of 2007 at Folio 643 to 654. By letter dated the 28th day of September 2007, Nicholas Maznek and Maureen Dunphy, the former owners of Parcel 1012 (Lot 44) were given permission to construct a pier to be situated in front of this said parcel. By letter dated 5th November 2007, Nicholas Maznek and Maureen Dunphy formally requested that the Pier License No. E.P. 13/06(11) ('the Pier License') be transferred to Kundysek Family Investment, L.P.
2. On the 1st day of April, 2009, the Second Defendant, the Commissioner of Lands & Surveys, granted to a Third Party, permission to survey approximately 0.65 acres of land, now known as Parcel No. 1019, Block 12 Caye Caulker Registration Section which is situated directly to the east of Parcel 1013. This Third Party applied to purchase this land in November 2009 and later purchased the freehold title to this land from the Government of Belize.

3. On the 31st of October 2013, Kundysek wrote regarding the status of the permission to construct a pier, and by letter dated the 8th day of January 2014, Kundysek was advised that it would need to submit an application to do so. Parcel 1012 (Lot 44) is bordered to the North by Parcel 1013 (Lot 45), the South by an alleyway, the East by Parcel 1019 and the West by a street, while Parcel 1012 (Lot 44) is bordered to the North by Parcel 1011 (lot 46), the South by Parcel 1013 (Lot 45), the East by Parcel 1019 and the West by a street.

4. ISSUES

- i.** Whether the Parcel 1019 is National Land within the meaning of the National Lands Act.
- ii.** Whether the First Defendant had the authority to grant freehold title to Parcel 1019 to a Third Party.
- iii.** Whether the Second Defendant failed and/or refused to act in a consistent manner by not cancelling the survey recorded under Entry No. 11889 in Register No. 24 of the Register of Surveys.
- iv.** Whether the Defendants have breached the Claimant's constitutional rights having granted freehold title to Parcel 1019 to a Third Party.

- v. If there has been a breach of the Claimant's constitutional rights, whether the Claimant is entitled to damages.
- vi. Whether the Claimant has accrued riparian rights in relation to parcels 1012 and 1013.
- vii. Whether there has been an expropriation or breach of the Claimant's riparian rights in relation to Parcel 1012 and 1013. And finally if there has been a breach of the Claimant's riparian rights, whether the Claimant is entitled to damages as a result.

These facts and issues are as stated in the Agreed Statement of Facts and Issues filed by the parties. The court now considers the evidence for and against this claim as well as the legal arguments of counsel on behalf of each party in deciding the issues raised in this matter.

5. Evidence on Behalf of the Claimant

At trial, the Claimant called two witnesses to prove its case. The first witness David Kundysek in his affidavit dated 8th October 2018 that he is the President of the Claimant company. He said that the Claimant owns Lots No. 44 and 45 in Caye Caulker by virtue of Deeds of Conveyance as shown in Exhibit "DK1". He says that this claim alleges that the

constitutional rights of the Claimant to protection from arbitrary deprivation of property under sections 3, 17 and 20 of the Constitution have been infringed by the Defendants. Mr. Kundysek states that there was a pier abutting the Claimant's land and there was no land to the East which would have been available to the Defendants to let to third parties. The previous owners of the Pier License No. E.P. 13/06 (11) ('the Pier License') formally requested that the license be transferred to the Claimant as the new owner of Lot No. 44 (Exhibit 'DK1-2'). On 1st April 2009 the Commissioner of Lands and Surveys granted a third party to one Nicholas Wade permission to survey some 0.65 acres of national lands in Caye Caulker Village known as Parcel No. 1019 Block 12 Caye Caulker as shown in Land Register Report Exhibit 'DK1-3'. Nicholas Wade was granted freehold estate of Parcel 1019 as shown by Exhibit 'DK1-4'. On 7th October 2013 the Minister of Natural Resources cancelled the survey of 0.46 acres of land which was granted in similar circumstances as Parcel No. 1019 as stated in a letter dated 7th October 2013 (**Exhibit DK1-5**). Mr. Kundysek states that he has been advised by counsel that the issue becomes one of compensating the private land owner. He drew a parallel between the case at bar and the 'Marine Parade Project' where the Government of Belize undertook reclamation works which had the similar effect of

expropriating the riparian rights of landowners. The government acceded to the request of those injured landowners to, *inter alia*, compensate their loss by the grant of the freehold interest in the lands which abut their existing lands in consideration for the sum of \$1.00. He attaches a file from the Lands and Surveys Department which contains this example as **Exhibit 'DK1-6'**. Mr. Kundysek is therefore seeking compensation from the government for the breach of his constitutional rights under Section 3(d) and 17 of the Constitution of Belize; the expropriation cannot be said to have been carried out in the public interest especially when regard is had to the fact that Parcel No. 1019 was granted to a Third Party and without any previous consultation with the Claimant as affected land owners of Lot No. 44 and Lot No. 45. Further, the Minister of Lands and Surveys and the Commissioner of Lands failed to act in a consistent manner in their previous conduct of regularizing issues such as these by either cancelling the survey and/or the grant of the freehold interest in the new piece of land being Parcel No. 1019.

6. Under cross-examination by Mrs. Matute Tucker for the Defendants, Mr. Kundysek said he became owner of Lots 44 and 45 by purchasing them after seeing advertisements online from one "Nick". He admitted that before he bought these lots, he had not visited Belize before nor had he

seen actual photos showing where these properties were located. Even after buying these lots, Mr. Kundysek admitted that he has still not visited either of these properties so he could not say with certainty whether there is land in front of them. He also could not say whether there exists a pier in front of his property at the moment. He has never provided money to construct a pier in front of Lots 44 or 45.

7. The next witness for the Claimant was Mr. Ronald Arias, Legal Assistant employed by Mr. Glenn D. Godfrey & Co., LLP, with general management of the documents and files of this case. The purpose of his evidence is to reply to the affidavit of the Defendant's witness Ms. Michelle Alvarez dated 9th January 2019 which was filed in answer to the Claimant's claim. The Claimant does not dispute the fact that the Plan shows that both Lots No. 44 and 45 are bounded to the East by 'national land.' He cites the National Lands Act which defines 'national lands' to mean "*all lands and sea bed, other than reserved forest within the meaning of the Forests Act, CAP 213, including cayes and parts thereof not already located or granted, and includes any land which has been, or may hereafter become, escheated to or otherwise acquired by the Government of Belize.*" In his affidavit, Mr. Arias also states that the standard inspection report is missing from the National Estate Office file concerning Parcel No. 1019. He claims

that such a report is ordinarily executed by a government land inspector prior to the granting of a lease or prior to the purchase approval of a parcel of land. Mr. Arias also notes that the letter indicating that approval for the pier license had been granted to the Claimant by the Minister of Natural Resources for the construction of a pier in front of Lot 44, situate North of the Split of Caye Caulker Village, Belize District. He states that the Defendants to date have not sent any letter to the Claimant cancelling the Pier Permit, and have continued to charge and collect payment of annual license fee for the Pier Permit up to 2011. It is Mr. Arias's belief that even if the Claimant did not acquire the rights accompanying the Pier Permit (which is denied), it would have acquired the right of the cause of action which had accrued to its predecessor in title.

8. Under cross-examination by Mrs. Matute Tucker for the Defendants, Mr. Arias admitted that he has never worked at the Ministry of Natural Resources nor the Lands Department therefore he cannot speak to what practices or policies the Ministry has. He agreed that he did not conduct an in person inspection of Lots 44 or 45, but he said he has seen the plans of those parcels. He was then asked to look at those plans; after looking at plans showing the Eastern border of Lots 44 and 45, the witness agreed that there was no mention of the sea in either plan. He agreed that the plan

stated National Land that bordered the Eastern border of Lots 44 and 45. The witness agreed with Learned Counsel's suggestion that based on the map, there exists land between the Claimant's properties and the sea.

9. Under re-examination by Mr.Lindo for the Claimant, Mr. Arias said that there is nothing on the map which states that there is a 66 foot reserve.

10. Evidence on Behalf of the Defendants

11. The Defendant called two witnesses at trial. Ms. Michelle Alvarez was the first witness. She said that she is the Director of the Department of Natural Resources and her duties include oversight of the Mining, Hydrology and Physical Planning Sections of the Ministry of Natural Resources. The Physical Planning Section handles licences to construct piers.

12. Ms. Alvarez states that she conducted a search of the relevant files at the Ministry of Natural Resources in relation to this matter. She discovered that by virtue of a Deed of Conveyance (**Exhibit MA1 and MA2**) dated 5th November 2007, Kundysek Family Investments L.P. the Claimant became the owner of Lots No. 44 and 45, now known as Parcel Nos. 1012 and 1013, Block 12, Caye Caulker, Registration Section, situate in Caye Caulker Village, Belize District. Ms. Alvarez also stated that Parcel 44 is bordered to the North by Parcel 45, the South by an alleyway, and the West

by a street, while Parcel 45 is bordered to the North by parcel 46, the South by Parcel 44, the East by National Land and the West by a street. The witness noted that at all material times, the Claimant's land was bordered to the East by national land, available to be let or be sold. Ms. Alvarez also noted that the previous owners of Lot No. 44 (Parcel No 1012) who sold it to the Claimant were given permission to construct a pier to be situated in front of Lot No. 44. This permission does not attach to the land, nor does it confer ownership, nor an interest in the land upon which it is built. She refers to the letter of permission exhibited as "MA5". The witness testified that when Lot 44 was sold to the Claimant, the permission to construct the pier was personal and remained with the previous owners of Lot No. 44. Since the pier licence remained with the previous owners, a letter was written seeking the transfer of the permission to the Claimant. Upon making enquiries of the Ministry of Natural Resources, the Claimant was informed that it would need to complete a new application for permission to construct a pier. To date, no new application has been filed. The witness said that the Claimant has no riparian rights since Lots 44 and 45 are bordered by national land and not by a body of water or water course.

13. Mr. Lindo cross-examined Ms. Alvarez on behalf of the Claimant. The witness admitted that she had been Director of Physical Planning from

August 2017 to April 2019. She said she referred to the Claimant's land as being bordered to the east by national land because it is labelled as national land on the two titles for Lots 44 and 45. Mr. Lindo showed Ms. Alvarez a map of Lots 44 and 45. She said she could not state what the broken line on the map represents as she is not a surveyor. She did say that left of the broken line is labelled "now or formerly National Land" and right of the broken line is labelled "The Sea". She agreed that it is customary to leave a 66 foot reserve between the sea and the boundary of someone's property, and that the portion referred to on the map as "now or formerly National Land" would fall within that 66 foot boundary. Ms. Alvarez admitted that there are instances when permission to construct a pier is given even if the Applicant does not own a parcel of land immediately adjacent to it; in those circumstances the pier would generally be located in a public access area which is adjacent to the 66 foot reserve or a public easement or alleyway. She also agreed that it is customary to issue a Pier License to a land owner who has seafront property. At the time when the Pier License for Lot No. 44 was granted, there was no other land owner in front of Lot No. 44. Ms. Alvarez agreed that the permission for the license came with conditions, one of which was the obligation to pay annual fees to Lands and Surveys department in Belize City. Payment of this annual fee annually would

renew this permission. She was shown **Exhibit RA1-3** and she identified it as Government of Belize Revenue Collector's Receipt received on 19th August, 2008 from David Kundysek for \$996.85 for a Pier Permit for Lot 44. She also identified another Government of Belize receipt showing payment received from Nicholas Maznek for \$996.85 for a Pier Permit. She said the annual fee is one thousand dollars and that she does not know why they are paying less than \$1,000. Ms. Alvarez agreed that the receipts shown to her were paid during the period of August 2008 through September 2011. The payments were toward the satisfaction of Condition 7 of the license, payment of annual fees. She said that the description of "in front of Lot No. 44" referred to on the license is a general description which could mean e.g. at the Northern, Southern , middle of the property, three quarters way down. It is not a geospatial reference. Upon being shown a letter (**Exhibit MA8**) issued by the Ministry to the Claimant, Ms. Alvarez agreed that the letter is saying that in order for the Ministry to continue processing the transfer of the Pier Permit, certain documents are needed. She also admitted that this letter does not state that the Pier Permit had been cancelled. She could not say whether it was reasonable for the Claimant to expect that the licence would be issued as it was the Minister

who approved the permits. She agreed that her review of the file for this matter revealed that no Inspection Report was done for Lots 44 and 45.

14. The next witness for the Defendant was Ms. Shirley Humes, Physical Planner of the Department of Natural Resources. Her duties include dealing with applications for use of the seabed and beach reserve. The witness said that she conducted an inspection of Lots 44 and 45 and Parcel 1019 in Caye Caulker Village on 8th January 2019. Upon inspection, she noted that Lot 44 is bordered to the North by Lot 45 (Parcel 1012), the South by an alleyway, the East by Parcel 1010 and the West by a street, while Lot 45 (parcel 1013) is bordered to the North by Lot No. 46 (Parcel 1011), the South by Lot 44 (Parcel 1013), the East by Parcel 1019 and the West by a street. Ms. Humes states that the Claimant's lands were bordered to the East by land at all material times and not by the sea as shown in Entry No. 1954 Register No. 8 (**Exhibit SH5**). The land bordering the Claimant's land to the East now forms Parcel 1019 as shown in the Register (**Exhibit SH6**) and was formerly national land. It was sold by the Government to Nicholas Wade who subsequently sold the said parcel to Roger Saldivar. There is the required 66 foot reserve between Mr. Saldivar's land and the sea. The inspection revealed that there was no pier existing in front of Lots 44 or 45.

15. Ms. Humes was briefly cross-examined by Mr. Lindo for the Claimant.

She was shown the map (**Exhibit SH5**); the witness said that based on the map, national land is located to the East of Lots 44 and 45. She further stated that the sea is also located to the East of both lots. The witness said she would not be able to say whether the land to the East of these lots was low lying in 2009. When she inspected the properties in January 2019, there was a parcel of land in front of Lots 44 and 45 to the East. The land was not low lying and was not higher than the land on Lot 44 or Lot 45. She said that the land was consistent with what existed except on the North of Parcel 1019 which was low-lying meaning swampy. Land to the South of Parcel 1019 was not low-lying. On the map, North of Parcel 1019 would be to the East of Lot 50. She clarified that the land was not swampy but it was just wet and they could have walked on it. She said that she cannot recall what time of day she conducted the inspection but thinks it was probably before noon. The witness agreed that here is land located directly to the North of Parcel 1019 and that reclamation works had been carried out on that parcel.

16. Legal Submissions on Behalf of the Claimant

Whether Parcel 1019 is national land within the meaning of National Lands Act

1. The National Lands Act¹ provides a wide definition of what national land is.

Section 2 provides as follows:

“national lands” means all lands and sea bed, other than reserved forest within the meaning of the Forests Act, Cap. 213, including cayes and parts thereof not already located or granted, and includes any land which has been, or may hereafter become, escheated to or otherwise acquired to the Government of Belize;”

2. The Claimant therefore agrees that Parcel 1019 would be caught by the wide definition of National Lands within the meaning of the National Lands Act as this provides for all land within the territorial limits of the State of Belize inclusive of the seabed.

Whether the 1st Defendant had the authority to grant freehold title to Parcel 1019 to a third party

3. Section 13 of the National Lands Act invests in the 1st Defendant the authority to dispose of National Land on such terms and conditions as he sees fit. This is not in dispute and the Claimant does not join issue with the powers of the 1st Defendant in this regard.

¹ National Lands Act, Chapter 191 of the substantive laws of Belize, [TAB 1]

4. The Claimant's contention, however, is the manner in which the 1st Defendant wields this power. The Claimant acknowledges that there is no statutory provision in the National Lands Act which would compel the 1st Defendant to afford any person, who would be affected by a decision he is about to make, the opportunity to make representations before him. This the Claimant submits, is a fundamental feature of a Constitutional Democracy, where the citizen is afforded the right to be heard. The modern trend, especially in States which feature Constitutional Supremacy, is for the right to be heard prior to decisions being made by the State which would affect the rights or interest of a citizen.
5. The Belize Court of Appeal in the *Bruce*² case upheld the decision of Conteh CJ, as he then was, in which the land of Mr. Bruce was compulsorily acquired by the State under the guise of public purpose. Morission JA held that:

“[77] There is no provision in the Act that mandates a hearing in these circumstances. Nevertheless, Conteh CJ expressed the view (at para. 74) that [it is] elementary fairness and justice that a person whose land is about to be compulsorily acquired should know beforehand and be afforded an opportunity, if he wants, to make representation to dissuade the decision maker”.

*[78] In **British American Bank & Boyce v Attorney General**, Legall J at first instance accepted, (at para. 125) that “generally, the right to be heard and fairness are legally required”, but considered that there were exceptions, the most important of*

² *The Attorney General, et al v Samuel Bruce*, Civil Appeal No. 32 of 2010, [TAB 2]

which was “there is no right to be heard before making legislation, whether primary or delegated unless it is provided by statute” (Wade, *Administrative Law*, 8th edn, page 44).

[79] *In this court, after a review of a number of Commonwealth authorities, both myself and Carey JA, with whom Alleyne JA agreed, accepted that in any case in which a decision “is calculated to cause particular prejudice to an individual or particular groups of individuals, the person has a right to be heard” (per Carey JA at para. 283; and see per Morrison JA at paras. 176 – 199).*

[80] **In the instant case, there being no question that Mr. Bruce would have been seriously prejudiced, by the loss of almost a half of his land and a considerable investment, I consider that Conteh CJ was also correct to suggest that elementary fairness and justice demanded that he be given an opportunity to be heard. In this way, not only Mr. Bruce’s concerns, but “all the facts of the case” which the Minister stated that he had considered, as well as the position of the church, could have been fully ventilated in a transparent manner.**
(emphasis mine)

6. The Claimant submits that in similar vein, where the action/decision of the 1st Defendant would result in the loss or expropriation of property or rights to the detriment of the citizen, it is incumbent on the 1st Defendant, prior to making such a decision, to afford the citizen a hearing in order to provide an opportunity to make representations in an effort to dissuade him or change his mind.
7. In the instant case, the Claimant submits that the 1st Defendant, being armed with the knowledge (which will be discussed below) that his decision to grant freehold

title for Parcel 1019 to a third party would effectively expropriate the Claimant's riparian/littoral rights acquired under Pier Licence E.P. 13/06(11) or otherwise, ought to have afforded the Claimant or its representatives the opportunity to be heard before making such a decision.

Whether the 2nd Defendant failed and/or refused to act in a consistent manner by not cancelling the survey recorded under Entry No. 11889 in Register No. 24 in the Register of Surveys

8. The 2nd Defendant, on the 7th October 2013³ exercised the powers vested in him by virtue of Part III of the Land Surveyor's Act⁴ when he wrote to one Mr. Gilberto Perez to inform him that a survey which was carried out by him (Mr. Perez) was being cancelled.

9. The Land Surveyor's Act invests, in the 2nd Defendant the following powers:

"3. (1) There shall be appointed by name or office a Commissioner of Lands and Surveys who shall, subject to this Act,

(a) direct, supervise and control all public surveys;

(b) ensure that all surveys and plans are effected in accordance with the laws of Belize;

³ See Exhibit DK1 – 5

⁴ Land Surveyor's Act, Chapter 187 of the Substantive laws of Belize, [TAB 3]

- (c) take charge of and preserve the originals of all survey plans;*
- (d) cancel or amend, in accordance with the provisions of any law, any survey plan or diagram found to be incorrect, superseded or inadequate;*
- (e) prepare, certify and issue, at the request of any person upon payment of the prescribed fee, copies of diagrams and documents filed within his department which are available to the public;*
- (f) do such other acts as may be necessary to carry out the provisions of this Act.*

10. Further, Section 19 of the Land Surveyor's Act provides the specific power for the 2nd Defendant to:

- “19 (1) Where, in the case of a document or instrument to which an authenticated plan is attached, or in which reference to such a plan is made,*
- (a) The plan is found to be inaccurate by reason of any error or omission in the survey; or*
 - (b) The plan does not conform with the terms and conditions subject to which the plan relates has been given, the Commissioner may cancel the authentication of such plan and may recall any copies which may have been issued.”*

11. The evidence in the instant case is that in a similarly circumstanced situation **(Exhibit DK1-5, with the plan attached)** the 2nd Defendant exercised the powers invested in him under the Land Surveyors Act and specifically sections 3(1)(d) and Section 19 thereof, to cancel the survey on the ground that there was no land available to let.
12. The instant claim is no different. The evidence of Ms. Shirley Humes under cross-examination⁵ is that there was evidence of Parcel 1019 being ‘*topped up*’ which the witness later clarified that soil was put on top of Parcel 1019.
13. The Claimant submits that the ineluctable conclusion to be drawn from the evidence of Ms. Humes is that the land that was sold to Nicholas Wade on the 20th November 2012 by the 1st Defendant was previously low lying land or the seabed and as such would not have been available to be disposed of ordinarily by the 1st Defendant.
14. The 2nd Defendant, has refused to exercise the powers invested in him by Section 3(1)(d) and Section 19 of the Land Surveyors Act to cancel the survey plan which forms the basis as showing the availability of National Land for the 1st Defendant to dispose of.

⁵ Page 66, lines 11 through 17 of the transcript of the Trial, [Tab 4]

15. The Claimant therefore invites this Honourable Court to find that the 2nd Defendant has acted in an inconsistent manner by his refusal to cancel the Survey in respect of Parcel No. 1019 notwithstanding the fact that he so did when similarly circumstanced with the Gilberto Perez survey.

*Whether the Claimant has accrued riparian rights in relation to
Parcels 1012 and 1013*

16. The central issue in determination of the instant claim is whether or not the Claimant has accrued riparian/littoral rights attaching to the Claimant's Land as a result of both parcels of land being bounded on the East by the Caribbean Sea.

17. The evidence before the Court is that there was in existence a Pier Licence E.P. 13/06(11) which was granted to the Claimant's predecessor in title – Nicholas Maznek – on the 28th September 2007⁶ on behalf of the 2nd Defendant.

18. The Pier Licence specifically stated that:

“Your application for permission to construct a Pier in front of Lot No. 44, situate North of the Split of Caye Caulker Village, Belize District was approved by the Minister of Natural Resources and the Environment subject to the following conditions: ...”

⁶ Exhibit DK1 – 2

19. The evidence of Michelle Alvarez under cross-examination is that the meaning of ‘*in front of*’ would be in an Easterly direction in the water.⁷

20. The evidence of Michelle Alvarez is that at least up until 2011 the Pier Permit was valid and still in existence.⁸

21. Awich J, as he then was, in the *National Fishermen*⁹ case explained at length as to how riparian rights were created. His Lordship explained as follows:

“21. *Riparian right generally.*

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.

22. *Riparian right is distinct from the right of navigation which is a public right, a point stressed in the William Lyon v*

⁷ See pages 46 line 20 and page 47 lines 1 through 3 of the transcript of the Trial

⁸ See page 43 lines 10 through 13 of the transcript of the Trial

⁹ National Fishermen Producers Co-Operative Society v Brown Sugar Market Place Ltd, Supreme Court of Belize Claim No. 540 of 2006, [TAB 5]

Fishmongers' Co. case. The expression that a riparian owner is entitled ex jure naturae to access to the water that abuts on his land, and to take the water that flows or washes on his land, emphasizes the point that riparian right is derived from the fact that the land abuts naturally on natural surface water, not on water of artificial channel or pond.

23. *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. The Privy Council appeal case from Trinidad and Tobago, **Stollmeyer v Trinidad Lake Petroleum Company***

Limited and Others [1918] A.C. 487, and Attwood v Llay Main Collieries [1926] Ch. 444, illustrated the rule. In the latter case, it was held that, the defendant riparian owner had no right to take river water to land too far away that he had interest in.

...

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”.

26. *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 - ...”*

27. *The principle of law in the two cases was repeated later in 1889, by the Privy Council in the Canadian case, **North Shore Railway Company v Pion and Others 14 App. Cas. 612**, that obstruction of access of a riparian owner, without parliamentary authority and indemnity was an actionable wrong. The facts were the following. The defendant built a railway on an embankment extending along the entire river front of the claimant’s riparian land, on the bank of River St. Charles in Quebec. They left a fifteen feet opening directly opposite the land for access, and another opening outside the claimant’s frontage at a public road. The claim of the plaintiff for damages (indemnity) for injury to their 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. They applied the English case, the **William Lyon v Fishmongers’ Co** case.*

22. The Claimant submits that based on the foregoing authorities and the fact that the Claimant's predecessor in title had a valid pier permit in existence at least up until 2011, the Claimant was invested with riparian rights.
23. This is bolstered by the admission of Ms. Humes under cross-examination that Parcel 1019 was in fact 'topped up' by the deposit of soil on top.
24. The Claimant says that it is immaterial whether or not the president of the Claimant, David Kundysek, had visited the Claimant's Land prior to purchasing the same as this would not and could not detract from the fact that the Claimant's Land, specifically Lot No. 44, now known as Parcel No. 1012, enjoyed riparian rights from the pier licence which was attached to it and the fact that this land abutted the Caribbean Sea which fact is made plain by the filling of Parcel No. 1019.
25. Further, it is immaterial as to whether or not a pier was actually built as this would not have affected the riparian right of the Claimant.
26. The Claimant therefore invites this Court to find that the Claimant's Land, in particular Lot No. 44, now known as Parcel No. 1012, enjoyed riparian rights as a result of the same abutting the Caribbean Sea and fortified by the issue and subsistence of the Pier Permit.

27. The Claimant further submits that the riparian rights attaching to the Claimant's Land is, as Awich J. held, at paragraph 25 of the *National Fishermen* case, that riparian rights form a part of the bundle of rights protected by Section 3 of the Belize Constitution Act.

Whether the Defendants have breached the Claimant's Constitutional rights having granted freehold title to Parcel 1019 to a third party

Whether there has been an expropriation or breach of the Claimant's riparian rights in relation to Parcel 1012 and 1013

28. The Claimant submits that the issue of expropriation can be dealt with succinctly.

The Claimant's riparian rights was, as a natural and ordinary consequence of the issue of freehold title to Parcel No. 1019 being granted, thereupon expropriated by the 1st Defendant.

29. The action of the third party filling up or, in the words of Ms. Humes, *topping up* the land, crystalized the expropriation of the Claimant's riparian rights. The Claimant could no longer exercise his riparian rights which were incidental to his ownership of Lot No. 44 or Parcel No. 1012.

30. The Claimant therefore submits that the grant of freehold title to Parcel No. 1019 effectively expropriated the Claimant's riparian rights and therefore breached the

Claimant's Constitutional Rights as provided by sections 3 and 17 of the Belize Constitution.

*If there has been a breach of the Claimant's riparian rights,
whether the Claimant is entitled to damages as a result thereof*

31. The Claimant initially prayed for relief in the Fixed Date Claim Form that Parcel No. 1019 be cancelled and a pro-rated amount of such parcel be granted to the Claimant. The evidence shows that this is no longer possible as there has been construction works on Parcel No. 1019 and the third party has acted to his detriment.
32. The Claimant therefore respectfully prays that the Court pronounce on the issue of liability in respect of the declarations sought by the Claimant and if this Honourable Court finds in the Claimant's favour, that leave be granted to the Claimant, in accordance with the prayer for such further or other relief, to provide evidence of the diminution in value of the Claimant's Land for damages to be proved.
33. There is, in the circumstances, no prejudice to be meted to the Defendants by adopting this approach which the Claimant states is in the interest of justice being served.

17. Legal Submissions on Behalf of the Defendants

Parcel 1019 is national land within the meaning of the National Lands Act

1. In the interpretive section of the *National Lands Act, Chapter 191 of the Substantive Laws of Belize* (hereinafter “*NLA*”) at *section 2* [TAB1], defines national land to mean all lands and seabed, other than reserved forest including cayes and parts thereof not already located or granted, and includes any land which has been, or may hereafter become, escheated to or otherwise acquired by the Government of Belize.
2. National Lands is classified in the *NLA* to include beach lands pursuant to *Section 4(1)(e)* [TAB2], which states:

“National lands shall be classed severally, as follows:-

- (a) town lands;*
- (b) suburban lands;*
- (c) rural, including pastoral, lands;*
- (d) mineral lands; and*
- (e) beach lands.”* (Emphasis added)

3. By virtue of the definition given in the *NLA*, it is the respectful submission of the Defendants that Parcel 1019, Block 12 Caye Caulker Registration

Section (“Parcel 1019”) falls to be considered as national land. This is to be evidence by Plan of Lot No. 45 situate in Caye Caulker Village, Belize District which demonstrates that Lot No. 45 is bordered to the East by National Lands.

4. It is the evidence of the director of the Claimant that prior to purchasing the properties, he did not visit the properties, so he cannot say with certainty that in front of the properties that there was land or not.
5. Further, it was the admission of Ronald Arias, witness for the Claimant, that while he did not carry out a physical inspection of the properties, he did agree that based on the map, there existed land between the Claimant’s property and the sea. This land in between as shown on the map is entitled “*now or formerly national land*”.
6. Further, the evidence has shown that Parcel 1019 is bordered on the East by national land inclusive of the 66 feet reserve, which is required by law. Therefore, we humbly submit that Parcel 1019 was National Lands at the material times and available to be let or sold by the Minister. This position is further buttressed by letter marked “DK1-5” attached to the Affidavit of

Kundysek which speaks to the cancellation of the survey because the land was not available to be let and not that there existed no land to be let.

1st Defendant had the authority to grant freehold title to Parcel 1019 to a third party

7. The *NLA* empowers the Minister to dispose of national land after he has been advised by the Advisory Committee pursuant to Section 5:

“(1) National lands shall not, save as is excepted by Section 6, be dealt with or disposed of, except in the manner hereinafter provided.

(2) The Minister shall appoint an Advisory Committee to advise him generally on all matters relating to land administration.

(3) The Minister may appoint local committees to assist him in the consideration of applications for all tenants of national lands and other matters relating to land distribution.”

8. The Minister is authorized to lease national land pursuant to *Section 7* of the *NLA* and in accordance with *Section 6(2)* of the *NLA* [Tab3], he may alter, vary or add to the ordinary terms upon which any grant, lease or license is made.

9. Section 7 states:

“The Minister may grant leases of national lands on such terms and conditions as he thinks fit and may likewise renew leases on such terms and for such periods as to him may seem proper.”

10. Section 6 states:

6. (1) Nothing contained in this Act shall prevent the Minister from excepting from sale in the ordinary manner and reserving to the Government of Belize the right of disposing of in a manner as for the public interests may seem best, such lands as may be required as reserves, public roads or other internal communications, or commons, or as the sites of public buildings, or as places for the interment of the dead, or places for the education, recreation and amusement of the inhabitants of any town or village, or as the sites of public quays, wharves or landing places on the sea coast or shores of streams, or for the construction of tram or railways or railway stations, or canals, or for the purpose of sinking shafts and digging for minerals, or for any purposes of public defence, safety, utility, convenience or enjoyment, or for otherwise facilitating the improvement and settlement of Belize, or for special purposes.

(2) The Minister shall also have power to alter, vary or add to the ordinary terms and stipulations upon which any grant, lease or licence is made, should it be considered expedient to do so in any special instance.

11. In ***Claim No. 356 of 2016 Marilee Pou v Minister of Natural Resources & Ors*** [TAB 4] it was stated at [25] of the judgment that National Land could be sold at a price and conditions as the Minister prescribes on the advice of the Advisory Committee as stated in the NLA.

12. It is the respectful submission of the Defendants that Parcel 1019 being national land at the relevant time could have been sold by the Minister on the advice of the Advisory Committee after an application had been made by the Applicant. It is the evidence before this Honourable Court that by letter dated the 1st April 2009, Mr. Nicholas Wade was granted permission to survey approximately 0.65 acres of national land situate in Caye Caulker District now described as Parcel 1019. Lease approval for same was given to Mr. Wade and he later applied to purchase the said property in November 2009. The Minister had the power to lease Parcel 1019 pursuant to ***Section 7*** of the ***NLA*** and is further empowered by ***Section 13*** of the ***NLA*** [Tab5] to sell national land. Therefore, the Defendants reiterate that Parcel 1019

was National Lands at the material times available to be let or sold by the Minister.

Survey record need not be cancelled

13. It is the respectful submission of the Defendants that the 2nd Defendant acted consistent and in accordance with the Act in his determination not to cancel the survey record in respect of Parcel 1019. As the Defendants have established above, Parcel 1019 was national land to have been let and sold, and there existed land and not sea as contended by the Claimant.

14. It is the evidence of the Defendants that based on the existing maps and the admission of the Claimant's witness, there existed land in between the Claimant's properties and the sea.

15. It is the further evidence before this court that the land in between the Claimant's properties and sea was not low-lying. Where Parcel 1019 was considered low-lying was to the North of it where it met the sea.

Has accrued riparian rights accrued in relation to Parcels 1012 (Lot 44) and 1013 (Lot 45).

16. In the definition of riparian rights, it is specifically stated that it relates to land that abuts the water body. *Black's Law Dictionary* [TAB6] defined riparian right as “the right of a landowner whose property borders on a body of water or water-course.
17. What constitutes riparian rights were defined by Awich J in *Claim No. 540 of 2006 National Fishermen Producers Co-operative Society v Brown Sugar Market Place Limited* [Tab7] as a private right of an owner of land which abuts a body of water to be able to moor vessels adjacent to its land for necessary periods to load and unload, if the owner is deprived of such right then he is entitled to compensation. Starting at [21] of the judgment, he states:

*“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.

[22] Riparian right is distinct from the right of navigation which is a public right, a point stressed in the *William Lyon v Fishmongers' Co.* case. **The expression that a riparian owner is entitled ex jure naturae to access to the water that abuts on his land, and to take the water that flows or washes on his land, emphasizes the point that riparian right is derived from the fact that the land abuts naturally on natural surface water, not on water of artificial channel or pond.** [Emphasis Added]

18. Critical in the definition and identification of riparian rights is that the land abuts the water. Taking the ordinary meaning of the word “abut”, it means that the land must border on, join or touch the sea. In the case at bar, it is the evidence before this Honourable Court that the Claimant’s properties do not abut the sea, but was bound on the East by national lands. It is that national land which then abuts the sea and is afforded riparian rights.
19. The Defendant therefore submits that the Claimant’s claim alleging a breach of his riparian rights is misconceived. The Claimant’s only right is to that of public navigation.

20. Awich J quoted from the case of *Duke of Buccleuch v Metropolitan Board of Works*, *Law Rep. 5 H.L. 418*, and stated at paragraph 37:

“Lord Selborne in a short judgment in the same case stated that the proprietor of land on the bank of a tidal navigable river had a right to the frontage of the river belonging by nature to his land, although the only practical advantage of the right might be the access afforded him. He went on to state categorically at page 684 that:

“Such a right of access is his only, and is by virtue and in respect of, his riparian property; it is wholly distinct from the public right of navigation”.

21. Awich J further quoted paragraph 40:

“In the Iveagh (Earl) v Martin case, it was held that: the right of the public, as part of the right of navigation, to use a quay on payment of a reasonable fee extended only to use in the course of embarking or, disembarking, loading or unloading, or in the course of carrying out repairs to vessel if she arrived in the ordinary course of navigation and the repairs were necessary. The right of navigation is primarily the right to use the river, lake or sea as a highway and for purposes incidental therefore; a claim based on the right of navigation can succeed only if the claimant proves special

damages to himself – see the Privy Council appeal case, David Bell v The Corporation of Quebec [1875] 5 App. Cas 84.”

22. In the case of *Arturo Matus v Attorney General*, [TAB8] this Honourable Court had to consider this same issue of the existence of riparian rights, and the Defendants invite this Honourable Court to consider her decision in that matter.

23. Therefore, it is the respectful submission of the Defendants that riparian rights are rights granted to a proprietor for the frontage of the seabed belonging by nature to his land. Separately is the public right of navigation, which is given to the public to access the seabed which is owned by the Government as it falls to be classified as national land. The public does not have a riparian right, they only have a right of navigation to access the seabed “*to use in the course of embarking or disembarking, loading or unloading or to carry out repairs to their vessel. It is a right to use the water like a right to use the highway and for purposes incidental*”.

24. Moreover, the Claimant attempts to show the existence of its riparian rights by alleging that a Pier License was granted to the previous owner of Lot 44

Nicholas Maznek and Maureen Dunphy. In the testimony of Ms. Michelle Alvarez, Mining, Physical Planning and Hydrology, on behalf of the Defendants, she stated that there are instances in which the privilege of a Pier License is given to an applicant even though they would not own a parcel immediately in front of the pier after consideration of special circumstances. A pier license in these circumstances do not give rise to riparian rights and only allude to the point of public navigation.

25. As the Defendants have demonstrated above, the survey plan clearly demonstrates that Parcel 1019 was national land and abuts the sea on the East. Parcels 1012 and 1013, formerly Lots 44 and 45 are bound on the East by national land available to be let and sold by the Minister. The Claimant did not at any material time accrue any riparian right by virtue of Parcels 1012 and 1013. On that basis, the Defendants further submit that there could not have been a breach of the Claimant's riparian rights where none existed, since the Claimant's properties did not abut the sea to have accrued riparian rights.

Whether the Defendants have breached the Claimant's constitutional rights having granted freehold title to Parcel 1019 to a third party.

26. Every person in Belize is afforded their right to not be deprived of their property as granted in the *Constitution of Belize, Chapter 4 of the Substantive Laws of Belize* (hereinafter “*the constitution*”). The right to protection from arbitrary deprivation of property is set out in *Section 17 [Tab9]* of the Belize Constitution, which states:

“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 in or right over the property a right of access to the courts for the purpose of-

(i) establishing interest or right (if any);

(ii) determining whether that taking of possession or acquisition was duly carried out for a public purpose in accordance with the law authorising the taking of possession or acquisition;

(iii) determining the amount of the compensation to which he may be entitled; and

(iv) enforcing his right to any such compensation.”

27. The Claimant alleges that he has been deprived of his constitutional right through the expropriation of his riparian rights and/or implied easement to the foreshore. The Defendants have established above that the Claimant's property was bound on the East by national land and therefore was not entitled to riparian rights nor did they accrue riparian rights. There was national land between the sea and the Claimant's property available, inclusive of the 66 feet reserve, to be let by the 1st Defendant. The Defendants humbly submit therefore, that the Claimant did not have any riparian rights and therefore there could not have been any breach of its constitutional right. At all material times the 1st Defendant was empowered by the NLA to sell national land.

28. Furthermore, the Claimant, through his own admission, was not aware whether his property was bound by land or it was abutting the sea as he claimed. The Claimant admitted that he doesn't remember if he saw photos of the property and had not visited the property up to the trial date. The Claimant further admitted that there was no pier in front of Lot 44, he never provided any money to construct a pier nor did he apply to construct a pier in front of Lot 44. The Defendants aver that the Claimant has no knowledge

if his property afforded him with riparian rights by virtue of it abutting the sea.

No entitlement to damages

29. The Defendants submit that the Claimant is not entitled to damages since there was no breach of the Claimant's constitutional right relating to his property. 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 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.

30. It was laid down by the Privy Council in *Maharaj v Attorney-General of Trinidad and Tobago* (1979) AC 385 [TAB10], that damages were an 'appropriate' relief in a claim for 'redress' for breach of the fundamental rights 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.*'

31. In *Maya Leaders Alliance et al v The Attorney General of Belize* [2015] CCJ 15 (AJ) [TAB11], the Court stated that there are three requirements which must be satisfied for an award of damages to be made under section 20 of the Belize Constitution, that is: “(1) *the existence of a constitutional right; (2) a contravention of that right; and (3) that a monetary award is the appropriate remedy or redress for the contravention.*”
32. It is noted that an award of damages pursuant to Section 20 of the Constitution, is not automatic, but is a discretionary award, and should only be awarded on a case by case basis, and where it is fit to do so. To make such an award automatic would undermine this discretion given to the Court under the Section. This was established in the case of *James v Attorney General of Trinidad and Tobago* [2010] UKPC 23 [TAB12], 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 his constitutional rights, and therefore, did not award any compensation.
33. Further, it was noted in *James* that since an award of damages is not automatic, it must be contemplated on what grounds will the Court make such an order; in other words, whether damages must be proven.

34. The First and Second Defendants humbly submit that it is trite law that loss has to be specifically proven. **Justice of Appeal Kangaloo** at the Court of Appeal and quoted by **Lord Kerr** at the Privy Council said in *James*:

“[I]t 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...” (Emphasis mine)

35. Therefore, there is no need for the Court to carry out any further exercise to determine the value of damages the Claimant may have been entitled to, as there was no order made for bifurcation, and it was incumbent upon the Claimant to provide any evidence it deems fit to justify any compensation.

Conclusion

36. Pursuant to the definition provided within the NLA, Parcel 1019 is defined as national land therefore, we humbly submit that Parcel 1019 was National Lands at the material times available to be let or sold by the Minister.

37. Parcel 1019 being National Land at the relevant time could have been sold by the Minister on the advice of the Advisory Committee after an application had been made by the Applicant. The Minister had the power to

lease Parcel 1019 pursuant to *Section 7* of the *NLA* and is further empowered by *Section 13* of the *NLA* to sell national land. Therefore, we further reiterate that Parcel 1019 was National Lands at the material times available to be let or sold by the Minister.

38. Furthermore, the Defendants aver that at all material times, the Claimant was bound on the East by national land and therefore was not entitled to riparian rights. There was national land between the sea and the Claimant's property available to be let by the 1st Defendant. The Defendants humbly submit that the Claimant did not have any riparian rights and therefore there could not have been any breach of his constitutional right.

39. In the definition of riparian rights it is specifically stated that it relates to land that abuts the water body. The Claimant's property does not abut the sea but is bound on the East by national land. It is that national land now Parcel 1019 which then abuts the sea and is afforded riparian rights.

40. The Defendant therefore submits that the Claimant's claim alleging ownership of riparian rights and thereafter a breach of his riparian rights is misconceived. The Claimant's only right is to that of public navigation.

41. We further submit that the claim ought to be dismissed in its entirety with
Costs to the Defendants.

42. All of the above are most respectfully submitted.

18. Decision

I am grateful to Counsel for the Claimant and for the Defendant for their helpful legal submissions on this claim. Having examined the evidence for and against this claim, I find that the Claimant has failed to establish on a balance of probabilities that his land abutted the sea, and that he was entitled to riparian rights. It is very clear when looking at the maps of Lots 44 and 45 (**Exhibits MA3 and MA4**) that the Claimant's land was bounded by national land on the East, and not by the sea. I accept as true the evidence of the witnesses for the Defendant, Ms. Michelle Alvarez, Director of the Department of Natural Resources that at all material times the Claimant's land was bounded on the East by national land. I accept her evidence as true that she personally conducted an inspection of the site in 2019 and she walked on this land and found that it was swampy and wet. I also accept as true the evidence

of Ms. Shirley Humes, Physical Planner in the Department of Natural Resources, that based on the existing maps, there was national land and not sea on the Eastern border between the Claimant's property and the sea. As the Claimant had not visited either of his 2 lots at the date of this trial, there is no factual evidence from him or from any other witness on his behalf as to the existence of land or sea at the Eastern border of his property. Having found as a fact that the Claimant's land was abutted by land and not by sea, it follows that the Claimant has failed to prove affirmatively on a balance of probabilities to the satisfaction of this Court that he had any riparian rights. As the Pier License issued to the Claimant's predecessor in title clearly states, the license does not confer any proprietary interest in land. I agree with the legal submissions of Mrs. Samantha Matute-Tucker on behalf of the Defendants that Parcel 1019 being National Land at the relevant time could have been sold by the Minister on the advice of the Advisory Committee after an application had been made by the Applicant. The Minister had the power to lease Parcel 1019 pursuant to *Section 7* of the *NLA* and is further empowered by *Section 13* of the *NLA* to sell national land. I agree that Parcel 1019 was National Lands at all

material times available to be let or sold by the Minister. The Claim is therefore dismissed.

Costs awarded to the Defendant to be paid by the Claimant to be agreed or assessed.

Dated this 27 day of June, 2022



Michelle Arana

Chief Justice (Ag.)

Supreme Court of Belize