

IN THE HIGH COURT OF BELIZE A.D. 2014

CLAIM No. CV486 of 2014

BETWEEN:

BANNISTER ISLAND RESORT HOLDINGS LIMITED

Claimant/Applicant

and

[1] **TAMBORLEE MANAGEMENT SA**

First Defendant/Respondent

[2] **BELIZE PARADISE LTD**

Second Defendant/Respondent

[3] **WILLIAM MACKENZIE**

Third Defendant/Respondent

Ms. Iliana N. Swift for the Claimant/Applicant

Mr. Hubert Elrington SC for the Third Defendant/Respondent

No Appearance for the First and Second Defendants/Respondents

2024: May 23 & July 12;
November 05.

RULING

Civil Practice & Procedure – Land – Judgment Order Against Defendants Not Satisfied – Application for Inhibition of Registration & Other Dealings With Land – Part 55 of the Civil Procedure Rules – Order Directing Registrar to Register Judgment as Incumbrance – Sale of Land and Proceeds to be Applied to Outstanding Debt – Title Document Not in Name of Third Defendant/Judgment Debtor – Vendor Executed Deed for Third Defendant but Title to Property Never Transferred to Third Defendant – Allegation that Deed Was Executed by Vendor in Name of Intervening Party as Part of Divorce Settlement – Vendor Denies Selling, Executing and Transferring Deed to Intervening Third Party – Whether Intervening Third Party had Notice of Buying Land from Third Defendant – Whether Third Party Interest Established – Whether Vendor Was a Bare Trustee.

[1] **ALEXANDER, J.:** The applicant, Bannister Island Resort Holdings Limited (“Bannister Island”), filed an amended application for an order for sale of land under Part 55 of the Civil Procedure Rules, 2005 (“CPR”). The amended application followed a judgment against the

defendants dated 27th August 2021 (“the judgment debt”). The judgment debt was in the principal sum of BZ\$1,694,540.00 plus interest and the defendants have failed to pay the judgment debt or any portion of it.

[2] The land is located in the Drowned Cayes Area of Belize City, Belize, and comprises of two parcels of different acreage, as described and shown on Plan No. 1057 and Plan No. 1058 (“the properties”). The properties do not fall in a declared area. The properties are held under Minister’s Fiat Grants No. 1057 of 2005 and No. 1058 of 2005 in the Land Registry, with both parcels showing that Mr. John Estephan is the registered owner and that the properties are free from encumbrances. These issues are not in dispute between the parties.

[3] Bannister Island says, however, that while the Land Register shows that ownership of the properties lies with Mr. John Estephan; he is not the legal title owner. Pursuant to an agreement for sale dated 23rd April 2009, Mr. John Estephan conveyed his interests, rights and titles in the properties to Mr. William MacKenzie. However, Mr. William MacKenzie failed to register the titles in his name. The present amended notice of application for sale, therefore, is against the rights, interests and titles of the defendants, specifically Mr. MacKenzie, in the properties.

[4] The amended notice of application was filed on 28th July 2023 (“the application”). By the application, Bannister Island also sought the following orders:

- [1] For registration of the judgment debt,
- [2] For proceeds of the sale to be applied to satisfy the judgment debt,
- [3] To direct the conduct of the sale by public auction,
- [4] For the Registrar of the Senior Courts to execute Conveyance instruments, following sales, to transfer the properties to the respective purchasers,
- [5] For the net proceeds of sale of the properties to be applied, first, to the costs and expenses of the sale and secondly, in satisfaction of the judgment debt inclusive of interest and costs, and thirdly, the balance to be paid over to the third defendant, Mr. William MacKenzie,
- [6] For the reserve price of BZ\$1,694,540.00, set pursuant to the valuation of Mr. Armin Cansino dated 21st September 2022, to be adjusted downward in increments of 10% until the properties are sold, and
- [7] For costs of the application.

- [8] The application was contested by the third defendant, Mr. William Mackenzie, through his attorney, Mr. Hubert Elrington. Mr. William MacKenzie did not attend any of the hearings and filed no evidence. However, his ex-wife, Mrs. Yvette MacKenzie, filed an affidavit in January 2024, in opposition to the grant of the sale of land order. Mr. John Estephan also filed an affidavit in support of Bannister Island's application. His affidavit was filed on 23rd October 2023, prior to Mrs. Yvette MacKenzie's. Therefore, there was cross-examination of the two deponents who swore to affidavits in this matter. Closing submissions were filed by counsel for the parties in July 2024.
- [9] Following a thorough examination of the evidence and submissions presented by both parties, the court rules in favour of granting the sale of land order and the related orders sought by Bannister Island.
- [10] I am satisfied that the evidence shows that Mr. William MacKenzie entered into an agreement for sale of the properties with the vendor and, paid the consideration in full as the purchaser. However, he did not act to convey the titles to the properties into his name. Mrs. Yvette MacKenzie failed to make out her case that the properties could not be taken to satisfy the debts of Mr. William MacKenzie, as she holds the legal and equitable titles to the properties, having bought them as a bona fide purchaser for value free from encumbrances.
- [11] The undated and unregistered deed in her name, which was attached to her affidavit, is denied by Mr. John Estephan as having been executed by him in her favour. Mr. John Estephan acknowledges only that it is his signature that is on the deed but says that the document was altered. He also pointed out that the executing witness to the deed was not in the employ of the firm of attorneys when the deed was purportedly executed. No evidence was called from the firm of attorneys who had carriage of the conveyance to support any of the claims made by the parties. Further, Mr. John Estephan denied having ever met Mrs. Yvette MacKenzie, or having entered into a sale agreement with her, or receiving monies from her or of executing any deed in her favour.
- [12] In my judgment, the legal titles to the properties, having never been formally transferred to Mr. William MacKenzie, as purchaser, remain vested in Mr. John Estephan who held same as a bare trustee for Mr. William MacKenzie.

[13] I will refer to Mr. John Estephan as “the vendor” or “Mr. Estephan” and Mr. and Mrs MacKenzie together as “the MacKenzies” and separately as “Mr. MacKenzie” or “Mrs. MacKenzie”.

Background

[14] I find it necessary to set out a short background on this dispute, as obtained post the judgment on liability. Essentially, following the grant of the judgment order against the defendants, and the unsuccessful attempts by Bannister Island to get the defendants to satisfy their debts, Bannister Island approached the court, by the present application, for a sale of land order.

[15] The first and second defendants did not respond to the application, nor did they participate in the proceedings, but the third defendant, Mr. MacKenzie, through his attorney-at-law, intervened to stop the grant of the sale of land order sought by Bannister Island. Basically, counsel for Mr. Mackenzie, Mr. Hubert Elrington, submitted that the properties were not owned by Mr. MacKenzie but by his ex-wife, Mrs. MacKenzie.

[16] Bannister Island countered by stating that Mr. Estephan sold the properties to Mr. MacKenzie, and not to Mrs. MacKenzie. Bannister Island brought Mr. Estephan to confirm this position and relied on his evidence to secure the order for sale of the properties. Mr. Estephan stated that he was paid in full for the properties by Mr. MacKenzie and, that he executed the deed of conveyance in favour of Mr. MacKenzie, not Mrs. MacKenzie. It appears that the transfer was never effected or registered, so the process remained incomplete. It is precisely what transpired, between payment and the execution of the conveyance and its non-registration, that resulted in these parties returning to the doors of the court to seek its intervention.

[17] I granted the parties an opportunity to file affidavits and ordered cross-examination of the deponents in a bid to resolve the impasse. On 23rd May 2023, both affiants were cross-examined. The cross-examinations of these deponents yielded some interesting results, with

the evidence of both deponents conflicting on material facts. There were serious allegations of “impropriety” and “fraud” made by the affiant, Mr. Estephan, as to what occurred between the sale, execution of the conveyance and its non-registration but no sufficient proof to establish these claims. They were not factored into the decision below for lack of proof nor were these issues tabled for resolution by this court. Parties were ordered to file submissions.

Issues

[18] I have identified the following as the issues arising for resolution on this application:

- i. Whether there was any agreement for sale and to whom the properties were sold?
- ii. What is the effect of the non-registration of titles to the properties where full payment is made to the vendor?
- iii. Whether Mrs. MacKenzie has established her ownership, entitlement, rights or any third-party or beneficial interests in the properties?
- iv. Whether the failure to transfer or register title makes Mr. Estephan a bare trustee of the properties and what is the effect of this on ownership?
- v. Whether the order for sale of the properties should be granted?

The Rules

[19] CPR 55 deals with the sale of land, the application that is to be made and the conditions under which the court will grant such an order. CPR 55.2 provides that the application is to be supported by affidavit and *inter alia* must identify persons who have an interest in the land, the nature and extent of each such interest and provide a valuation from a qualified land valuer or surveyor.

[20] CPR 55.5 provides the directions that the court should give for the sale of the land, and these include but are not limited to the holding of “an inquiry into what interests any interested persons may have in the land and the extent of such interests in the net proceeds of sale.”

[21] The present proceedings involved an inquiry into the interests of Mrs. MacKenzie, who claims entitlement and legal rights to the properties in issue in the application.

Discussion

Issue No.1: Whether There was Any Agreement for Sale and to Whom the Properties were Sold?

[22] The first question I must address is the existence of an agreement for sale.

[23] Parties are agreed that an agreement for sale of the properties was made on 23rd April 2009 between the vendor, Mr. Estephan, and Mr. MacKenzie.¹

[24] Bannister Island argues that the properties belong to Mr. MacKenzie. Although the Land Register reflects that Mr. Estephan is the legal owner of the properties, on 23rd April 2009 he agreed to sell the properties to Mr. MacKenzie via instalment payments. By 2013, he had received full payment of the purchase price. Subsequently, he executed a conveyance to pass titles of the properties to Mr. MacKenzie. Mr. MacKenzie failed to register the conveyance and/or to obtain the titles to the properties, so the Land Register remained unaltered, and did not reflect the true legal title holder's name.

[25] Mrs. MacKenzie intervened in the proceedings and asserted in her affidavit filed on 20th January 2024 that it was she who had purchased the properties from Mr. Estephan, so they are owned by her. The affiant says that she purchased the properties from Mr. Estephan in 2019, for the sum of US\$125,000.00 for both properties. He had signed, sealed and delivered in proper form a **conveyance to her**, which acknowledged that she had paid him the full purchase price for the properties, as well as a receipt. Mrs. MacKenzie then claimed that she was the equitable owner of the properties because she had paid US\$250,000.00 for them and was given a receipt. She puts it thus at her paragraph 19 of her affidavit, "I am the equitable owner of these lands, I bought them from John Estephan Jr., one for \$100,000.00

¹ John Estephan got title through a deed of conveyance made on 25th March 2009 between Caribbean Islands Investments LLC and himself.

USD and the other for \$150,000.00 USD and he has given me a receipt of acknowledgement that he has been paid in full by me for both (lands) properties.” [My Emphasis].

[26] She provided a copy of the conveyance purportedly executed in her name. It was undated and unregistered. It bore the signature of Mr. Estephan on the last/signature page. She provided no receipt of the payment of the purchase price. The affiant says further that her marriage to Mr. MacKenzie ended sometime before 2019. She bought the properties with monies owed to her by Mr. MacKenzie, as part of her settlement arrangement following the break-up of the marriage.

[27] During cross-examination, Mrs. MacKenzie admitted that she never had any communications with Mr. Estephan, nor was there any agreement for sale between them. She also admitted that she had made no payments directly to Mr. Estephan towards the purchase price of the property. In fact, when pressed, she could not recall the exact purchase prices for the properties. She then claimed that she had directed Mr. MacKenzie to buy the properties for her, “for the price stated in the conveyance from the registered owner”. She conceded also that she was not present when Mr. Estephan executed the conveyance in her favour and that she did not register the conveyance, nor did she obtain the titles to the properties in her name.

[28] The affiant says, simply, that the transaction was conducted by Mr. MacKenzie who purchased the property for her as part of her divorce settlement arrangement. After this, he provided a copy of the conveyance to her. Mrs. MacKenzie provided no evidence of any property settlement agreement or an agreement for sale. Mr. MacKenzie was not called to corroborate her evidence.

[29] I find as a fact that there existed no agreement for sale of the properties between Mr. Estephan and Mrs. MacKenzie. The agreement for sale of the properties was between Mr. Estephan and Mr. MacKenzie. The evidence was clear that Mrs. MacKenzie did not communicate with Mr. Estephan, and that he did not receive any payments directly from her or indirectly for her. Therefore, I find as a fact, on the evidence before me, that the properties were purchased by Mr. MacKenzie and that, thereafter, no step was taken to register the titles in his name or any other person’s name.

Issue No. 2: What is the Effect of the Non-Registration of Titles to the Properties Where Full Payment is Made to the Vendor?

[30] There is no dispute that the conveyance of the properties was not registered and that the titles remained vested in the name of Mr. Estephan. The question that arises here is what is the effect of the non-registration of the titles to properties after full payment is made to the vendor? A corollary question is whether Mrs. MacKenzie established any legal or beneficial interest in the properties?

[31] Mr. Estephan's position, as espoused by Bannister Island, is that having received full payment, he was no longer the legal owner and has no interest in the properties.

[32] The issues raised at paragraph 30 must be preceded by the questions "how is legal title to property" established and, "in default, how is beneficial interest established?"

[33] Section 13 of the General Registry Act, CAP 327 R.E. 2011 provides as follows:

13.-(1) From and after the commencement of this Act, a legal title to land or any estate or interest therein mentioned in subsection (3) of this section, may be created by a certificate of title.

(2) Where such title or any estate or interest therein has been so created, it shall only be granted or transferred by a certificate of title.

(3) Certificates of title shall be issued only in respect of,

(a) titles to land held in fee simple absolute in possession;

(b) titles to land held for terms of ten years and upwards absolute;

(c) titles to easements, rights and privileges in or over land for an interest equivalent to an estate in fee simple absolute in possession or to a term of ten years and upwards absolute.

which under section 3 of the Law of Property Act, Cap. 190 are capable of subsisting or of being created or transferred at law.

14. A certificate of title may be a First Certificate of title or a Transfer Certificate of title.

[34] Legal title passes upon registration of the conveyance and is evinced by a certificate of title. There was no certificate of title provided in the name of Mr. MacKenzie or Mrs. MacKenzie.

The effect of this non-registration of the conveyance is that the legal title appears on the Land Register as being vested in Mr. Estephan, the vendor. The vendor holds it for the benefit of the purchaser and until the conveyance is registered in the name of the new legal owner.

Issue No. 3: Whether Mrs. Yvette MacKenzie has Established her Ownership, Entitlement, Rights or Any Third-Party or Beneficial Interests in the Properties?

[35] Mrs. MacKenzie has not satisfied me that she holds the legal ownership in the properties, nor has she established any equitable interest in the properties. In fact, she produced no proper or sufficient evidence in support of her claimed rights or interests in the properties. It is Mrs. MacKenzie's evidence simply that she purchased the properties from Mr. Estephan, so has an equitable interest in them and, in fact, the properties belonged to her as part of her divorce settlement arrangement. The agreement on the divorce arrangement was not before the court.

[36] Ms. Swift, counsel for Bannister Island, submitted that the applicant should be permitted to sell the properties to satisfy the judgment debt for five main reasons – (i) lack of title documents held by Mrs. MacKenzie, (ii) no evidence of agreement for sale of the properties, (iii) no proof of consideration given by Mrs. MacKenzie for purchase of the properties, (iv) no intentions to create legal relations established between Mr. Estephan and Mrs. MacKenzie, and (v) no legal or equitable interests acquired or established by Mrs. MacKenzie (the conveyance purportedly executed in her name is denied by the vendor). I will treat with each argument separately, save the issue of the absence of a sale agreement which is extensively discussed above at paragraphs 23 to 29.

[37] **No Title Documents** – there is no dispute that the properties were never transferred and that the records reflect that the name of Mr. Estephan is documented in the Land Registry as the title holder. Mrs. MacKenzie has not satisfied me that the purported unregistered conveyance in her name, which is attached to her affidavit, establishes her legal title or any beneficial interest in the properties. She points to the law set out at paragraph 33 above as to how legal title is demonstrated but is silent as to how it applies to her case.

[38] Mr. Elrington submitted that the absence of title documents or non-alteration of the Land Register is not fatal to establishing Mrs. MacKenzie's title. Her evidence can be accepted that she purchased the property from Mr. Estephan through Mr. MacKenzie. She has produced a conveyance executed in her name and showing that titles to the properties were meant to be transferred to her. The failure to register the conveyance can now be cured by a direction of this court to Mr. Estephan to complete the registration process. Further, the court could safely accept Mr. Estephan's *viva voce* evidence that the signature on the conveyance was his. In addition, Mr. Elrington argued that having made full payment for the properties, Mr. MacKenzie became the equitable owner until registration. Mr. Estephan signed the conveyance as a bare trustee for Mr. MacKenzie and there was no duty at law or equity to let the vendor see the first and second pages of the conveyance, showing that the purchaser was actually Mrs. MacKenzie. If it is found that too much time has passed to register the old conveyance signed by Mr. Estephan in 2019, Mrs. MacKenzie can now direct the vendor to convey the properties to her, as he is a bare trustee for her.

[39] In my view, the evidence discloses that there was no title documents registered in the names of either one of the MacKenzies. It also clearly establishes that Mr. MacKenzie conducted the transaction and paid the consideration for the properties. He chose not to give any evidence in this matter.

[40] **Agreement for Sale** – I have already ruled at paragraph 29 above that Mrs. MacKenzie did not enter into any agreement for sale of the properties with the vendor, Mr. Estephan.

[41] **Proof of Consideration** – Mrs. MacKenzie did not produce in evidence any proof of consideration for purchase of the properties. She claims that purchase of the properties was part of her divorce settlement arrangement but did not provide an agreement to show this or a court order or any other evidence evincing this position. This is something that could easily have been provided. During cross-examination, she stated that she had the evidence of the divorce settlement arrangement at home. She made no request for a short adjournment to produce the evidence in court. In my view, her evidence does not advance her case any further. The settlement arrangement was not before the court.

[42] Mrs. MacKenzie was asked to attend court to prove her entitlement, rights or equitable/beneficial interests in the properties. It was incumbent on her to produce the proof of her beneficial interests at this inquiry. However, she failed to prove any rights or interests in the properties. Moreover, she was genuinely confused during cross-examination, and in her affidavit, about the purchase prices that she allegedly paid for the properties and for which she was given receipts in her name. She claimed initially in her affidavit at paragraph 8 that she had paid US\$125,000.00 for both properties. Then, at paragraph 19 in the same affidavit she averred that she paid US\$100,000.00 for one parcel and US\$150,000.00 for the other. Given the huge sums allegedly paid for these properties, I was unconvinced of the veracity of Mrs. MacKenzie's evidence as to the sums allegedly paid by her for the properties. Of note is that the vendor accepts that his signature is on the document but queries how it got there as well as how the signature of the executing witness got on the document, since that person was no longer in the employ of the firm of attorneys when the deed was purportedly executed.

[43] Mrs. MacKenzie knew that she was called to give evidence at the inquiry to support her intervention in the present proceedings and to prove that the properties were part of her divorce settlement arrangement but chose to leave the evidence at home. She produced no receipts or other evidence. I am unable to believe her word, without proof. I accepted the evidence of Mr. Estephan that he was paid the purchase price by instalments over a number of years by Mr. MacKenzie. I find that Mrs. MacKenzie failed to establish her claim that she had provided any consideration towards the purchase of the properties.

[44] **Intentions to Create Legal Relations** – the evidence was clear that these parties (Mrs. MacKenzie/Mr. Estephan) did not know or communicate with each other prior to the conveyance produced by Mrs. MacKenzie, pointing to an execution conveying the properties to her. This is not disputed, and I accept that, on the evidence, no intentions to create legal relations could have or did exist between the vendor and Mrs. MacKenzie.

[45] **Legal or Equitable Interests Established** – The evidence discloses that no contract existed between Mr. Estephan and Mrs. MacKenzie. It also discloses that she did not acquire any legal interests in the properties. The purported deed was never registered. The question

arises as to whether Mrs. MacKenzie holds an equitable interest in the properties. Mr. Elrington submitted that the vendor was a “bare trustee” to the MacKenzies, assumedly at different times in the process. Mrs. Mackenzie bought the properties with monies owed to her by Mr. MacKenzie, as part of her divorce settlement arrangement i.e. the evidence left at home. Her evidence was that she had no notice that she was buying the land from her husband and genuinely believed, at all times, that she was buying the land from the registered owner, Mr. Estephan. Mr. Elrington submitted that the evidence does not fix Mrs. MacKenzie with notice of the claim of Bannister Island or with notice that her ex-husband, Mr. MacKenzie, was the equitable owner of the properties. Therefore, she takes the land free and clear from any liability which Mr. MacKenzie has to Bannister Island, since it is she, and not her ex-husband, who owns the properties. Bannister Island’s application must be refused.

[46] To resolve the stalemate, the issue of a bare trustee and, particularly, whether the vendor was a bare trustee of Mrs. MacKenzie must be examined.

Issue No. 4: Whether the Failure to Transfer or Register Title Makes Mr. Estephan a Bare Trustee of the Properties and What is the Effect of this on Ownership?

[47] To determine whether the vendor was a bare trustee, I find helpful to start with a definition of this concept.

[48] The term “bare trustee” attracts a different meaning based on the context in which it is utilised. **Halsbury’s Laws of England**² states:

The meaning of ‘**bare trustee**’ varies according to context. A ‘**bare trustee**’ has been defined as a person who holds property in trust for the absolute benefit and at the absolute disposal of other persons who are of full age and mental capacity in respect of it, and who has no present beneficial interest in it and no duties to perform in respect of it except to convey or transfer it to persons entitled to hold it, and is bound to convey or transfer the property accordingly when required to do so. It seems, however, that a ‘**bare trustee**’ is under a fairly basis duty to preserve the trust property so long as the trusteeship subsists. ‘**Bare trustee**’ has been given an extended meaning in certain tax statutes. [Original Emphasis].

² Halsbury’s Laws of England Vol. 98 (2024).

[49] From the definition above, where land is sold but title is not transferred, a vendor will hold the legal fee simple for the purchaser, as a bare trustee, until the alteration of the Land Register to reflect the name of the true title holder. It is a basic duty to hold the property for the benefit of the purchaser. Thereafter, the purchaser is entitled to the transfer of the property or registration of the conveyance on request. Essentially, the vendor has no beneficial interest in the property and his only duty is to convey or transfer it as directed. In **Bridges v Mees**,³ the bare trustee principle was applied to hold that after the purchase price is received for land and the title is not transferred to the purchaser, a vendor becomes a bare trustee of the legal fee simple.

[50] Mr. Elrington submitted that in the present proceedings, once Mr. Estephan had received the full purchase price for the properties, Mr. MacKenzie became the owner of the entire equitable interests in the properties. It meant that the properties belonged to Mr. MacKenzie once Mr. Estephan had signed the conveyance. Strangely, Mr. Elrington was arguing the equitable rights/interests of both MacKenzies to the properties. Of note also is that Mr. Estephan did not claim any legal or equitable titles in the properties and stated, in evidence, that after receiving the full purchase price, he executed the conveyance in favour of Mr. MacKenzie.

[51] Mr. Elrington submitted further that once the full purchase price was received by the vendor, it entitled Mrs. MacKenzie to become “the fee simple absolute owner of the land” and argued that this vested her with a right to now direct Mr. Estephan to convey the land to her and register the properties in her name pursuant to the settlement arrangement in her divorce. Essentially, Mr. Estephan was her “bare trustee”. But the divorce settlement arrangement was not produced at the inquiry. Mr. Elrington then asserted that the court has no power to grant the application before it, as Mr. MacKenzie does not own the properties. His submissions seemed to be a strange mix of Mr. Estephan being the “bare trustee” of both MacKenzies. First, Mr. MacKenzie directed the vendor to transfer to Mrs. MacKenzie (without disclosing her name as the purchaser or allowing him to read the document) and now Mrs. MacKenzie can direct the vendor to convey the properties to her.

³ [1957] 2 All ER 577.

[52] I do find that the evidence shows that Mr. Estephan is a bare trustee of the properties in dispute in the current proceedings. I also find that he is the bare trustee of Mr. MacKenzie, as the evidence points to the fact that the purchaser of the properties was Mr. MacKenzie. Mr. MacKenzie has elected not to provide evidence and there is no evidence that he directed the vendor to execute a conveyance in his ex-wife's favour. Mrs. MacKenzie has not proved any beneficial interest in the properties. The equitable ownership of the properties remains vested in Mr. MacKenzie.

Issue No. 5: Whether the Order for Sale of the Properties Should be Granted?

[53] For the following reasons, I grant the application for sale of the properties.

[54] First, I do not accept the evidence of Mrs. MacKenzie that she "bought" the properties without notice as to the identity of the true seller (i.e. Mr. MacKenzie). The substantive claim was filed in 2014 and the judgment on liability was obtained by order of the Hon. Chief Justice (Ag) Michelle Arana on 27th August June 2021. I do not accept that in 2019, when the conveyance was executed by the vendor in favour of Mr. MacKenzie, that Mrs. MacKenzie was unaware of the proceedings before the court or did not know that she was buying the properties from Mr. MacKenzie, whether under the alleged divorce settlement or not. There was no evidence provided of the settlement arrangement in the divorce although Mrs. MacKenzie says that she has the evidence at home. Unfortunately, this evidence at home was not before me so did not help her case.

[55] In addition, I did not find on the evidence that Mrs. MacKenzie purchased the properties from Mr. Estephan. In fact, the evidence was clear that she did not know the purchase prices of the properties or Mr. Estephan. Further, I did not accept the evidence that the vendor was shown only the signature page and made to sign it, without first reading the document. I rejected the submission of Mr. Elrington that, "[W]hoever William MacKenzie was selling to and for whatever consideration was no business of John Estephan and William MacKenzie was in Law his principal." I do not accept that any vendor executing a conveyance will sign blindly without confirming that it was the correct purchaser of the properties on the document and the parcels of land being conveyed were the correct properties being conveyed. In fact,

Mr. Estephan was clear during cross-examination that while the conveyance presented to him in the proceedings did indeed contain his signature on the last page, it was not the one he had signed with respect to the previous pages. He was adamant that something was altered, and that even the named executing witness was wrong. His concerns were not addressed by either counsel and, in any event, does not influence the present decision.

[56] I grant the order for the sale of the properties as sought in the amended notice of application.

Costs

[57] Costs usually follow the event, and I award costs of the application to Bannister Island. I have considered the work done by counsel including having to attend court on several occasions as well as to cross-examine deponents in this application and to file submissions. I exercise my discretion to award costs in the sum of BZ\$5,000.00. Given the work involved, I consider this award to be reasonable in the circumstances. The applicant is also awarded the costs as may be occasioned by the conduct and completion of the sale.

Disposition

[58] It is ordered that:

1. The claimant succeeds on its amended notice of application filed on 28th July 2023 and is granted the orders sought in the draft order that is attached.
2. The defendants are to pay the costs of the amended application to the claimant, which I award in the sum of BZ\$5,000.00.

Martha Alexander
High Court Judge