

**IN THE HIGH COURT OF BELIZE, A.D. 2023**

**Claim No. 775 of 2020**

**BETWEEN**

**IESHA LEWIS (Administratrix ad litem)  
JANET HISLOP (Administratrix ad litem)**

**FIRST CLAIMANT  
SECOND CLAIMANT**

**AND**

**REGISTRAR OF LANDS  
RICHARD RUDON  
ELROY MCFOY**

**FIRST DEFENDANT  
SECOND DEFENDANT  
THIRD DEFENDANT**

**Before** the Honourable Madam Justice Geneviève Chabot

**Date of Trial:** October 20<sup>th</sup>, 2022

**Date of Last Written Submissions:** February 10<sup>th</sup>, 2023

**Appearances**

Darrell Bradley, for the Claimants

Samantha Matute and Jorge Matus, for the First Defendant

No appearance on behalf of the Second Defendant

Andrew Bennett, for the Third Defendant

**JUDGMENT**

**Introduction**

1. The Claimants seek restoration of Parcel 274, Block 45 in the Port/Loyolaville Registration Section (“Parcel 274”) to the Estate of Mark Lewis Sr. Parcel 274 was purchased by the Third Defendant, Elroy McFoy, from the Second Defendant, Richard Rudon. The Claimants allege that Mr. Rudon fraudulently applied for prescriptive title for Parcel 274, and that the First Defendant, the Registrar of Lands (the “Registrar”), acted unlawfully in granting prescriptive

title to Mr. Rudon. The Claimants seek restoration of Parcel 274 to the Estate of Mark Lewis Sr. on the basis that Mr. McFoy had knowledge of the fraud.

2. The Registrar denies having acted unlawfully, and asserts that her Office followed the process outlined in the *Registered Land Act*<sup>1</sup> in granting prescriptive title to Mr. Rudon. Mr. McFoy submits that he was a *bona fide* purchaser for value of Parcel 274, and as such that rectification of the Land Register is unavailable to the Claimants.
3. For the reasons that follow, I find that the Registrar acted unlawfully in granting prescriptive title to Mr. Rudon. I further find that Mr. Rudon fraudulently acquired prescriptive title for Parcel 274, and that Mr. McFoy had knowledge of the fraud. The Claim is granted and rectification of the Land Register is ordered.

### **Background**

4. The Claimants are the *Administratrices ad litem* of the Estate of Mark Lewis Sr. Mark Lewis Sr. died intestate on February 2<sup>nd</sup>, 2012.
5. Mr. Rudon is the uncle of Mark Lewis Sr. Mr. Rudon initially acquired title to Parcel 274 on June 22<sup>nd</sup>, 2001 through the (then) Supreme Court of Belize by prescription. On or about August 8<sup>th</sup>, 2001, Mr. Rudon transferred Parcel 274 to Mark Lewis Sr. A Transfer Certificate of Title in the name of Mark Lewis was issued by the Registrar on October 30<sup>th</sup>, 2001. There is conflicting evidence as to whether this transfer was made as a result of a gift or a sale. However, nothing turns on this particular point.
6. On or about July 4<sup>th</sup>, 2019, Mr. Rudon applied to the Registrar to acquire prescriptive title for Parcel 274, the same Parcel he had gifted or sold to Mark Lewis Sr. in 2001 (the “Application for Prescriptive Title” or the “Application”). The Application was granted by the Acting Deputy Registrar on September 28<sup>th</sup>, 2019. On November 20<sup>th</sup>, 2019, a Land Certificate was issued in the name of Mr. Rudon.
7. On or around January 7<sup>th</sup>, 2020, Mr. McFoy, purchased Parcel 274 from Mr. Rudon for the purchase price of \$45,000. Mr. McFoy is currently the registered proprietor of Parcel 274 under a Land Certificate issued on February 20<sup>th</sup>, 2020.
8. On March 24<sup>th</sup>, 2020, Ms. Lewis lodged a caution on Parcel 274 (the “Caution”). The Caution was registered on April 1<sup>st</sup>, 2020 and finalized on May 13<sup>th</sup>, 2020. The Registrar notified Mr. Rudon of the Caution on May 15<sup>th</sup>, 2020. On August 3<sup>rd</sup>, 2020, Mr. McFoy, through his attorneys, issued a letter of objection to the Registrar, claiming he is a *bona fide* purchaser without notice.

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<sup>1</sup> Cap. 194, Rev. Ed. 2020 (“*RLA*”).

9. On September 22<sup>nd</sup>, 2020, Mr. McFoy registered a charge on Parcel 274 in favour of the Belize Bank Limited in the amount of \$48,000.
10. On December 14<sup>th</sup>, 2020, the Registrar sent a letter to Ms. Lewis notifying her that the Caution would be removed based on Mr. Rudon's letter of objection at the expiration of one month, being January 14<sup>th</sup>, 2021, unless objection in writing was received. The Caution has yet to be determined.
11. The Claimants bring this Claim in order to restore Parcel 274 to the Estate of Mark Lewis Sr. The Claimants allege that Parcel 274 belonged to the Estate of Mark Lewis Sr. at all material times. The Claimants seek the following orders and declarations:
  - (1) A declaration that the First Defendant acted *ultra vires*, including procedural *ultra vires*, when the First Defendant granted the application of the Second Defendant for prescriptive title for Parcel 274, Block 45 in the Port/Loyolaville Registration Section, including that no notice or no proper notice was given to the Estate of Mark Lewis Sr. and that there was no basis or no proper basis to grant the Second Defendant's application for prescriptive title because, on the evidence submitted by the Second Defendant, the First Defendant could not have been satisfied that the Second Defendant was in possession of Parcel 274 adverse to the Estate of Mark Lewis Sr. and the decision to grant prescriptive title was *Wednesbury* unreasonable, procedurally improper, *ultra vires* and unfair.
  - (2) A declaration that the Second Defendant's acquisition of prescriptive title for Parcel 274 was procured by fraud, including that the Second Defendant deceitfully and falsely claimed to be in long, uninterrupted possession of Parcel 274.
  - (3) A declaration that the First Defendant owed the Estate of Mark Lewis Sr. a duty of care to carry out a proper hearing upon reasonable notice for the Second Defendant's application for prescriptive title for Parcel 274, including that the First Defendant ought to have carried out reasonable due diligence or ought to have considered all the proper circumstances to satisfy herself of the proper basis of the application, and she failed to do so.
  - (4) A declaration that the Second Defendant's prescriptive title was procured by fraud.
  - (5) A declaration that the Third Defendant has not acquired good title to Parcel 274 based on the legal principle of *nemo dat quod non habet* and that legal title to Parcel 274 was transferred to the Third Defendant wrongfully and contrary to the Claimant's caution.
  - (6) A declaration that the Third Defendant is not a *bona fide* purchaser for value without notice in respect of his acquisition of title to Parcel 274 because he had actual or

constructive knowledge of the fraud or the circumstances surrounding the Second Defendant's acquisition of prescriptive title, including for the reason that his brother or father, James McFoy, provided evidence in the form of a bland affidavit supporting the Second Defendant's application for prescriptive title and this information was relayed to the Third Defendant, and furthermore because the Second Claimant informed the Third Defendant of the circumstances of Parcel 274, including that the said parcel belonged to the Estate of Mark Lewis, Sr.

- (7) An order that the register for Parcel 274 be rectified, either by the First Defendant or by order of this Honourable Court, to cancel the Third Defendant's title for Parcel 274 and to issue a Land Certificate for Parcel 274 to the Estate of Mark Lewis Sr. or to the Claimants, for and on behalf of the beneficiaries of the Estate of Mark Lewis Sr.
- (8) *Mesne* profits or rent or an account of profits for the First and Second Defendants' wrongful interference or occupation of parcel 274, which at all times belonged to the Estate of Mark Lewis Sr.
- (9) Damages against the First, Second and Third Defendants.
- (10) Interest on any *mesne* profits or damages awarded from the inception of the said wrongful interference to the date of payment of such.
- (11) Costs.
- (12) Such further or other relief as this honourable Court deems just.

### **Issues for Determination**

12. At the outset of trial, the parties agreed to bifurcate this matter. This Judgment addresses the issue of liability only. Should this Claim be granted, the parties agreed to address the issue of damages separately.
13. The following issues must be determined:
  - a. Did the Registrar act unlawfully and in breach of her duties in granting prescriptive title to Mr. Rudon?
  - b. Was Mr. Rudon's prescriptive title obtained by fraud?
  - c. Can title to Parcel 274 be restored to the Estate of Mark Lewis Sr.?

## Analysis

*Did the Registrar act unlawfully and in breach of her duties in granting prescriptive title to Mr. Rudon?*

14. Yes. The requirements to establish ownership of land by prescription are established in the *Registered Land Act*. Pursuant to section 138 of the *RLA*, “ownership of land may be acquired by open, peaceful and uninterrupted possession for a period of twelve years and without the permission of any person lawfully entitled to such possession”. Mr. Rudon applied for prescriptive title on July 4<sup>th</sup>, 2019. The Registrar had to satisfy herself that Mr. Rudon had been in open, peaceful and uninterrupted possession of Parcel 274 since at least July 4<sup>th</sup>, 2007 without the permission of Mark Lewis Sr., who was then the legal owner of Parcel 274.
15. Under subsection 139(1) of the *RLA*, to be entitled to ownership by prescription, a person must show that he is either in possession of the land, or in receipt of the rents or profits from the land. Once an application has been made, section 140 of the *RLA* requires the Registrar to take two steps. First, the application must be advertised “in such manner as the Registrar may direct”. Second, the Registrar must give notice of the application to the proprietor of the land that is subject to the application, and to any person who may be affected by the application.
16. On the evidence before her, the Registrar could not have satisfied herself that Mr. Rudon had been in possession of Parcel 274 or in receipt of rents or profits from Parcel 274 since at least July 4<sup>th</sup>, 2007. According to Young J. in *Englebert Lincoln Tiabo v Clarence Flowers and anor; Clarence Flowers and anor v Englebert Lincoln Tiabo*,<sup>2</sup> two elements must be established to ground an application for prescriptive title: (1) factual possession demonstrated by an appropriate degree of physical control, and (2) intention to possess.
17. Mr. Rudon’s Application for Prescriptive Title established neither factual possession demonstrated by an appropriate degree of physical control, nor an intention to possess. First, the Application Form<sup>3</sup> itself is bare of any details. Apart from his name and address, Mr. Rudon provided no details of his claim for prescriptive title. Second, the Application Form was accompanied by statutory declarations from the following four persons: Sharondale Gillett, Kim Sanchez, James McFoy, and Percival Isaacs.<sup>4</sup> All four statutory declarations are identical. All declarants declare knowing Mr. Rudon “for the past 10 plus years” and to “have been friends for the past 5 plus years”. All declarants state as follows:

*I do also declare that Mr. Rudon is the true owner of property #274 Fabers Road of which he has owned since the 1980’s.*

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<sup>2</sup> Consolidated Claims No. 197 of 2017 and 722 of 2017.

<sup>3</sup> First Affidavit of Patricia Blackett dated May 13<sup>th</sup>, 2022, Exhibit PB-13.

<sup>4</sup> First Affidavit of Patricia Blackett dated May 13<sup>th</sup>, 2022 at para. 13.

18. The statutory declarations provide no information that would support how and when Mr. Rudon came to be in possession of Parcel 274.
19. Third, while the Registrar alleged in her submissions that the Application was supported by tax statements showing that Mr. Rudon was the owner of Parcel 274, these statements were not provided to this Court and cannot be verified.
20. Fourth, the land was at all material times vacant, except for a small wooden shack that had been occupied by one Russell Arnold for a few years by permission of Mark Lewis Sr. The evidence of Ms. Lewis, which was unchallenged at trial, was that the Lewis' family home is located three lots away from Parcel 274. Ms. Lewis testified that Mark Lewis Sr. and, after his death, she would monitor Parcel 274 from the family home. Ms. Lewis testified that Parcel 274 was at all material times vacant and unkempt, that Mr. Rudon never lived on Parcel 274, and that he never collected rent or profits from Parcel 274.
21. That the land was vacant and unkempt is supported by the inspection carried out by Leopold Mendez and Jorge Zaiden on September 18<sup>th</sup>, 2019 on behalf of the Registrar.<sup>5</sup> The "Report on Land Inspection" (the "Report") indicates that the following was found: "a small zinc house on a small portion of the land and the remaining portion high bush. No electricity and no water". The Report indicates that one Rudolph Russell<sup>6</sup> was interviewed by the inspectors. Mr. Russell stated that "he has no objection that Richard Rudon should get the Land Title because he has always known that Richard Rudon is the owner of said parcel of land". This statement, while relevant, is devoid of any details as to Mr. Rudon's actual possession of Parcel 274.
22. The Report also indicates that Mr. Rudon's basis for applying for prescriptive title is that "he found out that his nephew Mark Lewis (dec'd) forged his signature and also because he found out that the Land is still on his name at the Belize City Council and has been paying all the Property Taxes on a yearly Basis". Nothing in the Report speaks to Mr. Rudon's actual possession of Parcel 274. The considerations noted in the Report cannot ground an application for prescriptive title.
23. In sum, nothing in Mr. Rudon's Application for Prescriptive Title could support a contention that he was in actual possession of Parcel 274, and that he had the intention to possess Parcel 274. The Application was deficient and did not meet the criteria in subsection 139(1) of the *RLA*. This was admitted by the Registrar, Ms. Patricia Blackett, in cross-examination. Asked whether she would have granted prescriptive title on the basis of the Application Form and the affidavits (i.e. the statutory declarations), Ms. Blackett admitted that she would not. Further,

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<sup>5</sup> First Affidavit of Patricia Blackett dated May 13<sup>th</sup>, 2022, Exhibit PB-15.

<sup>6</sup> The Court notes an inconsistency in the evidence in respect of the name of the person who inhabited the small house on Parcel 274. It is likely that "Russell Arnold" and "Rudolph Russell" are the same person. This person is now deceased and could not be called as a witness.

Ms. Blackett agreed with Counsel's suggestion that based on the Application Form and the affidavits, Mr. Rudon did not qualify for prescriptive title.

24. I agree with the Claimants' Counsel's submission that, once found to be deficient on its face, the Application for Prescriptive Title should not have been investigated further by the Registrar. An applicant must show, in the application form itself, that he has a viable claim for prescriptive title. It is only where the Registrar is satisfied that the statutory requirements appear, on the face of the application, to be met that further steps can be taken to validate the information contained in the application form. It is not for the Registrar to gather the evidence necessary to supplement a deficient application, as was done here. Yet, in the face of a deficient Application Form supported by vague statutory declarations, and upon receipt of a Report that did not support Mr. Rudon's claim, the Acting Deputy Registrar granted Mr. Rudon's Application for Prescriptive Title on September 28<sup>th</sup>, 2019. This was, in my view, *ultra vires* the powers of the Office of the Registrar of Land to do.
25. That is not all. In her Affidavit, Ms. Blackett states that she then "caused for a publication notice to be entered in the Gazette and the Guardian Newspaper that the Second Defendant is applying for prescription and if anyone has an interest or objection that they should enter such within a month. The Publication is issued on the 13<sup>th</sup> October 2019 and expired on 14<sup>th</sup> November 2019". No publication is exhibited to Ms. Blackett's Affidavit. While the parties do not appear to dispute that the publication was indeed made, it is curious that such a crucial piece of evidence was not provided to this Court.
26. Pursuant to subsection 140(2) of the *RLA*, in addition to advertising the Application, the Registrar should also have given notice of Mr. Rudon's Application to the proprietor of the land affected and "to any other persons who may, in his opinion, be affected thereby". At the time of the Application, the Land Register showed no registered proprietor for Parcel 274. However, the Registrar admits that she was in possession of a Memorandum of Transfer of Sale dated August 8<sup>th</sup>, 2001 from Mr. Rudon to Mark Lewis Sr., an Application for Transfer of Title to Land dated August 8<sup>th</sup>, 2001 from Mark Lewis Sr., and a Transfer Certificate of Title dated October 30<sup>th</sup>, 2001 issued in the name of Mark Lewis Sr. as the registered proprietor of Parcel 274.<sup>7</sup> It was not explained to this Court why Mark Lewis Sr. did not appear as the registered proprietor of Parcel 274 on the Land Register. In any event, it is clear that, based on the documents on file, there was evidence that Mark Lewis Sr. was the registered proprietor of Parcel 274, and his Estate should have been notified of the Application.
27. The Registrar admits that no written notice was provided to the Estate of Mark Lewis Sr., but argues that there is no requirement in the *RLA* for the notice under subsection 140(2) to be given in writing. The Registrar relies on the recent decision of Young J. in *Marie Francis (as administrator of the Estate of Maurice Francis) v The Registrar of Lands et al.*,<sup>8</sup> for the

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<sup>7</sup> First Affidavit of Patricia Blackett dated May 13<sup>th</sup>, 2022, Exhibits PB-9, PB-10, PB-11, and PB-12.

<sup>8</sup> Claim No. 145 of 2021 ("*Marie Francis*").

contention that notice under subsection 140(2) of the *RLA* can be given orally. My interpretation of subsection 140(2) differs from that of the learned judge. In my view, subsection 140(2) must be interpreted alongside section 149 of the *RLA*. Subsection 140(2) provides that the Registrar shall “give notice” of an application for prescriptive title to the proprietor of the land or any other persons affected by the application. Section 149 provides for the service or the giving of a notice under the *RLA* in the following terms:

149. A notice under this Act shall be deemed to have been served on or given to any person—

(a) if served on him personally;

(b) if served on an attorney holding a power of attorney where under such attorney is authorised to accept such service;

(c) if sent by registered post to him at his last known postal address in Belize or elsewhere; or

(d) if service cannot be effected in one of the above-mentioned ways, by displaying it in a prominent place on the land affected and by publishing it in three consecutive issues of the *Gazette*.

28. Section 149 of the *RLA* applies whenever the *RLA* requires a notice to be “served” or “given”. Subsection 140(2) of the *RLA* provides that notice of an application for prescriptive title must be “given” to certain persons. In my view, notice can only be “given” under the *RLA* if it complies with section 149. There is no basis to exclude subsection 140(2) from the ambit of section 149 of the *RLA*.

29. A proper textual interpretation of the *RLA* does not support a finding that notice of an application for prescriptive title can be simply given orally. Young J. is correct in noting that section 149 distinguishes between “serving” and “giving” a notice. This semantic distinction can easily be explained when one looks at the four options for notice provided for under section 149. The first three options constitute “service” because a written document is provided to a person personally or by registered post, or to his attorney. The fourth option (displaying a notice on the land affected) does not constitute “service”, but allows a person whose interests are affected to be notified when service is not possible. Just like the other three options, that fourth option requires a notice in writing to be issued so that it can be displayed on the land affected. This would constitute “giving” notice under section 149. Nowhere in section 149, or in the *RLA* generally, is the option of giving any notice orally provided for, and one would expect such an option to be clearly spelled out in the *RLA* if it were available. Given the nature of the interests at play under the *RLA*, notice must be clear so that affected persons can exercise their rights as provided for under the *RLA*. To allow for oral notice to be

given where not specifically provided for would introduce uncertainty and the potential for mistakes and unnecessary conflicts in the land registration regime.

30. It may be that the circumstances in the *Marie Francis* case led the learned judge to conclude that notice had been sufficiently “given” to the registered proprietor. In *Marie Francis*, the evidence was that the Assistant Registrar personally visited the then proprietor of the land subject to the application for prescriptive title. If I am wrong in my interpretation and notice under subsection 140(2) of the *RLA* can be given orally, I would still find this requirement to have been breached in the circumstances of this case. The only evidence of any oral notification given in this matter consists in an informal discussion between the inspectors and Ms. Hislop during the inspection that took place on September 18<sup>th</sup>, 2019. The Claimants were not given notice of the inspection. In cross-examination, Ms. Hislop stated that she was not actually interviewed by the inspectors, but that she approached them when they were getting into their truck. She asked them what was happening, and they responded that they were looking at the land. Ms. Hislop testified that she showed the inspectors the Land Title Certificate under Mark Lewis Sr.’s name. The inspectors responded that this was an “important piece of paper” and then left. Ms. Hislop denied that the inspectors mentioned to her that an application for prescriptive title was pending.
31. This conversation cannot possibly constitute the “giving” of a notice under the *RLA*. There is no evidence that the inspectors tried to get in contact with any representative of the Estate of Mark Lewis Sr. in advance. It was Ms. Hislop who approached the inspectors when they were about to leave. The inspectors did not inquire about Ms. Hislop’s interest in Parcel 274, and did not consider the documents she carried with her. The evidence as to whether the inspectors mentioned Mr. Rudon’s Application is conflictual. In any event, there is no evidence that the inspectors gave any specific information to Ms. Hislop, such as the date the Application was made and the time limit for her and Ms. Lewis to make representations. On the whole, I find that notice was not sufficient to allow any representative of the Estate of Mark Lewis Sr. to exercise their rights under the *RLA*.
32. Despite not receiving notice as provided for under subsection 140(2) of the *RLA*, Ms. Hislop did give informal notice of Mark Lewis Sr.’s family objection to Mr. Rudon getting title. This was noted in the Report. Yet, nothing was done with this information, and a mere 10 days after the inspection, Mr. Rudon’s Application for Prescriptive Title was granted. In cross-examination, Ms. Blackett admitted that nothing was done by her Office despite the objection recorded in the Report. She also admitted that had she known of the objection, she would have given written notice of the Application to Ms. Hislop. While Ms. Blackett noted that at the time, there were no beneficiaries or administrators of the Estate, she admitted that her Office made no effort to confirm if that was indeed the case.

33. Even if Ms. Hislop had received proper notification of the Application on September 18<sup>th</sup>, 2019 through the inspectors, subsection 140(3) of the *RLA* would have been breached. Subsections 140(2) and (3) provide as follows:

(2) The Registrar shall give notice of any such application to the proprietor, if any, of the land affected and to any other persons who may, in his opinion, be affected thereby.

(3) After one month has elapsed from the date of giving notice under sub-section (2) the Registrar, on being satisfied that the applicant has acquired the ownership of the land claimed, may allow the application and register him as proprietor of the land claimed, subject to any interests on the register which have not been extinguished by the possession.

34. Pursuant to subsection 140(3) of the *RLA*, if proper notification under subsection 140(2) had been given to Ms. Hislop on September 18<sup>th</sup>, 2019, the Application could not have been granted until at least October 18<sup>th</sup>, 2019. The Application was granted on September 28<sup>th</sup>, 2019, 20 days short of the statutory one month waiting period.

35. Finally, I note that while the Application for Prescriptive Title was granted on September 28<sup>th</sup>, 2019, notice of the Application was allegedly published in the *Gazette* on October 13<sup>th</sup>, 2019, roughly two weeks after it was granted. Under subsection 140(1) of the *RLA*, an application must be advertised “*on application* by any person for registration as proprietor under section 138”. The purpose of notification is defeated if an application is advertised after it is granted.

36. As a result of the numerous breaches of the *RLA* noted above, I find that the Registrar acted *ultra vires* and in breach of her duties in granting prescriptive title to Mr. Rudon.

37. I note that the Claimants ask this Court to make a declaration that the Registrar owed the Claimants a duty of care to carry out a proper hearing upon reasonable notice of the Application. I do not find it necessary to consider whether there is any such duty of care. A breach of a duty of care arises in the context of a claim in tort. This Claim is one for declarations, rectification of the Register, and damages. Given my finding that the Registrar breached the *RLA*, there is no need to consider whether she also acted in a tortious manner towards the Claimants.

*Was Mr. Rudon's prescriptive title obtained by fraud?*

38. On the balance of probabilities, I find that Mr. Rudon acquired prescriptive title by fraud. Of note, is that Mr. Rudon never participated in this matter despite being duly served.<sup>9</sup> The trial proceeded without his evidence.
39. The circumstances surrounding the acquisition of Mr. Rudon's prescriptive title for Parcel 274 lend themselves to a finding of fraud. Having transferred Parcel 274 to Mark Lewis Sr. in 2001, Mr. Rudon knew Mark Lewis Sr. was the proprietor of Parcel 274. Mr. Rudon was the uncle of Mark Lewis Sr. It is highly likely that Mr. Rudon knew of Mark Lewis Sr.'s passing in 2012 and of the Claimants' legal interest in Parcel 274. Yet, the Claimants' evidence is that Mr. Rudon never approached them regarding his claim for prescriptive title for Parcel 274, including not notifying them of the Application once made.
40. There is no evidence of Mr. Rudon ever occupying Parcel 274 or collecting rent from Parcel 274. The evidence is that the land was vacant and unkempt, save for a small zinc house. Mr. Rudon could not honestly consider that he was entitled to prescriptive title on the basis of his possession of Parcel 274. It must be remembered that Mark Lewis Sr. died in February 2012, 5 years after the start of the period claimed by Mr. Rudon as entitling him to prescriptive title. Mark Lewis Sr. lived three lots away from Parcel 274 and would monitor it regularly. There is no evidence that Mr. Rudon was in open, peaceful, and uninterrupted possession of Parcel 274 when Mark Lewis Sr. was alive, or after his passing.
41. Mr. Rudon would also have been aware that the information contained in the four statutory declarations was false. The four statutory declarations are identical and state as follows: "I do also declare that Mr. Richard Rudon is the true owner of property #274 Fabers Road of which he has owned since the 1980's". This is plainly wrong. Mr. Rudon transferred title to Parcel 274 to Mark Lewis Sr. in 2001. None of the makers of the statutory declarations could attest to Mr. Rudon being the "true owner" of Parcel 274 since the 1980's.
42. Finally, the timing of Mr. Rudon's Application points to an ulterior motive for the Application. Mr. Rudon applied for prescriptive title on July 4<sup>th</sup>, 2019. He obtained title to Parcel 274 on November 20<sup>th</sup>, 2019 and sold it to Mr. McFoy on January 7<sup>th</sup>, 2020. Combined with the other factors mentioned above, I find that it is more likely than not that Mr. Rudon applied for prescriptive title for Parcel 274 because he knew someone was interested in purchasing it, and he wanted to benefit from the proceeds from the sale. Mr. Rudon likely knew that someone was interested in purchasing Parcel 274 through Kim Sanchez (also referred to as Kim Isaacs). Ms. Sanchez was one of the persons who signed a statutory declaration in support of Mr. Rudon's Application. Ms. Sanchez is also the person who indicated to Mr. McFoy that Parcel 274 was for sale. Despite knowing that Parcel 274 was in the name of Mark Lewis Sr. and that

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<sup>9</sup> Contrary to the Registrar's submissions, there is an Affidavit of Service on record. The Affidavit of Service dated March 15<sup>th</sup>, 2021 from Omar Burns shows that Mr. Rudon was served with the Fixed Date Claim Form and supporting Affidavit on March 12<sup>th</sup>, 2021.

the Claimants likely had a legal interest in Parcel 274, Mr. Rudon moved quickly to apply for prescriptive title for Parcel 274 and, once title was obtained, to sell it to Mr. McFoy for his own profit.

43. On the unchallenged evidence before me, I find that Mr. Rudon acted dishonestly and deceitfully in order to fraudulently obtain prescriptive title for Parcel 274.

*Can title to Parcel 274 be restored to the Estate of Mark Lewis Sr.?*

44. Yes. Pursuant to section 143 of the *RLA*, rectification of the Register is available where a registration has been obtained by fraud, unless title to the land in question is in the name of a proprietor who acquired the land for valuable consideration and without knowledge of the fraud. Section 143 of the *RLA* provides as follows:

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

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

45. I find that, on the balance of probabilities, Mr. McFoy had knowledge of the fraud.
46. First, I agree with the Claimants' position that the proximity in time between the acquisition by prescriptive title of Parcel 274 by Mr. Rudon and the sale to Mr. McFoy points to the sale as being a part of the fraud. The evidence is that Mr. McFoy found out about the land through his brother, James McFoy. James McFoy had purchased land from Ms. Sanchez in May 2019. James McFoy told his brother that Ms. Sanchez had two other properties for sale, including Parcel 274. Mr. McFoy contacted Ms. Sanchez, who confirmed that Parcel 274 was for sale. It is telling that neither James McFoy's, nor Mr. McFoy's Affidavits include the specific date at which this conversation occurred. I find that it is more likely than not that this conversation occurred between May and July 2019. In May 2019, Parcel 274 was not in Mr. Rudon's name. It was not for sale. Mr. Rudon applied for prescriptive title on July 4<sup>th</sup>, 2019, likely after Ms. Sanchez and Mr. McFoy had a conversation about Parcel 274. Mr. Rudon obtained title for Parcel 274 on November 20<sup>th</sup>, 2019, and quickly sold it to Mr. McFoy a little over a month later on January 7<sup>th</sup>, 2020. As noted above, it is more likely than not that Mr. Rudon applied for prescriptive title for Parcel 274 because he knew someone was interested in purchasing it, and he wanted to benefit from the proceeds from the sale.

47. Second, the same actors were involved in Mr. Rudon's Application for Prescriptive Title for Parcel 274 and in its subsequent sale to Mr. McFoy. As noted above, James McFoy is Mr. McFoy's brother, and Ms. Sanchez is the agent who facilitated the sale of Parcel 274 from Mr. Rudon to Mr. McFoy. Both James McFoy and Ms. Sanchez made statutory declarations in support of Mr. Rudon's Application for Prescriptive Title. In addition, James McFoy's signature on the sale agreement for the purchase of his property in May 2019 was witnessed by one Sharondale Gillett. Sharondale Gillett also made a statutory declaration in support of Mr. Rudon's Application. All three statutory declarations were entered into evidence as exhibits to Ms. Blackett's Affidavit.
48. In his Affidavits and in cross-examination, James McFoy denied making a statutory declaration in support of Mr. Rudon's Application for Prescriptive Title. James McFoy alleges that his signature on the statutory declaration provided by Ms. Blackett is a forgery. Having put the authenticity of the signature into question, it was Mr. McFoy's burden to prove the forgery. No expert was called by Mr. McFoy to opine on the authenticity of the signature. The signature was witnessed by one Brandon V. Gillett, Justice of the Peace, on July 26<sup>th</sup>, 2019. Mr. Gillett was not called as a witness. In addition, it was suggested that Ms. Sanchez may have had something to do with the forgery. She was also not called as a witness. The only evidence in support of the forgery is that of James McFoy, whose brother's defence turns on the alleged falsity of the statutory declaration. I decline Mr. McFoy's invitation to find that the signature on the statutory declaration is so obviously different from the signatures on other documents provided by James McFoy as to establish forgery. The signatures are similar enough that it would not be proper for this Court to venture into expert territory.<sup>10</sup> In the circumstances, I draw an adverse inference from the fact that no independent witness or expert was called in support of the allegation of forgery. I find that, on the balance of probabilities, the statutory declaration was signed by James McFoy.
49. Third, I note that while the title search conducted by Barrow & Williams LLP concluded that Mr. McFoy acquired good title from Mr. Rudon, this search was conducted on or around February 3<sup>rd</sup>, 2020, two months after the Land Certificate had been issued in the name of Mr. Rudon. The Land Register would not reveal *how* Mr. Rudon acquired title for Parcel 274. In normal circumstances, under a Torrens system, a *bona fide* purchaser of land for value can avail himself of the "curtain principle" under which the purchaser would not have to look any further than the Land Register to satisfy himself that he acquires good title. However, and as confirmed by the Privy Council in *Quinto v Santiago Castillo Limited*,<sup>11</sup> in circumstances where there are indicia of fraud, the curtain is drawn and the purchaser is under a duty to make the necessary further inquiries, lest knowledge of the fraud be imputed to him:

43. The Board has concluded that Conteh CJ was correct to hold that Santiago had knowledge of Ann Williams fraud, and of the mistake that this induced in relation to

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<sup>10</sup> *Albert Neal v Macaw Farms Ltd.*, Civil Appeal No. 2 of 2008 at para. 9.

<sup>11</sup> [2009] UKPC 15 ("*Quinto*").

both registrations and that the Court of Appeal should not have reversed this finding. As to this there is a pertinent passage in the judgment of the Board given by Lord Lindley in an appeal dealing with the effect of registration of land under legislation then in force in *New Zealand, namely Assets Company Ltd v Mere Roihi* [1905] AC 176 at p. 210.

“Further, it appears to their Lordships that the fraud which must be proved in order to invalidate the title of a registered purchaser for value, whether he buys from a prior registered owner or from a person claiming under a title certified under the Native Land Acts, must be brought home to the person whose registered title is impeached or to his agents. Fraud by persons from whom he claims does not affect him unless knowledge of it is brought home to him or his agents. The mere fact that he might have found out fraud if he had been more vigilant, and had made further inquiries which he omitted to make, does not of itself prove fraud on his part. But if it be shown that his suspicions were aroused, and that he abstained from making inquiries for fear of learning the truth, the case is very different, and fraud may be properly ascribed to him.” [emphasis added]”<sup>12</sup>

50. The title search conducted by Barrow & Williams LLP therefore does not, in itself, absolve Mr. McFoy in the particular circumstances of this case.
51. I also note that Mr. McFoy places reliance on two documents from the Belize City Council purportedly showing that Mr. Rudon was registered as the owner, and paid property taxes for Parcel 274.<sup>13</sup> The first document dated January 7<sup>th</sup>, 2021 shows Mr. McFoy as the owner of the property. The document records payments made as far back as March 31<sup>st</sup>, 1990, but does not indicate who made the payments and who the owner of Parcel 274 was at the time. The second document is dated November 10<sup>th</sup>, 2020 and shows Mr. Rudon as the owner. However, this document only shows payments made between April 1<sup>st</sup> and November 1<sup>st</sup>, 2020 for “arrears”, but does not indicate the time period at which those payments were due. Both documents were issued months after Mr. McFoy purchased Parcel 274. Mr. McFoy cannot rely on these documents to prove to this Court that he believed Mr. Rudon was the owner of Parcel 274 when he purchased it back in January 2020.
52. On the whole, based on the sequence of events and the persons involved, I find that it is more likely than not that Mr. McFoy had knowledge of the fraud. It is more likely than not that Mr. McFoy was aware, through Ms. Sanchez and his brother, James McFoy, that Mr. Rudon did not have good title, and that he would apply for prescriptive title for Parcel 274. It is more likely than not that Mr. McFoy knew that both made false statutory declarations in support of Mr. Rudon’s fraudulent Application. The short timeframe between the contact with Ms.

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<sup>12</sup> *Quinto, supra* at para. 43.

<sup>13</sup> Second Affidavit of Elroy McFoy dated March 30<sup>th</sup>, 2021, Exhibit EM-6.

Sanchez, Mr. Rudon's Application, and the purchase of Parcel 274 by Mr. McFoy is indicative of a concerted effort by all actors involved to get the transaction done as quickly as possible. I therefore find that Mr. McFoy was not a *bona fide* purchaser for value of Parcel 274, and that he cannot avail himself of the protection offered by section 143 of the *RLA*. In the circumstances, rectification of the Land Register is available, and will be so ordered.

53. Since the parties agreed to bifurcate the issues of liability from the issue of damages, this Court will remain seized of this matter for the purpose of determining the issue of damages.

**IT IS HEREBY DECLARED AND ORDERED THAT**

- (1) The Claim is granted;
- (2) The First Defendant acted *ultra vires* in granting the application of the Second Defendant for prescriptive title for Parcel 274, Block 45 in the Port/Loyolaville Registration Section;
- (3) The Second Defendant's acquisition of prescriptive title for Parcel 274 was procured by fraud;
- (4) The Third Defendant is not a *bona fide* purchaser for value without notice of Parcel 274;
- (5) The Registrar of Lands is directed to rectify the Land Register to cancel the Third Defendant's title for Parcel 274;
- (6) The Registrar of Lands is directed to issue a Land Certificate for Parcel 274 to the Estate of Mark Lewis Sr.;
- (7) Costs are awarded to the Claimants and shall be assessed after this Court's determination of the issue of damages.

Dated August 2<sup>nd</sup>, 2023

Geneviève Chabot  
Justice of the High Court