

IN THE SUPREME COURT OF BELIZE, A.D. 2015

CLAIM NO. 5 OF 2004

BETWEEN:

EMY GILHARRY RAMIREZ

Claimant

AND

**THE ATTORNEY GENERAL OF BELIZE
ALMA BARTLEY
ANNA JACOBS
GEORGIA ELIZABETH MARSHALL**

Defendants

In Court.

BEFORE: Hon. Chief Justice Kenneth Benjamin.

May 7 & 13, June 17 and July 3, 2015.

Appearances: Mr. Mark Williams for the Claimant.
Ms. Leonia Duncan, Crown Counsel, for the Attorney General.

JUDGMENT

[1] The Claimant brought suit against the Attorney General and the three occupants in respect of a parcel of land situate in BEC Layout, Freetown Area, Belize City for possession and, alternatively, damages for breach of contract for the sale and purchase of the said land. The Claim was dismissed at trial. On appeal, the decision was reversed and the Court of Appeal found that the Claim for damages was proved against the Attorney General and ordered an assessment of damages by the Supreme Court.

[2] The present application is for damages to be assessed pursuant to the Order of the Court of Appeal. The facts are that the Claimant acted upon a Land Purchase Approval Form dated August 24, 1998 for the purchase of the said land comprised of

568.5382 square yards for a purchase price of \$1,500.00. It was a condition that the Lease No. BZ/33/94 in favour of the Claimant would remain in effect until freehold title was issued upon payment of the purchase price within three (3) years. The purchase price and stamp duty were paid in full but title was never issued. On July 18, 2003, the Minister of Natural Resources issued leases in favour of the three present occupants of the said land.

THE EVIDENCE

[3] The evidence relied upon by the Claimant consisted of her witness statement and the witness statement of Thomas G. Morrison, a professional architect and real estate appraiser, exhibiting a valuation report. With the leave of the Court, the Chief Valuer (Ag.) of the Valuation Section of the Ministry of Natural Resources, Mr. Herman Castillo, swore to and caused to be filed an affidavit to which was attached an appraisal report in respect of the said land.

[4] The Claimant's witness statement recounted the chronology leading up to the Claim. She pointed out that her intention was to develop the said land in conjunction with her adjoining property and that she had been deprived of the opportunity to do so.

[5] The valuation report of Thomas Morrison placed a market value of BZ \$107,000.00 on the said land as at March 2003. On behalf of the Attorney General, Herman Castillo appraised the said land at a present market value of \$111,000.00 based on a market value of \$58,555.55 in 2003.

[6] After both sides had presented their evidence, the Court invited learned Counsel and Crown Counsel to consider the engagement of a court-appointed valuation expert. It was agreed that Mr. Clinton Gardiner be appointed. In compliance with the order of the Court, Mr. Gardiner submitted a valuation report in respect of the disputed land. He estimated the value of the land to be \$59,300.00 in 2003. Written questions were put to Mr. Gardiner by learned Counsel for the Claimant and answers in writing were furnished. Although he appeared at trial for cross-examination, no questions were put to him.

MEASURE OF DAMAGES

[7] The Claim is essentially one of breach of contract for the sale of land. The Minister of Natural Resources, by Land Approval Form referred to in paragraph 2 above, entered into an agreement with the Claimant for the sale and purchase of the land. The Government of Belize failed to transfer title to the Claimant. By its actions in granting leases to the 2nd, 3rd and 4th Defendants in July 18, 2003, it was no longer feasible for title to be given to the Claimant as purchaser. It cannot be denied that the inability of the Minister to complete the sale was occasioned by his own actions. The Claimant is therefore entitled to damages. Indeed, the contract stated as follows: "The purchase price can be paid immediately or within three (3) years after which title will be issued." The full purchase price, together with the stamp duty attracted for the transfer, were both paid by the Claimant on August 24, 1998.

[8] At common law, the measure of damages is aimed at putting the purchaser in the position he would have been if the contract had been completed (**Engell v Fitch (1869)** L.R. 4 Q.B. 659 Ex. Ch. at p 666). The usual measure of damages for the failure of the vendor to complete is the market value of the property as at the date specified for completion under the contract less the contract price (McGregor on Damages, 18th edition para 22-005). However, as was recognised in **Suleman v Shahsavari et al [1988] 1 WLR 1181** at p 1183, this general rule is not absolute and the damages may be assessed referable to the value at some other date depending on the circumstances of the cases.

[9] In her witness statement, the Claimant stated (at paragraph 14):-

"I must point out that at the time of making application to purchase the said land it was always my intention to develop same in conjunction with, or, as an extension of my adjoining property on which there is an unfinished building."

In response to learned Crown Counsel when cross-examined, she agreed that when the purchase price was paid on August 24, 1998 pursuant to the Land Purchase Approval Form, she did not communicate such intention to develop the property in such manner.

Learned Counsel then re-examined her as to whom she spoke to when the payment was made. She then contradicted her earlier answer and stated that she had spoken to one Ms. Brown and to the Commissioner of Lands and Surveys, Mr. Cansino, telling them that she needed the title immediately as she “intended to develop the land”.

[10] The volte-face in the Claimant’s testimony gave the Court no comfort and it cannot be accepted as a fact that such a conversation or conversations did take place. In addition, the Claimant exhibited letters she wrote to the Hon. Attorney General, the then Minister of Natural Resources, the then Prime Minister and to the Commissioner of Lands. The only letter pertinent to her purported statement of her intention to develop the land in conjunction with her adjoining property is that of April 4, 2003 to the then Minister of Natural Resources. In that letter, she wrote that she had been offered US \$35,000.00 per month to lease both properties. However, this bald assertion takes the matter no further as nothing was offered to substantiate same. Curiously, Mr. Gardiner was asked whether he was aware that the Claimant owned the adjoining corner property and if so, whether he had made any adjustments to the valuation to accommodate that fact. In the course of answering, he admitted to being aware of her ownership as early as the 1990s and stated that “the corner property had been abandoned for years – in fact as early as 1998.” This was not challenged by the Claimant. It follows therefore that the factual matrix does not support damages for loss of the opportunity to commercially exploit the land by virtue of the Claimant’s ownership of the adjacent property.

[11] In his written submissions, learned Counsel urged that the damages should be referable to the date when the leases were granted to the 2nd, 3rd and 4th Defendants by the Minister on July 18, 2003. On behalf of the Attorney General, learned Crown Counsel stated the same position in her submissions. I am prepared to apply the usual measure of damages and to treat the date of completion as July 18, 2003.

VALUE OF THE LAND

[12] The determination by the Court of the value of the land as at July 18, 2003 involves an examination of the various reports of the three experts. The Court received the reports of the valuers into evidence and each expert was made available for cross-examination. Mr. Thomas Morrison stated his profession as being that of an architect and also a real estate appraiser. He explained that as part of his architectural course leading to a diploma in building and civil engineering from City and Guilds of London he was required to study valuation methods. In addition he attended and was certified in 1990 by a valuation course spanning 90 contact hours mounted by the then Belize Urban Development Corporation. He has been involved in doing valuations for the past 28 years at an average of 80 to 100 valuations per year. Indeed, he said that the majority of his income is derived from rendering valuation reports.

[13] Having described the property in a general way as being the “Eastern Portion of Lot Number 1986 and situated along Cleghorn Street in Belize City, Belize”, he stated that he visited the property and analysed “each and every factor(s) involve (sic) and defined the full nature of the subject property”, as a result of which he recommended a “MARKET FAIR VALUE” free from any and all incumbrances. He concluded that by his analysis he arrived at ‘a realistic “REFLECTIVE MARKET VALUE” for this property as in the conditions and locality being at the reflective date defined and shown herein above, with all its structures standing and being therein to be \$107,000.00’. The breakdown provided was as follows: 568.5382 square yards at \$189.32 = \$107,635.65 rounded to \$107,000.00.

[14] The report did not include a map or any depiction of the property. He freely agreed in cross-examination that the report did not state what method of valuation was employed nor did he set out what were the standard factors to which he referred as being involved in his analysis. In addition, no attempt was made to offer the values of comparable properties in the vicinity, although he insisted that comparables were used. This report was therefore devoid of any stated method and demonstrated no analysis to assist the Court in making an assessment of the probity of the conclusion.

[15] The valuation report upon which the Defendants relied was presented by the acting Chief Valuer of the Ministry of Natural Resources, Mr. Herman Castillo. His experience in doing valuations dated back to 2008 and his work as a valuer is predominantly done for private banks although for the last two years he has done such work for Government. His Bachelor's degree is in Land Economy and Valuation Surveying, graduating in 2008. In cross-examination he was asked about his description of the boundary of the property as being not specific and he explained that the property was being sub-divided and therefore, because of the difference between the survey and the layout he relied on an old survey map with a measurement of 568.5832 square yards. His testimony displayed familiarity with the location although he did not know of the Claimant's ownership of the adjoining property.

[16] Mr. Castillo's report included a plan identifying the property in its relative location. It was stated that the appraisal was done on the basis of the Market or Sales Approach to value. He described the property as being in a good location for a commercial activity. He opined that the market value of the property in the year 2003 was \$58,555.55 based on comparable properties at an average of \$109.00 per square yard. A table of the comparables in skeletal form was attached to the report. No comparables were found for 2003. An interest rate of 6% per annum was applied based on Central Bank Statistics of deposit rates.

[17] At the invitation of the Court, a third valuation report was obtained from Mr. Clinton Gardiner, a former Commissioner of Lands and Surveys with experience as a lands inspector dating back to 1969. He holds a Bachelor of Commerce in Urban Land Economics. His resume detailed eleven (11) significant appraisals he has carried out since 1978. His appraisal report included maps, plans, photographs and a Google printout of the area in which the property is nestled. In support of his stated adopted method of Direct Capital Comparison Method or Sales Comparison Approach, he provided a detailed schedule of the eight comparable properties that informed his analysis. Like Mr. Castillo, he too was unable to obtain any lands sales information for 2003. Thus, he examined prices between 2004 and 2006 from properties within a radius of half-a-mile with adjustments back to 2003. The range of \$31.63 to \$253.07

per square yard yielded an average of \$104.27 per square yard. The property value was estimated at \$59,300.00 calculated as follows: $\$104.27 \times 568.5832$ square yards rounded to \$59,300.00.

[18] The Court was afforded the opportunity to follow Mr. Gardiner's approach by reference to the narrative of his Appraisal Report and the listed comparable properties.

[19] The determination of the market value of the property as at 2003 must be arrived at through an assessment of the evidence of the valuers presented as expert witnesses. As a question of fact, the Court is required to arrive at a conclusion as to the proper market value to be applied. As earlier iterated, Mr. Morrison's valuation did not offer any supporting material upon which it could be properly tested for flaws of reasoning. Mr. Castillo's valuation barely provided the essential material upon which a tribunal of fact could make an assessment of its cogency. In sharp contrast, the valuation of Mr. Gardiner set out in a simple way the manner in which his valuation figure was computed based upon the detailed supporting narrative and data. In the premises, the valuation of \$59,300.00 as at 2003 is accepted as the market value.

[20] However, Mr. Gardiner did not address the interest rate to be applied. Mr. Morrison applied an inflationary rate on inland lands in Belize and indicated the rates were gleaned from a named market value study report and applied a rate of 5.21%. The report was not made available to the Court. Mr. Castillo detailed in his affidavit his calculation in arriving at an interest rate of 6% over eleven years using a standard valuation formula. He relied on Central Bank Statistics as to weighted averages of the deposit and the lending rates. The statistics from the Central Bank were not challenged and indeed have been utilized by this Court in other proceedings. I had no difficulty accepting the interest rate calculated on the basis of the Central Bank Statistics.

[21] Following the stated measure of damages, the purchase price of \$1,500.00 and stamp duty of \$75.00 must be deducted from the sum of \$59,300.00. The resulting aggregate is \$57,725.00 to which interest is to be applied at the rate of 6% per annum from July 18, 2003 up to the date of judgment and at the statutory rate of 6% until payment. Accordingly it is ordered that judgment is entered for the Claimant against the

First Defendant in the sum of \$98,279.00 with interest thereon at the rate of 6% per annum from the date of judgment until payment. The First Defendant shall pay to the Claimant costs in the agreed sum of \$10,000.00.

KENNETH A. BENJAMIN
Chief Justice