THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

CLAIM NO: ANUHCV 2005/0347

IN THE MATTER OF THE REGISTERED LAND ACT CAP 374
AND
IN THE MATTER OF PARCEL 17 OF BLOCK 12 2293 B IN NORTH CERNTRAL REGISTRATION SECTION

BETWEEN:

THE DIOCESAN SYNOD OF THE NORTH EASTERN CARIBBEAN AND ARUBA

Claimant

And

HILROY HUMPHREYS
HILARENE HUMPHREYS

Defendants

Appearances:
Mrs. Eleanor Solomon & Dr. David Dorsett for the Claimant
Mr. Septimus Rhudd and Ms. Gail Pero for the Defendants

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2007: November 30
2008: September 26
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JUDGMENT

[1] **Harris J**: The Claimant brings this action against the Defendants for the rectification of the Register under the Registered Land Act Cap 374 of the Laws of Antigua and Barbuda. The Claimant's action is to substitute the Claimant, The Diocesan Synod of the North Eastern Caribbean and Aruba (the Diocesan Synod), as the registered proprietor of a parcel of land known as **"**parcel 17 of Block 12 2293 B in North Central Registration Section**"** in place of the two (2) Defendants Hilroy and Hilarene Humphreys.

[2] The Diocesan Synod alleges that the Humphreys were entered as registered proprietor as a result of a mistake. The facts are that the Crown was registered under the Registered Land Act as the first proprietor of the said parcel 17 based on the certified Adjudication record[1] and subsequently, in 1987, it lawfully conveyed the said parcel to the Defendants herein.

[3] THE HISTORY of this matter is that pursuant to the introduction of the **Land Adjudication Act Cap 234 (the "LAA")** of the Laws of Antigua and Barbuda, and the associated **Registered Land Act Cap 374 ("the R.L.A")** all unregistered lands were to be brought under the Registered Land Act (R.L.A.) and done as provided for in the Land Adjudication Act. How this worked was that under the Land Adjudication Act (the L.A.A. or "Adjudication Act") all lands were demarked and named.

[4] Notices and schedules in relation to this process for each adjudication section are prepared and published and made known throughout the adjudication area for the purpose of bringing it to the attention of all persons affected.

[5] Every person claiming any land or interest in land within an adjudication section such as for instance, in the instant case, the North Central Registration Section, is required to make his claim in the manner provided in the Act. Prior to the demarcation of land in an adjudication section, notice is given as to the time and place of the demarcation.

[6] Disputes over demarcation or rivals claims to any interest in land which cannot be resolved by the appointed demarcation officer are to be referred to the adjudication officer[2]. All lands are eventually demarcated, named and determined. Further, the Minister, or any other affected person who is aggrieved, may within 90 days of the notice of the completion of the adjudication record being published, petition the adjudication officer with respect to such grievance[3].

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[1] See para 7 and para 8 below for process and significance of certification
[2] See Section 15 of The Land Adjudication Act Cap 234
[3] See section 20 of the Land Adjudication Act Cap 234

[7] This process of adjudication culminates in the preparation of an adjudication record which is open for public inspection together with the demarcation map. Subsequently and after the hearing of all 'S.20' Petitions, the Adjudication Officer certifies the Adjudication Record and map thereto.

[8] The adjudication record then forms the basis for the Registrar of lands to enter as registered proprietor under the R.L.A, all properties and interests in land. The Adjudication Act **("L.A.A.")** provides further that any persons aggrieved by any act or decision of the Adjudication Officer under the Act, can within 90 days of the publication of the Adjudication record, petition the Adjudication Officer to hear and determine the grievance.

[9] The Adjudication Act provides further, that any person including the Minister, who is aggrieved by any act or decision of the Adjudicating Officer and desires to question it or any part of it, may, within 2 months from the date of the issue of the Certificate by the Adjudication Officer or within such extended time as the court may allow, appeal to the High Court[1].

[10] And it came to pass in the instant case, that this adjudication process with all its opportunities for, **(i)** reference of disputes to the Adjudicating Officer under S.15 of the L.A.A. **(ii)** Petition of Adjudicating Officer and subsequent hearing & determination under S.20 of the L.A.A. **(iiii)** Appeal to the High Court under S.24 of the said L.A.A., and prior to all these interventions; **(iv)** a party claiming any land or an interest in land could have made his claim known in writing in response to the adjudication officer's first Notice of the Adjudication Section under S.6 of the L.A.A and thereafter attend in person or by agent. **All** this took place without the claimant being stirred to avail itself of the relief provided.

[11] Further still, S.14 of the L.A.A. provides for another appointed officer under the Act, the "Recording Officer", to consider all claims to any interest in land, and to investigate the claim(s) and prepare a record of every parcel of land; which would include adjoining lands of the character claimed by the Claimant.

[1] See S.2 of the Adjudication Act, Interpretation Section for meaning of "Court"

[12] In deed, the L.A.A. appears to afford parties every reasonable opportunity to protect their own interest and ensure the accuracy of the Adjudication Record. Under section 17 of the LAA, lands deemed Crown lands as would have the subject lands, remain so deemed until the contrary is proved. The Act as is shown, provides adequate opportunity to prove the contrary. The Claimant did not avail itself of the opportunity to prove the contrary by registering its claim to the disputed parcel 17, the subject of this action, or to dispute, Petition or Appeal the decisions of any of the authorized officers under the Act.

[13] The now disputed lands are located on the outside of the claimant's existing wall enclosing the St. Georges Church Building situate in the North Central Registration Section, which itself may have been adjudicated upon and determined to be (probably but not necessarily, by operation of law) that of the claimant.

[13] There is no evidence before me that the Claimant did not participate in the adjudication process with respect to its existing walled-in church property, patent though, its ownership is.

[14] The facts in this matter suggest that upon the completion of the adjudication process, it was determined that the Crown be recorded as owner of the parcel 17.

[15] The Crown was registered as the 1st proprietor in 1981[1]. In 1981 pursuant to permission obtained from the Minster of Agriculture[2], he caused the parcel 17 to be surveyed[3]. Subsequently, by the hand of His Excellency the Governor General, the parcel was conveyed to the Defendants on the 8th October, 1987. The Defendants were registered as proprietors on the 13th October, 1987.

[1] See Land Register extract for parcel 17 at pp 17 of Trial Bundle
[2] **"***All I did was make an application to the Ministry of Agriculture for a piece of land":* Hilroy Humphreys in cross-examination
[3] "*The surveyor was Mr... Hughes. The survey is dated 3/7/81".*

[16] The Diocesan Synod first took action to claim the parcel as theirs in or around February 1987[1]; some six (6) years after the 1st registration and longer still after the cadastral survey and even later, the adjudication process, had been completed.

[17] The evidence is that discussions took place between the Claimant and the Government of Antigua and Barbuda (and the Registrar of Lands) and then, between the Defendant and the Government of Antigua and Barbuda. These discussions, I find, concerned the prospect of the Defendants relinquishing their indefeasible title to Parcel 17, in exchange for an alternate and suitable parcel from the Government. There is no evidence before me in support of any form of direct communication between the parties to this action or of the 'Cabinet' being instructed to or in effect lawfully acting as the agent of either party.

[18] The evidence is that the Claimants discussed this 'exchange' arrangement with the Government of Antigua and Barbuda and more particularly the Attorney General, with a view to having the register under the R.L.A. rectified pursuant to S.140 of the R.L.A and presumably more particularly pursuant to a consent to be obtained from the interested parties (see Section 137 of the RLA). The Claimant went so far as to prepare the necessary documents including a draft **"**Consent to Rectification of Register**"** document[2].

[19] Mr. Humphreys on the other hand maintains that he had no discussion with the claimants and was not aware that Cabinet had discussed the land exchange between himself, the Crown and the Claimant. The upshot of his evidence as I have found it, is that he did agree with the Government of Antigua and Barbuda to give up parcel 17, but on the condition that he got another suitable parcel in exchange[3]. After the passage of 16 years and without being presented a suitable parcel of land, Mr. Humphreys is no longer interested in

[1] See letter dated 5th February, 1987 to the "Hon. Attorney General" at pp 7 of the Trial Bundle. See also para 4 and para 5 of Affidavit of F.A. Clarke at pp 4 of the Bundle and his evidence in cross-examination
[2] This document makes no reference to the Crown/Government as an interested 'person'. Section 139 of the RLA provides for rectification by the Registrar with consent of "…all persons interested..."
[3] He must have understood this request for the 'exchange' to be as a result of the discussions between the claimants and Government.

an exchange[1]. An exchange his evidence suggests, that was purely voluntary and not to be construed as an admission of the Claimant's Claim of ownership by prescription.

[20] Several issues arise in this matter:

(i) Whether parcel 17 was registered in the name of the Defendants was a mistake under S.140 of the RLA.

(ii) Whether the parcel 17 was registered in the name of the Crown was a mistake under S.140 of the RLA.

(iii) Whether the Defendants are estopped from denying that the sale of the disputed land in 1987 was a mistake.

ISSUE "(i)"

[21] Was parcel 17 registered in the name of Hilroy and Hilarene Humphreys a mistake under S.140 of the R.L.A? A good starting point for this issue and issue "(ii)" for that matter, is the proper construction of S.140 of the R.L.A. and more particularly S.140 (1) as set out below:

> **S.140 (i)** **"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 registration including a first registration has been obtained made or omitted by fraud or mistake**".

[22] The section refers to **"***any registration including the first registration*…**"** The first registration in the instant matter is that of the Crown. Over this, there is no dispute and if there is a dispute I find as a fact, on the evidence, that the 1st registration was to the Crown.

[23] Further, the action refers to the registration being made, obtained or omitted by fraud or mistake. We are here concerned with a mistake.

[1] Hilroy Humphrey alleges that he was only taken to view two parcels of land in that period. The claimant witnesses confirmed the location of these two parcels of land.

[24] The simple question I would have thought, is, what is the mistake complained of? And at what stage of the history and evolution of the process of 'adjudication' and 'registration' resulting in the Humphreys being registered, did this mistake occur?

[25] The Diocesan Synod does not in their Fixed Date Claim Form or their Affidavit in Support of the claim, allege what was the mistake and who made it. The Claim Form merely states that the registration in the name of the Defendants as proprietors was obtained by mistake[1]. The Affidavit in Support and all of the twenty-eight (28) exhibits that it refers to, do not even once refer to the word "mistake". Not even the draft "*Consent to Rectification of Register*[2] document, at pp 35 of the trial Bundle, refer to a "mistake" or circumstances amounting to a 'mistake'.

[26] The thrust of the exhibited correspondence between the Claimant and the Government of Antigua and Barbuda and more particularly the Hon. Attorney General, is of an alleged decision for a land exchange between the Defendants and the Government of Antigua and Barbuda. It is not suggested nor is there any evidence of the Claimants being privy to that alleged decision (or even 'agreement' if that is what it is).

[27] To return to the 'mistake'. The evidence does not disclose a flawed land adjudication process. The Claimant has not pleaded and/or contended that it was flawed and that it has given rise to a mistake. Indeed, the Claimant in its Affidavit in Support of the claim (see Trial Bundle para 3) and in cross-examination of the Claimants witness, Mr. F. Clarke[3], the claimant acknowledged that parcel 17 was registered in the name of the Crown, because, due to inadvertence the Claimant had not made a claim for the land during the Adjudication process.

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[1] It does not allege either, that the Claimants name was "omitted" as registered proprietor

[2] In cross-examination of Mr. Franklyn Clarke for the Claimant, he admitted that: "*The Consent to Rectification was prepared by me"* and what "*Yes, there is nothing in this document about rectification as a result of a mistake".*

[3] After stating that he was aware of the Cadastral Survey that took place in Antigua between 1966 and the early 1970's

[28] None of the several provisions in the Adjudication Act were invoked by the Claimant to avail itself of the opportunity to register its interest, complain of, petition or appeal any aspect of the adjudication process and decisions therein. None of these opportunities are now available to the Claimant[1]. In any event, as I pointed out above, the Claimant has not, by this action, sought any remedy under the now obsolete Adjudication Act.

[29] The Crown, having been duly registered as proprietor, pursuant to the combination of the Registered Land Act and the Land Adjudication Act, conveyed the said parcel 17 to the Defendants six (6) years later, in 1987. The conveyance under the hand of His Excellency the Governor-General is exhibited in the Core Trial Bundle. What is the mistake here? Is it the Claimant's inadvertence to "claim" the land under the Adjudication process?

[30] The judgment of Robothom CJ in Webster v Fleming[2] is quite clear on the point, that the mistake referred to in S.140 of the RLA is a mistake in the Registration Process not the adjudication process. He put it thus: ***"****In my judgment any mistake made in the registration process could be rectified. The Court must distinguish between mistakes occurring in adjudication under the Land Adjudication Ordinance and in registration under the Registered Land Ordinance. Section 140 provides relief only for those mistakes occurring in the registration process****"***.

[31] In the instant case no mistakes made in the adjudication process can amount to a mistake under S.140. Robotham CJ in the said Webster case acknowledged as an example, that if for instance, the Registrar incorrectly recorded the determination of ownership by the Adjudication Officer, that would be covered by 'mistake' in a first registration under S.140 of the R.L.A. This allegation has not been made in the instant case.

[32] The evidence is overwhelming that the Defendant and the Government had discussion about exchanging the parcel 17 for another suitable parcel. I accept the evidence that the

[1] See Byron CJ (Ag.) in Thelma Crane v David Worrell et al Civ. App. No. 13 of 1997 (St. Lucia)
[2] Anguilla Civil Appeal No. 6 of 1993 pp 12; see also Heirs of Hamilton La Force etc [1996] Eastern Caribbean Law reports – 246 (St Lucia), Skelton v Skelton (1986) 37 WIR 177, Hyacinth V Moore v Joycelyn Moore etc ANUHCV 1999/0108 per Mitchel J.

1st Defendant, for himself and on behalf of the 2nd Defendant (who was a minor at the time of registration) agreed to this process. I accept the evidence of the 1st Defendant that he was motivated by his mothers urging that he ought not to "fight the Church". I do not accept that he engaged in discussions with the Government as an acknowledgement of a mistake made by any one. I accept that he was not bound to proceed with the proposed arrangement and that his exchanging the parcel 17 was in any event subject to the availability of another parcel suitable to him and impliedly, within a reasonable time.

[33] As it turned out he was not satisfied with the two (2) alternative parcels shown to him over a sixteen (16yr) period. The Defendants were the registered proprietors during most of this period.

[34] But, importantly, this understanding, or put at its highest[1], this agreement to exchange parcel 17 with another, was one between the Government of Antigua and Barbuda and the Defendant only, albeit, ultimately it could redound to the benefit of the Claimant under a separate arrangement or agreement between the Government and the Claimant.

[35] The Claimant cannot in its claim under S.140 of the R.L.A and in the peculiar circumstances and facts of this case rely on an agreement – or as the Court finds, a mere unenforceable understanding – to which it is in any event, not privy. It stands to reason that on the basis of the chain of logic inherent in S.140, that even if the conveyance and/or registration to the Defendant was a mistake, the first registration of the Crown as proprietor was not. Removing the Defendants from the register still leaves the Crown as registered proprietor or certainly as a party with a strong if not stronger case for retaining registration.

ISSUE "(ii)"

Was parcel 17 registered in the name of the Crown a mistake under S.140 of the R.L.A?

[1] But I do not see the evidence to support this

[36] Put shortly, the registration of the Crown as registered proprietor of parcel 17 after the adjudication process under the Land Adjudication Act was not a mistake as contemplated by S.140 of the Registered Land Act.

[37] The evidence led by the Claimant in this matter with respect to the Defendants and the Government exchanging parcel 17 for another, is of no relevance to the issue of the Crowns first registration. That evidence is peculiar to the Defendants registration in 1987.

[38] The reasoning adopted in relation to the first issue above - of the Defendants registration - apply to this 2nd issue also. That is, the "mistake" contemplated by S.140 of the R.L.A applies to the registration process and not to he adjudication process under the L.A.A.

[40] In this matter, no action was brought against the Crown. If the Court were to find that the Defendant's registration was "made" by a mistake, I do not believe it could on this action, without any representation from the Crown, order that the register be rectified in favour of the Claimant herein. The Crown has not had an opportunity to defend or otherwise represent its interest in the parcel as the 1st registered proprietor. It bears repeating here that under S.140 of the RLA, the court has to be satisfied that a mistake has been made in the 'registration' and not the prior 'adjudication' under the LAA. ***There was no mistake in the Registration of the crown as proprietor of parcel 17*** and the claimants do not allege that it does either.

ISSUE "(iii)"

The Defendants are estopped from denying that the sale of the disputed land in 1987 was a mistake.

[41] The evidence of the Defendant that he entertained the exchange proposal by the Government because his mother discouraged him from fighting the Church is accepted. Further, I accept the evidence that the exchange was subject to acceptance of the alternative parcel offered him. This accords with simple commercial and indeed common logic. In any event, a registered proprietor such as the Defendants, have protected rights with respect to property and cannot by the mere act of agreement and understanding of

two other parties be deprived of their proprietary interest in parcel 17. I accept further, that the defendants did not irrevocably accept the lands that were shown to him including that in which the 1st Defendant himself had initially expressed an interest, located in the Lindsey's "subdivision". I have considered the claimant's testimony of the Defendant being taken to see the lands. The claimant's witness Mr. Kenrick Isaac gave evidence in chief that he gave instructions to one Lemuel Roberts, a surveyor attached to the Lands and Surveys Division, to accompany Mr. Humphreys to the Lindsey's subdivision site. Mr. L Roberts did not give evidence in this matter of what transpired on that site visit. At no time however, does the evidence disclose that there was any representative of the claimant showing lands to the defendant or of the Defendant making any representations with respect to the 'exchange' to an agent/representative of the Claimant[1].

[42] Mr. Isaac went on to give evidence of the long possession of the disputed property by the claimant. Mr. Clarke did the same, both, presumably, with a view to establishing the claimants proprietary interests in the land. Both witnesses are senior members of the claimant church. There is no evidence from independent persons of the type referred to in the evidence of both these men that: **"***...it has always been known and accepted to be church land.***"** And that, **"***However it is accepted by <u>all persons in the area</u> that these lands have been church property ever since time immemorial***"[2] (emphasis mine).** This evidence, led in support of the claimant's claim of ownership, is weak. The Defendants have not led any evidence to rebut the claimant's claim of long possession, save for **(i)** the inference that the Adjudication did not detect any evidence of occupation alleged by the claimant and **(ii)** the apparent fact that the claimant was not aware of the Defendants physical survey of the land in 1981. Both these activities prevailed at a time during which the claimant alleges the land was known and accepted to be church land by all persons in the area. The claim of ownership as presented by the claimant is not sufficient in my view, to now act upon the conscience of the defendants so as to render it inequitable for the Defendant's to maintain their claim to the indefeasible title to parcel 17.

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[1] Mr. Isaacs evidence in chief at pp 55 of the Trial Bundle is that: "I was mandated by the Government to locate a parcel of land to be transferred to Hilroy Humphreys... At that time I was the Secretary of Central Housing and Planning Authority (CHAPA)." Mr. Isaac was not involved as a representative/agent of the Claimant. Mr. Isaac retired from the Government in 2004.

[2] See letter from claimant to the Attorney General dated Feb 5th 1987 at pp 7 of the trial bundle.

[43] But what is the essence of the claimant's argument in estoppel by representation? A good starting point is to set out a classic definition of that type of estoppel.

[44] In Snell's Principles of Equity[1], the doctrine is explained thus: **"***Where by his words or conduct one party to a transaction freely makes to the other an unambiguous promise or assurance which is intended to affect the legal relations between them (whether contractual or otherwise), and the other party acts upon it, altering his position to his detriment, the party making the promise or assurance will not be permitted to act inconsistently with it.***"***.* Whether the claimant is relying on estoppel at common law which is predicated on the representation of an existing fact or on promissory estoppel defined by ***Snell's*** above, which itself is predicated on the representation of an intention or a promise, the effect for our purposes here is the same.

[45] Firstly, these forms of estoppel are to be used as a *shield not as a sword.* The claimant is attempting to use this doctrine to found a cause of action as opposed to a using it as a defence. The reliance on the doctrine of an equitable estoppel by a claimant, as a cause of action, raises the prospect of the improper application of the doctrine[2]. So, what facts and argument is the claimant relying on?

[46] The claimant's argument is that the 1st Defendant was a member of cabinet from 1987 and including 1993 and would have then have had notice of a decision of the cabinet to exchange parcel 17 for another parcel[3]. Further says the claimant, even if the Defendant was not present at cabinet for that decision, then by the principle of 'collective responsibility', the Defendant would have at least, constructive notice of cabinet's decision and that thereafter he took steps to facilitate the agreement, ultimately to the detriment of the claimants.

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[1] 28th edit at pp 556

[2] In certain circumstances – which do not arise in the instant action - the effect of the rule can be relied on by a claimant. see Amalgamated Investment etc v Texas Commerce etc. [1981] 2 WLR 554 at 571

[3] See copy of cabinet minute dated 13th April, 1993 exhibited at pp 30 of the trial bundle.

[47] A simple flaw in this position is that a cabinet has no authority to unilaterally "exchange" "private" property. The Defendants as registered proprietors can only be deprived of that status in accordance with the Law. Further, even if the 1st defendant was or deemed to be a participant in or have notice of the 1987 cabinet decision, that would only be half of the equation. The other half would be the defendants accepting a suitable parcel of land in exchange[1]. This he said he has not done and the court accepts this evidence, and accepts this evidence also, as representing a state of mind peculiarly within his knowledge. The agreement – if that is what is was – was that if he found a suitable parcel he would be prepared to exchange it and not that he agreed to be bound in any event, to accept a parcel to facilitate an exchange.

[48] So, even if there was such an agreement - to exchange - between the parties to this action, the claimants would fail on this point. In any event as I said, in my view, there was no enforceable contract between the Crown and the defendant far less, between the Defendant and the claimant. I do not accept that 'constructive knowledge' of the discussions between the Government and the claimant, by way of cabinet's **"**collective responsibility**"**, is sufficient to support any limb of the doctrine of equitable estoppel in the instant case.

[49] The claimant submits two instances of the representations that it relies on in support of *estoppel by representation*. The first is on account of the 1st Defendants alleged participation in the 1993 Cabinet meeting which purports to commit to an exchange of the Defendant's land for another, as detailed in para 17 and 18 above and the second is the alleged representation **"**...*after he was a member of cabinet, that he was willing to have another parcel of land from the Crown in exchange for the disputed land"*[2]. Both those representations - if that is what they are - are post the disputed 1987 registration in favour of the Defendants. Further, even on the claimant's statement of case and evidence in support thereof, neither 'representation' moves from the Defendants as registered

[1] I do not understand the claimant's case or the said cabinet decision to be suggesting a compulsory acquisition. The cabinet minute at best can only be entertaining the prospect of a negotiated settlement with the registered proprietor.
[2] See "Supplemental Skeleton Arguments with Authorities for The Claimant" filed by the claimant on September 20, 2006.

proprietors to the claimants. At best, these would be representations made by one of the two (2) Defendants, to the Government of Antigua and Barbuda.

[50] Putting the facts up against the definition of estoppel by representation, the following elements required to be met by the claimant have not been met; **(i)** there is no legal relationship giving rise to rights and duties between the parties **(ii)** there is no promise or representation by the defendants to the claimant that he would not enforce against the claimant their strict legal right arising out of that relationship **(**which on the facts in any event did not exist**) (iii)** there is no evidence that the Defendant's intended that the claimant's act upon any representations made by the defendants to the Government **(iv)** there is no evidence of the claimant acting to its detriment after the two alleged representations referred to above in para.49 that can relate back to the mistaken registration complained of in this matter.

[51] **The claim in estoppel, if that is what it is, for the reasons provided above, fails**.

[52] Finally, I am not able to accept that the 1st Defendant can bind the 2nd Defendant and make the legally binding representations that the claimants are alleging, after the 2nd Defendant attained the age of consent. I need not say any more on this for at this point it is purely academic.

ORDER

[53] In the circumstances and for the reasons provided above, it is **HEREBY ORDERED**:

(i) that the claim for an order that the land register in respect of parcel 17 of Block 12 2293 B in North Central Registration Section be rectified on the grounds of 'mistake', is DISMISSED.

(ii) that Costs be the Defendants Costs in the agreed sum of EC$3,500.00[1].

DAVID C. HARRIS
Judge
High Court of Justice
Antigua and Barbuda

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[1] For the agreement on costs see 'Consent Order' dated 21st October 2005 signed by E. Clarke for the claimants and Dexter Wason for the Defendants.