

IN THE SUPREME COURT OF BELIZE A.D. 2008

CLAIM NO. 34 OF 2008

BETWEEN

MARK WINGLER

CLAIMANT

AND

**1. MIKE CAMPBELL
2. BELIZE AVIATION ENGINEERING
COMPANY LIMITED**

DEFENDANTS

Mrs. Ashanti Martin for the claimant.
Mr. Hubert Elrington SC for the defendant.

AWICH J

29.11.2010

JUDGMENT

1. *Notes: Sale of goods; when property passed; whether there was breach of the contract of sale by the vendor or by the purchaser, when sums paid are deposit on the contract of sale or purchase price; whether sum refundable. Nominal damages when no proof of damages.*

2. The facts of this claim are the usual ones in sale and purchase of goods agreement between acquaintances. In early 2006, Mr. William Campbell, also known as Mike Campbell, the vendor, agreed sale of

his 1973, 172 Cessna aircraft of registration No. V3-HSB, for US \$55,000.00, to the claimant, Mr. Mark Wingler.

3. The agreement was oral. The terms of payment were by instalments over time. The evidence was insufficient as to how much each instalment would be, and when the final instalment would be paid. The form of payment was not agreed. The defendant would keep possession of the aircraft and would use it until full payment; and pay landing fees to the Aviation Authority. It is not clear whether there was agreement on maintenance expenses. It is also not clear when delivery would take place.
4. By December 2006 Mr. Wingler had paid US \$29,000.00. By March 2007, he had paid US \$45,000.00, and that remained the sum paid until 21.1.2008, when this claim was filed at court. The balance owing is US \$10,000.00.
5. About June 2007, the parties discussed and agreed resale of the aircraft to a willing and able buyer. They were unable to sell it, and it remained unsold by 10.1.2008, when Mike William demanded payment of the balance of US \$10,000.00 purchase price owing, and fixed a deadline of Tuesday January 15th 2008.
6. Mr. Wingler responded that he would make payment by banker's cheque. Mr. Campbell refused and demanded payment by "wire transfer" to a bank in Miami, USA. Wingler again offered to pay cash in

Belize on the same date, 14.1.2008. Campbell refused because he said he was “suspicious of the cash”.

7. In the end Wingler failed to pay the balance of US \$10,000.00 by wire transfer. Campbell resold the aircraft at US \$25,000.00 to one Badhur Flores.
8. The claim against the second defendant has been dropped. The claim against Campbell was for breach of contract and specific performance of the contract. At trial the claimant preferred to pursue return of payment made, damages and costs. It is my view that an order for specific performance would be inappropriate anyway. It seems that parties intended that property in the aircraft would pass only upon full payment of the purchase price. Property has remained with Campbell up until the end of the contract.
9. So the questions raised are: (1) whether the vendor or purchaser was in breach of the contract of sale; (2) if the purchaser was in breach, whether he was liable to pay damages, and in what sum; and (3) whether the vendor would be entitled to retain the US \$45,000.00.
10. ***Determination***

No time was fixed for Wingler to complete payment of the purchase price, but it could not have been totally left upto him to decide when to complete payment. From the evidence he was expected to complete payment in reasonable time. Parties understood that reasonable time

would be upto the end of 2006 or at most some time in 2007. I accept that it was because of the pressure put on Wingler to pay up that both agreed that the aircraft could be sold off to a new buyer. I do not consider though, that the agreement included ending the contract of sale between the parties altogether. The sale was to obtain money to pay off the sum of US \$10,000.00 owed to Campbell.

11. The question may then be asked: When did reasonable time expire? I have already said that according to evidence parties contemplated late 2006 or early 2007. To fix the end of reasonable time, Campbell needed to set a deadline. He did, it was Tuesday January 15th 2008. It was five days from the day he gave notice of it by email. Wingler did not consider five days notice unreasonably short. He offered to pay up on 14.1.2008. The mode of payment was by banker's cheque.
12. Campbell had demanded that payment be by "wire transfer" into a bank account in Miami USA. He refused payment by banker's cheque, he said because banker's cheque could be stopped anytime. I doubt that. In any case, Wingler would be in Belize to hand the cheque over.
13. Then Wingler offered to pay in cash. Campbell refused again. He said he was suspicious of the cash. He did not explain his suspicion. Although it is common in Belize for people to fix their contract price in US dollars, I do not think that they can legally refuse tender of payment in Belize dollars. It is legal tender in Belize – see **s: 22(3) of the Central Bank of Belize Act, Cap. 262**. I do not think Campbell could

refuse payment in Belize dollar cash on a contract entered into in Belize – **see s: 21 of the Central Bank of Belize Act**. Moreover, Campbell could not insist on payment by wire transfer when no particular mode of payment was agreed in the contract.

14. On the evidence, it is inferable that Campbell had hoped that Wingler would fail to meet the deadline, he was disappointed that Wingler came up with the money. Campbell sold the aircraft anyway. In my view, Campbell having fixed the date on which reasonable time would expire, could not sell the aircraft before the deadline expired. He breached the contract of sale made in 2006 between Wingler and himself. Judgment is entered for Mr. Mark Wingler against Mr. William Campbell also known as Mike Campbell.

15. Mr. Wingler is entitled to the return of the sum of US \$45,000.00 that he paid on the contract of sale. The sum was paid as part of the purchase price and not as a deposit to secure the contract. It would be refundable even if Wingler had been in breach of the contract, although he would be liable to pay damages – see **Mayson v Clouet [1924] A.C. 980 CA**.

16. Mr. Wingler has not proved any damages, nominal damages of \$10.00 is awarded to him.

17. Court awards interest at 6% per annum on the total sum of US \$45,010.00, from 21.2.2008, when this claim was filed until full payment. Costs to Mark Wingler.

18. **Delivered this Monday 29th November 2010**

At the Supreme Court

Belize

SAM LUNGOLE AWICH
Judge
Supreme Court