IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 346 of 2022

BETWEEN:

GONZALO RAMIREZ

Claimant

and

[1] NONITA ENCARNACION RAMIREZ
[2] MARTIN JOSE GUERRA
[3] MINISTRY OF NATURAL RESOURCES
[4] ATTORNEY GENERAL OF BELIZE

Defendants

and

TEICHROEB & SONS

Interested Party

Appearances:

Nazira Uc Myles, for the Claimant
Deshawn Arzu Torres, for the 1st and 2nd Defendants
Agassi Finnegan and Imani Burgess, for the 3rd and 4th Defendants
Darinka Muñoz, for the Interested Party

2023: February 20

September 4

DECISION ON APPLICATIONS TO STRIKE OUT

[1] **CHABOT, J**: This decision deals with three distinct applications to strike out the fixed date claim filed by the claimant for the recovery of four parcels of land. For the reasons outlined in this decision, the claim is dismissed with costs to the defendants and the interested party.

Background

[2] This matter involves the following four parcels of land, together referred to as the "Parcels" or the "Property":

1. Parcel 298 - Pembroke Hall Registration Area - Corozal (Previously Lot 30 in Louisville Layout, Corozal)
2. Parcel 299 - Pembroke Hall Registration Area - Corozal (Previously Lot 25 in Louisville Layout, Corozal)
3. Parcel 300 - Pembroke Hall Registration Area - Corozal (Previously Lot 26 in Louisville Layout, Corozal)
4. Parcel 301 - Pembroke Hall Registration Area - Corozal (Previously Lot 27 in Louisville Layout, Corozal)

[3] Title to Parcel 298 is currently in the name of Teichroeb & Sons ("Teichroeb"), who acquired it from the first defendant, Ms. Ramirez, on March 4th, 2021. Ms. Ramirez currently holds title to Parcels 299 and 300, and her son, Mr. Guerra, holds title to Parcel 301.

[4] The claimant filed this claim on May 30th, 2022 to recover ownership of the Parcels. The claimant asserts that in 1978, he obtained the following leases from the Minister of Natural Resources:

1. Lease 64 of 1978 dated February 9th, 1978 on Lots 25 and 26
2. Lease 66 of 1978 dated February 9th, 1978 on Lots 27 and 30

[5] With the assistance of a mortgage from the Royal Bank of Canada on Parcels 299 and 300 (then Lots 25 and 26), the claimant alleges that he began investing by clearing and building structures on the Property. He and his father approached Shell and Texaco with a view to developing a gas station on the leased Parcels. The project was approved and the claimant made the necessary investments. The gas station operated for a few months before being shut down. The claimant and his father also hired Belize Sugar Industries ("BSI") to clear 15 acres of land and plant sugar cane on the Property. The sugar cane operation continued until the late 1980's, when it was stopped due to

the deterioration of the fields and financial losses. The claimant also operated a business on the Property slaughtering 3 to 5 pigs every week and selling meat and fat.

[6] The claimant alleges that he allowed his parents and siblings to move in with him on the Property and to "live rent free" as he wanted to help them. The claimant provided financial assistance to the family, and allowed his father to assist with the operations on the Property. In the early 1990's, the claimant's family left the Property but the claimant continued to assist them financially.

[7] The claimant alleges that in 1991, with his permission, his father obtained a mortgage from the Belize Bank secured by Lease 66 of 1978. The creation of the mortgage was approved by the Minister on June 3rd, 1991.

[8] In 2011, the claimant allegedly paid off the remaining lease balance for all four Parcels, and cleared the old sugar cane and some additional acreage to plant new sugar cane. The sugar cane was registered and delivered to BSI in the claimant's wife's name until 2018.

[9] In March 2020, the claimant noticed that a bulldozer had cleared a portion of the Property. He confronted his sister, Ms. Ramirez, who allegedly told him she was clearing a portion of the land because she needed a place to live. In August 2021, the claimant found out through a social media post that the Property was being cleared for the Renate By-Pass. The claimant contacted Teichroeb, who confirmed it had purchased Parcel 298 from Ms. Ramirez. A title search revealed that Parcels 299 and 300 were registered in the name of Ms. Ramirez, and Parcel 301 in the name of her son, Mr. Guerra.

[10] The claimant claims that he has held a lease, has been paying rent to the Ministry of Natural Resources, has developed and used, and has been in continuous and undisturbed possession of the Parcels since 1978. He argues that he did not authorize, transfer, sell, or consent for titles to be issued or registered in the names of Ms. Ramirez, Mr. Guerra, or Teichroeb. He asserts that titles were obtained by these defendants by fraud and/or mistake.

[11] The claimant seeks the following relief in the claim:

1. Specific performance of the contract between the claimant and the 4th defendant for purchase of the Properties.

2. A declaration that the transfers of Parcels 298, 299, 300 and 301 from the 3rd defendant to the 1st and 2nd defendants are void and a nullity, the 1st and 2nd defendants having obtained title to the said Properties by fraud.

3. Further or in the alternative, a declaration that in the very least, the 3rd defendant registered the titles in the name of the 1st and 2nd defendants by mistake.

4. An order directing the Registrar of Lands of the 3rd defendant to rectify the Land Registers in accordance with the provisions of Section 143 (1) of the Registered Land Act[1] by canceling or deleting the transfer in favor of the 1st and 2nd defendants and interested party.

5. In the alternative, a declaration that the claimant has been in continuous and undisturbed possession for a period well in excess of twelve (12) years – 43 years of the Properties.

6. A declaration that the claimant having been in open and undisturbed possession of all the Properties for a period well in excess of 12 years (43 years), the title of the 1st and 2nd defendants and interested party was extinguished pursuant to section 12 and 22 of the Limitation Act.[2]

7. An order that the 1st and 2nd defendants and interested party surrender their titles for the issue of title to the claimant upon an application by him for prescriptive title pursuant to Section 138 of the Registered Land Act.

8. Further and in the alternative, damages for breach of contract and unjust enrichment by the defendants.

9. Interest on any amount of damages found to be due to the claimant in accordance with Section 166 of the Supreme Court Judicature Act.[3]

10. Costs.

11. In addition, or in the alternative, the appropriate declarations and orders as would secure and enforce the rights of the claimant.

[12] The defendants filed three distinct notices of application to strike out the claim. As each application deals with a different aspect of the claim, each will be considered

[1] Cap. 194, Rev. Ed. 2020.
[2] Cap. 170, Rev. Ed. 2020.
[3] Cap. 91, Rev. Ed. 2020.

separately. I begin with a consideration of a preliminary procedural matter raised by the claimant, namely whether these applications are preemptive.

Preliminary procedural matter

[13] The claimant argues that the three applications to strike out the claim are preemptive, as they were filed before the claimant had a chance to file a reply to the affidavits filed as defences in this matter. The applications were made without the full pleadings being properly before the court. With respect to the Government defendants in particular, the claimant notes that they have yet to file any defence in this claim. According to the claimant, the evidence in support of their position should have been put in in response to the claim, not in support of their application because an application to strike out must be considered on the basis of the pleadings only. In addition, the claimant asserts that the 1st hearing of the claim has yet to take place, and he can still amend his claim without permission from this court.

[14] I find no merit in the claimant's procedural objection. Rule 26.3(1) of the Supreme Court (Civil Procedure) Rules, 2005 ("CPR") does not restrict the filing of an application to strike out a statement of case to any specific point in time. The claimant did not bring the court's attention to any rule or case law supporting his position that the defendants were prohibited from filing the applications to strike out before the Government defendants filed their affidavit in defence and before the claimant filed a reply. The overriding objective of the rules in the CPR is to enable the court to deal with cases justly, which includes ensuring that cases are dealt with expeditiously and saving expenses (CPR rules 1.1(2)(b) and (d)). This objective would be stifled if in all cases parties were required to expend the resources necessary to file their pleadings in response to cases which have no merit on their face.

[15] I have also not been persuaded by the claimant's contention that the Government defendants were prohibited from presenting evidence in support of their application to strike out. CPR rule 11.9 dealing with applications generally provides that applications can be supported by evidence contained in an affidavit, unless a rule, a practice direction, or a court order otherwise provides. Applications to strike out a statement of

case are not exempted from the general rule and can be supported by evidence if appropriate.

[16] While the court must refrain from engaging in a mini-trial, it must "closely and carefully" scrutinize the facts pleaded.[4] This exercise may be helped by the evidence of another party giving context to the facts pleaded in the statement of case, provided that this evidence does not raise any conflicts on which the outcome of the claim may turn or difficult questions of law which call for careful deliberation. As noted by Young J. in **Romero**, "the court must simply ensure that the claimant's cause of action has substance and reality and is not an abuse of the court's process". Evidence may be adduced to show that the court's process would be abused if a statement of case is allowed to proceed on the basis of flawed facts.

[17] The evidence presented by the Government defendants serves to provide additional context to the claimant's allegations in the claim. This evidence does not create a conflict but provides a more complete picture of the claimant's allegations in relation to the leases over the disputed Parcels. I find that the Government defendants were entitled to bring this evidence in and the court can consider it. The claimant had an opportunity to respond to that evidence, which he did. I find no unfairness in allowing the Government defendants to adduce that evidence.

[18] As for the claimant's submission that he has yet to file an affidavit in reply to the affidavits in defence and can do so without leave, I note that CPR rule 8.7 places on a claimant a duty to set out their case in the claim form or in the statement of case. This duty comprises a duty to state "all of the facts on which the claimant relies" (CPR rule 8.7(1)) and to "identify or annex a copy of any document which the claimant considers is necessary to his or her case" (CPR rule 8.7(3)). An affidavit in reply is meant to respond to new matters raised in a defence, not to rectify a deficient claim. It was for the claimant to set out his case in the fixed date claim form and accompanying affidavit. The applications to strike out allege deficiencies in the claim. These deficiencies

[4] Barbara Estella Romero v The Minister of Natural Resources et al., Claim No. 302 of 2012 ("Romero").

cannot be fixed by filing an affidavit in reply. It is therefore appropriate to consider the applications to strike out at this stage.

[19] Finally, the claimant is incorrect when he states that he can still amend his pleadings without the court's permission because the 1st hearing has not taken place. The court records show that the 1st hearing of this claim took place on July 28th, 2022. In any event, once an application to strike out a claim is filed, a claimant may only amend his statement of case with leave of the court. This was made plain in the Saint Lucia Court of Appeal's decision in **The Attorney General of Saint Lucia v Darrell Montrope**:[5]

> [36] It is accepted that there is no rule in the CPR (and similarly in Jamaica and Barbados) which provides that the filing of an application to strike has the effect of prohibiting a party, whose pleadings are under attack, from amending without the court's leave, even where the case management conference has not yet taken place. While it is true that CPR 20.1 provides that pleadings may be amended once, without the court's leave, before the date fixed for the case management conference, it appears that the principle in **Index** and **Maria Agard** is premised on the overriding objective of the CPR and considerations of justice and fairness. To my mind, the principle laid down in those cases is quite persuasive. In the context of an adversarial system, were this to be approached differently, it would defeat the overriding objective as a defendant attacking a claimant's pleading could be faced with a claimant constantly shifting the goal post of his pleaded case and neutralising the defendant's attack. The ability to strike out weak or unviable pleadings would be rendered a toothless tiger. Equally, a claimant would be absolved of its duty to assist the court in furthering the overriding of objective by, in the first place, pleading viable claims in a manner that is in keeping with the CPR.
>
> [37] I agree with Mr. Patterson's submission that the learned judge's reasons for declining to apply the learning from **Index** and **Maria Agard** cases are flawed. Logically, if leave to amend in the face of an application to strike were not required, the party seeking to attack the other side's pleadings would have to address any subsequent amendments, made without the court's leave, by perhaps mounting another application if there remained any basis for doing so. Adopting the words of Alleyne J in **Maria Agard**, such an approach would indeed be tantamount to the party attacking the pleadings '[shooting] at a moving target'. As Mangatal J in **Index** puts it, it is inconceivable that a party could simply, 'pull the rug out' from under the feet of the party applying to strike by simply turning up with new pleadings that have been filed without the court's leave. It is clear that

[5] SLUHCVAP2019/0021 at paras. 36-37.

> the approach adopted by the learned judge would sanction one party 'stealing a march' on the other by curing the defects in its pleadings which the very application to strike sought to impugn. This could render the application nugatory.

[20] The claimant did not apply for leave to amend his claim. As a result, I dismiss the claimant's preliminary procedural objection. I will now turn to the Government defendants' application to strike out.

The Government defendants' application to strike out

Submissions

[21] The Government defendants apply under CPR rules 1.1, 11, and 26.3(1)(b) and (c) and the inherent jurisdiction of this court to strike out the claim on the basis that there is no reasonable grounds for bringing the claim, that the claim is an abuse of process, and that there in an alternative form of redress.

[22] The Government defendants' position is that Lease 66 of 1978 (on Lots 27 and 30, now Parcels 298 and 301) was granted by Minister's Fiat to Gonzalo Ramirez Sr., the claimant's father, and expired on February 9th, 2003. The claimant was not a party to Lease 66 of 1978, and as such he has no legal interest over Parcels 298 and 301. The claimant cannot maintain a claim against the Government defendants for breach of contract or pray for specific performance of a contract he was not a party to.

[23] As for Lease 64 of 1978 (on Lots 25 and 26, now Parcels 299 and 300), the Government defendants acknowledge that it was granted by Minister's Fiat to the claimant. However, Lease 64 of 1978 was for a term of 25 years with an option to purchase the Parcels on application, provided that the area was surveyed. One of the terms and conditions of Lease 64 of 1978 was that all monies paid as rent would be credited towards the purchase price, provided the lessee did not fall into arrears. The claimant made no rental payment on Lease 64 of 1978 between 1987 and 2003. In addition, he did not apply for renewal of the lease before or after its expiration, and no approval for any such renewal was given by the Minister. Lease 64 of 1978 therefore expired on February 9th, 2003.

[24] While the claimant made a payment clearing the rental arrears on May 16th, 2011, the sum would not have been deducted from any purchase price pursuant to the terms and conditions of Lease 64 of 1978 as the arrears were due to non-payment. In any event, the claimant made no application to purchase Parcels 299 and 300, and the Minister did not approve any such purchase. Any interest the claimant may have had in Parcels 299 and 300 reverted to the Government of Belize in 2003.

[25] The Government defendants assert that this claim is an abuse of process because the claimant seeks orders in relation to Parcels to which he did not at any time have any legal interest. In addition, being a claim for breach of contract, the claim ought to have been brought by way of an ordinary claim.

[26] Finally, the Government defendants point out that the claimant had access to the mechanism provided for under the Registered Land Act to have his interest in the Parcels established and registered.

[27] The claimant asserts that the Ministry of Natural Resources was required to take certain (unidentified) steps once Lease 64 of 1978 expired, and "it was not done". Likewise, the Ministry of Natural Resources did not demand or provide a notice for the claimant to terminate his occupation of the Parcels after any expiration of the Lease, as is required by law. The Ministry of Natural Resources continued to accept payment of rent and land taxes from the claimant, and at no time did the claimant receive notification that payment would not be accepted. In oral submissions, the claimant's counsel argued that acceptance of these payments created a periodic tenancy over the Parcels.

[28] As for Lease 66 of 1978, the claimant alleges the fact the Lease was not in his name does not affect the claim, since he has been in possession of the Parcels as is required by law to claim an interest. The determination of possession is a question of facts, and the facts are to be determined by witness statements and examination of the evidence of the witnesses.

[29] On the issue of alternative remedy, the claimant argues that there is no mandatory requirement that he must apply to the Registrar of Lands to note his interest by occupation prior to commencing a claim in the High Court.

[30] Finally, the claimant notes that if this court is of the opinion that the claim should have been filed as a regular claim, the court has the discretion to order the conversion of the claim without the need to strike out the entire claim.

Ruling

[31] I grant the Government defendants' application to strike out, as I find that the claim discloses no reasonable grounds for bringing the claim against the Government defendants.

[32] The claimant's claim for specific performance of the alleged contract between him and the Government of Belize for the purchase of Lots 27 and 30 (now Parcels 298 and 301) cannot succeed. The claimant is not a party to any contract with the Government of Belize because he is not a party to Lease 66 of 1978. Lease 66 of 1978 was granted to the claimant's father, Gonzalo Ramirez Sr.[6] There is no evidence, nor does the claimant plead, that Mr. Ramirez Sr.'s interest in Lease 66 of 1978 passed on to the claimant.

[33] Similarly, the claimant's claim for specific performance of the alleged contract between him and the Government of Belize for the purchase of Lots 25 and 26 (now Parcels 299 and 300) cannot succeed. Lease 64 of 1978 was granted on February 9th, 1978 and had a duration of 25 years.[7] Lease 64 of 1978 expired on February 9th, 2003. There is no evidence, nor does the claimant plead that he ever applied to renew Lease 64 of 1978 or to purchase Parcels 299 and 300. Clause 8 of Lease 64 of 1978 establishes two conditions for the purchase of Parcels 299 and 300 after the expiration of the Lease: an application to purchase, and the survey of the Parcels. The claimant does not plead or provide any evidence that either of these steps were taken by him

[6] Affidavit of Gonzalo Ramirez dated February 9th, 1978, Tab 2.
[7] Affidavit of Gonzalo Ramirez dated February 9th, 1978, Tab 1.

at any time. Regardless of the claimant's payment of the arrears on the rent due in 2011, the claim simply does not support that the claimant ever applied to secure his interest in Parcels 299 and 300. Lease 64 of 1978 came to an end by effluxion of time. I note that counsel's argument made in oral submissions in relation to an alleged periodic tenancy has not been pleaded, and therefore cannot ground the claim.

[34] As a result, the claimant's claim for a relief in the form of the specific performance of an alleged contract between himself and the Government of Belize for the purchase of the Parcels cannot succeed. Reliefs "1" and "8" in the fixed date claim form are struck out.

[35] Given my ruling on the Government defendants' application to strike out, I do not find it necessary to address the issue of alternative remedy. The claimant's submission in respect of his alleged occupation of the land will be addressed in the context of the other applications to strike out.

Teichroeb's application to strike out

Submissions

[36] Teichroeb applies under CPR rules 26.3(1)(a), (b) and (c), and 26.1(2)(c) to strike out the portion of the claim and reliefs pertaining to Parcel 298 to which Teichroeb currently holds title. Teichroeb argues there are no reasonable grounds for bringing the claim or seeking the reliefs claimed against it, and that the claim against Teichroeb is an abuse of process.

[37] The pleadings show that the claimant has no interest in Parcel 298. Lease 66 of 1978 is in the name of the claimant's father and expired in 2003. Parcel 298 was unoccupied before Teichroeb acquired ownership and possession. The only developments ever done on Parcel 298 were those by Teichroeb. If the claimant had a case and wished to obtain title to Parcel 298 by prescription, he ought to have utilized the mechanism specified under the Registered Land Act.

[38] The claimant seeks rectification of the Land Register for Parcel 298 based on alleged fraud and/or mistake. To succeed, the claimant must plead the particulars of, and prove Teichroeb's knowledge of the omission, fraud, or mistake in consequence of which rectification is sought, how Teichroeb caused such omission, fraud, or mistake, or how it substantially contributed to it by its act, neglect or default. Teichroeb argues that the claimant failed to plead and particularize any such material facts. The facts set out in the claimant's statement of case do not ground the cause of action alleged, and the reliefs sought are not viable as a matter of fact and law because the claimant has no interest in Parcel 298. Teichroeb claims that it is a good faith purchaser without notice of any alleged fraud or mistake of Parcel 298. The claimant's pleadings contain bald conclusory statements of facts that provide no reasonable basis for bringing the claim against Teichroeb. This position is immutable and cannot be cured by an amendment.

[39] Finally, Teichroeb argues that the claim should have been filed as a claim form, not a fixed date claim form. The claim is properly one for rectification of the Land Register under section 143 of the Registered Land Act. Teichroeb notes that the failure to follow the proper procedure has prejudiced it because it was prevented from being able to apply for summary judgment.

[40] In response, the claimant argues that there are issues for determination between him and Teichroeb as it relates to notice of ownership prior to purchasing the property. The issue before the court relates to leases, and possession and purchase of land *bona fide* or without notice. To make that determination, the court must consider the entire history of the Property. This will involve an interpretation of the applicable law, as well as factual evidence in relation to possession and notice before purchase. Possession and circumstances determining a purchase in good faith or without notice are always questions of facts, which can only be determined as proven after hearing oral evidence.

[41] The claimant asserts that he has an overriding interest in the land under section 31(1)(g) of the Registered Land Act which would defeat Teichroeb's title even if it was

acquired in good faith for value. The issue of overriding interest must go to trial. The defendants and interested party are asking the court to make inferences from facts which are alleged by the parties, and arrive at the conclusion that the claim has not been proven when the very facts demand scrutiny at trial.

[42] Finally, the claimant argues that the allegations can be further particularized by an amendment to the claim.

Ruling

[43] I grant Teichroeb's application to strike out, as the claim discloses no reasonable grounds for bringing the claim against Teichroeb.

[44] As noted above, this application to strike out must be considered on the pleadings as they currently stand before the court. The claimant can no longer amend his pleadings without leave from the court. The claimant has not sought leave to amend his pleadings.

[45] The claimant failed to plead and particularize his claim against Teichroeb in relation to Parcel 298. Despite his counsel's oral submissions, nowhere in the pleadings does the claimant plead an overriding interest in Parcel 298 under section 31(1)(g) of the Registered Land Act. In any event, the claimant's allegation in relation to this alleged overriding interest cannot succeed. Pursuant to section 31(1)(g), an overriding interest is created by *actual* occupation of land:

> 31.-(1) Subject to sub-section (2), unless the contrary is expressed in the register, all registered land shall be subject to such of the following over-riding interests as may for the time being subsist and affect it, without their being noted on the register–
>
> […]
>
> (*g*) the rights of a person in actual occupation of land or in receipt of the rents and profits thereof except where inquiry is made of such person and the rights are not disclosed; or

[46] In **Abbey National Building Society v Cann and Others**,[8] the learned Lords held that the relevant date for determining the existence of an overriding interest by actual occupation is the date of completion of the transaction giving rise to the right to be registered.

[47] Ms. Ramirez purchased Parcel 298 from the Minister of Natural Resources on May 28th, 2020 and title was registered in her name on June 3rd, 2020. Teichroeb purchased Parcel 298 from Ms. Ramirez and title was registered in its name on March 4th, 2021. The claimant does not plead that he was in actual occupation of Parcel 298 at the time of these transactions. The last of the allegations that could possibly ground a claim in occupation can be found at paragraph 22 of the claimant's affidavit in support of the fixed date claim form. In that paragraph, the claimant states that in 2011 he paid the remaining lease balance for all four Parcels, and with his wife "began clearing the old sugar cane land and some additional acreage to plant new sugar cane […] The sugar cane was registered and delivered in [his] wife's name to BSI. The business was continuous until 2018". The claimant's pleadings do not contain any allegations of actual occupation of Parcel 298 after 2018. The allegations pertaining to 2019 and 2020 are allegations that the claimant was in discussions to develop a regenerative agriculture initiative on the Parcels, not that he was in actual occupation of the Parcels. Paragraph 33 of the claimant's affidavit alleges that the claimant "continued to clean and maintain that portion of the property in preparation for our projects". However, the claimant does not particularize which portion of the Property he allegedly cleaned, and on what date this alleged cleaning took place. The pleadings simply do not support the existence of an overriding interest on Parcel 298 under section 31(1)(g) of the Registered Land Act.

[48] In addition, rectification of the Land Register is not available because the claimant failed to particularize his allegations against Teichroeb. Pursuant to section 143 of the Registered Land Act, rectification of the Land Register is only available where a registration has been obtained by fraud or mistake, unless title to the land in question is in the name of a proprietor who acquired the land for valuable consideration and

[8] [1990] UKHL 3.

without knowledge of the fraud or mistake. Section 143 of the Registered Land Act 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

[49] I agree with Teichroeb that the claimant makes bald allegations that Teichroeb had knowledge of the alleged fraud or mistake. The only allegations in the claimant's affidavit in relation to Teichroeb's knowledge of the fraud or mistake are the following:

> 44. I did not authorize, transfer, sell or consent for titles to be issued or registered in the names of the 1st and 2nd Defendants nor the Interested Party and any such title was obtained by fraud and/or mistake.
>
> […]
>
> 45. The 1st 2nd and 3rd Defendants and Interested Party had knowledge of the omission, fraud or mistake in respect of which the rectification is sought or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.

[50] Paragraph 44 of the affidavit sets out the "Particulars of Fraud", but none of these particulars speak to Teichroeb's knowledge.

[51] The Land Register for Parcel 298 shows no registered proprietor for Parcel 298 prior to Ms. Ramirez, who sold the Parcel to Teichroeb. From the claimant's own pleadings, Parcel 298 was not actually occupied by the claimant on or around March 4th, 2021 when Teichroeb purchased and obtained title for Parcel 298. The claimant's generic allegation of knowledge against Teichroeb is insufficient to ground a claim against Teichroeb. Rectification of the Land Register is not available under section 143 of the Registered Land Act. Relief "4" is struck out.

Ms. Ramirez's and Mr. Guerra's application to strike out

[52] Ms. Ramirez and Mr. Guerra apply to this court to strike out the claim pursuant to CPR rules 26.3(1)(a), (b) and (c), and rule 26.1(2)(c) on the basis that the claim contains no reasonable cause of action against them, and is an abuse of process.

[53] Ms. Ramirez and Mr. Guerra allege that despite claiming to have been in continuous and undisturbed possession of the Parcels for a period of 43 years, the claimant produced no evidence of his alleged adverse possession. Ms. Ramirez and Mr. Guerra maintain that no such occupation has existed. The claimant became married in the 1970s, and thereafter never occupied or visited the property. The Parcels were unoccupied until Ms. Ramirez applied to purchase them from the Government of Belize in 2020.

[54] Even when a party claims to have been in actual occupation of a property, this does not create an automatic right of ownership. The second stage is to consider what equitable right or interest flows out of the actual occupation. Ms. Ramirez and Mr. Guerra argue that the claimant failed to provide any proof of interest in the Parcels. They claim that the Leases were in the claimant's father's name, and that the claimant was never a leaseholder of the Parcels. The claimant has no interest in the lease contract between the Government of Belize and his father. The Land Register clearly shows that there were no previous owners of the Parcels. Ms. Ramirez and Mr. Guerra claim that they are therefore the lawful owners of the Parcels.

[55] Further, Ms. Ramirez and Mr. Guerra argue that while the reliefs sought include allegations of fraud and/or mistake, no particulars of the said fraud and/or mistake are pleaded within the claim. Fraud must be pleaded with particularity, and it was incumbent on the claimant to present and allege the material representations of facts which support a reasonable inference that the allegations of fraud as presented are true. The claimant at no time held any lease on the Parcels, was not in occupation of the Parcels for a period amounting to 12 years, or is entitled to any other legal interest.

[56] In response, the claimant reiterates that the determination of the issue of possession is a question of facts, and the facts are to be determined by witness statements and examination of the written and oral evidence of witnesses. The factual allegations outlined in Ms. Ramirez's and Mr. Guerra's application to strike out demonstrate that there is an issue to be determined by the court based on factual evidence of possession.

Ruling

[57] I grant Ms. Ramirez's and Mr. Guerra's application to strike out, as the claim discloses no reasonable grounds for bringing the claim against them and for seeking prescriptive title over the Parcels.

[58] Under sections 138(1) and 139(1) of the Registered Land Act, a person claiming ownership of land by virtue of his open, peaceful, and uninterrupted possession for a period of twelve years without the permission of any person lawfully entitled to such possession must show that he is still in possession of that land or in receipt of the rents or profits:

> 138.-(1) Subject to sub-section (2), the 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.
>
> […]
>
> 139.-(1) Where it is shown that a person has been in possession of land, or in receipt of the rents or profits thereof, at a certain date and is still in possession or receipt thereof, it shall be presumed that he has, from that date been in uninterrupted possession of the land or in uninterrupted receipt of the rents or profits until the contrary be shown.

[59] I do not have to consider any of the parties' evidence as to the claimant's alleged possession of the Parcels between 1978 and the filing of this claim to rule on this application to strike out. It is not disputed that Ms. Ramirez purchased Parcels 298, 299, and 300 from the Minister of Natural Resources on May 28th, 2020 and registered her titles on June 3rd, 2020. Mr. Guerra purchased Parcel 301 from the Minister of

Natural Resources on July 7th, 2020 and registered his title on July 8th, 2020. This claim was initiated on May 30th, 2022. As noted above, the claimant's pleadings do not contain any allegations of possession or actual occupation of any of the Parcels after 2018. Section 138(1) of the Registered Land Act does not apply because the Claimant does not allege or provide any evidence that he was in possession of the Parcels when he made his claim. The claimant is therefore not entitled to a declaration that he has been in continuous and undisturbed possession of the Parcels for a period exceeding twelve years, or that title to Ms. Ramirez, Mr. Guerra, and Teichroeb has been extinguished on account of that possession. Reliefs "5" and "6" are struck out.

[60] Ms. Ramirez currently holds title to Parcels 299 and 300. Mr. Guerra holds title to Parcel 301. Under section 143(1) of the Registered Land Act, their titles can only be defeated if the claimant shows that the registration has been obtained, made, or omitted by fraud or mistake. I agree with Ms. Ramirez's and Mr. Guerra's position that the claimant has not sufficiently particularized his allegations of fraud against them. The importance of distinctly and carefully particularizing allegations of fraud has been expounded on by Byron acting CJ (as he then was) in **Thomas v Stoutt and Others**:[9]

> The mere averment of fraud in general terms, is not sufficient for any practical purpose in the prosecution of a case. It is necessary that particulars of the fraud are distinctly and carefully pleaded. There must be allegations of definite facts, or specific conduct. A definite character must be given to the charges by stating the facts on which they rest. The requirement for giving particulars of fraud in the pleadings is mandated in the Rules of the Supreme Court, Order 18, rule 12(1)(a).
>
> This ancient principle was referred to in *Wallingford v Mutual Society and Official Liquidator* at page 697 by Lord Selborne LC:
>
> > 'With regard to fraud, if there be any principle which is perfectly well settled, it is that general allegations, however strong may be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any court ought to take notice. And here I find nothing but perfectly general and vague allegations of fraud. No single material fact is condescended upon, in a manner which would enable any court to understand what it was that was

[9] (1997) 55 WIR 112.

> alleged to be fraudulent. These allegations, I think, must be entirely disregarded.'[10]

[61] In **Derry & Others v Peek**,[11] the House of Lords stated that "fraud is proved when it is shown that a false representation has been made knowingly, or without belief in its truth, or recklessly, careless whether it be true or false".

[62] The claimant grounds his allegation of fraud against Ms. Ramirez and Mr. Guerra in their alleged knowledge of the Claimant's occupation, development, and payment on the Parcels. The Claimant does not particularize these allegations such that the court can understand what exactly the claimant alleges was fraudulent. There are no allegations of definitive facts or specific conduct against Ms. Ramirez and Mr. Guerra.

[63] As discussed previously, the claimant has not demonstrated that he holds any interest in the Parcels. He does not plead, nor is there any evidence that he was in possession or occupation of any of the Parcels in 2020 when Ms. Ramirez and Mr. Guerra purchased the Parcels. The claimant's allegations of knowledge against Ms. Ramirez and Mr. Guerra, even if considered true, are insufficient to ground a claim in fraud.

[64] Similarly, the Particulars of Mistake are vague and not sufficiently particularized. The allegation is that Ministry of Natural Resources sold the Parcels to Ms. Ramirez and Mr. Guerra having knowledge of the mistake in transfer. The Particulars of Mistake do not particularize the alleged mistake, nor do they explain how the Ministry of Natural Resources would have become aware of any mistake.

[65] It was incumbent on the claimant to particularize his claim in a manner that would allow this court to understand the allegations of fraud or mistake against Ms. Ramirez and Mr. Guerra. It is too late to amend the claim to provide those much needed particulars. Taking the pleadings as they are and as true, I find that the claim discloses no reasonable grounds for bringing the claim against Ms. Ramirez and Mr. Guerra. Reliefs "2" and "3" are struck out.

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[10] *Ibid* at 117-118.
[11] HL 1889, 14 AC 337.

Costs

[66] I award costs to both groups of defendants and to the interested party in an amount to be agreed or assessed.

IT IS HEREBY ORDERED THAT

(1) The claim is struck out.

(2) Costs are awarded to the defendants in an amount to be agreed or assessed.

Geneviève Chabot
High Court Judge