

IN THE COURT OF APPEAL OF BELIZE, A D 2023
CIVIL APPEAL NO 16 OF 2022

**BELMOPAN LAND DEVELOPMENT CORPORATION
LIMITED**

Appellant

v

**JUAN LANDAVERDE
RAMIRO PALMA
ARMANDO GUERRA
ALBINA MARQUEZ
JOSE MARQUEZ
OSCAR VASQUEZ
CARLOS ORELLANA
PABLO CHOC**

1st Respondent
2nd Respondent
3rd Respondent
4th Respondent
5th Respondent
6th Respondent
7th Respondent
8th Respondent

BEFORE:

The Hon Madam Justice Woodstock-Riley	-	Justice of Appeal
The Hon Madam Justice Minott-Phillips	-	Justice of Appeal
The Hon Madam Justice Arana	-	Justice of Appeal

Naima Barrow for the appellant.
Nazira Uc Myles for the respondents.

Hearing: 22 June 2023
Date of promulgation: 20 September 2023

JUDGMENT

MINOTT-PHILLIPS, JA

[1] By Fixed Date Claim Form dated 28 September 2020, the Appellant, Belmopan Land Development Corporation Limited (“BLDC”) sought an order that each of 20 named Defendants occupying any portion of 1,394.577 acres of the property described in the Schedule of the Fixed

Date Claim Form (“the Property”) vacate the Property and deliver up possession to BLDC with immediate effect. BLDC also sought the following ancillary reliefs:

- a. a permanent injunction restraining the Defendants from trespassing on and/or occupying their property;
- b. damages for trespass;
- c. interest pursuant to section 166 of the Supreme Court of Judicature Act, 2003; and
- d. costs.

[2] BLDC’s claim was certified as true by one of its directors, Glenford Ysaguirre, and supported by his affidavit and that of Darwin Gomez, both sworn to on the 28th day of September 2020.

[3] A document filed as an affidavit in response to the claim was sworn to on the 10th day of March 2021 on behalf of 8 only of the 20 Defendants, being the Respondents to this appeal. I say “*filed as an affidavit*” because the document was found by the court to have a deficient jurat (as it was in English and did not have the certification required by CPR 30.5(4) of an affiant not literate in English) in relation to 6 of the 8 persons on whose behalf it was filed and was, accordingly, disallowed by the trial judge in relation to those 6 individuals (being respondents 1-5 and 8 “**Landaverde et al**”).

[4] The trial judge decided that the affidavit remained good evidence on behalf of Oscar Vasquez (“**Oscar**”) and Carlos Orellana (“**Carlos**”) who defended the claim on two bases: namely, (1) that they cannot confirm that the portion of land they admit occupying belongs to BLDC; and (2) that they have acquired an interest in the land they occupy based on their continued possession of the land for more than 12 years (in the case of Oscar for 17 years in relation to 17 acres, and in the case of Carlos for 14 years in relation to 5 acres).

[5] Oscar and Carlos counterclaimed against BLDC for:

- a. A declaration that they have been in continuous and undisturbed possession of the portions of the land they claim for a period well in excess of 12 years;
- b. a declaration that they have an overriding interest in the portions they occupy based on their claimed adverse possession;

- c. a declaration that the title of BLDC to the portions of land they occupy is extinguished;
- d. a declaration that they have acquired rights by adverse possession which rank as if they are incumbrances noted on the certificate of title of BLDC;
- e. An order of possession of the portion of lands they occupy;
- f. An order that BLDC surrender its title for the extraction by the Registrar of Lands of the portions of land occupied by them and for the issue of title to them for those portions upon an application by them for prescriptive title; and
- g. Costs.

[6] BLDC filed a Reply and Defence to Counterclaim in which it joined issue with the facts set out in the Respondents' affidavit filed on 10 March 2021. BLDC specifically denied that the Respondents had an interest in its land based on continuous possession for more than 12 years and that its title to the property had been extinguished by the effluxion of time. BLDC also denied holding its titles subject to any rights or overriding interest relating to any portion of its land.

[7] The evidence adduced by BLDC in support of the case it set out in its Fixed Date Claim Form was provided by the affidavit and oral evidence of:

- a. Glenford Ysaguirre – one of its directors;
- b. Dawin Gomez – an occupant of 10 acres of BLDC's land;
- c. The expert report dated 25 June 2021 of Cyrus Blandsford Samuels, Jnr;
and
- d. The expert report dated 7 July 2021 by Sharp Consulting – Etienne John Sharp.

Only the persons at *a* and *b* above gave oral evidence. The expert evidence was in written reports filed pursuant to the permission of the court contained in its order made at the Pre-Trial Review. By the same order the Respondents were given leave to put questions to the experts to clarify their reports within a specified time. The order required the expert to respond to those questions within a further specified time. No questions were put to the experts on behalf of the Respondents.

[8] The decision of the court below dated 8 December 2022 was that:

- a. The Claimant's claim is dismissed;
- b. The Defendants' Counterclaim is dismissed;
- c. Each party shall bear its own costs.

[9] The trial judge dismissed BLDC's claim on the bases that:

- a. The court was not provided with the requisite nexus in order to be able to identify with certainty, the specific areas of BLDC's property which it claims to be occupied by the Respondents¹.
- b. The disclaimer from Google Earth, provided in the Surveyor's Report which says that it is to be used for entertainment only, and should not be used for any purpose requiring accuracy whatsoever².

[10] Accordingly, the judge found that BLDC's claim could not succeed and that the ancillary claims for trespass and an injunction could not succeed. She went on to say that "*Likewise, however, the Defendants do not and cannot succeed on their counterclaim on the Claimant Company.*"

[11] Only BLDC appealed the decision of the trial judge and it has done so on the grounds that:

- a. She erred in law and misdirected herself in finding that BLDC provided no evidence of the Respondents' occupation of its property; and
- b. The decision was against the weight of the evidence.

[12] Both of these grounds require an examination of the evidence that was before the trial judge. Inasmuch as the impugned findings are issues of fact, this court will not set aside the findings of fact of the trial judge who saw and heard the witnesses merely because it may have concluded differently. For it to do so it must appear to this court that those findings of fact were

¹ Numbered paragraph 30 of the judgment.

² Numbered paragraph 34 of the judgment.

not supported by the evidence and/or that they were founded on an incorrect application of the law.

[13] At the outset of her judgment Shoman, J. noted that the 1st, 2nd, 4th-11th, and 14th Defendants named in the claim filed no Acknowledgement of Service and that the 2nd, 4th-11th, and 14th Defendants did not file any Defence to the Claim. She regarded the 1st Defendant as contesting the claim (even though he did not appear) because he filed a defence disputing the claim on the basis that he does not occupy any land belonging to BLDC as described in the Fixed Date Claim Form or any land in or about the area.

[14] As she made no mention of it in her written reasons for her decision given on 8 December 2022, it seems that Shoman, J. did not recall that during the hearing on 1 April 2022 (approximately 8 months prior), and upon the Respondents calling Mr Juan Landaverde to the stand as a witness, she disallowed the affidavit sworn to and filed on the 10th March 2021 as against him and those other Defendants who were unable to read English for want of the required certification in the jurat. Absent that certification there was nothing to establish that the affidavit had been read over to them, translated, understood, and signed by them on that basis. Referring specifically to Mr Juan Landaverde the trial judge indicated at the hearing on that day that the court “*will not be able to take this witness... and he will need to step down*”. That decision also applied to those affiants who were illiterate in English.

[15] The legal effect of that is that BLDC’s claim against Landaverde et al was undefended and their counterclaim eliminated. Shoman, J. therefore erred when, at the outset of her judgment, she regarded that affidavit as putting forward a Defence and Counterclaim on behalf of Landaverde et al. In the light of her disallowance of it in relation to them, it did not.

[16] The giving of oral evidence by Oscar and Carlos at the trial – they being the only two of the named 20 Defendants who did so -- is entirely consistent with her prior order disallowing the affidavit evidence of Landaverde et al.

[17] As the matter was one commenced by Fixed Date Claim Form, the absence of a defence by many of the Defendants was not sufficient to allow the court to give judgment in favour of BLDC, as default judgment is not an available option for matters commenced by Fixed Date Claim

Form³. BLDC had to establish its case evidentially against the 20 Defendants and respond to any evidence adduced by Oscar and Carlos in support of their counterclaim.

[18] As pointed out earlier, the Respondents did not put any questions to the experts and did not, during the course of the trial, make any challenge to the expert reports. Consequently, there was no factual evidence adduced by the Respondents that undermined the content of the expert reports and no competing expert evidence or cross-examination of the experts, either by way of written questions put to them or otherwise.

[19] In addition to the affidavit filed on 10 March 2021, Carlos and Oscar gave oral evidence and adduced 10 of 20 photographs in evidence. The remaining 10 photographs were disallowed by the court as not being relevant to the cases of Carlos and Oscar, or taken by them.

[20] The case BLDC set out in its Fixed Date Claim Form relates solely to the 1,394.577 acres of land particularized by description in the Schedule. That is clear from the definition of “*the Property*” set out in its Fixed Date Claim Form. It further gives a description of the Property that includes reference to specific grid coordinates and bearings. BLDC’s case does not extend to any part of the remainder of the original acreage contained in the Transfer Certificates of Title registered at Folio 48 Volume 29 and Folio 97 Volume 29 of which BLDC is the legal owner. It is confined to the 1,394.577 acreage of which BLDC is both **the legal and beneficial** owner. Paragraph 8 of the affidavit of Mr Ysaguirre makes it clear that BLDC’s claim is brought only in respect of what remains of its property **after** the Government of Belize acquired portions of what was comprised in the two titles.

[21] The expert witness, Cyrus Blandsford Samuels, Jr was tasked by the court with:

- a. Providing testimony on the reliability of Google Earth;
- b. Providing a report on the plotting of the location of the portions of BLDC’s property that the Respondents have claimed to be in occupation of for over 12 years; and
- c. Verifying it by an affidavit exhibiting the report.

³ CPR 12.2

[22] The location of those portions of the Property occupied by the Respondents and others as plotted and identified by Mr Samuels in his expert report cannot but be portions of the property legally and beneficially owned by BLDC, as his report was confined to the property subject of the claim and did not extend to any part of the remainder of the land contained in the original two titles. I find myself in agreement with BLDC's submission at trial that,

“The expert report of Mr Samuels is clear in its conclusion, based on plotting he did, that the Defendants are occupying portions of the Claimant's land but have been doing so for less than 12 years.

[23] This conclusion of the expert derives from the facts he found and reported on in his survey of the land owned by BLDC that is the subject of its Fixed Date Claim Form. Mr Samuels testified on the reliability of Google Earth in relation to the plotting of the location of those portions of BLDC's property that the Respondents have claimed to be in occupation of for over 12 years⁴. His conclusion negated the Respondents' claim to a prescriptive title to the land they occupied because it forensically established (at the very least on a balance of probabilities) that they (including Oscar and Carlos) were not in possession for 12 years or more of the portions of BLDC's land they occupied.

[24] Mr Samuels's expert report shows, *inter alia*, how Google Earth is used:

- a. to determine coordinates, bearing and distances for pre-planned exercise;
- b. to compare ground surveys carried out with GPS/GNSS with conventional surveys (which in this case showed variation results within 1.5m plus or minus) and,
- c. as a tool for preparing survey estimates⁵.

[25] In his expert report Mr Samuels speaks to the capacity of Google Earth to allow users access to satellite and aerial imagery, topography and other geographical data of the Earth over the internet (including the ability to do so at different points in time). He also speaks to the consensus

⁴ Item 3 of his report.

⁵ Items 2 & 5.3 of his report.

among professional users of Google Earth (including himself) that it is reliable for mapping within a range of 1.5-15meters⁶. That consensus reflects his own professional view that Google Earth is a viable and reliable tool for the mapping of land encroachment⁷. He then certifies that he plotted the portions of BLDC's property currently being occupied by the Respondents and that the satellite imagery viewed for the year 2009 showed no development or occupation of the Property by the Respondents⁸. By way of illustration of his conclusions he produced side-by-side comparison photos of the land. Those included a comparison of the portion being occupied by Oscar in 2021 with the land as it was in 2009 (showing it then unoccupied). Similarly, as regards Carlos, he produced side-by-side comparison photos of the land being occupied by Carlos in 2021 with the land as it was in 2009 (showing it then unoccupied).

[26] BLDC made the following submissions at trial (which I find to be well founded) in relation to the expert evidence it adduced,

“Having provided adequate bases for his conclusion, the expert’s report is far from inadequate or unreliable.

If the Defendants truly wanted to know more about how plotting is done and how the Surveyor plotted the Defendants’ property and came to his conclusions, they ought to have taken advantage of the opportunity afforded to them to put questions to the expert.”

[27] The failure of Oscar and Carlos to put questions to the expert witness does not mean that the court was bound to accept the uncontroverted expert report. In the case of ***Peter Griffiths v TUI (UK) Limited***⁹, the UK Court of Appeal grappled with the question of whether and if so, in what circumstances, the court can evaluate and reject what is described as an ‘uncontroverted’ expert’s report. The court held that

“There is no rule that an expert’s report which is uncontroverted and which complies with [the] CPR...cannot be impugned in submissions and ultimately rejected by the judge. It all depends upon all the circumstances of the case, the

⁶ His resource material is set out at item 8 of his report.

⁷ Item 7 of his report.

⁸ Item 9 of his report.

⁹ [2022] 2 All ER 1137 at 1150 para [40], Per Asplin, LJ in giving the majority judgment

nature of the report itself and the purpose for which it is being used in the claim.”

That statement is not novel. The court does not operate as a rubber stamp of the opinions of others.

[28] In that case the UK Court of Appeal referred to the statement of Clarke, LJ in the case of *Coopers Payen Ltd v Southampton Container Terminal Ltd*¹⁰ that the question for the trial judge of whether there was a breach of duty by the Defendant “*had to be considered by reference to the evidence as a whole, including the eyewitness evidence and the expert evidence, all of which (like any evidence) must be considered against the probabilities.*”¹¹ Clarke, LJ went on to state that, at the end of the trial it is the duty of the court to apply the burden of proof and to find the facts having regard to all the evidence in the case which may include both evidence of fact and evidence of opinion which may interrelate. As Asplin, LJ commented in *Griffiths v TUI*, “*such a proposition is hardly controversial*”.¹²

[29] Applying that approach, the question for us, therefore, is whether the circumstances of the case, the nature of the reports, and the purpose for which they were being used in the claim, warranted the finding of fact by the judge that the court was not provided with the requisite nexus in order to be able to identify with certainty, the specific areas of the BLDC’s property which it claims to be occupied by the Respondents. I am of the view that, considered altogether, they did not.

[30] The statement in the Defence of Oscar and Carlos that they occupy land acquired by the Government of Belize stops short of being an assertion of fact. They assert it ‘*to the best of our knowledge*’. That renders it a statement of belief. This was a trial, not the hearing of an interlocutory application. Parties’ assertions must be of relevant facts. The relevant statement of fact made in their Defence and repeated in their Counterclaim was, “*We are not trespassing on the Claimant’s land but hold an interest in this land based on our continuous possession of the land for more than twelve (12) years*”. I am unable to accept that a defendant who both defends the claim, and counterclaims, based on his entitlement to the claimant’s land by way of his adverse possession of it, can be challenging the claimant’s assertion that he is occupying it. The judge

¹⁰ [2003] EWCA Civ 1223; [2004] 1 Lloyd’s Rep 331

¹¹ See extract cited in *Griffiths v TUI (UK) Ltd* [2022] 2 All ER 1137 at 1151 para [44].

¹² *Griffiths v TUI (UK) Ltd* [2022] 2 All ER 1137 at 1152 para [48]

below appears to have lost sight of the fact that BLDC's claim below related only to the land that it legally and beneficially owned. In the face of a counterclaim by a defendant averring adverse possession of a part of that land, it is just not possible for that defendant to be disputing his possession of the claimant's land. After all, his counterclaim is one of adverse possession of **the claimant's** land. That averment in this counterclaim, without more, renders the fact of occupation of BLDC's Property by the Respondents a non-issue. In any event, neither Carlos nor Oscar has denied being in occupation of the claimant's land. The only real question in the case is how long the defendants have been there and, if not for the required length of time as to acquire prescriptive rights, the extent of the ancillary relief that should be granted to the claimant following the issue of the order granting it recovery of possession.

[31] It appears to me that the expert Samuels did precisely what he was tasked by the court to do. The criticism levelled by the Respondents in their closing submissions was not that the relevant co-ordinates were not in his report, but that he failed to disclose the source of the co-ordinates. It was an attack on his credibility. If the Respondents intended to challenge the truthfulness of the information provided in the expert report, they ought to have exercised their right to ask questions testing the accuracy of that information and to have allowed the expert an opportunity to respond to any questions directed at him in that regard.

[32] The location of property can be established otherwise than by the use of maps and, in fact, Mr Samuels did so in this case by way of a survey and the plotting of coordinates. In the light of Mr Samuels' evidence, I cannot discern the evidential basis for the Judge's finding that BLDC has provided to the court no surveys, no GPS coordinates for the land owned by BLDC, to show where each, or indeed any, of the Respondents are in fact in occupation of its property¹³.

[33] The generic legal disclaimer by Google Earth that is intended to protect it from liability in tort to its users for negligent misstatement, does not mean that the information generated by Google Earth is insufficiently accurate to establish possession or non-possession (as the case may be) of land at different points in time on a balance of probabilities. As the Hon Mr Justice Westmin James observed in the case of *Courtney Arnold & Tiffany Arnold v Daniel Tun*¹⁴ (in which, as

¹³ Numbered paragraph 19 of the judgment.

¹⁴ Belize Supreme Court. Claim No 507 of 2020. Unreported judgment delivered on 14 July 2021, at numbered paragraph 22.

here, the court was grappling with a claim for an order for possession of land and a counterclaim for ownership based on adverse possession),

*“No matter how many witnesses of fact are called, the best evidence in disputes like this is photographic and documentary evidence. In an adverse possession case, it may be necessary to determine exactly when it was that the occupier began his occupation so it is important to know how the land looked historically. In this regard aerial photography can play an important part in the evidence especially when the issue is how long the disputed land has been occupied. **Aerial photographs are widely available including Google Earth images of the same place historically and there are available images over the last 20 years that could have assisted the Court in showing the state of the land but none was produced.**”*
[my emphasis]

[34] Unlike in the *Arnold v Tun* case, here the court was assisted in determining the issue of adverse possession by Mr Samuels’ expert report attaching comparative Google Earth images of the portions of BLDC’s land occupied by the Defendants (including Oscar and Carlos) at different points in time.

[35] The circumstances of this case included the following:

- a. The claim was concerned entirely with and confined to the Property legally and beneficially owned by BLDC (i.e. the 1,394.577 acres specified in the Fixed Date Claim Form and paragraph 8 of the affidavit of BLDC’s witness, Glenford Ysaguirre).
- b. The expert report of Mr Samuels was rendered in relation to that Property only and did not encompass any other. Any unpermitted occupation of any part of it by anyone would, absent prescriptive rights, constitute an unauthorized occupation.
- c. There was no defence to BLDC’s claim, nor was there a counterclaim to title

by way of adverse possession filed by any of the defendants other than Carlos and Oscar;

- a. There was no denial by Carlos and Oscar that they were occupying BLDC's property;
- b. The evidence of the expert witness, Samuels, based on his plotting of the areas of illegal occupation and on the data he mined from Google Earth, identified the areas of the BLDC's Property that were occupied by the Defendants (including Carlos and Oscar) and certified that neither Carlos nor Oscar had any presence on the Property for a period of 12 years or more prior to BLDC's claim for possession. Without a viable adverse possession claim their occupation of BLDC's property, on the evidence provided to the court by BLDC's representative, would have been unauthorized and unlawful.
- c. No Respondent other than Oscar or Carlos had any affidavit evidence before the court. It was, therefore, not open to any other Respondent at the trial to dispute BLDC's claim or assert a counterclaim.
- d. Oscar and Carlos, through their counsel, sought, in their closing submissions, to impugn the reliability/content of the report of the expert witness, Samuels, in relation to them being located on BLDC's land and the duration of their occupation of it.
- e. The oral evidence of Oscar and Carlos (noted by the Judge¹⁵ as having been adduced in cross-examination) was that they did not know the co-ordinates or bearings of the property they occupied.

[36] The case before us fell squarely within that category of case where a litigant seeks in closing submissions to challenge the evidence of a witness on the basis that it is untrue. The law requires fairness in litigation. If the credibility of a witness is to be impeached then, as a matter of fairness, he should be given the opportunity of giving an explanation. If he has not been given

¹⁵ At numbered paragraph 22 of her judgment

the opportunity, in the absence of further relevant facts, generally it is not appropriate to challenge the evidence in closing speeches¹⁶. The leading authority for that principle is the old House of Lords case of **Browne v Dunn**¹⁷ where Lord Herschell LC remarked as follows¹⁸

“Now my Lords I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with witnesses. Sometimes reflections have been made upon excessive cross-examination of witnesses, and it has been complained of as undue; but it seems to me that a cross-examination of a witness which errs in the direction of excess may be far more fair to him than to leave him without cross-examination, and afterwards to suggest that he is not a witness of truth...All I am saying is that it will not do to impeach the credibility of a witness on a matter on which he has not had any opportunity of giving an explanation by reason of there having been no suggestion whatever in the course of the case that his story is not accepted.”

[37] In this case there were written reports submitted to the court by the expert witnesses. The Respondents did not avail themselves of their entitlement¹⁹ to put written questions to the experts for the purpose of clarifying their reports. The allowing of parties to put written questions to expert

¹⁶ Ibid at 1156 para [62]

¹⁷ (1893) 6 R 67, HL.

¹⁸ Ibid at 70

¹⁹ Pursuant to CPR 32.7

witnesses to which the experts are required to respond is a form of cross-examination. Those questions and the answers to them become part of the expert's report²⁰. The Respondents submitted in their closing arguments at trial that the expert evidence of Mr Samuels, while it *"meets the requirements of the CPR ... is unreliable as it fails to disclose the source of its coordinates (bearings) for the conclusion on each Defendant."*

[38] In my view it was not fair for the Respondents to fail to utilize their statutory and court-ordered entitlement to put questions to Mr Samuels in writing and then go on, in their closing submissions, to attack the reliability of the content of his report.

[39] If there was some basis upon which the judge could, for some good reason, have rejected the expert report of Mr Samuels, then she could not be faulted for having done so. However, in this case the material before the court does not support the conclusion, applying the requisite standard of proof on a balance of probabilities, to which she came. Even if the judge was of the view (which I don't share) that the specific areas of BLDC's land occupied by the Defendants were not identified in the report, there was no need for that degree of specificity once it was the case that BLDC owned all the land subject of its claim and portions of it were unlawfully occupied by the Defendants.

[40] For those reasons I find that the judge erred in finding that the Appellant provided no evidence of the Respondents' occupation of its property, and that her decision was against the weight of the evidence.

[41] I would, therefore, order that:

- a. The appeal is allowed;
- b. The decisions in those parts of the order of the judge below made on 8 December 2022 that dismiss the Claimant's claim and order each party to bear its own costs are set aside;
- c. Each of the named Defendants to the Fixed Date Claim Form filed by the

²⁰ CPR 32.8(3)

Appellant in the court below, or any person occupying any portion of the Property of the Appellant described in the Schedule to its Fixed Date Claim Form dated 28 September 2020 with the permission of those Defendants, is to vacate the Property and deliver up possession of it to the Appellant within 30 days of the date hereof.

[42] Additionally, I make the following provisional costs order which will become final if not altered following further consideration upon receipt of written submissions from the parties on costs within 7 days of the date hereof: The Appellant is awarded its costs of this appeal and of the proceedings in the court below, to be taxed if not agreed.

[43] For the avoidance of doubt, the order of Shoman, J dismissing the Respondents' counterclaim remains intact.

MINOTT-PHILLIPS, JA

WOODSTOCK-RILEY, JA

[44] The draft judgment of Minott-Phillips, JA details the facts and background to this matter. In two aspects I am in complete agreement. First, that the challenge by the Appellant to the use of google earth by Cyrus Blandsford Samuels, licensed land surveyor, the expert whose report was relied on, and the trial judge's reference that the disclaimer from google earth indicates it should not be relied on, is insufficient to discredit the experts' report. Secondly, that the report does identify land occupied by the Respondents and supports that it was not occupied for the period of time required to claim adverse possession.

[45] My main concern was the issue of whether the Appellant had provided evidence that the Respondents were on land owned by them. The trial judge clearly felt they had not. It was clear that the Appellant had title to 2,647 acres of land. It was clear that a portion of that land was acquired by the Government. The fixed date claim form refers only to 1394.577 acres of land

particularized by description in the schedule to the claim and includes reference to specific grid coordinates and bearings as the land in respect of which the claim is brought. The claim was certified by one of the appellant's directors, Glenford Ysaguirre, who provided an affidavit in support. Para 8 of the affidavit of Mr. Ysaguirre does assert the claim is brought only in respect of its property after the Government acquired portions.

[46] However, in cross examination Mr Ysaguirre said he was not sure of the exact amount taken by the Government, it was 202 for sure and *'in the neighborhood'* of an additional 1,300. Those figures would not correspond with the amount claimed of 1394.577. Further he admitted in response to the question *'you would agree with me that there is no map showing exactly what portion the govt acquired and what remains as the claimant's property?'* *'yes I would agree'*. He also answered yes to the Trial Judge when she asked *'nowhere do you identify where each particular defendant is said to be occupying on the property.'*

[47] The Samuels report focuses on the validity of google maps, and that is noted in the indication of his instructions *'to provide testimony on the reliability of Google Earth in relation to plotting of the location of portions of "the Claimants" property that "the Respondents" have claimed to be in occupation of for over 12 years'*. It shows parcels of land occupied by the defendants, it addresses the question of whether there was development on that shown parcel at a particular time. It does not show the relationship between any of those particular parcels of land and the 1394.577 claimed by the Appellant.

[48] The Appellant asserts in its submissions paragraph 53 that *'the surveyor confirmed that the respondents were occupying the appellant's property'*. The report is not expressed in that way. I don't consider it is adequate to support a claim with the submission at paragraph 55 *'the appellant further submits that it is more probable than not that having secured judgment for damages from GOB for the portions of property it had illegally taken, the Appellant would not initiate a claim to remove trespassers from the portion of the property taken by GOB'*. Nor do I consider it conclusive that by counterclaiming entitlement by way of adverse possession this renders the fact of occupation of the appellant's land a non-issue or a waiver of the substantive issue of ownership

of the land that the Respondents are on. The parties were in agreement at trial that whether the respondents were on the Appellant's land was in issue.

[49] The Trial Judge stressed that the claimant provided to the court no maps, no surveys, has not related the GPS coordinates for the land referred to in the FDC as owned by the Claimant Company to show where each, or indeed any, of the Defendants are in fact in occupation of property belonging to the claimant company. Further, her determination that *'the role of the Experts who were appointed was to assist the Court, but regrettably, the evidence of the Expert witness in this claim were not of assistance to the Court at all in determining the actual location of the property occupied by the Defendants which the Claimant claims is its property. This court has not been provided with the requisite nexus in order to be able identify with certainty, the specific areas of the Claimant's property which the Claimant Company claims to be occupied by each of the 12th, 13th and the 15th to the 20th Defendants. The Claimant had a duty to ensure that it was able to provide this Court with accurate and convincing evidence that its property was being occupied, and that it was being occupied by these Defendants. What is lacking here is a survey of its property, showing by some accurate and verifiable indicator such as GPS coordinates, for each of the plots occupied and mapped, to show that these Defendants in fact occupy the Claimant's property and not that of the Government of Belize. The Claimant has not provided such evidence to the satisfaction of the Court and consequently, the Claimant's claim cannot succeed.*

[50] I appreciate the Trial Judge's comments and would agree that the report could have included further information. However, ultimately, I am persuaded by Justice Minott-Phillips' reference at paragraphs 36–38 of her judgment regarding the Respondent not challenging the expert report and the fact that the expert does exhibit a location map and does certify that he has *'plotted the locations of portions of the claimant's property currently being occupied by the respondents. The satellite imagery viewed for the year 2009 showed no development or occupation by the Respondents'*.

[51] In the circumstances I agree with the orders proposed.

WOODSTOCK-RILEY, JA

ARANA, JA

[52] I have read the draft judgment of Minott-Phillips JA. I agree with the judgment and the proposed order and I have nothing to add.

ARANA, JA