

LOST GARDEN IN BOCAS

The plot that wandered away

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BOCAS DEL TORO. Lin Gillingham is English. Her husband Dave is from New Zealand. They've traveled all over the world. When they visited Bocas del Toro in 1998, they decided to make their home there.

They bought 20 acres of land on Isla Colon, subdivided from Plots 1880 and 733, duly titled and inscribed in the Public Registry. They built a spacious house on a hilltop and surrounded it with a botanical garden with 40 kinds of heliconia and more than 30 kinds of ginger, bamboos and palms and flowering trees. Its variety and beauty attracts scientists and tourists alike.

Neither sort was in the group of 18 that descended on them in a flotilla of taxis last January. In command was Judge Danis Castillo, substituting for Circuit Judge Manuel Garcia, with his clerk and bodyguards. Behind came officers, surveyors and lawyers. Their mission, capping a campaign of legal harassment that began in September 2008, was to execute a "Non-Contentious Delimiting and Marking" ordered by Judge Garcia at the request of Compañía Faustina, S.A.

WITHOUT LIMITS

The Gillinghams asked to see a warrant. Garcia had issued none, but Castillo wrote one out and the group entered. They meant to locate a plot belonging to Faustina and were looking for a point to measure from. Lin Gillingham asked where, and no one knew. In that case, she said firmly, they should look outside.

Javier Valdez, a builder, was present when they came out. "They walked here and there," he told the Star, "looking for a surveying point. 'Is it here, is it



PHOTO: COURTESY

Dave and Lin Gillingham's botanical garden attracts scientists, tourists and judges.

there?" They were really confused."

Garcia, who declined to discuss his cases with the Star, later ordered another invasion and delimiting for July.

In 1995 Faustina had acquired a five-acre property, subdivided from Plot 901. The company's owners neither marked nor fenced nor took possession of it and therefore didn't know where it was. Nonetheless, according to Faustina's lawyer, a partner in a large firm in Panama City, notes on the plan of the property indicated that it was located outside 901 on the Gillingham's land.

The Gillinghams weren't mentioned in the delimiting order. They had no right to be represented, even though the purpose of the action—supposedly "non-contentious"—, was to locate Faustina's plot on top of theirs legally and thereby strip them of the land they had bought in good faith, the labour and money they had invested in it,

and the life they had made for themselves in Bocas del Toro.

QUESTIONS AND ANSWERS

How did this come about? From a judicial twist allowed by the judge. Attorney Dimitri Troetsch explained for the Star.

"The purpose of a "Non-contentious Delimiting and Marking" is to fix and mark the borders of the requester's plot land with neighboring plots. The action requires that the requester occupy the land he means to delimit.

"In the present case, the firm requesting the action doesn't occupy the land and doesn't know its location or its neighbors. Those actually in possession aren't part of the process even though they live there. The requester's purpose is not to set boundaries but to gain control or ownership of the land, an obviously contentious purpose. This sort of delimiting action ought not be admitted."

But if Faustina's right? What if,

as its lawyer says, the company owns the land through a topographical error? Attorney Troetsch explains.

"The requester should take the ordinary route, assuming the burden of proving its land's ownership and location, so as to force its recovery if it is in another's possession. Intentions of this sort belong in a Recovery Action, which is eminently contentious, and must be substantiated according to the ordinary rules of procedure."

Such legal action, of course, has costs and risks and great difficulties for a suing party that never took possession of the land it claims. Since the claim was in Bocas del Toro, where the judge is accommodating, Faustina took an easier, cheaper, and riskless route. The Gillinghams, for their part, fought back.

Given the defects of the judicial system, they took their case to the court of public opinion.

"They went to the press!" said

Faustina's lawyer, when the Star asked him about the case. The Star reminded him of the French proverb about the animal so vicious that, when attacked, it defends itself.

Besides telling the newspapers about the plot of land that wandered away and whose owners were looking for it in their garden, the Gillinghams mobilized their many friends to give the judge a spectacular welcome during the invasion scheduled for July.

Meanwhile, Faustina's wealthy and socially-prominent owners grew nervous at the publicity. Early in July they requested a three-month postponement of the delimiting action during which to solve the matter peacefully.

"We never meant to evict the Gillinghams," said one of them. What he didn't say is that delimiting actions are enforced in Bocas, and that Judge Garcia is famous for his evictions.

Why is there so much confusion over land titles in Panama? Why is the judicial system so weak and corrupt?

Why is there so little juridical security?

Because the people who run Panama know how to take advantage of these defects.

Does that include President Martinelli? We'll know soon.

The carpetbagger in Bocas del Toro

A man shows up at your door and announces that all your land belonged to his grandfather, and he has a hand drawn sketch to prove it? A fantasy story, but it happened in Bocas. Read the details here tomorrow.