

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 644 of 2022

BETWEEN:

[1] DELTA MAYA LIMITED
[2] ALEXANDER VRINCEAN
[3] REEF RESORTS LIMITED

Claimants

and

[1] REGISTRAR OF LANDS
[2] ATTORNEY GENERAL OF BELIZE

Defendants

Appearances:

Godfrey P. Smith SC and Hector D. Guerra for the Claimants

Israel J. Alpuche and Stanley Grinage for the Defendants

2023: 29 September
20 December

DECISION

[1] **FARNESE, J:** Reef Resorts Limited (Reef Resorts) claims that as a good faith purchaser for value without notice of any mistake or fraud, they are entitled to be registered as the owner of Parcels 10351 and 10352 in Block 7, San Pedro Registration Section (the Parcels). Reef Resorts

purchased Parcel 10351 from Delta Maya Limited (Delta Maya) and Parcel 10352 from Mr. Vrincean. They allege that the Registrar has unlawfully registered a caution in favour of Island Resorts Limited (Island Resorts) on the title to those Parcels and placed a restriction over the properties preventing the transfer from being completed. The claimants seek various declarations with respect to the validity of their interests in and dealings with the Parcels and for breach of their constitutional rights to protection of law. They also request several orders directing the Registrar to remove the cautions and restriction and to register Reef Resorts as owner of the Parcels.

- [2] The defendants argue that the claim is an abuse of process and premature because the claimants ought to have sought relief through a judicial review. They contend that the claimants have not exhausted the statutory option for removing cautions available under section 132 of the Registered Land Act (RLA).¹ They also argue that section 8 of the RLA bars action against the Registrar. Furthermore, the defendants question whether the sale agreements between the claimants were *bona fide* and without notice of Island Resorts Limited's claim and whether Mr. Vrincean and Delta Maya were in possession of the Parcels when they were sold to Reef Resorts.
- [3] For the reasons outlined below, I find that upon registration, Delta Maya and Mr. Vrincean's titles to the Parcels were immediately indefeasible, meaning they are only subject to those prior interests that were noted on the title and any over-riding interests. As a result, Island Resorts' interest in the Parcels is unenforceable. Maintaining the cautions and preventing the transfer of title to the Parcels is not justified.
- [4] I further find that the claimants' rights to equal protection of the law were violated when the Registrar prevented the proper functioning of the RLA. The Registrar also improperly used her authority under the RLA to restrict Delta Maya and Mr. Vrincean's use and enjoyment of their property to pressure them into relinquishing their titles to the Parcels. Her actions have compromised the certainty of the land register and the indefeasibility of title on which the claimants placed their trust.

¹ The Substantive Laws of Belize, Cap. 194 (Rev. Ed. 2020).

Issues

- [5] The following issues are raised in this claim:
- a) Is the claim an abuse of process because it has been brought by way of an originating motion and not an application for judicial review?
 - b) Is the claim premature?
 - c) Are the claimants barred from bringing this action against the Registrar by operation of section 8 of the RLA?
 - d) What effect, if any, does the issuance of titles to Parcels 10351 and 10352 in error by the Registrar have on the rights of the registered owners of those Parcels?
 - e) Is Reef Resorts entitled to be issued a Certificate of Title as registered owner of the Parcels?
 - f) Has the claimants' constitutional right to equal protection of the law protected under sections 3(a) and 6 of the Belize Constitution been violated?

Background

- [6] Neither Party exercised their right to cross-examine witnesses on the affidavit evidence presented to the court because the facts that gave rise to this claim are largely undisputed. In 2012, the Ministry of Natural Resources (MNR) created Parcels 10351 and 10352 and registered title in the names of Mr. Miguel Octavio Alamilla and Mr. Ruben Pierre Francois. I have no information about either the events that led to the creation of the Parcels or the transfers to Mr. Alamilla and Mr. Francois. Therefore, I will presume that their interests were acquired in good faith.
- [7] Parcels 10351 and 10352 wholly overlap with Parcel 12326 which is a pre-existing, larger Parcel that is registered to Island Resorts. The defendants have explained that the overlap was inadvertent. Therefore, I refer to the creation of Parcels 10351 and 10352 as a mistake and an error for convenience and not as a finding of fact.
- [8] Mr. Vrincean and Delta Maya purchased their respective Parcels from the then registered owners of those Parcels in 2013 after reviewing the Land Register, which did not list any encumbrances on the titles. Mr. Florian Pindic-Blaj, director and majority shareholder of Delta Maya personally inspected the Parcels prior to the sale and found no evidence of trespassers. Mr. Pindic-Blaj and Mr. Vrincean are friends and business partners.

- [9] In 2019, Delta Maya was contacted by the MNR's Department of Lands and informed that the land described in their title overlapped with the description of land described in the title to Parcel 12326 which was registered to Island Resorts. After some negotiation, the Government of Belize (GOB) offered Delta Maya and Mr. Vrincean BZ\$280,000.00 and a 4.5-acre parcel of land in exchange for relinquishing their interest in the portion of their Parcels that overlapped with Island Resorts' Parcel.
- [10] Delta Maya and Mr. Vrincean signed a settlement agreement to this effect in 2020, but that agreement was never signed by the GOB. The GOB paid the BZ\$280,000 sum but did not transfer the 4.5-acre parcel. Delta Maya and Mr. Vrincean's counsel at the time wrote to the GOB asserting breach of the agreement. She made a final request for the GOB's position on the issue on 10 January 2022 and received no response. Similarly, Delta Maya and Mr. Vrincean have attempted to return the cash payment, but the GOB has not provided the banking information required to do so.
- [11] Reef Resorts entered into agreements to purchase the Parcels in February 2022 after reviewing the Land Register and inspecting the property. No encumbrances were noted on title or trespassers present on the property. The transfer documents were completed in February 2022 and the stamp duties were paid. The Departments of Lands, however, has failed to process the transfers.
- [12] On 4th July 2022, Island Resorts lodged a caution against the properties claiming that Parcels 10351 and 10352 form a part of Parcel 12326. The claimants were not given notice of the pending caution or permitted to make representations to the Registrar as outlined in section 131 of the RLA. On 28 September 2022, the Registrar placed a restriction on the Parcels because of the competing claims.

Is the claim an abuse of process because it has been brought by way of an origination motion for constitutional relief and not an application for judicial review?

- [13] The defendants argue that the claimants have not established that special and exceptional reasons exist that justify pursuing relief under section 20 of the Constitution instead of an application for judicial review. The defendants further argue that this application is premature because the Registrar has yet to consider their application to remove Island Resorts' caution. For these

reasons, the defendants assert that to proceed by way of an originating motion for constitutional relief is an abuse of process.

- [14] The defendants rely on **Lucas v Chief Education Officer** in support of their argument that the claim must demonstrate that special and exceptional circumstances exist to justify proceeding by way of originating motion:²

Proceeding by constitutional Motion may well be an impermissible strategy either for unfairly jumping the litigation queue or evading the scrutiny of a judicial review judge charged with filtering out groundless or hopeless cases. A similar principle is applied where the litigant has adequate recourse in private law but chooses to proceed by way of constitutional motion. In those instances the courts will entertain a constitutional action only if the circumstances disclose some “special feature” that justifies going beyond private law remedies and invoking the constitution.

The claimants, however, are not seeking a private law remedy. Proof of a “special feature” or exceptional circumstance makes sense in the private law context because a claimant should not gain an advantage in the litigation process merely because the defendant is the government.

- [15] In **Lucas**, the CCJ references their decision in **Belfonte v The Attorney General of Belize**³ and further writes:⁴

...the determining factor in deciding whether there has been an abusive process is not merely the existence of a parallel remedy but also, the assessment that the allegations grounding constitutional relief are being brought “for the sole purpose of avoiding the normal judicial remedy for unlawful administrative action”.

The defendants have not alleged that the claimants have brought this claim in bad faith. The claimants are not seeking to avoid the consequences of the strict timelines for bringing an application for judicial review or the permission requirement. The claim is also not plainly frivolous or vexatious. The Registrar has prevented the claimants from completing a land transaction, which is *prima facie* evidence of interference with their property rights.

- [16] I am also not convinced that the application is premature because the claimants’ application to remove Island Resorts’ caution has yet to be considered. There is sufficient evidence to establish that the Registrar has already reached the conclusion that Parcels 10351 and 10352 are void. In 2020, the CEO of the MNR wrote to Island Resorts stating they were in the process of cancelling

² [2015] CCJ 6 (AJ) at para 133 [Lucas].

³ [2020] CCJ 9 (AJ).

⁴ Lucas at para 134.

titles. As only the Registrar has that authority under the RLA, it is reasonable to conclude that she was facilitating the cancellation. In a letter dated 6 June 2022 from the CEO of the MNR, Delta Maya and Mr. Vrincean are urged to cease and desist from any further developments on the Parcels thereby suggesting that their position on the validity of their titles had not changed.

[17] The claimants argue, and I agree, that the court cannot ignore clear guidance from the Caribbean Court of Justice (CCJ) that where there is a viable claim for a constitutional remedy, procedural requirements should not be interpreted in an overly restrictive way if the consequence of that interpretation is to prevent the court from considering the claim. In **Sears v The Attorney General**, the CCJ recently reiterated this point:

The Court continues to caution against the unnecessary reliance on strict rules of procedure to shut out citizens from seeking constitutional relief, especially in the face of serious allegations of constitutional violations. The focus of this Court, as is the clear intention of the constitution, is to provide flexible and effective access to justice for the peoples of Belize so that they can seek full vindication of their constitutional rights.

Thus, I find no reason why this claim cannot proceed.

Are the claimants barred from bringing this action against the Registrar by operation of section 8 of the RLA?

[18] The defendants argue this claim is statute barred by section 8 of the RLA. I disagree. Section 8 outlines that:

The Registrar shall not, nor shall any other officer of the Registry, be liable to **any action or proceeding** for or in respect of any act or matter done or omitted to be done in good faith in the exercise or supposed exercise of the powers and duties under this Act or any regulations made thereunder.

(emphasis added)

As the margin note accurately describes, section 8 creates a personal indemnity to reassure Registry officers that they can perform their duties without fear of being personally sued. Section 8 does not bar claims alleging the Registrar has exceeded her jurisdiction or is otherwise non-compliant with the RLA or the Constitution.

[19] Any other interpretation would be inconsistent with the broad right to appeal in section 145:

145.-(1) The Minister or any person aggrieved by a decision, direction, order, determination or award of the Registrar may, within thirty days of the decision, direction, order, determination or award give notice to the Registrar in the prescribed form of his intention to appeal to the court against the decision, direction, order, determination or award.

An appeal is certainly a proceeding and therefore would be captured by section 8 if the defendants' interpretation is adopted. Such a result cannot be what was intended by the drafters.

What effect, if any, does the issuance of titles to Parcels 10351 and 10352 in error by the Registrar have on the rights of Delta Maya and Mr. Vrincean of those Parcels?

[20] As good faith purchasers, I find that Delta Maya and Mr. Vrincean received absolute and indefeasible title upon registration, subject only to the encumbrances noted on title and any overriding interests by operation of sections 26 and 31 of the RLA. Delta Maya and Mr. Vrincean have the same rights and obligations as anyone with a fee simple interest in Belize. Therefore, the Registrar's error voids Island Resorts' title to Parcel 12326 to the extent of the overlap with Parcels 10351 and 10352. Any other finding is inconsistent with the title registration system created by the RLA.

[21] Section 26 outlines that, upon registration, Delta Maya and Mr. Vrincean received a fee simple interest free of any encumbrances:

26. Subject to section 30,⁵ the registration of any person as the proprietor with **absolute title** of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, **free from all other interests and claims whatever**, but subject–

(a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

(b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 31 not to require noting on the register,

Provided that –

- (i) nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee; and
- (ii) the registration of any person as the proprietor under this Act shall not confer on him any right to any minerals or any mineral oils unless the same are expressly referred to in the register.

(Emphasis Added)

[22] The use of “absolute title” in section 26 denotes that upon registration a fee simple interest is created, and “free from all other interests and claims whatever” reflects that the title is

⁵ Section 30 concerns unregistered interests arising from bankruptcy or winding up of a company and is not relevant.

indefeasible. An indefeasible interest is one that is not capable of being voided. The defendants do not dispute that the Register was searched and showed no encumbrances when the titles to Parcels 10351 and 10352 were registered to Delta Maya and Mr. Vrincean. Unless Island Resorts' interest in Parcels 10351 and 10352 is an over-riding interest, it is incapable of surviving registration because the interest was not noted on the Register.

[23] Section 31 of the RLA provides an exhaustive list of unregistered interests that survive registration and remain enforceable:

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—

(a) rights of way, rights of water and any easement or profit subsisting at the time of first registration under this Act;

(b) natural rights of light, air, water and support;

(c) rights of compulsory acquisition, resumption, entry, search, user or limitation of user conferred by any other law;

(d) leases or agreements for leases for a term less than two years, and periodic tenancies within the meaning of section 2;

(e) any unpaid moneys which, without reference to registration under this Act, are expressly declared by any law to be charged upon land;

(f) rights acquired or in the process of being acquired by virtue of any law relating to limitation or prescription;

(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

(h) electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, canals, weirs and dams erected, constructed or laid in pursuance or by virtue of any power conferred by any law.

(2) The Registrar may direct registration of any of the liabilities, rights and interests herein before defined in such manner as he thinks fit.

The unregistered interests of a prior registered owner deprived of title by mistake is not contemplated in the exhaustive list.

[24] I note that Island Resorts' application to lodge the caution asserts that they are in possession of the land that forms Parcels 10351 and 10352. If this assertion is proven, subsection 31(1)(g) may give rise to an overriding interest. Island Resorts have not participated in this claim and the

defendants have not contested Delta Maya and Mr. Vrincean's evidence in support of their claim of possession other than to point to Island Resorts' competing claim. Nonetheless, having been alerted to this potential interest, I feel it necessary to consider the relevant evidence to remove any doubt as to my finding that Delta Maya and Mr. Vrincean have titles free of any encumbrances or over-riding interests.

[25] Delta Maya and Mr. Vrincean have proven, on a balance of probabilities, that they are in possession of the Parcels. Mr. Pindic-Blaj states in his first affidavit that he visited the Parcels prior to their purchase to confirm that they were unoccupied. Mr. Pindic-Blaj asserts that he began making improvements in 2012. His assertions are supported by letters to the claimants dated 2012 and 2018 from the San Pedro Town and the Forest Department authorizing the work the claimants assert they have done on the Parcels. Delta Maya and Mr. Vrincean also provided a copy of a valuation of the Parcels completed in 2019 that notes a small dwelling and other small works on the property. I also note that despite the Parcels 10351 and 10352 being created in 2012, Island Resorts did not object to Delta Maya and Mr. Vrincean's titles until 2019. Had they been in possession of the Property, it is reasonable to conclude that Island Resorts would have noticed the construction of the works and objected sooner. Delta Maya and Mr. Vrincean titles are not subject to an over-riding interest in favour of Island Resorts.

[26] The defendants are also unable to rely on the court's authority in section 143 of the RLA to order the Registrar rectify the title by restoring Island Resorts' interest in the Parcels. Section 143 provides:

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.

[27] First, I have found that Delta Maya and Mr. Vrincean are in possession of the Parcels. Subsection 143(2) precludes rectification where the title of a proprietor in possession will be affected unless

the proprietor had knowledge of the mistake. The use of “had knowledge” instead of “has knowledge” is significant. Knowledge acquired of a mistake after registration is not relevant.

[28] Second, subsection 143(1) only allows rectification of a registration that “has been obtained, made or omitted by fraud or mistake”. Delta Maya and Mr. Vrincean were good faith purchasers for value without notice of the mistake. Each of their transactions is not tainted by mistake. Subsection 41 of the RLA confirms that the original mistake does not follow subsequent registrations:

41.-(1) No person dealing or proposing to deal for valuable consideration with a proprietor shall be required,

(a) to inquire or ascertain the circumstances in or the consideration for which such proprietor or any previous proprietor was registered or the manner in which any such consideration or part thereof was utilised;

Delta Maya and Mr. Vrincean were entitled to rely on the register to mirror all interests in the Parcels.

[29] The mistake that led to the Parcels’ creation has no effect on Delta Maya and Mr. Vrincean’s titles. The position taken by the defendants that Island Resorts has an enforceable interest in the Parcels and the government can act to restore title to them, is antithetical to the purpose and proper functioning of the RLA. The enactment of the RLA reflects a clear policy choice to abolish the doctrine of notice, which allowed common law legal estates to have priority to subsequent legal title holders, in favour of priority based on date of registration. Upon registration, Delta Maya and Mr. Vrincean’s titles to the Parcels were immediately indefeasible, meaning they are only subject to those prior interests that were noted on the title and any over-riding interests noted in section 31.

Is Reef Resorts entitled to be issued a Certificate of Title as registered owner of the Parcels?

[30] I find Reef Resorts, as a *bona fide* purchaser for value who has completed the requisite transfer documents and paid the stamp duties, is entitled to become registered owner of the Parcels. Delta Maya and Mr. Vrincean hold fee simple interests, which include the right to transfer their interest to Reef Resorts. Island Resorts’ ability to enforce their interest in the Parcels did not survive registration of title in Delta Maya and Mr. Vrincean’s names. Consequently, the cautions and restriction preventing the transfer were based on the erroneous belief that Island Resort had a superior claim to the Parcels and cannot be sustained.

[31] The defendants have argued that if Reef Resorts had knowledge of Island Resorts' claim of an enforceable interest, they would no longer be a *bona fide* purchaser. That position, however, is inconsistent with the widely accepted jurisprudence that only prior registered interests are enforceable against a subsequent registered owner even where there is notice of a prior unregistered interest.⁶ Reef Resorts' purchase is not tainted by fraud.

[32] Likewise, Delta Maya and Mr. Vrincean's attempt to negotiate an amicable resolution to the competing claims did not prejudice their rights as registered owners to sell the Parcels to Reef Resorts as the defendants allege. While section 142(1)(c) would have permitted the Registrar to rectify the register with Delta Maya and Mr. Vrincean's consent, Delta Maya and Mr. Vrincean were under no obligation to negotiate their consent. I find that the failure to transfer the 4.5-acre parcel was a fundamental breach of the settlement agreement that entitled Delta Maya and Mr. Vrincean to repudiate the agreement. As they were no longer bound by the settlement agreement, Delta Maya and Mr. Vrincean were free to enter into agreements for sale of the Parcels with Reef Resorts.

[33] Furthermore, I find the cautions and restriction are no longer justified in the circumstances and cannot prevent Reef Resorts from becoming the Parcels' registered owner although I reject the claimants' assertion that the cautions and restriction were unlawfully registered. I do not agree that Island Resorts did not have one of the required interests that permits them to lodge a caution. Subsection 130(1) of the RLA outlines that:

130.-(1) Any person who,

(a) claims any unregistrable interest whatever, in land or a lease or a charge;

(b) is entitled to a licence; or

(c) has presented a bankruptcy petition against the proprietor of any registered land, lease or charge,

may lodge a caution with the Registrar forbidding the registration of dispositions of the land, lease or charge concerned and the making of entries affecting the same.

The claimants argue that because Island Resorts claims to be the *registered* owner of Parcels 10351 and 10352 by virtue of their title to Parcel 12326, they do qualify for a caution under subsection 130(1)(a), which only protects *unregistered* interests. Such an interpretation is unnecessarily restrictive and is not in keeping with the intent of cautions. A caution is used to hold

⁶ Half Moon Bay Ltd. v Crown Eagle Hotels Ltd. 92002) 60 WIR 330 at 336.

one's priority ahead of subsequent registered interests because the priority of interests under RLA is based on date of registration. Therefore, 'unregistered interests' in subsection 130(1)(a) refers to interests that are not registered on the titles on which the caution is lodged. Island Resorts' interest was not registered on Parcels 10351 and 10352.

[34] I also do not agree with the claimants' assertion that the cautions were unlawful because they were not given notice of them as required by section 131 of the RLA:

131.-(1) The Registrar shall give notice in writing of a caution to the proprietor whose land, lease or charge is affected by it.

(2) So long as a caution remains registered no disposition which is inconsistent with it shall be registered except with the consent of the cautioner or by order of the court

The Registrar does not contest that Delta Maya and Mr. Vrincean learned of the cautions from Island Resorts' attorney in a letter dated 26 July 2022. I find the Registrar did not comply with section 131. I do not find, however, that the failure to give notice voids the cautions. Such a result would be manifestly unfair to the cautioner who has no remedy if the Registrar's error causes them to lose their priority. On the other hand, the registered owner is in no worse position, were the caution warranted, for not having received notice. But if the caution was wrongfully registered, section 133 of the RLA allows the registered owner to sue the cautioner for damages.

[35] I also do not agree with the claimants that section 135 of the RLA requires the Registrar to hold a hearing before she orders a restriction be placed on a title. Section 135 provides:

135.-(1) For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, after directing such inquiries to be made and notices to be served **and hearing such persons as he thinks fit**, make an order, hereinafter referred to as a restriction, prohibiting or restricting dealings with any particular land, lease or charge.

(Emphasis added)

When read in context, the language of "and hearing such persons as he thinks fit," gives the Registrar the discretion to decide that it is unnecessary to hear from anyone before acting. The RLA gives the Registrar the ability to freeze the status quo on suspicion of fraud, improper dealings, or other sufficient cause because registration creates immediately indefeasible rights. Delay may irreversibly affect a person's property rights. Therefore, like cautions, notice of a restriction comes

after it is registered.⁷ The registered owner can then apply to have the restriction varied or removed.⁸

[36] I find the assertion that the Registrar is now prepared to hear the application for removal of the cautions and restriction disingenuous. While I have found that failure to give Delta Maya and Mr. Vrincean notice of the cautions did not void the cautions, the defendants have offered no explanation for the failure. The RLA requires notice to allow the landowner to challenge the caution if it is unwarranted. I further accept the claimants' evidence, supported by a receipt for the application fees, that their first attempt, in the beginning of December 2022, to file the application to remove the cautions and restriction was refused by the Registrar. The claimants' attorney wrote to the Registrar twice after the refusal and received no response. Instead, the CEO of the MNR responded on her behalf and stated that the Registrar had not been presented with an application for removal of the cautions. The CEO also wrote that the "Ministry intends to persist with its efforts to amicably resolve the ongoing issue." This statement, combined with no follow-up or invitation to resubmit the application to remove the cautions and restrictions, are evidence that the Registrar had no intention of hearing their application.

[37] Based on the foregoing analysis, I find that the claimants are entitled to an order requiring the Registrar to remove the cautions and the restriction and to list Reef Resorts as the registered owner of Parcels 10351 and 10352. During a case management hearing, I ordered that Island Resorts be served with notice of this claim because the pleadings suggested that they may be an Interested Party. I note, however, that subsection 137(2) of the RLA, which gives the court wide discretion to make any order it thinks fit upon application of "a proprietor affected by a restriction," only requires that the Registrar be given notice of the application to remove a restriction. Likewise, subsection 132(1) allows the court to order a caution's removal without notice to the cautioner. Island Resorts did not seek to intervene in these proceedings. While I can only speculate, their decision not to participate may reflect that Island Resorts understands that they are unable to enforce their interest against the claimants' titles to the Parcels.

⁷ RLA at section 136.

⁸ RLA at section 137.

Have the claimants' constitutional right to equal protection of the law protected under sections 3(a) and 6 of the Belize Constitution been violated?

[38] The Constitution contains a free-standing right to equal protection of law.⁹ By expanding our understanding of equal protection of law beyond considerations of access and discrimination, the CCJ has given full and meaningful effect to the Preambles of Caribbean constitutions which expressly recognize fundamental human rights as the foundation of the rule of law. It cannot have been the CCJ's interpretation, however, that governments must justify every instance of different treatment. Such an outcome risks frustrating the normal workings of government and overburdening the courts, thereby undermining timely and efficient redress for constitutional violations. Proof of a *prima facie* case of different treatment is too low of a threshold especially as a more flexible approach to judicial review means that direct access to the courts is more readily available.

[39] In **Belize Sugar Industries Ltd. & Anor v The Attorney General of Belize**, I explained that existing jurisprudence offers a robust yet pragmatic approach to considering allegations of violations of this free-standing right:¹⁰

[The claimants] have the burden to prove a prima facie case that (1) the government had a duty to act to prevent the breach of another fundamental right and failed to do so and, (2) meaningful redress or remedy for that breach is unavailable. If a prima facie case that the Claimants' rights to equal protection is established, the burden shifts to the AG to justify the breach on the basis that the breach was in the public interest or necessary to protect the fundamental rights of others.

This approach balances the importance of removing barriers for claimants to access the courts to seek redress for constitutional violations with the need to not bog down the system with meritless claims.

[40] The claimants argue that, if allowed to persist, the Registrar's arbitrary and unlawful refusal to register Reef Resorts as the registered owner of the Parcels and the unlawful placing of cautions and a restriction against the Parcels would breach the claimants' constitutional right to protection from the arbitrary deprivation of their property without compensation contrary to sections 3(d) and

⁹ The Maya Leaders Alliance v. AG (Belize) [2015] CCJ 15 [Maya Leaders].

¹⁰ Claim No. 215 of 2022 at para 25 [Belize Sugar].

17 of the Constitution. The defendants disagree and assert that their actions were done in good faith and were not arbitrary as they were done in response to Island Resorts' lawful application for a caution in accordance with the RLA. They argue that the claimants' rights to protection of the law do not supersede Island Resorts' right.

- [41] I agree with the defendants that because bad faith has not been alleged, I have no reason to conclude that the Registrar acted with anything other than good faith. In paragraph 21, I also found that the cautions and restriction were lawfully registered. The breach of the claimants' constitutional right to equal protection, however, arises out of the unilateral decision to give priority to the property rights of Island Resorts over those of Delta Maya and Mr. Vrincean with no due process and no lawful basis.
- [42] The claimants' rights to equal protection of the law were violated because the Registrar has prevented the proper functioning of the RLA. If the cautions remain and the transfer is disallowed, Island Resorts' interests in the Parcels will be enforced even though the proper operation of the RLA precludes that result. I find that the defendants' actions are akin to an attempt to expropriate land for a private purpose which is not permitted under Belizean law.
- [43] To be clear, I find no fault in the defendants having approached Delta Maya and Mr. Vrincean to see if they would voluntarily consent to an amicable resolution and entering into negotiations towards that end. The problem arose after the MNR failed to finalize and carry-out the terms of the settlement agreement. The Registrar also improperly used her authority under the RLA to restrict Delta Maya and Mr. Vrincean's use and enjoyment of their property to pressure them into relinquishing their titles to the Parcels. It is of no consequence that Delta Maya and Mr. Vrincean were likely to be compensated. The Government of Belize cannot coerce persons into relinquishing their private property rights even if they pay fair market value.
- [44] The Constitution protects private property as a fundamental right. This protection serves no purpose if the government can arbitrarily prevent private property's use and enjoyment. Therefore, government interference with private property must be authorized by law and serve a valid public

purpose to avoid a constitutional violation. This means the government cannot directly or indirectly expropriate land unless it is required for a public purpose.¹¹

[45] The Registrar's actions have not only prevented the transfer of the Parcels. Her improper use of her authority under the RLA has compromised the certainty of the Land Register and the indefeasibility of title on which the claimants placed their trust. No other remedy or redress is available to address this breach of the Registrar's duties under the RLA.

[46] Finally, I find that the defendants have not provided adequate justification for the breach of the claimants' right to equal protection of the law. While I concluded that the Registrar's actions preventing the claimants' land transfer and refusing to hear the application to remove the cautions and restriction were not authorized by the RLA, I did not find the initial lodging of those cautions unlawful. Under the RLA, Island Resorts was entitled to have their cautions lodged against the Parcels and to participate in any hearing where the Registrar considered their removal. No hearing was held by the Registrar and Island Resorts chose not to participate in the High Court claim. Consequently, the defendants have not convinced me that the breach was necessary to protect Island Resorts' right to equal protection of the law.

Reliefs and Disposition

[47] For the reasons provided, the claimants are entitled to the declarations and orders they seek. I will not consider whether damages are warranted in the circumstances. In their reply submission, the claimants agreed that if I found in favor of the claimants and ordered the removal of the cautions and restrictions on the issuance of the land certificates for the Parcels in favor of Reef Resorts, that would be a sufficient and adequate remedy.

[48] It is hereby ordered and declared that:

- a) Delta Maya Limited is a *bona fide* purchaser for value without notice in possession of Parcel 10351, Block 7, San Pedro Registration Section from Mr. Miguel Octavio Alamilla, and therefore the lawful proprietor of the said parcel;
- b) Mr. Alexander Vrincean is a *bona fide* purchaser for value without notice in possession of Parcel 10352, Block 7, San Pedro Registration Section from Mr. Ruben Pierre Francois, and therefore the lawful proprietor of the said parcel;

¹¹ Land Acquisition (Public Purpose) Act, The substantive Laws of Belize, Cap 184 (Rev. Ed. 2020) at section 3.

- c) The Registrar of Lands must remove the cautions placed, respectively, against Parcels 10351 and 10352, Block 7, San Pedro Registration Section;
- d) Delta Maya Limited's sale of Parcel 10351, Block 7, San Pedro Registration Section to Reef Resorts Limited was not tainted by mistake or fraud and is a valid and effective transfer that should be registered;
- e) Mr. Alexander Vrincean's sale of Parcel 10352, Block 7, San Pedro Registration Section to Reef Resorts Limited was not tainted by mistake or fraud and is a valid and effective transfer that should be registered;
- f) Reef Resorts Limited is a *bona fide* purchaser for value without notice of any alleged mistake involved in the First Registration of title of parcel 10351, Block 7, San Pedro Registration Section to Mr. Miguel Octavio Alamilla in the year 2012 and in the First Registration of title to parcel 10352, Block 7, San Pedro Registration Section to Mr. Ruben Pierre Francois in 2012;
- g) The respective instruments of transfer of title for parcel 10351 and parcel 10352, Block 7, San Pedro Registration Section from Delta Maya Limited and Mr. Alexander Vrincean, respectively, to Reef Resorts are valid, effective and registrable;
- h) The Registrar of Lands must register Reef Resorts Limited as the proprietor of parcels 10351 and 10352, Block 7, San Pedro Registration Section; and
- i) Costs are awarded to the claimants as agreed or assessed.

**Patricia Farnese
High Court Judge**