St-Lucia

EASTERN CARIBBEAN SUPREME COURT

HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

CLAIM NO: ANUHCV2007/0560

BETWEEN:

CARIBBEAN DEVELOPMENTS (ANTIGUA) LIMITED

(Claimant)

-And-

RICHARD CHARLES SAYER

(Defendant)

Appearances:

(1) Mr. John E. Fuller for the Claimant

(2) Mr. Andrew Young and Dr. David Dorsett for the Defendant

2011: January 20,

March 30,

JUDGMENT

FLOYD, J.

[1] The Claimant, Caribbean Developments (Antigua) Limited, issued a Claim Form on October 3, 2007 and a Statement of Claim on the same date. The proceedings arose from a Sales Agreement dated February 17, 2005, whereby the Claimant, a company registered

in Antigua and Barbuda, sold to the Defendant a villa (house) and additional land in the area known as Jolly Harbour. The Land Transfer document for the transaction was dated February 10, 2006.

[2] The sale of the villa is not in dispute, however, the additional or extra land referred to in the transaction is. Specifically, the size of that additional land is what the parties contest.

[3] The Claimant seeks a declaration that the written agreement of February 17, 2005, as it relates to the land and seawall purchased, is null and void and unenforceable. Alternatively, the Claimant seeks a declaration that the Defendant is entitled to 40 square metres of land to the east of the eastern boundary of the parcel of land together with 4 metres of sea wall only. The Claimant also seeks an order that the Defendant remove all fixtures placed on the additional land and sea wall. Alternatively, the Claimant seeks an order that the Defendant remove all fixtures placed on any land, in excess of the 40 square metres and 4 metres of sea wall claimed. The Claimant also seeks an Injunction to restrain the Defendant from entering and trespassing upon lands adjacent to the eastern boundary of the parcel or east of such lands as are declared by the Court to be the property of the Defendant.

[4] The Claimant seeks damages for trespass and costs.

[5] The Defendant filed a Statement of Defence on February 22, 2008. The Defendant relies upon the accuracy of the Sales Agreement and maintains he is the lawful proprietor of the villa and extra land, including sea wall and 40 metres parallel to the road.

[6] By Application Without Notice dated March 28, 2008, the Claimant sought an Injunction against the Defendant.

[7] By Order of Justice Louise Blenman, dated April 3, 2008, the Defendant was restrained from commencing any construction on the disputed land, specifically, that immediately

adjacent to the eastern boundary of Parcel 204 of Block 551186 C of Southwest Registration Section, until further order of this court.

[8] On April 4, 2008, the Claimant filed an Undertaking in Damages as a result of the Injunction.

[9] On May 2, 2008, Justice David Harris ordered that the Injunction of April 3, 2008 be continued until further order of this court.

[10] On May 23, 2008, the Defendant filed an Amended Defence and Counterclaim. The Defendant made claim to a residential lot and an undemarcated parcel of land, and submitted that there was no mistake in the Sales Agreement. The Defendant sought specific performance of the transfer of the extra land from the Claimant to the Defendant.

[11] A Reply and Defence to the Counterclaim was filed by the Claimant on September 8, 2008. The Claimant joined issue with the Defendant, alleging there was a mistake in the Sales Agreement and the term "40 metres" should have actually been "4 square metres" (altered to 40 square metres at trial).

[12] On December 22, 2009, Master Cheryl Mathurin issued an Order on Case Management which was subsequently followed by the parties with list of documents, witness statements and pre-trial memoranda being filed.

[13] The trial was scheduled to take place on October 19, 2010 but was adjourned to January 20, 2011 by Order of Justice Mario Michel.

[14] On January 20, 2011, the trial of this matter took place. At the outset, and on consent of both parties, the pleadings were amended. The Statement of Claim at page 3, paragraph 2 of the Trial Bundle Volume I, was amended to indicate that the Claimant intended to sell an additional area of land to the Defendant of 40 square metres (not 4 square meters as

indicated). Similarly, at page 4, paragraph 2 of the Trial Bundle Volume I, an amendment was granted on consent to read that the Defendant is entitled to 40 square meters of land (not 4 square metres as indicated).

[15] Similarly, at the outset of trial, and on consent of both parties, the Amended Defence and Counterclaim at p. 28, paragraph 2 of the Trial Bundle Volume I, was amended to indicate that the Defendant purchased an undemarcated square meterage of land being 400 square metres (not 40 square feet as indicated). Similar amendments were granted on consent to the pleadings at p. 29, paragraph 9, indicating the Claimant was obligated to transfer 400 square metres (not 40 metres as indicated), and at p. 30, paragraph 11 of the Trial Bundle Volume I, the Defendant counterclaimed for specific performance of the transfer of 400 square metres of extra land (not 40 metres as indicated).

[16] Finally, prior to viva voce evidence commencing, the parties filed, on consent, additional documents which were marked as pages 108 - 131 consecutively and inclusive, to the Trial Bundle Volume III.

[17] THE EVIDENCE:

(1) Gaye HECHME testified as the managing director of the Claimant company. She held that position since January 2006, & the issue that is this claim, came to her attention in April 2006. She confirmed that the contentious document is the Sales Agreement found at p, 26 of Volume III of the Trial Bundle. The purchase price of $151,000.00 USD is for the villa, & there was an understanding that the extra land was to be purchased at $120.00 USD per square metre. Her witness statement indicated that the Sales Agreement described the Defendant purchasing a portion of land adjoining the villa for $4,800.00 USD, together with its sea wall for $4,000.00 USD. The $4,800.00 represented 40 square metres of land at $120.00 USD per square metre.

(2) She was aware that the Defendant had purchased land before in Jolly Harbour but on the golf course, where the price per square metre was approximately $93.00 USD, compared to this property, which was waterfront & therefore higher in value. She understood that the Claimant company always sold additional land at $120.00 USD per square metre.

(3) She confirmed that the hand drawn diagram of the extra land attached to the Sales Agreement, found at page 29 of Volume III of the Trial Bundle, was marked at the time as being not to scale, & to be confirmed & finalised. It was her understanding that there was never any finalization & confirmation. She confirmed that she was not with the Claimant company when this document was created. Her witness statement indicated at paragraph 11 that the purported agreement for the extra land was expressly stated as being conditional on the measurements being confirmed & finalised, which was never done.

(4) In April 2006, the Defendant applied to erect a fence & move a garbage receptacle. She therefore attended the property & observed a fence surrounding the entire area, including what she understood to be land belonging to the Claimant company, being an area of approximately 575 square metres. She therefore contacted legal counsel. She realized that there had been an error in the Sales Agreement.

(5) Ms. HECHME testified that the villa in question was transferred to the Defendant but the extra land was not registered to him under the Registered Land Act, & it has no plan number to this day.

(6) She confirmed that Anna VANDENBURGH & Elizabeth WETZEL dealt with the Defendant on behalf of the Claimant company. Ms. WETZEL was in charge of overall sales at Jolly Harbour.

(7) She testified that the Defendant bought 4 square metres of sea wall at $1,000.00 per metre. The Sales Agreement indicates extra sea wall $4,000.00 for 4 metres.

(8) She testified that the Sales Agreement should have read extra land approximately 40 square metres parallel to the road. The word square was omitted. Were it to be otherwise, the indicated purchase price for the land of $4,800.00 would be totally wrong.

(9) The extra land was to be used for a garden & pool. The construction of a garden & pool on the extra land is confirmed in the email from the Defendant to representatives of the Claimant dated September 30, 2004 found at p. 21 of the Trial Bundle Volume III.

(10) In cross examination, Ms. HECHME confirmed that she had no direct interaction with the Sales Agreement preparation & completion. She also confirmed she signed the letter of April 4, 2006 on behalf of the Claimant & addressed to the Defendant, indicating that he had purchased an area of land 40 metres parallel to the road & 9 metres wide, found at p. 76 of the Trial Bundle Volume III. However, she said she was wrong in the dimensions she indicated in her letter. It was based on the information she had at the time & on her company records. She agreed it corresponded to the Land Transfer document, in particular paragraph F at p. 43 of the Trial Bundle. She read the documents & her letter was based on that. When asked whether she ever sent a further letter to the Defendant correcting the error, she replied she did not, but that her company, the Claimant, obtained an injunction against the Defendant (as part of this action).

(11) She said the Defendant fenced in more land than he actually purchased.

(12)She understood from Elizabeth WETZEL that the purchased land area was 40 square metres. She knew the Claimant company did not sell land without it being indicated as square metres.

(13) She was not aware whether the purchased land had planning permission to build on it when sold but understood that the Defendant obtained planning permission afterwards. She did not believe that would have affected the land's value.

(14) In re-examination, Ms. HECHME indicated that it was intended that the Defendant buy 40 square metres at $120.00 per square metre. The entire piece of extra land abutting the Defendant's purchased villa was approximately 575 square metres. The Defendant paid $4,800 for the extra land. The price would therefore have been approximately $8.00 per square metre at that price.

(15) Elizabeth WETZEL testified & provided a witness statement. She was the managing director of the Claimant company at the time period in question. She was also the chief salesperson for the Claimant company in Jolly Harbour.

(16) She confirmed that although she had spoken with & communicated with the Defendant, she had never met him until the day of trial.

(17) Her experience with the company included selling approximately 500 houses & 100 plots of land. In her experience, vacant waterfront land went for $150.00 per square metre for land that could be built on, & $120.00 per square metre for non-building land. That price was non-negotiable. Land by the golf course went for between $110.00 - $117.00 per square metre.

(18) She knew that the Defendant had purchased one plot of land on the golf course - vacant land, building land - in or about 2002. She confirmed the Sales Agreement for that purchase was found at p. 115 of the Trial Bundle Volume III, & the cost indicated thereon was as she described for land on the golf course.

(19) On October 19, 2004 she sent an email and copied it to the Defendant. In it, she advised that she had agreed to sell "some garden and the extra seawall, both of which need measuring and surveying at (the defendant's) cost". The message went on to say "if we need to retain a small piece of land beside the entrance to the island, then we need to agree on the size and reason for this." That message is found at p. 22 of the Trial Bundle Volume III. She never received a reply from the Defendant disagreeing with those terms.

(20) Ms. WETZEL testified that her agreement with the Defendant was that he purchased 4 metres of sea wall, which was standard for any unit. The extra land purchased was approximately 40 square metres at $120.00 per square metre. The area was 4 metres wide from the sea wall & 10 - 12 metres from the road, subject to a survey. There was no agreement for any more than that but it was left open.

(21) She was a signatory to the Sales Agreement. Her understanding of the extra land was a strip of land beside the house (villa) between the sea wall & the road. It had not been surveyed & no parcel number ever obtained for it. She indicated that she never agreed to sell a garden of a size 10 metres x 40 metres, as indicated in the diagram attached to the Sales Agreement, found at p. 29 of the Trial Bundle Volume III, & paragraph F of the Land Transfer found at p. 43, because she did not know how much land was actually there. It was never confirmed & finalised, as it was expressly stated that it had to be. She first saw paragraph F after the transfer had been registered. There was no agreement for paragraph F. It was not part of the original agreement. That

document was, however, prepared by a lawyer acting for both the Claimant & the Defendant. Having now read the document, she assumed it was a standard form document with the exception of paragraph F.

(22) The estimated statement of account for vendor document at p. 33 of the Trial Bundle Volume III, referred to $4,000.00 for sea wall & $4,800.00 for land. The sea wall purchase was calculated as $1,000.00 per linear metre of sea wall.

(23)She testified that there was never any agreement for the establishment of 6 villas on the extra land. It was supposed to be green land, not building land. Hence the described use for a pool & garden. The term garden was used to describe a green area of plants & the like. It was not a euphemism for anything else.

(24) Ms. WETZEL was a signatory to the Land Transfer found at p. 51 of the Trial Bundle Volume III. However, she testified that she was in Antigua only one week out of 3 months & would sign blank pages for sales transactions. The sheets would be placed in a safe, then signed by others & attached to the sales document later. She thought it was not irresponsible on her part to do things in that fashion. She stated this particular sales document in totality was not accurate. It was not what she agreed to but she never saw the final document prior to execution.

(25) The problem was brought to her attention by Gaye HECHME in a telephone call. Subsequently, the Defendant contacted her & advised her to keep out of it as it did not concern her.

(26) She described the area of land in question as being an important location, since it was immediately adjacent to the roundabout that provided the only entrance/exit to the island area depicted in the aerial photograph at p. 60 of the Trial Bundle Volume III.

(27) Ms. WETZEL testified that this was not a case of a bad business deal that the Claimant was now trying to renege on.

(28) She disagreed with the contention that the Defendant offered a price for the entire piece of land, which was accepted by the Claimant. She said that she has been in the business for 25 years & that price for that amount of land is simply not correct.

(29) An email from Anna VANDENBURGH (who worked for Ms. WETZEL) dated July 31,2004 found at p. 89 of the Trial Bundle Volume III, to the Defendant & to the Claimant's/Defendant's lawyer, refers to Ms. WETZEL agreeing to sell "the land" to the Defendant, as an "extra" to the villa. The Defendant was to present plans for the land & the Planning Committee must approve them. However, the term "the land" is vague & unclear.

(30) When this witness was confronted with surveys & diagrams of the land, she stated that she did not dispute the dimensions of the property; she disputed what amount of land the Defendant had paid for. The transaction as drafted, & the amount of money paid for the amount of land, was not correct.

(31) In re-examination, it was confirmed that the pool, as described in the consultant's report found at p. 24 of the Trial Bundle Volume III, would fit into the small land area as maintained by the Claimant. Similarly, in the diagram submitted by the Defendant for planning permission, found at p. 73 of the Trial Bundle Volume III, the deck extends 4 metres from the villa & fits into the small land area maintained by the Claimant.

(32) The Defendant, Richard SAYER, testified & filed a witness statement. He confirmed that his contact person with the Claimant was Anna VANDENBURGH. It was Ms. VANDENBURGH who offered him villa 401.

There was never any mention of either square metres or square footage; it was always a parcel of land. The price for the extra land was originally $2,000.00 but it increased to $4,800.00.

(33) The Defendant had been dealing in land in Antigua for about 9 years up to the date of trial, including the land he bought on the golf course from the Claimant. In 1993 he paid $73.00 per square metre for that land. In Jolly Harbour, $70.00 per square metre was low. It recently went for $120.00 per square metre.

(34) The land in question was undeveloped but not prime. It was waterfront but not in the best location.

(35) There was no mistake in the agreement. The agreement was what he had contracted for. Shortly before the agreement was signed, Ms. WETZEL confirmed the draft was correct. Reference was made to an email at p. 90 of the Trial Bundle from Ms. WETZEL to Ms. VANDENBURGH indicating she had read through the contract & it looked "OK to (her)."

(36) The Defendant applied for permission in FEBRUARY of 2006 to construct 6 villas on the land in question, which would have had a huge impact on the land value.

(37) When the issue arose, he spoke to Gaye HECHME & Anna VANDENBURGH, & said he would call Elizabeth WETZEL. This was different from what Ms. WETZEL testified to - that the Defendant told her to stay out of it.

(38) Under cross examination, the Defendant maintained that he had not checked what the price per square metre would be for the disputed land, at the price he purchased it for.

(39) The Defendant disputed that a pool would fit into the smaller area the Claimant maintains was purchased. He also stated that "garden" was a euphemism which he would use for other things like pool, footings, building and not simply a botanic garden.

(40) The only initials on the pages of the Land Transfer document at pp. 42 - 50 are those of the Defendant, including on the page containing paragraph F. He stated that the words "to be confirmed and finalised," found on the diagram of the land in question (which the Defendant drew), and attached to the Sales Agreement at p. 29 of the Trial Bundle, meant the measurements were to be confirmed by a surveyor. That was required for Plan registration & not in order to confirm what he had purchased.

[18] SUBMISSIONS:

(1) The Claimant's position is that there was a mistake in this transaction & that the written Sales Agreement or contract did not accurately reflect the intent of the parties. The Claimant intended to sell 40 square metres of extra land, not 40 metres, as set out in the Sales Agreement.

(2) The Defendant's position is that there was no mistake & that the Agreement of Sale should be accepted as framed, as an accurate depiction of the parties' intentions.

(3) Learned Counsel for the Defendant submits that there was a meeting of the minds between the Defendant & the Claimant's representative, Anna VANDENBURGH. The sale was negotiated between these two & approved by Elizabeth WETZEL for the Claimant. The Defendant submits that the email from Ms. WETZEL at p. 22 of the Trial Bundle, stating an agreement to sell some garden & the extra sea wall, which needed measuring & surveying, confirms that a parcel of land was being sold, not a specific size of land. This

is further confirmed, learned Counsel submits, by the confirmation that a pool would be located thereon. Any standard sized swimming pool could not have fit into the 40 square metres as alleged by the Claimant. There is no evidence of mistake in the negotiation stages, submits learned Counsel for the Defendant.

(4) Further, it is submitted by learned Counsel for the Defendant, that the written contract accurately reflects the pre-contract understanding. The Sales Agreement itself is unambiguous. It was signed by all parties without alteration. The terms are clear & indicate, amongst other things, 40 metres of extra land for $4,800.00 & 4 metres of extra sea wall for $4,000.00.

(5) Learned Counsel also points to the behaviour of the agents of the Claimant after the signing of the agreement. For example, the letter from Gaye HECHME, dated April 4, 2006, seems to confirm the area of land purchased as being 40 metres by 9 metres. The plans at p. 69 of the Trial Bundle, prepared by the Defendant, showing 2 finger docks attached to the sea wall, would necessitate access. The Defendant applied for permission to develop the land in issue by constructing 6 villas.

(6) Learned Counsel for the Defendant submits that there is no legal basis for a claim of mistake in this case. It is possible for there to be a mistake as to the subject matter of a contract, he submits, but not in this case. Which 40 square metres does the Claimant refer to, he asks? It is mere speculation that it is to run alongside the villa & that is at variance with the description in the agreement of it being parallel to the road.

(7) Learned Counsel for the Defendant asks who has made the mistake if one exists? He submits that the Defendant did not make a mistake & therefore seeks to enforce the agreement as worded. He relies upon the case of BELL And Another v. LEVER BROTHERS LTD. And Others [1932] A.C. 161 a

decision of the House of Lords dated DECEMBER 15, 1931, relating to mistake. At p. 218, the Court held that "mistake as to quality of the thing contracted for...In such a case a mistake will not affect assent unless it is the mistake of both parties, and is as to the existence of some quality which makes the thing without the quality essentially different from the thing as it was believed to be."

(8) Learned Counsel for the Claimant submits that the written agreement did not reflect the actual agreement between the parties. The intention was to sell 40 square metres of extra land. The Claimant relies upon the case of Hartog v. Colin & Shields [1939] 3 ALL ER 566 wherein the court held that "the plaintiff must have realised, and did in fact know that a mistake had occurred ... it was a mistake on the part of the defendants or their servants which caused the offer to go forward in that way, and ... that anyone with any knowledge of the trade must have realised that there was a mistake." One party must therefore have known or been aware of the mistake & the agreement should not go forward.

(9) Learned Counsel for the Claimant submits that, in the circumstances of this case, it would be inequitable to disallow rectification & relies upon the case of Thomas Bates & Sons Ltd. V. Wyndham's (Lingerie) [1981] 1 WLR 505 . The court held in that case that "the conduct of the defendant must be such as to make it inequitable that he should be allowed to object to the rectification of the document." The court went on to refer to the case of A. Roberts & Co. Ltd. V. Leicestershire County Council [1961] Ch 555 which set out the parameters of equitable rectification, including, one party being aware of the omission or inclusion of the mistaken term, omitting to draw the mistake to the other party's attention, & benefiting from the mistake.

(10) Learned Counsel for the Claimant refers to The Principles of Equitable Remedies, I.C.F. Spry, 4th Edition. At p. 153, it is stated that "where a written

contract does not accord with the actual agreement of the parties, so that it would be unconscionable that a party should rely on it in that form, he may be prevented from doing so...In the second place it may be found that although there is a valid and enforceable contract at law, one or both of the parties has a right in equity to have it rescinded or cancelled, due to circumstances arising out of mistake." What is reasonable will depend on the circumstances or facts of each case.

[19] ISSUE:

(1) Was there a mistake in the Sales Agreement entered into between the parties as to the size of the extra land sold?

[20] DECISION:

(1) I agree with Learned Counsel for the Defendant that there was an agreement to sell a parcel of land consisting of garden area & sea wall that needed measuring & surveying. Hence the terms "measuring & surveying" and "to be confirmed and finalised" referred to in emails & documents, including the Sales Agreement & Land Transfer. From the early stages of dealings between the parties, it was for garden & pool use that this area of extra land was intended. I do not agree, however, that the terms used must encompass the larger area of land sought by the Defendant in this claim simply because reference is made to a pool being located thereon. I find that it would be possible to place a pool, albeit a small one, on the area of land as sought by the Claimant. The report prepared by Consultant, Sandy MAIR, dated December 6, 2004, on behalf of the Defendant, confirms that a "small garden swimming pool" 10' x 12' is sought to be installed by the Defendant in the area in question.

(2) I do not agree with Learned Counsel for the Defendant that the actions of the Claimant's agents, after the contract was signed, support the Defendant's suggested area of land. While it is true that Gaye HECME wrote the letter of April 4, 2006 regarding the size of the land in question, she testified that she did so

incorrectly. It was written based upon the records she had at the time, however, it was wrong. That letter also points out the extent of land being fenced by the Defendant, an area that extended even beyond that which he claimed in the Sales Agreement. The planning submissions by the Defendant moved from garden, deck & pool, to 6 villas. The former accords with the position of the Claimant, through its witnesses, as to the use of the extra land, the latter does not.

(3) I do not agree that it is mere speculation that the land in question would run alongside the villa purchased by the Defendant. The fact that the agreement states, parallel to the road, does not, in my view, preclude the land also running beside the villa. How else would the purchased land be demarcated? It is self evident that it would be beside the dwelling house purchased & down to the sea wall. The sea wall was also purchased by the Defendant in the agreement.

(4) Learned Counsel for the Claimant submits that there is a lack of certainty in the agreement, in that the intention of the parties cannot be ascertained. I disagree. The intention is clearly to transfer a parcel of land adjacent to the villa, the size of which is known to the parties, however, the specific dimensions of which are to be confirmed by survey.

(5) The Defendant was an informed participant in this land transaction. He could be described as a land developer. Not only had he purchased land in Antigua before, but he had purchased from the same company. He had purchased land on the golf course and now purchased waterfront land - more valuable. At the time of the transaction, he would have had a knowledge & understanding of land values, particularly in the Jolly Harbour area, & would have known the difference in value between waterfront land & land not bordering the sea. The former being more valuable.

(6) In addition to this knowledge of land value, the Sales Agreement clearly shows "Extra Land Approximately 40 metres parallel to the road US $4800" &

immediately below that, "Extra Sea Wall: US $4000 for four metres." Those two lines in & of themselves are incompatible & make no sense. They should have raised questions & concerns immediately for the parties. How can one pay $4,000 for 4 metres of sea wall & also pay $4,800 for 40 metres parallel to the road? That obvious & apparent incongruity in the agreement troubles me greatly.

(7) Elizabeth WETZEL testified that purchasers of land beside the sea wall were strongly encouraged to purchase the sea wall also. It is the location of the sea wall that supports the contention that the extra land is adjacent to the villa. The extra land would obviously run from the sea wall to the road, & beside the villa.

(8) I am satisfied that the Defendant agreed to purchase a parcel of extra land adjacent to the villa & running from the sea wall to the road. Through email transmissions, diagrams & evidence of verbal discussions & communication, the parties clearly intended that land to be used for the placement of a garden & a pool with deck. Docking facilities could be attached to the sea wall.

(9) I therefore find that the Defendant purchased, & the Claimant sold, 40 square metres at a price of US $120 per square metre, for a total of US $4800 & not 400 square metres at a price of US $4800 (as the Defendant pleads), being US $12.00 per square metre. This finding is supported when the price for sea wall is compared to the price for extra land, as noted in the agreement, & referred to above. It is also supported by the history of land sales & prices charged by the Claimant for land, as described by Elizabeth WETZEL, as well as the clear indication that the land was to be used for a garden & pool.

(10) I find that the parties intended to contract for the purchase of extra land adjacent to the villa being 40 square metres at a price of US $4800.00. Both parties erred when they signed the agreement as set out, & both parties were therefore mistaken as to the quality of the thing contracted for in the written agreement. Therefore, according to the BELL case supra, the mistake vitiates the agreement

as written.

(11) It appears & I so find, that the error in the agreement first came to the attention of the Defendant, & he afterwards sought to rely upon it to his benefit. This is evident in the planning submissions of the Defendant which progress from a pool & garden to a 6 villa development. If successful, this would have clearly been a substantial benefit to the Defendant, with the villas potentially selling for hundreds of thousands of dollars each. As in the HARTOG case supra, one party realized the mistake & anyone with knowledge of the trade would have known of the mistake. The agreement, therefore, should not be allowed to go forward as framed.

(12) I find that it would be inequitable to allow the agreement to stand, to allow the Defendant to rely on the agreement as framed, & to benefit from it, as noted above. It would therefore be unreasonable not to rectify the agreement.

(13) I cannot, however, leave the topic without commenting on the business practices of the Claimant's agent, Elizabeth WETZEL. She testified that it was not unusual, nor did she see anything wrong, in signing certain blank pages of sales agreements, leaving them in the office, & subsequently having them attached to the full agreements, to be signed by others. That a company dealing regularly in land transactions would act in such a manner is, to say the least, very surprising & somewhat disturbing. It is to be hoped that, subsequent to this case, such practice has been discontinued.

(14) For all of the reasons noted above, I find that the Claimant is successful & there will be an Order as follows:

[21] ORDER:

(1) The Defendant is entitled under the Sales Agreement of February 17, 2005, to 40 square metres of land to the east of the eastern boundary of Parcel 204 of Block 551186 C of South West Registration Section, together with 4 metres of

sea wall.

(2) The Defendant shall remove all fixtures placed by him on any lands, the property of the Claimant, in excess of the land mentioned above.

(3) The Counterclaim of the Defendant is dismissed.

(4) In the interests of avoiding any confusion, the survey of the 40 square metres adjacent to Parcel 204 of Block 551186 C of South West Registration Section shall be carried out & completed at the expense of the Claimant, within 6 months of the date of this decision.

(5) There will be no order as to costs. Each party is to bear its own costs.

RICHARD G. FLOYD
High Court Judge