

IN THE SUPREME COURT OF BELIZE, A. D. 2011

CLAIM NO. 288 OF 2011

	(HUSSEIN JUNDI	CLAIMANT
	(
BETWEEN	(AND	
	(
	(DARREN TAYLOR	FIRST DEFENDANT
	(VIRTUE ENTERPRISES COMPANY LTD.	SECOND DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mr. Eamon Courtenay, SC, and Pricilla Banner for the Claimant
Mr. Oswald Twist for the First Defendant
Mr. Estevan Perera for the Second Defendant

Hearing Dates:

3rd March, 2016
21st November, 2016

J U D G M E N T

The Facts

1. Mr. Hussein Jundi owned a piece of land which he bought from Emilio and Michelle Zabaneh on September 24th, 2001. This property is described as *“ALL THAT lot piece or parcel of land being Block Nos. 719 and 719A situate on the West Side of Yemeri Creek and along the seacoast in the Stann Creek District bounded and described as shown on the Plan attached to Minister’s Fiat Grant No. 408 of 1998”*. The conveyance showed

that Mr. Jundi paid Emilio and Michelle Zabaneh \$150,000.00 for the property. Approximately ten years later on 19th January, 2011 a Deed of Conveyance was registered at the Lands Department in Belmopan with the alleged signature of Mr. Jundi, purporting to transfer this property to Mr. Darren Taylor, the Defendant. The Deed of Conveyance was allegedly signed by Mr. Jundi in New York, USA on January 19th, 2011 and was notarized by one Otis K. McBride. This second conveyance showed that Mr. Taylor purportedly paid Mr. Jundi \$20,000.00 for the property. On July 12th, 2013 Mr. Taylor then conveyed the same property to Virtue Enterprises Company Ltd. for the sum of \$75,000.00. Mr. Jundi claims that he never sold his property to Darren Taylor or to anyone else and he never signed any conveyance as alleged by Mr. Taylor.

The Issues

2. i) Was the property fraudulently conveyed from Hussein Jundi to Darren Taylor and if so, should the Conveyance be set aside?
- ii) If the conveyance from Jundi to Taylor is fraudulent, what is the status of the conveyance made from Taylor to Virtue Enterprises Company Ltd.?

The Claimant's Case

3. Hussein Jundi told the court in his witness statement that he is a businessman who lives on Kadisha Street Near Islamic Hospital in Lebanon. He said that he bought this parcel of land located along the sea coast in Stann Creek from Emilio and Michelle Zabaneh on 24th September, 2001 (Annex HJ 1). Mr. Jundi said that he left Belize in 2005 and has been living in Lebanon since that date. Upon learning that his property was being sold,

he made enquiries at the Lands Department through Mr. Sarkis Abou Nehra as to the status of his title. He then learnt that a Deed of Conveyance dated 19th January, 2011 purportedly signed by him was registered at the Lands Department, transferring the property to Mr. Taylor (Annex HJ2). He says that he was not in New York on the date that this conveyance was allegedly signed by him and that he never sold his property to Mr. Taylor or to anyone else. He produced copies of all pages of his Belizean and Lebanese passports to prove that he was not in New York at the material time (Annex HJ 3). He further states that since he had bought the property for \$150,000.00, he would not have sold it for \$20,000.00. Finally Mr. Jundi states that Darren Taylor fraudulently transferred his property by forging Mr. Jundi's signature on the Conveyance, thereby depriving Mr. Jundi of his property.

4. Under cross examination by Mr. Twist on behalf of the First Defendant Darren Taylor, Mr. Jundi was asked why he did not return to Belize after leaving in 2005. He replied that he was just living in Lebanon with his family. He was asked whether he was in New York at the time the Deed of Conveyance was signed. He said he was not. He was challenged as to his failure to indicate his whereabouts for that period. Mr. Jundi said he did not go to New York at that time as he did not have a visa to the United States. He was asked again why he didn't indicate his whereabouts in his witness statement at the time the conveyance was signed, to which the witness said "*I was in Lebanon. That's the fact*". He admitted that he did not say that in his witness statement but says that he was in Lebanon. Upon enquiries from Mr. Twist as to whether he had passports other than the Belize and Lebanon passports, Mr. Jundi said that he only has those two

passports. He was pressed by counsel as to whether he produced any forensic evidence in court to prove that the signature on the conveyance is a forgery. Mr. Jundi agreed that he had produced no forensic evidence. He was challenged that he went to the United States and signed the conveyance in the presence of Justice of the Peace McBride. Mr. Jundi said he did not. He also denied that the signature on the conveyance to Darren Taylor was his.

5. Under cross-examination by Mr. Perera on behalf of the Second Defendant, Virtue Enterprises Company Ltd., Mr. Jundi was asked whether he had provided the court with a handwriting expert. Mr. Jundi said he had not. He was shown his signature on his witness statement and he agreed that that was his signature. He was then asked if he provided any particulars as to how his signature got on the conveyance. The witness said he cannot. He disagreed with counsel's suggestion that the signature on the conveyance looked like his signature. He was asked whether he applied for an injunction in 2011 to prevent any transfer of the property and he agreed that he did. At this point his counsel Ms. Banner objected on the basis that the injunction application was a matter of court record in Claim No. 288 of 2011 and Mr. Perera agreed. Mr. Jundi was then asked whether he had registered any encumbrance on the property and he said he had not. It was put to him that when he left Belize in 2005 he took his family and left nothing behind, severing all ties with Belize. Mr. Jundi denied this, stating he has properties in Belize in his name. He admitted that he has not paid taxes on the property since 2011, nor did he put up a "*No Trespassing*" sign after he learnt of the conveyance to Mr. Taylor. He was asked whether he made any application for the Notary Public who

signed the conveyance in New York to be present in court; he said no. The witness was shown the 2011 Conveyance and asked if he knows Darren Taylor. Mr. Jundi said he did not know him. He said Mr. Taylor tried to approach him on the morning of the case but he told Mr. Taylor please don't talk to me. At that point counsel put to the witness that he is lying in court in an attempt to unilaterally take back his land. Mr. Jundi said that was not true. Counsel suggested to the witness that he did not put up a sign or an encumbrance on the property because he knew that he had already sold it. Mr. Jundi said that is not true.

6. Under re-examination by Ms. Banner, Mr. Jundi clarified that he had a United States visa in 1988 and 1989 but since 2001 his United States visa application was rejected. He has not been issued a US visa since 2001, and he has therefore never been to the US since that year. He also clarified that the reason he was not able to show a Belize stamp on the copies of his passport sent to the court was because the copies of his passport were sent from London before he arrived to Belize.

7. **The First Defendant's Case**

Mr. Darren Taylor said in his witness statement that he lives at 44B Ogaldez Street, Dangriga Town, Stann Creek District. He said he is a Land Agent. He stated that he knew Mr. Jundi personally for a number of years as he used to do land transactions on Mr. Jundi's behalf while he was living at 11 St. Vincent Street in Dangriga. Mr. Taylor claims that while he was in the United States Mr. Jundi contacted him by phone and told him that he wanted to sell parcel 719 and 719A situate on the West Side of Yemeri Creek in Dangriga Town but that he could not find a buyer. Mr. Taylor said he then told

Mr. Jundi that he wanted to buy the land from him and they agreed on a price of \$20,000.00 BZ. Mr. Taylor alleges that Mr. Jundi then sent the signed conveyance to him by one of his friends whose particulars were unknown. Mr. Taylor said he handed over the agreed selling price in cash to Mr. Jundi's friend before he was given the conveyance. He said that in inspecting the conveyance he noted that it was signed by Mr. Jundi, and since he had seen Mr. Jundi sign on several occasions when Mr. Jundi was in Belize, Mr. Taylor said he recognized his signature. The signed conveyance was witnessed by Jason Lewis and US Notary Public Otis K McBride of New York, USA. The Conveyance was duly registered at the Lands Department (DT 1). Mr. Taylor claims that he appeared in 2013 for the hearing of a case of fraud, where a male judge (name unknown) scolded Mr. Jundi's attorney when he tried to present the case without Mr. Jundi being present. Mr. Taylor states that the judge released his title from an injunction, and he later sold the property to Virtue Enterprises Company Ltd (DT II).

8. Under cross-examination by Mr. Courtenay, SC, for the Claimant, Mr. Taylor said that he could not recall the date when he sold the land to Virtue Enterprise Company Ltd. He could not recall the name of the person to whom he sold the property, but he does know that the transaction was done through a middleman, one Mr. Castillo. He could not recall if Castillo contacted him first, or if he contacted Castillo first; all he could say was that he signed a conveyance to the Company. He does not know where Mr. Castillo is, but he just saw him the day before the trial at the Customs border clearing two vehicles. When asked by Learned Counsel what was the role of Mr. Castillo, Mr. Taylor replied that Mr. Castillo was one who prepared documents, brought a sale agreement to

him and negotiated a purchase price with him. He was then asked where is the sale agreement; Mr. Taylor said he might have it but he was not too worried about that issue because he knew he had a general title. Mr. Taylor was asked about the price he paid Mr. Jundi for the property. He replied that the only mistake he made was because he put \$20,000.00 on the conveyance so as to avoid paying stamp duty, but he really paid Mr. Jundi \$60,000.00 for the land which he says was all water eroded. He said he then sold the land to the company for \$75,000.00. Mr. Taylor said that he came to Belize from New York the day after he bought the land from Mr. Jundi and he went to inspect the land and to do a title search. Mr. Courtenay, SC, then asked if Mr. Jundi was present when he inspected the property and the witness said no. He was then asked the name of the person who gave him the conveyance of the property from Mr. Jundi to him; Mr. Taylor said first one Ms. Emi then he changed to one Ms. Lily Arieta who was representing Mr. Jundi. He says Ms. Lily Arieta is in New York but she always does business in Belize. He said that he took a month to get the money together then he sent the money, dropped the money and he then got a conveyance. A couple months after Mr. Taylor got a letter from an attorney saying there was an injunction on the property; he visited the Lands Commissioner who informed him that if the matter is not pursued the Commissioner will release the land back to him. When Mr. Courtenay, SC, questioned Mr. Taylor about Ms. Lily's last name, Mr. Taylor said he can't recall, and that it's a funny name but he has a business card from Ms. Lily at his house. He said he did not give Ms. Lily the cash; he gave the cash to his business partner in New York who then delivered it. His business partner's name is Kendney Crawford. Mr. Taylor said that

he gave Mr. Crawford \$30,000US (\$60,000.00 BZ) to give to Ms. Lily. He was asked if he saw Mr. Jundi sign the conveyance to him; he said no. He was then asked if he saw the Notary sign the conveyance; he said he saw the notary sign the Sale Agreement. He was asked again if he saw the Notary sign the Conveyance; he said he never saw the Notary do the rest of work. He only saw the Notary sign the Sale Agreement, after which he got the money to them, and he got the conveyance. He finally said that he doesn't know if all the papers that he signed were really mixed with the Conveyance but he knows at the time they did not want to do anything else until payment was made. Mr. Courtenay, SC, suggested that Mr. Jundi and Mr. Taylor are not and have never been friends. Mr. Taylor replied that Mr. Jundi was his neighbor, and that Mr. Jundi never lived on St. Vincent Street but on Magoon Street. He further said that he knows Mr. Jundi for almost ten years. Mr. Taylor disagreed with counsel's suggestion that he was not being honest with the court in the way he described the transaction of the purchase of the property. It was put to him that he was not speaking the truth in saying one Ms. Lily was involved; the witness said yes she was involved. It was put to Mr. Taylor that Mr. Jundi at no time agreed to sell him the land. He responded that he never said Jundi had a conversation with him; he bought the land after seeing it for sale on a website belonging to Ms. Lily. He could not recall the name of the website when pressed by counsel. Finally, Mr. Courtenay, SC, questioned Mr. Taylor about whether his witness statement was true. He replied saying the only errors was about the stamp duty which he could admit he went illegally and said he paid \$20,000.00 to avoid paying heavy stamp duty, and that everybody does that. Under re-examination by Mr. Twist, Mr. Taylor was asked

if he knew Mr. Jundi and he said yes he knew him in person. Then he was asked if he did any business transactions with Mr. Jundi; he said No, maybe they saw each other. He then explained that he knew Mr. Jundi was a man who bought and sold land. He said he knew Mr. Jundi for over ten years. When the court asked him whether he knew Mr. Jundi's children (as he had claimed earlier), he said yes, but he could not recall their names. He was further pressed by the court as to his assertions that he had emails of the transaction with Ms. Lily over the land, he said he had the conveyance; his counsel Mr. Twist then clarified that the Defendant had not produced the email exchange as evidence, only the conveyance.

9. **The Second Defendant's Case**

Mr. Francisco Ramirez was called on behalf of the Second Defendant, Virtue Enterprises Company Ltd. ("Virtue"). He said in his witness statement that he is the Director of the Second Defendant Company and was authorized by the company to make this statement. He said that Virtue is the legal owner of all that lot, piece and parcel of land being Block Nos. 719 and 719A situate on the west side of Yemeri Creek and along the sea coast in the Stann Creel District bounded and described as shown on plan attached to Minister's Fiat Grant No. 408 of 1998. Mr. Ramirez further states that the Claimant executed a Deed of Conveyance in respect of the said property in favour of the First Defendant on January 19th, 2011 in the presence of Notary Public Otis McBride in New York. He also said that the fact that the Deed of Conveyance was executed before a Notary Public proves that Mr. Jundi was in New York at that point in time, and that he was paid \$20,000.00 for the property. In 2013, Mr. Taylor contacted Virtue and

informed them that he had a land to sell to them; this was the same property described earlier. The company conducted a title search and found that the property was free and clear of all encumbrances; Virtue then proceeded to purchase the property from Mr. Taylor for \$75,000.00 by way of conveyance dated July 12th, 2013. Mr. Ramirez maintains that Virtue Enterprises Company Ltd. is an innocent purchaser for value without notice.

10. Mr. Ramirez was cross-examined by Ms. Banner for the Claimant. It was put to him that he was not present at the time the Conveyance dated 19th January, 2011 was signed. He agreed that he was not present. He also agreed that he could not speak on who executed the Conveyance. He was asked whether he could say with certainty that the Deed of Conveyance was executed before a Notary Public in New York. The witness said he thought as the Conveyance had the stamp and from his experience in the US or anywhere one has to be in front of a Notary Public so the Notary Public will sign the document. Ms. Banner asked Mr. Ramirez whether he was present at the time the Notary signed the document; Mr. Ramirez agreed that he was not present at that time. He then stated that he could be certain because the document has the signature of the Notary Public and a stamp from the Notary Public and from his experience no Notary Public over there is going to sign something without you being in front of them so that they can put their stamp on it. Mr. Ramirez was then asked whether he knew the rate of fraudulent signatures by Notaries Public in the United States; he said he did not know. It was put to him that since he was not present when the document was executed he cannot say with virtual certainty that this document was executed by this

Notary Public; he agreed that he could not say that. He also agreed that he was not present in New York City on the 19th January, 2011. The witness started to say that from his experience and from the minute he has a document signed and stamped by a Notary Public, upon pressure from Ms. Banner who said she didn't want to hear about his experience and simply wanted to know whether he was present, the witness then reluctantly agreed that he was not present. He also agreed that he did not see or meet the Claimant in New York and so he could not say whether the Claimant was in New York at that time. Mr. Ramirez was then questioned about the title search his company conducted on the property. He disagreed with counsel's suggestion that Virtue did not do a viable title search; he said they did do a title search and found that the title to the property was clear. He was asked whether he as Director of the company looked at the conveyance of the property from Mr. Zabaneh to Mr. Jundi; he said that he read everything on the document but he could not remember looking at the Zabaneh conveyance. At this point, Ms. Banner drew Mr. Ramirez's attention to the purchase prices on the two conveyances; he acknowledged that the purchase price of the land on the Zabaneh/Jundi conveyance was \$150,000.00, while the purchase price on the Jundi/Taylor conveyance was \$20,000.00. It was then put to Mr. Ramirez that as a businessman he saw a difference of \$130,000.00 in purchase price and yet he made no enquiries about this sum. The witness said that is why he did a title search; he also said that he cannot tell Mr. Taylor if he paid 150 and he wants to sell it for a thousand dollars that is his business. Ms. Banner then put it to Mr. Ramirez that he saw on the first conveyance that the sea coast property was bought for \$150,000.00 in 2001, and ten

years later this same property was being sold for \$20,000.00, and that this put him on notice that this was a fraudulent transaction. Mr. Ramirez said he would not know that.

11. Legal Submissions on behalf of the Claimant

Mr. Courtenay, SC, submitted on behalf of Mr. Jundi that the Claimant's case is simply that he never sold the property to Mr. Taylor. The First Defendant fraudulently transferred the Claimant's property to himself by the Deed of Conveyance dated January 19th, 2011 and purportedly made between Hussein Jundi (Vendor) and Darren Taylor (Purchaser) and duly recorded in Deeds Book Volume 5 of 2011 Folios 393-404. He further states that the consequence of this fraudulent deed is that the conveyance of the property to the First Defendant and any subsequent transfers are thereby rendered null and void. Mr. Courtenay, SC, then goes through the evidence, stating that the Claimant says he was not in New York on the date the Conveyance was purportedly signed by him before Notary Public McBride, and that he never signed the Deed nor did he sell the property to the First Defendant or to anyone else. The Claimant also says that he never received \$20,000.00 from the Defendant for the property; he says Mr. Jundi paid \$150,000.00 for the property so he would not have sold it for \$20,000.00.

Mr. Courtenay, SC, then highlights *viva voce* evidence of Mr. Jundi as follows:

- a) The Deed was not executed by him and the placement of his signature on the document is forged;
- b) He was not in New York on the date the Deed was purportedly executed and was in fact in Lebanon;

- c) He does not have a visa to travel to the United States and has not had such a visa since 2001 when the United States embassy in Belize rejected his visa application;
- d) He has other properties in Belize apart from the Property subject of the Deed;
- e) He does not know the First Defendant Darren Taylor and in fact saw him for the first time on the date of the trial;
- f) He only has two nationalities - Belizean and Lebanese - for which he produced both passports to the Court.

12. **What is the effect of the First Defendant's evidence of the illegal undervaluing of the Deed dated 19th January, 2011?**

Mr. Courtenay, SC, submits that a new issue arose in the course of trial when Darren Taylor testified that the purchase price on the Deed was illegally stated to be BZ \$20,000.00 instead of BZ \$60,000.00 for which it was purportedly sold for the purpose of evading the payment of stamp duty to the Government of Belize. Under the Stamp Duties Act section 36:

"If, with intent to evade the payment of duty under this Act, a consideration or sum of money shall be expressed to be paid on any instrument less than the amount actually paid or agreed to be paid, every such instrument shall be void."

Learned Counsel argues that this section, taken with the admission of Mr. Taylor that the price on the Deed was deliberately undervalued to avoid Stamp duty, is fatal to the Deed of Conveyance dated 19th January, 2011. He also argues that the Court has no discretion under the section and mandates that the Deed is void, which means that it is to be treated as if it never existed to begin with. He relies on ***Azucena v de Molina*** (1991) 50 WIR 85 where the Belize Supreme Court had to consider, where the purchase price was falsely stated to avoid stamp duty, whether a contract for sale of land and memorandum of transfer were illegal and void. The Court held that applying Section 36 of the Stamp Duty Act, the whole transaction was tainted with illegality as evidencing intent to defraud the revenue:

“Public policy forbids this court from giving any recognition to any transactions which are clearly a fraud on the revenue and against public policy. Vendors and purchasers are therefore forewarned that the court will not countenance illegal transactions of this nature.”

He also relied on this Court’s decision in ***Bernard Dueck v Cornelius Dueck*** Claim No. 34 of 2012 Belize Supreme Court, where the Claimant admitted during the course of cross-examination that a lower purchase price was stated on the transfer of shares in order to pay a lower amount of stamp duty. The Court held that the undervaluation of shares on the share transfer form was done by both parties with the intent to defraud the Government of Belize of the proper amount of stamp duty and as such no shares were transferred as there was a total failure of consideration and the Claimant could not benefit from the illegality.

In ***Albert Neal v Macaw Farms Ltd*** Civil Appeal No. 2 of 2008 The Belize Court of Appeal one of the grounds stated by the appellant was that the purchase price was understated in the affidavit of the seller and in the memorandum of transfer and that the understatement was made with the intent to evade the payment of duty under the Stamp Duties Act, and as such the Judge ought to have declared that the memorandum of transfer was void. Mottley P stated after reviewing the evidence:

“In order for this section to be applicable, it must be shown that, not only was the purchase price stated in the instrument of transfer lower than the actual price paid for the land, but that the lower price was stated with the intent to evade the payment of the duty payable under the Stamp Duty Act.”

In that case the Court of Appeal was concerned that since the issue was not pleaded, it was not clear whether the trial judge in that case *“had before him all the relevant circumstances”*. In addition, the appellant was seeking to benefit from his own complicity in the tax evasion scheme, but that in any event, there was insufficient evidence from which to draw the inference that the lower amount stated as the purchase price was a deliberate attempt to evade stamp duty. In the case at bar, Mr. Courtenay, SC, contends that there is no need for inferences as the First Defendant voluntarily admitted to the Court that not only was the purchase price illegal but the purpose of understating the price was to evade stamp duty payable, The First Defendant stated that his business was to buy and sell land and as such he was well aware of the illegality he was engaged in. There is also no evidence that the Claimant took any part in this transaction so question arises as to his complicity. The First Defendant without

prompting freely testified as to his own fraud. The Court should find that the First Defendant is a liar and a fraudster; under section 35 of the Stamp Duty Act the Deed of Conveyance dated 19th January, 2011 should be declared void by the court.

13. **Is the Deed dated 19th January 2011 fraudulent and therefore null and void?**

Mr. Courtenay, SC, submits that there is no evidence that the Claimant sold his property to the First Defendant as there is no evidence of any in person contact between Mr. Jundi and Mr. Taylor, no communication by email or by telephone, no payment of any funds to Mr. Jundi and no evidence from Mr. Taylor that he knew Mr. Jundi. Learned Counsel cites section 41 of the Law of Property Act which provides that:

“41.(1) From and after the commencement of this Act and except in respect of national land , the creation or transfer in law of –

(a) An estate in fee simple absolute in possession,

(b) A term of years absolute; and

(c) An easement, right or privilege in or over any land equivalent to an estate in fee simple absolute,

Shall be effect-

(i) In case on registered land by the issue of a certificate of title under and in accordance with part III of the General Registry Act; and

(ii) In the case of unregistered land by the recording of the title deed thereto under and in accordance with Part IV of the General Registry Act.”

After pointing out that this section does not give guidance on fraud with unregistered land, counsel relies on an excerpt from ***Megarry and Wade The Law of Real Property*** 7th Ed (2008) as [8-054] for such guidance:

“An executed conveyance may be avoided, set aside or modified by the court in various cases of fraud, undue influence, or mistake; and where this occurs the court may order the document to be delivered up for cancellation. The jurisdiction is either equitable or statutory. In either case the conveyance is not void but voidable. Where the jurisdiction is equitable, the right to set aside the instrument is a mere equity. If therefore the property comes into the hands of an innocent purchaser (including a purchaser of an equitable interest) without notice of the vitiating facts, his title will be unimpeachable. If the right is statutory, provision is normally made for the protection of purchasers. The extent of that protection depends upon the wording of the statute and may override the proprietary principles that would otherwise apply.”

Mr. Courtenay, SC, says that there is clear evidence of fraud in this case and invites the court to find that the Deed of Conveyance was fraudulent.

14. On the matter raised by the Defence that no expert was called by the Claimant to give evidence of Mr. Jundi’s handwriting on the Deed of Conveyance, Mr. Courtenay, SC, argues that such evidence was absolutely unnecessary in view of the compelling evidence that the Claimant was in no way connected to the transaction in issue. He contends that the court is at liberty to take the measure of witnesses on cross-

examination and come to its own conclusions as to whether Mr. Jundi signed the conveyance. He refers to ***Albert Neal (As Administrator of the Estate of Canuto Neal) v Macaw Farms Ltd*** Civil Appeal No 2 of 2008 where the Appellant contended that the learned trial judge had erred in law in finding that expert evidence was not necessary to prove the signature of Canuto Neal and that the learned judge ought to have relied on an expert as provided by section 48 of the Evidence Act. After reviewing the Judge's observations on the statements made by the witness the Court of Appeal found that:

"The judge clearly based his decision on this evidence of Canuto Neal and in my view, he was entitled to so conclude. He did not base his decision on any examination and comparison of the handwriting of Canuto Neal."

The Court continued at paragraph 12 :

"Counsel also contends that as there was a dispute as to whether Canuto Neal signed the transfer documents, expert evidence ought to have been adduced to establish the authenticity of the signature. On the evidence, I must reject this submission for the reasons stated above the judge was entitled to conclude that signature was that of Canuto Neal."

Mr. Courtenay, SC, invites this court to find that there is compelling and undisputed evidence that Mr. Jundi was not in New York at the material time and could not appear before the Notary Public to sign the Deed of Conveyance. Further Mr. Taylor gave very different versions of what happened in New York and how the sale was consummated. His story is a tissue of lies. The evidence as a whole demonstrates that there was no contact between Mr. Jundi and Mr. Taylor. The court is therefore at liberty to find on

the evidence and without having to do any comparison of handwriting that the Deed is fraudulent.

15. **Legal Submissions on behalf of The First Defendant**

Mr. Twist submits that Mr. Jundi claims the conveyance was a forgery but fails to conclusively prove that allegation. He argues that while Mr. Jundi says he only has a Lebanese and a Belize passport, and no US visa, failure to have a passport or visa is not conclusive evidence of a person's whereabouts since he could have entered the USA illegally. Mr. Twist further argues that the Claimant failed to call a finger print expert and failed to call Otis MacBride as the Notary Public as a witness. He then cites section 21(1) (2) and (3) of the Evidence Act Chapter 95 of the Laws of Belize states that:

“21(1) Where any deed is made and executed, or purports to be made and executed, either before or after the Commencement of this Act, in any place outside a Commonwealth country in the presence of a witness or witnesses, before or with one or more notaries public, the deed and every notarial grosse, or authentic copy thereof purporting to be a notarial grosse, or authentic copy of the original deed, certified and legalized, or purporting to certified or legalized, either before or after the commencement of this Act, under the hand and seal of any officer of state, judge or magistrate of that place, or of any ambassador, minister, consul-general, consul, viceconsul or consular officer appointed by the Government of Belize for that place, may be recorded in the General Registry, and shall, without any proof, be as valid and effectual as any original power or letter of attorney, contract or agreement, or other instrument in writing coming

from a Commonwealth country, and proved and attested in the manner prescribed in section 18.

(2) In subsection (1) 'certified and legalized' means (a) that the deed is attested by the signature of the notary public before whom it is, or purports to be, executed; and (b) that the fact that he holds that office in the place where the deed is, or purports to be, executed is certified, in the same manner as an affidavit or declaration, of the due execution of a deed is required to be attested.

(3) An office copy of every recorded procuration, power or letter of attorney, contract or agreement, or other instrument in writing mentioned in subsection (1) duly certified by the Registrar General or his Deputy shall, without any proof, be received in evidence in any civil cause or matter."

Mr. Twist also cites section 24 of the Evidence Act as follows:

24. "The signature and seal of any justice of the peace , notary public or other officer authorized by law to administer an oath in the united Kingdom, subscribed and affixed to the certificate or attestation of any declaration made, either before or after the commencement of this Act, before the justice, notary public or other officer, mentioned in this section, under and by virtue of the Statutory Declarations Act 1835, or under and by virtue of any other Act in that behalf, shall, without any proof, be received as evidence , in any civil cause or matter, of that declaration having been duly made."

And section 25:

“If any person whose duty or interest it is to deny or disprove the validity of any signature or seal, or other matter or thing, declared in section 21 to be receivable in evidence without any proof, denies and takes upon himself to disprove the validity of that signature or seal, or matter or thing, he shall be permitted to do so, but the proof of the invalidity shall rest entirely upon that person.”

Mr. Twist submits that the Conveyance was signed on the 19th January, 2011 by the Claimant in the presence of a witness and a Notary Public. Mr. Jundi has not provided any evidence to disprove this. The Evidence Act Chapter 95 Section 21(1), (2) and (3) and Sections 24 and 25 amplify this position. Allegations of fraud must be strictly proven as in ***Jonesco v Beard*** 1930 AC 298 and the Claimant has failed to prove fraud.

16. Mr. Perera on behalf of Virtue Enterprises also relies on section 21 and 25 of the Evidence Act cited above. He submits that it is for the Claimant to prove to this court that he did not execute the Conveyance on January 19th, 2011. He further states that Mr. Jundi failed to provide a handwriting expert to verify if the signature on the conveyance was his, and he failed to prove particulars of fraud as required by law. He also contends that Mr. Jundi failed to file any encumbrance against the property and finally the document was notarized before a Notary Public. In relation to the passports produced by Mr. Jundi as proof that he was not in New York at the material time, Mr. Perera argues that this is hearsay and cites Winn J in ***R v Rice*** (1963) 1 QB 857 at 872:

“It is however essential whether for the purpose of logical reasoning or for a consideration of the evidentiary effect in law of any such document, to distinguish clearly between its relevance and its probative significance: the document must not be treated as speaking its contents for what it might say could only be hearsay. Thus a passport cannot say ‘My bearer is X’ nor the air ticket ‘I was issued to Y’. Mr. Perera submits that the Claimant has failed to prove that he did not execute the Deed of Conveyance in light of the fact that it was signed before a Notary Public in New York.”

In specific reference to Virtue Enterprises Ltd., Mr. Perera cites ***Snell’s Equity*** 32nd Ed. 4-018 p76 that it is the law that a bona fide purchaser for valuable consideration who obtained a legal estate at the time of his purchase without notice of a prior equitable right was entitled to priority in equity as well as at law. In such a case, equity followed the law; the purchaser’s conscience was in no way affected by the equitable right so there was no justification for invoking the jurisdiction of equity against him. Mr. Perera says that Virtue Enterprises Ltd. is a bona fide purchaser as the company has paid Mr. Taylor \$75,000.00 for the land, it had no notice of any other right and it now holds the property as the legal owner under the Deed of Conveyance. He submits that there were no liens or encumbrances on the title when the company investigated the title. Nowhere in the pleadings did the claimant assert that the Second Defendant was not an innocent purchaser for value, and it was only at trial that this assertion was made. Finally, there are many reasons why a seller may choose to sell at a certain price, and it is not the duty of the attorney or purchaser to verify the adequacy of the purchase price

Comment [M1]:

in any conveyance. No defect in title should affect the interest of the Second Defendant as they acted prudently and carried out a title search as any reasonable person would have done. Its interest is protected in equity as an innocent purchaser for value.

17. **Decision**

Having reviewed all the evidence in this matter, along with all the legal submissions filed on behalf of all parties, I accept as true Mr. Jundi's evidence that he did not sign the conveyance dated January 20th, 2011 and that he was not in New York at that time. In my view the Belize Court of Appeal in ***Albert Neal v Macaw Farms Ltd.***, Civil Appeal No. 2 of 2008, that there was no need for expert evidence for trial judge to determine validity of a signature. Mr. Jundi gave his evidence in a forthright manner and answered questions in cross-examination in this same direct manner. His version of events appear to my mind to be more likely to be true. I accept as true that Mr. Jundi has not had a US Visa since 2001, and I also accept the evidence substantiated by his passports that he was therefore not present in New York on the date the conveyance was signed. I accept his evidence that he did not sign the conveyance dated January 20th, 2011, and that he does not know Mr. Taylor nor did he receive any money from Mr. Taylor for the purchase of this land. I completely reject the version of events put forward by Mr. Taylor as I find him to be a witness who is a stranger to the truth. Without any prompting or invitation, Mr. Taylor clearly stated in this court under oath that he defrauded the Government of Belize of its revenue by understating the value of the land to reduce the amount of Stamp Duty that he had to pay. To my mind, Mr. Taylor has by his own lips declared himself to be an avowed fraudster. In addition, I find many major

inconsistencies in Mr. Taylor's evidence which convince me that he is not telling the truth, e.g., the cloak and dagger scenario involving his purchase of the land in New York coupled with his inability to produce a single email from "Ms. Emi" or from "Ms. Lily" (last name Arieta, then last name unknown) as to how this transaction took place and claiming he left Ms. Lily's business card in his house; his insistence in the witness statement that he knew Mr. Jundi and had done business with him in the past and that Mr. Jundi had called him and asked him to purchase this land then contradicting this with evidence in court that he learnt of the land from a website yet could not recall the name of the website; his refusal to clarify whether or not he was present when the conveyance was allegedly signed and notarized in New York, then reluctantly saying he was only present for execution of the Agreement of Sale. I therefore have no difficulty in striking down the conveyance dated January 20th, 2011 as fraudulent. Since Mr. Taylor did not have good title to the land, it follows that he had no title to pass to Virtue Enterprises Ltd. The company is therefore now left to pursue its remedy against Mr. Taylor.

I therefore grant the Claimant the following relief:

1. Declaration that the Deed of Conveyance dated 19th January, 2011 and purportedly made between Hussein Jundi (Vendor) and Darren Taylor (Purchaser) and duly recorded in Deeds Book Volume 5 of 2011 folios 393-404 be set aside on the basis of fraud;

2. An order directing the Registrar of Lands to void the said Conveyance from the Deeds Book on that basis that Darren Taylor obtained the fee simple interest in the property by fraud;
3. Declaration that the Deed of Conveyance dated 12th July, 2015 LTU-201301336 made between Darren Taylor and Virtue Enterprises Company Limited is unlawful, null and void;
4. An order of the Court directing the Registrar of Lands to void the said Conveyance from the Deeds Book on that basis that Virtue Enterprises Company Limited obtained the fee simple interest in the property by fraud;
5. Costs awarded to the Claimant to be paid by the Defendant to be assessed or agreed.

Dated this 21st day of November, 2016

**Michelle Arana
Supreme Court Judge**