

IN THE COURT OF APPEAL OF BELIZE AD 2023
CIVIL APPEAL NO 11 OF 2021

ARTURO MATUS

Appellant

v

**ATTORNEY GENERAL OF BELIZE
REGISTRAR OF LANDS
NEW DEAL LIMITED**

First Respondent
Second Respondent
Third Respondent

BEFORE:

The Hon Madam Justice Hafiz-Bertram	-	President
The Hon Madam Justice Woodstock-Riley	-	Justice of Appeal
The Hon Madam Justice Minott-Phillips	-	Justice of Appeal

Mr Darrell Bradley for the appellant.

Ms Samantha Matute, Assistant Solicitor General, for the first and second respondents.

Ms Naima Barrow for the third respondent.

Hearing Date: March 3, 2023

Date of Promulgation: September 20, 2023

JUDGMENT

WOODSTOCK RILEY, JA

Introduction

[1] The parties Agreed Statement of Facts and Issues notes, the Appellant, Arturo Matus, is the registered proprietor of all that parcel of land described as Parcel No. 4105, Block 16 in the Caribbean Shores/Belize Registration Section (hereinafter called Parcel “4105”). He has occupied the land from around 2002 onwards to the current date and he has exercised full occupation, possession and control of all the land described as Parcel 4105. There was a reserve of 44 feet in front of Parcel 4105 as noted on the survey plan of Parcel 4105. In or about the early part of 2014, the Second Defendant, the Registrar of Lands, purported to create a parcel, Parcel 5031, Block 16

in the Caribbean Shores/Belize Registration Section (hereinafter called Parcel “5031”). This parcel purported to include the reserve in front of Parcel 4105 along the Belize River and title to Parcel 5031 was sold to the Third Defendant, New Deal Ltd. This company then constructed a fence which blocked off Mr. Matus’ access to the Belize River through parcel 5031 and to any other access to the area denoted on the survey as the reserve.

[2] The Appellant owns Parcels 4105, 4106 and 1335. The Third Respondent owns Parcels 148, 149, 164 and 5031 all within the same area and shown by a cadastral map, an exhibit to the Affidavit of the Commissioner of Lands, Wilbert Vallejos. This map shows parcel 5031 as a strip of land abutting the Belize River, connecting lands owned by New Deal Limited Parcel 164 to Parcel 148 but passing in front of other land owned by New Deal Parcel 149 and a narrow strip of which passes in front of 4105 owned by the Appellant and which is adjacent to 164 and 149.

[3] The Appellant complained about the interruption of his access to the Belize River and a letter was written on behalf of the Registrar of Lands to the Third Respondent’s Director dated 24th March, 2016, the full contents of which is reproduced below.

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

Dear Sir:

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

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

We write to inform you that research was carried out by the Ministry of Natural Resources and Immigration and it was discovered that the recording was erroneous in that New Deal Limited was issued a portion of land comprising 520.418 s.m., which

belongs to Arturo Matus. The size of Parcel 5031 should be 1.67 acres, and not 1.709 acres, as stated on the Land Register and on your corresponding Land Certificate.

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

Kindly note that your written consent to amend the size of Parcel 5031 in the Caribbean Shores/Belize Registration Section is being sought. You are also being asked to surrender Land Certificate LRS-201406355 in order for the rectification process to commence.

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

*Yours Respectfully,
Yvette Price (Ms.)
Assistant Registrar of Lands
For Registrar of Lands
Belize Lands Registry*

[4] With the matter unresolved, subsequently legal proceedings were instituted by Mr. Matus.

[5] The relief set out in his claim form was as follows:

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

land and belonged to the Claimant, or that the Claimant has a proprietary or beneficial interest therein.

- 3. A declaration that the Third Defendant's title to a portion of Parcel 5031 is extinguished by virtue of Section 22 of the Limitation Act or at least the portion of Parcel 5031 directly in front of the Claimant's land.*
- 4. A declaration pursuant to Section 143 of the Registered Land Act that the creation of Parcel 5031 and the issue and transfer of that parcel to New Deal Limited as proprietor was obtained, made or omitted by fraud or mistake and in contravention of law.*
- 5. A declaration that the creation and issue of Parcel 5031 was void and ultra vires Section 12(8) of the National Lands Act, read together with the other provisions of the legislation, which requires that all surveys of National Lands be subjected to a reserve not exceeding 66ft.*
- 6. A declaration that the creation and issue of Parcel 5031 was void and ultra vires the powers of the Second Defendant because Parcel 5031 was previously designated as a reserve area and constituted the only access way by way of public lands for the Claimant to access Parcel 4104, which is immediately adjacent to Parcel 5031 and which is owned by the Claimant.*
- 7. A declaration that an easement, including an easement of necessity, is created over and through Parcel 5031 in favour of the Claimant and permitting the Claimant to access Parcel 4105 which is immediately adjacent to Parcel 5031 and which is owed by the Claimant.*
- 8. An order directing the Registrar of Lands to rectify the register in respect of Parcel 5031 by cancelling the register in respect of Parcel 5031 and or cancelling the registration of New Deal Limited as current registered proprietor of Parcel 5031 and further that the Registrar of Lands be directed to issue title to a portion of Parcel 5031 to the Claimant, if this register is not closed.*

9. *A permanent injunction restraining the Third Defendant by itself or by its servants, agents, workmen or otherwise howsoever from coming unto Parcel 5031 or from commencing or continuing any development or construction thereon, including commencing or continuing the erection of a fence or other structure or from interfering in anyway with the Claimant's interest or right to Parcel 5031, including the Claimant's riparian rights or at least portion of Parcel 5031 directly in from of the Claimant's land.*
10. *Damages against New Deal Limited, either directly or through its servants and or agents, for trespassing or interfering with the Claimant's property rights, including riparian right.*
11. *Damages by way of compensation for infringement of the Claimant's constitutional rights for the taking away of the Claimant's property rights, including riparian rights.*
12. *Such further or other orders or directions or consequential relief as this Honourable Court may consider appropriate for the purpose of enforcing or securing the enforcement of the aforementioned declarations or orders.*
13. *Costs.*

[6] In her judgment, the Trial Judge extensively outlined the evidence given by the Claimant and his witness, a neighbor of the Claimant; for the First and Second Defendants evidence given by William Vallejos, the Commissioner of Lands and Survey in the Ministry of Natural Resources; for the Third Defendant evidence given by a director of the Third Defendant and a part time manager and maintenance supervisor of the property of the Third Defendant. The Third Defendant argued that Mr. Matus had impeded its ability to cross the “reserve” and Mr. Matus argued he was now impeded by the Third Defendant blocking his access to the river.

[7] The Trial Judge briefly indicates her decision narrowed to the issue of establishment of riparian rights and/or an easement. Noting ‘*I do not find, based on the evidence before me, that*

the Claimant has established that he had any riparian rights over the open space (that portion of land between parcel 4105 and the Belize River) as Parcel 4105 does not abut the Belize River or Haulover Creek on its northern boundary.. The Commissioner of Lands has testified that this Open Space was never designated a reserve by the Ministry of Natural Resources under the National Lands Act Section 6(3). The Claimant has asserted that he is entitled to this Open Space in front of his Parcel 4105 by prescription, having occupied and utilized this space since 2000 or 2002, but I agree with Ms. Tucker's legal submission that the Claimant has not occupied this property for the requisite period of 30 years under Section 128 of the Registered Land Act. The Open Space therefore remained national lands until it was sold by Government to New Deal Ltd. in 2014. As rightly pointed out Ms. Tucker for the Defendants, the Claimant did not, and has never owned the Open Space in front of Parcel 4105. He has only owned Parcel 4105 since 2002 when he acquired title for that Parcel from the Government of Belize and Parcel 4105 abuts the Open Space on its northern boundary; it does not abut the Haulover Creek or the Belize River. As ably argued by Ms. Barrow in her legal submissions, even accepting (though the Third Defendant does not) that the Belize River was present on the Claimant's land during high tides, section 28 of the National Lands Act is inapplicable to the Claimant's Parcel 4105 because it provides for boundaries in reference to ordinary tides. 'Mr. Matus therefore has no riparian rights over his property for this court to protect. I also agree that there is no easement of necessity that would arise in these circumstances as such easements arise after 20years under section 141 of the Registered Land Act. In addition, I agree with the submissions that since Mr. Matus already has access to his Parcel 4105 through his Parcels 1335 and 4106, an easement of necessity for Parcel 4106 would not arise. Having decided the case on this critical issue, the other issues fall away.

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

[8] Grounds of Appeal

- (i) *The learned trial judge erred on a point of law in finding as a matter of law that, because of the presence of a reserve located between the Appellant's*

land, Parcel 4105, and the river's edge, this negates any finding that the Appellant's land, Parcel 4105, does not abut against the water's edge. The learned trial judge erred in failing to appreciate that a reserve can, and does in many cases, exist between a riparian owner's land and the water's edge. The learned trial judge erred on a point of law in failing to conclude that a reserve, or otherwise termed as a "beach" or "embankment", is simply a buffer zone to allow for the ebb and flow of the water and a reserve may disappear at high time and reappear at low tide. But this notwithstanding, the presence of a reserve in law does not negate the existence of riparian rights and the Appellant's riparian rights, at law, subsists even though there is a reserve.

- (ii) *The learned trial judge's decision was against the weight of the evidence when the learned trial judge concluded as a matter of fact that the Appellant's land, Parcel 4105, does not abut against the water's edge and thereby the Appellant's could not, as a matter of fact, be entitled to riparian rights as a riparian owner. The undisputed evidence at trial is that there is a narrow slither of land, the reserve, which disappears at high tide and reappears at low tide. The presence of this reserve does not negate the existence of the Appellant's riparian rights as a matter of fact and the learned trial judge should have concluded that the Appellant's land does abut against the water's edge.*
- (iii) *The learned trial judge erred on a point of law and her decision was against the weight of the evidence when the learned trial judge failed to conclude, on the evidence at trial, that the creation, issue and sale to the Third Respondent of Parcel 5301 and the construction of a fence by the Third Respondent resulted in the taking away of the Appellant's riparian rights as contained in Section 3(d) and 17 of the Belize Constitution, and accordingly is null and void and of no effect and that the Claimant is entitled to an injunction and damages.*

- (iv) *The learned trial judge erred on a point of law and her decision was against the weight of the evidence when the learned trial judge failed to make a finding that an easement of necessity was created through the reserve to permit public entry and exist, including for the Appellant to access his land. The evidence at trial was that the reserve was the only public access way for the Appellant to access Parcel 4105.*
- (v) *The learned trial judge erred on a point of law and her decision was against the weight of the evidence when the learned trial judge failed to make a finding that the reserve formed at all material times part of the Appellant's Parcel 4105 and constituted part of the Appellant's title, which had a reserve, including that the Appellant had occupied and used the reserve area for a period beyond any statutory minimum to acquire possessory title.*

[9] The Appellant seeks the following relief:

- (a) *An order allowing the appeal, setting aside the decision and order of the learned trial judge, made on 27 April, 2021 and entered and perfected on 19 May, 2021, dismissing the Appellant's claim, and an order that the Appellant's claim be granted, that the declarations and injunctive orders be made and that damages be granted and further that the Appellant have his cost in this honourable Court of Appeal and in the honourable court below.*
- (b) *The costs of this appeal and of the cost of the case below be awarded to the Appellant.*

[10] It was essentially conceded in argument on the appeal that the Appellant's claim of ownership of the area in dispute was not sustainable and the focus of the appeal became the issue of riparian rights or, alternatively, of an easement.

[11] **Whether or not the presence of a reserve means that the Appellant's land does not abut the water's edge for purposes of riparian rights and that the findings that the Appellant's land did not abut the water's edge was against the weight of the evidence.**

The Appellant submitted that the Learned Trial Judge erred on a point of law in finding that, because of the presence of a reserve located between the Appellant's land, Parcel 4105, and the river's edge, this negates any finding that the Appellant's land, Parcel 4105, abuts against the water's edge for purposes of the creation of riparian rights. That the presence of a reserve in law does not negate the conclusion that the Appellant's land abutted the water's edge for purposes of concluding the existence of riparian rights and that these riparian rights subsists even though there is a reserve.

[12] Counsel cited *Halsbury's Laws of England* regarding riparian rights:

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

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

[13] The Appellant also relied on the Belize Supreme Court case of *National Fishermen Producers Co-operative Society vs. Brown Sugar Market Place Limited (formerly River Front Duty Free Limited)* Claim No. 540 of 2006 where the Belize Supreme Court applied the Canadian Privy Council case of *North Shore Railway Company v Pion and Others* 14 App. Cas. 612. In that Canadian case, the facts included that there was a riverbank separating the Plaintiff's land from the River St. Charles in Quebec, but this notwithstanding the Plaintiff's land

still remained a riparian tenement. The facts were that the Defendant built a railway on the riverbank extending along the entire river front of the Plaintiff's riparian land, on the bank of the River St. Charles. The riverbank did not belong to the Plaintiff, but the Plaintiff had access to the river through the embankment. The Defendant left fifteen feet opening directly opposite the land for access, and another opening outside the Plaintiff's frontage at a public road. The claim of the Plaintiff for damages (indemnity) for injury to its land was upheld by the Privy Council. Their Lordships said that the two openings were no answer to the claim for indemnity for a private right.

[14] The English Court of Appeal case of *Port of London Authority vs. Caney Island Commissioners* [1932] 1 Ch. 446 was also relied on where there was a ditch, seawall and embankment located between the River Thames and the Plaintiff's land. The embankment had been expanded over the course of time to include a strip of land as a foreland or fore share of some sixteen acres located between the river and the new embankment. The Court stated:

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

[15] The area of land has been described as, open space, reserve, foreshore, national land. Undisputedly, and as agreed by the Commissioner of Lands, it is the area right in front of the Appellant's parcel 4105, between Parcel 4105 and the Belize River.

[16] The Appellant is contending that he always enjoyed access to the Belize River

through this reserve, including mooring his boat, etc., and this was interrupted by the creation of the parcel of land given to the Third Respondent. Photographs of a dock he had created were exhibited. His evidence was that at some time the water at high tide would come onto his parcel 4105. Essentially, that the Government took away his riparian rights by the creation of this new parcel of land.

[17] The un-contradicted evidence was that the Appellant at all material times enjoyed open and free access to the Belize River from Parcel 4105 over the reserve/open space.

[18] Commissioner Vallejos did concede that the survey plan prepared in 2002 on behalf of Mr Matus by Licensed Surveyor, C.B. Samuels that refers to the area as a reserve was accepted. While it was Mr Matus' surveyor who put in the reserve area on the plan the Commissioner exhibited as WV8, his department at the Ministry of Natural Resources accepted this survey plan. There was no evidence that his ministry had written to Mr. Matus or to the surveyor indicating that anything was wrong with this survey plan. Although the Commissioner in his Affidavit evidence said that this space had not been designated a reserve within the meaning of section 6 of the National Lands Act, in answer to a question about it asked by the Trial Judge after examination, cross examination and re-examination he noted *'that was a Government reserve'*. The Commissioner further noted in his oral evidence that he did not know if that open area/reserve is land or river or a combination of land and river. When he was asked by counsel for New Deal Limited *'is it contemplated that that reserve includes water?'*, he answered, *'Sometimes.'*

[19] As noted by the authorities cited by the Appellant, riparian rights can exist over land not owned. While the Trial Judge was correct that ownership of this open area/reserve was not established I am of the opinion that the evidence is overwhelming that the Appellant's land, parcel 4105 did abut the Belize River so as to establish riparian rights.

[20] Easement

The Appellant did not rely substantially on this ground of appeal. Having determined the Appellant did have riparian rights it may not be necessary to extensively examine this area

however we touch on it because we feel it is relevant. The submissions of the Respondent accepted by the Trial Judge were that as the Appellant owned adjoining lots to 4105 there was no easement or public access necessity required for the benefit of Lot 4105. Commissioner Vallejos noted he *“has been advised by his legal representative that Mr Matus has access to a public road through parcel 4106 and parcel 1335. It is his belief that application for an easement of necessity despite having access to a public road through his property parcels 4105, 4106 and 1335 does not meet the legal threshold and will fail.”*

[21] Yet the Respondents admitted 4105, 4106 and 1335 are each separate parcels of land. It is therefore inaccurate to treat the properties as one without any legal documentation that they were legally joined (required to be always held as ‘one holding’). Admittedly, of concern, was reference in the judgment that Mr Matus constructed a dwelling house on part of parcel 4105 and 4106. This would support access from 4105 through 4106. However, Mr Matus in his Affidavit refers to building his home on Lot 4105. In cross examination he refers to partly on 4106 and on 4105. The encroachment, if it be that, does not, however, make the separately titled 4105 and 4106 one holding. The fact remains that the lots are separately titled and that 4105 is now landlocked by the action of the Second Defendant. The Respondents argue that this area is national land and the Commissioner can therefore do what he chooses with it. That can only be to the extent permitted by law. The Registrar of Lands, herself, in her letter of 23 March 2016 to New Deal Limited recognized a rectification of the title to Parcel 5031 was needed to recognize the rights of Arturo Matus. Not insignificantly, the Commissioner in his oral testimony said it is a requirement that all parcels of land have access to a public road, and that Parcel 4105 has no access directly to a public road. The importance of the land being able to directly access the waterway is irrefutable in that context.

[22] Notably, while the Commissioner baldly notes in his affidavit that the letter sent to New Deal Limited was sent in error without research, the letter itself speaks to research having been done. The effect of the letter acknowledging the area in front of the Appellant’s should not have been included in the parcel 5103 was not addressed at all by the Respondents or the Trial Judge, and it supports the Appellant’s position (and common sense and reason) that the creation and sale of parcel 5103 was erroneously done.

[23] Conclusion

The Appellant has established riparian rights and Parcel 4105 is entitled to access to the Belize River. The Appellant had claimed *‘Damages against New Deal Limited, either directly or through its servants and or agents, for trespassing or interfering with the Claimant’s property rights, including riparian right. And Damages by way of compensation for infringement of the Claimant’s constitutional rights for the taking away of the Claimant’s property rights, including riparian rights.’* However no claim for special damages was made and no submissions were made on quantum of damages. I have considered the principles upon which damages for breaches of constitutional rights are to be assessed and that the sums appropriate to be awarded depend on the nature of the particular infringement and the circumstances relating to the infringement. Similarly for trespass when the trespass can and will be remedied. In the circumstances the following orders are made .

[24] Order

- a. The appeal is allowed and the decision of the court below is set aside.
- b. It is hereby declared and ordered that:
 - i. *Arturo Matus has riparian rights over that part of Parcel 5031 Block 16 in the Caribbean Shores/Belize Registration Section (hereinafter called Parcel “5031”), that abuts parcel 4105 of which he is the registered owner;*
 - ii. *The purported taking away of the riparian rights of Arturo Matus attaching the adjacent parcel of land 4105 of which he is the registered owner by the creation, issue and sale to New Deal Limited of Parcel 5031, is null and void and of no effect.*
 - iii. *Section 143 of the Registered Land Act applies. The creation of Parcel 5031 and the issue and transfer of that parcel to New Deal Limited as proprietor was made by mistake.*

- iv. *The creation and issue of Parcel 5031 was void and ultra vires the powers of the Registrar of Lands.*
 - v. *The Registrar of Lands is to amend the Land Register regarding Parcel 5031 to the extent and in the manner set out in her letter of 24 March 2016 to New Deal Limited.*
 - vi. *New Deal Limited is to surrender its title to Parcel 5031 to the Registrar of Lands to permit the amendment to it above to also be effected on its copy of the title.*
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- c. *New Deal Limited is hereby restrained by itself or by its servants, agents, workmen or otherwise howsoever, from commencing or continuing any development or construction (including commencing or continuing the erection of a fence or other structure) that interferes in any way with the riparian rights attaching to Parcel 4105.*
 - d. *New Deal Limited pay the sum of \$20,000 to the Appellant as damages for trespass .The Attorney General pay the sum of \$20,000 to the Appellant for breach of his constitutional rights .*

[26] Pending receipt of written submissions on costs within 14 days of the promulgation of this judgment, a *nisi* order issues awarding the Appellant 75% of his costs of this appeal and of the proceedings in the court below.

WOODSTOCK-RILEY JA

HAFIZ-BERTRAM, P

[27] I am in agreement with the reasons given for judgment by my learned sister, Woodstock-Riley, JA.

HAFIZ-BERTRAM, P

MINOTT-PHILLIPS, JA

[28] I have read the judgment of my sister, Woodstock Riley, JA. I agree with the reasons given and the order made and have nothing to add.

MINOTT-PHILLIPS, JA