

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

**ANTIGUA AND BARBUDA
CLAIM NO. ANUHCv2002/0641
BETWEEN:**

JOSEPH W HORSFORD

Claimant

-and-

THE ATTORNEY GENERAL

Defendant

GEOFFREY CROFT

Interested Party

Appearances:

Mr. Joseph Horsford – Claimant in Person
Mrs. Carla Brookes-Harris for the Defendant
Mr. Sylvester Carrott for the Interested Party

.....
2022: February 1st

2022: November 18th
.....

JUDGMENT

[1] **Robertson, J:** The claimant initiated these proceedings seeking a declaration that an entry in the Land Register regarding Parcel 171 and the entries regarding Parcels 217 and 218 are null and void. Specifically, the claim concerns an allegation that the subdivision of land described in the Land Registry as Registration Section: Falmouth and Bethesda, Block 34 2482B Parcel 171; ("Parcel 171") situated at Monks Hill in the parish of Saint Paul in Antigua and Barbuda into parcels 217 and 218, and the transfer of the created parcels were done without the knowledge or consent of the claimant and contrary to the laws of Antigua and Barbuda. The claimant alleges that his only action with respect to Parcel 171 was the sale of the said parcel to Joanna Tobbit and that no further action was taken by the claimant with respect to Parcel 171.

[2] Specifically, the claimant seeks orders that:

- (1) The entry of No.3 entered the 1st day of May 2005 in the proprietorship section, edition 1, in the Antigua Land Register No. 34 2482B, Falmouth and Bethesda Section is null and void;
- (2) The entry No. 1 entered the 1st day of May 2005 creating a new parcel No 34 2482B-217 ("Parcel 217"), in the proprietorship section, edition 1 creating a first registration in the name of the claimant, for the said Parcel 217, Block: 34 2482B, Falmouth and Bethesda Section is null and void;
- (3) The entry No. 1 entered the 1st day of May 2005 creating a new parcel No. 34 2482B-218 ("Parcel 218"), in the proprietorship section, edition 1, creating a first registration, in the name of the claimant for the said Parcel 218, Block: 34 2482b, Falmouth and Bethesda Section is null and void;
- (4) An order directing the Registrar of Lands to expunge from the record of the Antigua Land Register No. 34 24282B-171, the said entry no. 3, and all other entries or documents grounded upon the said mutation and subsequent creation of Parcels 217 and 218.
- (5) Costs.

[3] Parcel 217 was later registered in the name of Geoffrey Croft. Mr. Croft applied and was granted permission to be added as an interested party in these proceedings. Parcel 218 is owned by third parties who are not parties to these proceedings.

Background

[4] On 31st January 2002, Mr. Joseph Horsford entered into a purchase agreement with Joanna Tobitt for the sale of Parcel 171, for the sum of US\$60,000.00. The purchase money was payable by way of deposit with the balance to be paid on or before 28th February 2002. Ms. Joanna Tobitt completed payment for the property.

[5] Sometime in May of 2005 Parcel 171 was subdivided into two parcels namely: Parcel 217 and Parcel 218. At the time of sub-division, the claimant was still recorded as the proprietor of Parcel 171. The register in respect of Parcel 171 was cancelled in favour of the newly created Parcels 217 and 218. The newly created parcels were registered in the name of the claimant.

- [6] By an Instrument of Transfer Parcels 217 and 218 were transferred from the claimant to Paul van Beek in consideration of the sum of EC\$120,000.00. On the face of the document, the Instrument of Transfer contains the signatures of the claimant and Paul van Beek. The date indicated as the date of execution was 31st October 2005. The said instrument was filed at the Land Registry on 2nd November 2005.
- [7] Mr. Nicholas Fuller acted as legal representative for the sale of Parcel 171 and the transfer of Parcels 217 and 218 to Paul van Beek. Sometime thereafter, Paul van Beek sold Parcel 218 to named persons for a consideration of EC\$81,000.00. Parcel 217 was sold to Mr. Geoffrey Croft, the interested party.
- [8] The issues before this court surround the subdivision of Parcel 171 and the subsequent transfer of the newly created parcels. The claimant contends that he neither authorized the subdivision of Parcel 171 nor the transfer of the created Parcels 217 and 218 to Paul van Beek.
- [9] By way of a letter dated 21st April 2009, the claimant communicated with the then Registrar of Lands, informing that he neither sold any parcels to nor had any interaction with Paul van Beek and that at no time did he own Parcels 217 and 218. In that letter the claimant denied executing an Instrument of Transfer which transferred Parcels 217 and 218 from himself to Paul van Beek. In support of this contention the claimant indicated that he was off the island on the date reflected on the documents relating to the transfer.
- [10] The claimant contends that the liability of the defendant rests “*in the fact that the claimant made no application for the mutation of the said parcel 171, or the subsequent registration of the resultant parcels 217 and 218, and that the Attorney General by the Registrar of Lands whose functions fall under the jurisdiction of the Ministry of Legal Affairs, a department of the Government of Antigua and Barbuda has proceeded with the registration of the subdivision of the said parcel 171 and subsequently that of the parcels 217 and 218 when no photographic identification of the parties or other acts required (sic.) had been complied with*”¹.

¹ Amended Claim para. 10.

- [11] The defendant and the interested party resisted the granting of the declarations sought by the claimant on the basis that there is no legal or factual basis for the declarations sought and/or the claimant's claim is statute-barred.

THE EVIDENCE

- [12] There were four witnesses in these proceedings. The claimant gave evidence in support of his case. The other witnesses were Mr. Nicholas Fuller, attorney-at-law, Ms. Joanna Tobitt, Geoffrey Croft and Ms. Sharon Simmons, Registrar of Lands (previously the Deputy Registrar of Lands for the period 2007-2016). Mr. Nicholas Fuller provided legal services in respect of the agreement for sale and the transfer of Parcel 171. Mr. Fuller also provided legal services in respect of the transfer of Parcels 217 and 218 from the claimant to Paul van Beek and the subsequent transfer to third parties. Geoffrey Croft is the proprietor of Parcel 217.
- [13] Paul van Beek did not give evidence as Paul van Beek departed this life prior to the filing of these proceedings.

The Claimant

- [14] The claimant gave evidence in support of the case outlined above. It is important to note that the claimant maintained that he signed an agreement for sale on 31st January 2002 for Parcel 171 to be sold to Ms. Joanna Tobitt and that he executed a transfer document to Ms. Joanna Tobitt. The claimant indicated that he was fully paid pursuant to the agreement for sale for Parcel 171. The claimant also indicated that the transaction engaged Joanna Tobitt and that he had no knowledge of Ms. Joanna Tobitt acting as an agent for Paul van Beek. The claimant insisted that he had no interaction with Paul van Beek regarding Parcel 171.
- [15] The further evidence of the claimant is that the document which transferred the property from the claimant to Ms. Joanna Tobitt was not discovered in the Land Registry and that he did not know that the transfer document was not duly filed in the Land Registry until he searched for same. The claimant denied affixing his signature to the transfer instrument for Parcels 217 and 218 in favour of Mr. Paul van Beek. The claimant insisted that he did not engage in any transactions with respect to the sub-division of Parcel 171 and the transfer of the sub-divided parcels to Paul van Beek. The claimant continuously maintained that his only action on the matter was to execute an instrument of

transfer of Parcel 171 in favour of Ms. Joanna Tobitt. The claimant also indicted that he could not have executed the transfer to Paul van Beek since on the date reflected on the transfer documents for Parcels 217 and 218 the claimant was out of the jurisdiction. The claimant's evidence is that he travelled out of the country from 19th October 2005 to 5th November 2005 to attend a hearing in which he was a litigant in person before the Judicial Committee of the Privy Council.

Mr. Nicholas Fuller

[16] Mr. Nicholas Fuller's evidence is that sometime in 2001, Paul van Beek (a frequent client) engaged this witness to provide legal services with respect to the purchase of a parcel of land. In this regard Mr. Fuller was required to prepare a purchase agreement between the claimant and Ms. Joanna Tobitt for the sale/purchase of Parcel 171, for the price of US\$60,000.00. In accordance with the terms of the agreement the purchaser was required, in addition to the payment of the 10% deposit, to pay the taxes relative to the transfer of the property. Mr. Fuller stated that he was aware that Ms. Joanna Tobitt was the life partner of Mr. van Beek and therefor the engagement by Paul van Beek with respect to the purchase agreement for Joanna Tobitt was not unusual.

[17] After entering into this agreement, Paul van Beek communicated via fax that the claimant agreed to clear a 'lower access road'. The purchase price for the land was paid to the claimant in two transactions, one payment was from the client's account and one cheque from an account of Ms. Joanna Tobitt. The latter appeared to this witness to have been signed by Mr. van Beek.

[18] The evidence of Mr. Nicholas Fuller is that Paul van Beek advised Mr. Fuller of the intention to arrange to have Parcel 171 sub-divided rather than transferred and Mr. Fuller was to await specific instructions from Paul van Beek. Mr. Fuller also received a correspondence dated 11th May 2005² from Paul van Beek which advised that he was selling one of the two subdivided parcels, 218, for EC\$81,000.00. The correspondence made reference to another correspondence dated 10th May 2005 from Paul van Beek to the claimant in which Paul van Beek advised the claimant that the former was able to have Parcel 171 subdivided into Parcels 217 and 218 and that Parcel 218 was to be sold to named individuals. In that correspondence from Paul van Beek to the claimant, Paul van Beek requested that the claimant "*act with Nick Fuller to enable the transfer as we previously agreed*".

² Shown in evidence as 11.5.05.

Paul van Beek also confirmed in the correspondence of 10th May 2005 that he would be responsible for all vendor's taxes. The correspondence of 10th May 2005 and 11th May 2005 were admitted into evidence and are before the court.

[19] Further Mr. Fuller indicated that he subsequently received a faxed communication from Paul van Beek which requested that the subdivided Parcels 217 and 218 be transferred to himself or to Joanna Tobitt. The transfer instrument was drawn up by this witness and in accordance with instructions received from Paul van Beek, the transfer instrument for both parcels were done in favor of Paul van Beek. The witness confidently affirmed that the transfer documents were executed by the claimant before the witness. The witness noted that the execution by the claimant before the witness was verified by the certificate of verification of execution signed by the witness.

[20] It is noted that the agreement for sale between the claimant and Ms. Joanna Tobitt provided that the property may be transferred to the said Joanna Tobitt or a nominee. Thus, it was open to this witness to have the property transferred to Paul van Beek or any other nominee.

[21] This witness conceded that an incorrect date may have been inserted in the transfer document. The explanation proffered by the witness is that on occasions in the past he would witness the signature or signatories of land transfer instruments but inadvertently neglect to immediately affix his signature as a witness or note the exact date upon which the parties signed the transfer document. The witness explained that owing to the passage of time he could no longer recall the exact date that the claimant signed the document, but it is very likely that the claimant signed the document prior to the claimant traveling to England. The evidence of Mr. Fuller is that after the claimant affixed his signature Mr. Fuller held the document for execution by Paul van Beek. The fully executed document was later filed at the Land Registry by Mr. Fuller.

[22] Mr. Fuller also indicated that he charged an additional fee in relation to the legal work required to transfer Parcels 217 and 218. Specifically, this witness indicated that he previously received fees from Mr. van Beek in relation to the legal work undertaken in respect of Parcel 171 but later issued an additional invoice to Mr. van Beek in relation to the transfer of Parcel 217 and 218 as there was additional work required in the second transaction. Mr. van Beek objected to there being an additional invoice as Mr. van Beek was of the view that although additional legal work would have been required the additional work was to complete the original transaction. This, Mr. Fuller

represents as an illustration that there was no financial incentive or inducement to Mr. Fuller to fraudulently transfer the parcels by fraudulently affixing the signature of the claimant to the document. The additional fee invoiced to Paul van Beek and the rejection of the additional fee were tendered into evidence and are before this court.

Ms. Joanna Tobitt

[23] The witness indicated that Paul van Beek was her partner in life from 1971 until his death in 2009. It was a union in which they shared a child. By virtue of his career as a sailor, Paul van Beek spent much of his time at sea. Consequently, Ms Tobitt would transact several business activities on behalf of Mr van Beek. The purchase of Parcel 171 from the claimant was one such activity. Additionally, the evidence of the witness is that prior to the purchase of Parcel 171 the claimant and Paul van Beek had several business transactions including the purchase in 1985 of the property upon which the witness now resides.

[24] The witness stated further that it was Mr van Beek who initiated, negotiated and concluded the transaction with the claimant and that the claimant was *“fully on board with Mr. Van Beek subdividing Parcel 171”*. As far as this witness was aware all *“the transactions were amicably concluded with the claimant in 2005 when Parcel 171 became Parcels 217 and 218”*. This witness exhibited a memorandum between the claimant and Mr van Beek dated 10th May 2005 evidencing their communication. The witness also exhibited documents to which reference was made by Mr Fuller.

Ms. Sharon Simmons

[25] The witness stated that parcel 171 was subdivided by a mutation form number 37/2005 filed on 1st May 2005 which created parcels 217 and 218. Ms. Simmons accepted that there was no signed document by the claimant which indicated that the claimant made an application to subdivide Parcel 171.

[26] The witness underscored that the mutation form used to authorize the subdivision of land does not make provision for the signature of the registered proprietor or his agent who authorized the survey. The evidence of this witness is that the practice was that mutations were initiated at the Survey Department and the registration of the mutation would take place once a signed and completed

mutation form was received from the Survey Department. The practice of using the mutation forms as the application for subdivision was discontinued in or about 2007.

[27] The witness indicated that the practice was that the application of the proprietor was taken to commence at the point a proprietor approached Survey Department and the mutation form was completed. The Registrar of Lands would treat the mutation form as the proprietor's application, as the general understanding at the time was that only the registered proprietor would go through the expense of hiring a surveyor to survey their land and effect a subdivision.

[28] This witness also noted that once the lodged transfer instrument was in compliance with the Registered Land Act the instrument can be registered. The Registrar of Lands is not required to request photo identification on the registration of a Transfer Instrument where a certificate of verification has been completed by an Attorney-at-law.

Geoffrey Croft

[29] The relevant evidence of Geoffrey Croft is indicated herein. This witness is the registered proprietor of Parcel 217 and has been in a long-standing dispute with the claimant. A matter in dispute between the claimant and this witness is the use of a particular access road to the property. This witness indicated that despite there being litigation between the claimant and this witness regarding the property, the witness only became aware of these proceedings through a chance conversation in 2018 between the witness' attorney at law and the Registrar of Lands. This witness sought and was permitted to intervene in these proceedings.

[30] The witness is of the view that the claimant was aware of the subdivision of Parcel 171 and to support his view, the witness referred to the typed correspondence dated 4th August 2005 endorsed with words in script. The correspondence was addressed to the claimant from Paul van Beek, the correspondence reflects the number (fax number) of the claimant, and that the correspondence was faxed from Clarke and Clarke Solicitors in respect of the purchase of parcel 218. There are certain indications in script on the correspondence. The indications in script are, "*The party to whom the Parcel 171 ... (illegible) Kindly make reference to (1) the agreement to purchase (2) transfer of parcel 171 to transferee. (3) The Bridges must give an undertaking not to use the road below. i.e. the Gordon ground road entering east from Baileys supermarket but rather the road from Cobbs Cross*". Another

endorsement in script indicated “Aug 5, 2005 9.10 am called Miss Clarke on vacation until 15th. Called Joanna Tobitt (number stated) engaged.” This witness noted that the information in script was dispatched and the witness points to bottom of the page which has the date August 9, 2005 (and a time), the name “Joseph W. Horsford” and the number (fax number) of the claimant.

[31] The witness also referred to the correspondence from Paul van Beek to Mr. Fuller dated 14.9.05 in which Paul van Beek referred to Parcels 217 and 218.

[32] This witness suggests that the claimant is disingenuous in the initiation and in the litigation of these proceedings.

ISSUES

[33] The issues for consideration are:

- a. Whether it is proper for there to be a rectification of the register in relation to the subdivision of parcel 171 and the registration of parcels 217 and 218.
- b. Whether these proceedings are statute barred.

Law

[34] It is accepted that the Registrar of Lands is empowered by the Registered Land Act (hereinafter called “the Act”) to, among other things, register transfers, to accept applications by proprietors for the subdivision of property and once approved to appropriately record such subdivision in the Land Register³.

[35] It is settled law that the court can only intervene to rectify the Land Register in circumstances as prescribed by legislation. The power of the court and its limitations are conferred by *section 140* of the Act. The provision provides that:

- (1) “Subject to the provisions of subsection (2) the Court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any

³ See section 21 of the Registered Land Act.

registration including a first registration has been obtained, made or omitted by fraud or mistake. [Emphasis added].

- (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. [Emphasis added.]”

[36] In the absence of fraud or mistake, the court is constrained from rectifying the register under section 140. Even when a claimant can successfully ground a claim in fraud or mistake, the legislation goes further by indicating that there must also be shown that the proprietor had knowledge of the omission, fraud or mistake or it substantially contributed to such omission, fraud or mistake by his/her actions, neglect or default. The threshold for rectification of the register is a high one and the legislation is in keeping with the general system of registration which, in broad terms, confers indefeasibility of title on the registered proprietor⁴. The indefeasibility of title, by its very nature, protects the registered proprietor from attack with respect to his/her interests in the property for which the proprietor is registered⁵.

[37] **Fraud.** In proceedings in which fraud is alleged the claimant has a duty to particularize fraud, a duty to lead cogent and reliable evidence of the exact nature of the fraud and a duty to show how the fraud was alleged to have been committed. It is not sufficient to merely allege fraud or dishonesty. On the matter of the pleadings of fraud the court is concerned with whether the allegations are directly made and are supported by particulars. Fraud as contemplated under section 140 of the Act is actual fraud.

[38] In *Brelsford v Providence Estate Ltd*⁶, the Court of Appeal referred to the dicta of Lord Lindley in the Privy Council case of *Assets Company, Limited v Mere Roihi and Others* where section 140 of the Montserratian’s provision was considered. This provision is in similar terms to section 140 of the Act. The Court of Appeal noted that:

⁴ See section 23 of Registered Land Act.

⁵ *Brelsford et al v Providence Estate Limited*.

⁶ NIHCVP2016/0008 MNIHCVP2016/0009 MNIHCVP2016/0010 MNIHCVP2016/0011.

“[50] The Privy Council determined that fraud referred to in section 140 must be actual fraud, i.e. dishonesty of some sort, and not merely equitable fraud arising from an unconscionable act that should affect the conscience of the proprietor. ... In the absence of a finding of fraud or mistake, the conditions for rectification of the register under the RLA, section 140 do not arise and the court has no jurisdiction otherwise to order the rectification, i.e. either cancellation or correction, of the land registers.”

[39] The party seeking to make a case on allegations of fraud must plead the primary facts and prove its case on a preponderance of evidence. In the case of **Portland Stone Firms Ltd. v Barclays Bank Plc**⁷ the court in considering pleadings of allegations of fraud referred to the dicta of Andrew Smith J in the case of **Fiona Trust & Holding Corp v Privalov**⁸ where that court stated that:

“ It is well established that “cogent evidence is required to justify a finding of fraud or other discreditable conduct”: per Moore-Bick LJ in *Jafari-Fini v Skillglass Ltd.*, [2007] EWCA Civ 261 at para. 73. This principle reflects the court’s conventional perception that it is generally not likely that people will engage in such conduct: “Where a claimant seeks to prove a case of dishonesty, its inherent improbability means that, even on the civil burden of proof, the evidence needed to prove it must be all the stronger”, per Rix LJ in *Markel v Higgins*, [2009] EWCA 790 at para 50. The question remains one of the balance of probability, although typically, as Ungood-Thomas J put it in *In re Dellow’s Will Trusts*, [1964] 1 WLR 415,455 (cited by Lord Nicholls in *In re H*, [1996] AC 563 at p.586H), “The more serious the allegation the more cogent the evidence required to overcome the unlikelihood of what is alleged and thus to prove it”...

...Thus, in the *Jafari-Fini* case at para 49, Carnwath LJ recognised an obvious qualification to the application of the principle and said, “Unless it is dealing with known fraudsters, the court should start from a strong presumption that the innocent explanation is more likely to be correct.”

⁷ [2018] EWHC 2341 at para 25.

⁸ [2010] EWHC 3199 (Comm) at [1438]- [1439].

[40] **Mistake.** The rectification of the register on the basis of mistake was considered by Ellis J in the case of *Garna Oneal v Registrar of Lands*. In that case the learned judge noted the decision of the Privy Council in the case of *Louisien v Jacobs*⁹ and indicated that:

“ 41. There is a line of jurisprudence on section 98 of the LRA and similar enactments in force in other Caribbean countries, indicating that rectification of the register is available only if the mistake in question (or, no doubt, the fraud, when fraud is in question) occurred in the process of registration. See *Skelton v Skelton* (1986) 36 WIR 177, 181- 182; *Portland v Joseph*; and *Webster v Fleming*. Their Lordships consider that this principle is a correct and useful statement of the law, but would add two footnotes by way of explanation or amplification.

42. A mistake in the process of registration” is a useful phrase, but it is judge-made, not statutory language, and its scope must depend on a careful evaluation of the facts of the particular case. Moreover the fact that there has been a mistake in the course of the adjudication process does not automatically exclude the possibility of the same mistake being carried forward, as it were so that it becomes a mistake in the registration process.”

[41] In the circumstances of this case the Registrar of Lands understood that there was an application for subdivision of Parcel 171. This was determined by the submission of a completed mutation form. The evidence of the Registrar of Lands is that, at that time, the mutation form was treated as the application and the Registrar determined that the completed form was presented by the proprietor. In accordance with the provisions of the Act the register with respect to Parcel 171 was closed and registers with respect to Parcels 217 and 218 were opened so that the subdivided parcels would be first registered. The Registrar of Lands was later presented with an instrument of transfer from the claimant to Paul van Beek for Parcels 217 and 218. This signed instrument would no doubt support the contention that it was the proprietor who subdivided Parcel 171.

[42] This court does not accept the claimant’s contention that he had no knowledge of what occurred with Parcel 171 after the claimant received payment from Joanna Tobitt for same. The evidence is that subsequent to the subdivision, the Registrar of Lands was presented with transfer documents which complied with the Registered Land Act, and which contained, among other things, the

⁹ [2009] UKPC 3 at paragraphs 39-42.

signature of the parties to the transaction, the certification of verification by an attorney at law and the evidence of compliance with the Stamp Act. The Registrar of Lands, after confirming compliance with the laws of Antigua and Barbuda, was entitled to register the instrument.

[43] Additionally, it is noted that although the claimant disputes that he affixed his signature to the transfer instruments the claimant has not adduced any evidence which supports that the signature on the transfer documents were forged. The claimant indicates that he was out of the country on the date indicated on the transfer instrument, but this does not disprove the signature thereon. This court notes and accepts the explanation of Mr. Fuller regarding the date reflected on the transfer instrument.

[44] Further, this court notes the evidence of Joanna Tobitt was that the negotiations for the sale of Parcel 171 and the subsequent subdivision were conducted between the claimant and Paul van Beek. This is supported by the correspondence dated 10th May 2005 which was addressed to the claimant, and which indicated that Parcel 171 was subdivided, that there was to be a sale of one of the parcels and the request made in that correspondence for the claimant to work with the Mr. Fuller to effect the transfer. It is also noted that the correspondence contained what appeared to be a fax number which the claimant admitted was a telephone number registered to the claimant's home. This court does not accept, as the claimant contends, that the number was never used with a fax machine. Additionally, the correspondence 14th September 2005 between Paul van Beek and Mr. Fuller suggests that there was some previous communication with the claimant about the property.

[45] Finally, and particularly fatal to the claimant's case is the fact that although the claimant raises mistake by the defendant and alludes to there being some act of dishonesty which resulted in the claimant's signature being affixed to the transfer documents which were registered, the claimant has failed to specifically particularise in his pleadings how the allege dishonesty or mistake may have occurred.

[46] In this court's view the preponderance of the evidence does not support the claimant's case. The claimant has failed to meet the evidentiary burden of proof which would move the court to consider that an alteration be made to the register in respect of the subdivision of Parcel 171 and the registration of Parcels 217 and 218. Further, it is noted that an alternation of the register in the nature sought by the claimant will obviously have the effect of adversely affecting the proprietary interests

of third parties who were bona fide owners. The claimant has also not met the requirements of section 140 (2) of the Act.

LIMITATION

[47] The Registrar of Lands is a public authority with the meaning of the Public Authority Protection Act (PAPA). Section 2 of the PAPA stipulates that action shall not lie or be instituted unless it is commenced within six months next after the act, neglect or default complained of, or, in case of a continuance of injury or damage within six months next after the ceasing thereof. It is clear that claimant was aware of the subdivision prior to 21st April 2009 since this was when the claimant wrote to the Registrar of Lands on the matter. The claimant contends that he became aware of the subdivision after he searched the land register sometime around the end of 2008 and the beginning of 2009. However, it is also noted that the claimant admitted that he received, in 2005, faxed communication which referred to the subdivision of Parcel 171.

[48] It is the claimant's general contention that his integrity and reputation can be questioned since it would appear to persons at large that he sought the subdivision and resale of property which he previously sold. The claimant contends that there is continuous injury to the claimant.

[49] This court does not find favour with the claimant's submissions. It is noted that there has been no allegation made against the claimant by any person. Additionally, Joanna Tobitt readily admits that she signed the agreement to purchase Parcel 171 and it is undisputed that the purchase price was paid in full. After subdivision of Parcel 171, the subdivided parcels were transferred to her nominee, Paul van Beek and were later sold to third parties.

[50] As a consequence of the forgoing this court has determined that the claimant has not proven his case and that this claim is to be dismissed with prescribed costs payable by the claimant to the defendant and to the interested party.

[51] **Postscript.** At the determination of the trial in these proceedings this court communicated the delivery date of its decision in this matter. This court was unable to meet the delivery date which was indicated.

This court apologizes to the parties and counsel for any inconvenience and anxiety which may have been experienced by the parties and counsel, by the court not having met the stated date for the delivery of this decision.

Marissa Robertson

High Court Judge

By the Court

Registrar