IN THE COURT OF APPEAL OF BELIZE, A.D. 2010

CIVIL APPEAL NO 13

EMY GILHARRY RAMIREZ **Appellant**

AND

ATTORNEY GENERAL
ALMA BARTLEY
ANNA JACOBS
GEORGIA ELIZABETH MARSHALL **Respondent**

BEFORE:

The Hon. Mr. Justice Mottley	**-**	**President**
The Hon. Mr. Justice Morrison	**-**	**Justice of Appeal**
The Hon. Mr. Justice Barrow	**-**	**Justice of Appeal**

Mr. Mark Williams for the appellant
Ms. Magali Perdomo for the first respondent
Mr. Philip Palacio for the other respondents

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8 October 2010; 16 May 2011.

MOTTLEY P

[1] I have read the judgment in draft of Barrow JA. I concur in the judgment.

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MOTTLEY P

MORRISON JA

[2] I have read, in draft, and entirely agree with, the judgment of Barrow JA in this matter.

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MORRISON JA

BARROW JA:

[3] The appellant succeeded on this appeal against the Attorney General in her claim for damages for breach of a contract to sell land and an assessment by the Supreme Court was ordered. Costs in this Court and in the Supreme Court were ordered to be paid by the Attorney General to the appellant and the other respondents. These are my reasons for concurring in that decision.

[4] As amended, the claim was for declarations of ownership, entitlement to immediate possession of and trespass to land, and alternatively for damages for breach by the Government of Belize of the agreement to sell a parcel of national lands to the appellant. The land had first been leased to the appellant, apparently in 1994, and on 24th August 1998 she paid the purchase price and stamp duty to purchase the freehold title to the land. In breach of its agreement with the appellant the Government, in July 2003, leased the land in three parcels to the other persons named as respondents to this appeal and a Grant of title for one of the parcels was later issued. The appellant's claim to an interest in the land is largely supported by undisputed copies of official documents.

[5] On 26th January 1994 the Lands and Survey Office in Belize City issued an official certificate that it had that day accepted an application form from the appellant to lease a parcel of land situate in the BEC Area, Freetown; that $5.00 worth of postage stamps had been affixed to the form; and that it was recorded in the Applications Book under reference number BZ – C 33/94. The appellant did not produce a copy of the lease but she produced a letter from the Lands Department dated 30th April 1997 informing her that the Minister of Natural Resources had revoked the cancellation of her lease No. 33/94 in respect of a parcel of land situate in the BEC Layout, Freetown Area, Belize City.

[6] On 24th August 1998 a Land Purchase Approval Form bearing reference number 859/97 was issued to the appellant. This document was in a standard form with blank spaces to be filled in. Spaces were filled in and the form was signed on behalf of the Commissioner of Lands and Surveys. It informed the appellant "Your application to purchase parcel No. 568.5382 s.y. acres of land situate in the B.E.C. Layout, Freetown Area, Belize City was submitted to the Honourable Minister of Natural Resources on the 29th October 1997 when it was approved in accordance with section 13 (1) of the National Lands Act, 1992 to be sold subject to the following conditions: (1) The Lease No. BZ 33/94 is still in effect until freehold title is issued. (2) The purchase price can be paid immediately or within three (3) years after which title will be issued. (3) The purchase price of the land is $1,500.00, Stamp duty $75.00 … Total $1,575.00 …"

[7] Below the signature on behalf of the Commissioner of Lands and Surveys appeared the following: "I _____ have read, understood and accepted the following as a binding contract between myself and the Government of Belize." Lines for signature and date appeared below those words. The copy produced by the appellant was not signed or dated.

[8] Copies of two Government of Belize receipts were produced by the appellant, both also dated 24th August 1998. One was for the sum of fifteen hundred dollars ($1,500.00) which was stated to be the "full purchase price on 568.5382 s.y. B.E.C. Layout, Freetown Area, Belize City 859/97". The other was for the sum of seventy five dollars ($75.00) stated to be for stamp duty on the same parcel.

[9] It was common ground that leases were granted by the Minister of Natural Resources dated 18th July 2003 to the other respondents, who had earlier entered into occupation of the land that the appellant had paid to purchase. After the appellant had made unsuccessful representations to the authorities asserting her right to the land, the lawyers for the appellant issued the writ of summons commencing the claim on the 6th January 2004.

[10] In a reserved judgment dated 23rd December 2009 Awich J persuaded himself, with some assistance from crown counsel, that the appellant's cause of action had accrued nine years before she issued her writ. The judge accordingly dismissed her claim on the ground that it was barred because it had been brought after the expiration of the six year limitation period for bringing a claim in contract, contained in section 4 of the **Limitation Act**, Chapter 170. The judge determined that the appellant's claim arose out of the failure of the Government to issue the appellant with title to the land which he stated she had first demanded nine years before the claim was filed. At para. 11 the judge stated

> "I do not consider this claim to be one for recovery of land or possession of it based on a right to land. The claimant did not have any title or interest in the land, upon which the claim could be based. She did not even take actual occupation of the land. Her claim was based on a simple contract which was yet to lead to obtaining an estate in land. The contract was not of itself an instrument conferring property right. On this decision alone, I strike out the claim of Ms. Ramirez."

[11] If one accepts the premises stated by the judge that the claim was based on a simple contract and that the cause of action was for failure to deliver title to the land (and if it was permissible – which it is not –to ignore the fact that the claim was brought to vindicate the appellant's right to the land because the Government had wrongfully leased it to other persons and this was why the declarations were sought and alternatively damages were claimed) one is left with the fact that the only contract that was before the court was the one contained in the Land Purchase Approval Form dated 24th August 1998. Even on the impossible hypothesis that the contract was breached the same day it was created, six years from that date would have expired in August 2004. The claim was issued in January 2004 and, therefore, well within the six year period. Contrary to the written submissions to this Court by crown counsel, the limitation period stopped running on the day when the appellant issued the writ of summons; it did not continue running up to the date the appellant filed her amended statement of claim. The reference in section 4 of the **Limitation Act** is to the date when an action is brought; not the date when a amended statement of claim is filed.

[12] It does not matter that the appellant was first granted a lease in 1994 and that it was from some unknown time after the grant of the lease that she began to make requests to be issued the freehold title. As noted, the lease was not produced in evidence and there was no suggestion that the lease also contained a contract to sell the freehold to the claimant. Hence, there was no apparent or stated basis for the judge to have decided that the cause of action arose in 1994. In any case, even if it did, a new contract was created on 24th August 1998 when the Land Purchase Approval Form was issued and the appellant paid the purchase price stated in that form.

[13] It may be the judge failed to advert to the Land Purchase Approval Form as marking the effective contract date because he took the view, which he later expressed at para. 22, that the 'letter of approval' was not yet a firm offer with definite and certain terms. The judge found it was merely an indication that a parcel of land in the BEC Layout Area measuring 568.5832

square yards would be sold to the claimant for $1,500.00, after a specific parcel in the area would have been properly identified by carrying out a survey.

[14] A proper reading of the Land Purchase Approval Form reveals at least a firm offer for sale. That form contains an acceptance by the Minister of the applicant's request to purchase land that she then held on lease from the Government. That is what the form is intended to communicate. In this case the form stated that the appellant's application to purchase had been approved (on 29th October 1997) and set the conditions of purchase, including the purchase price. By paying the purchase price and stamp duty stipulated by the Minister the appellant completely performed her side of the contract. It was only left for the Minister to issue title.

[15] Crown counsel argued, taking her cue from the testimony of the Commissioner of Lands, that payment of the purchase price by the appellant did not constitute an agreement for purchase. The Commissioner argued that anyone can walk into any Lands Department office and, if he gives a land account number, pay money to that account. The judge upheld this argument (at para. 37). I do not think that argument should have succeeded on the facts of this case.

[16] As seen from the documents identified above, the appellant paid the purchase price and stamp duty for the parcel of land comprising 568.5382 square yards and bearing account number 859/97 on the same day that she was issued with the Land Purchase Approval Form in respect of that exact parcel of land. It is difficult to imagine a stronger connection between the payment of the purchase price and the agreement to sell the said parcel of land to the appellant.

[17] The judge also erred, I think, in giving any weight to the contention of the Commissioner of Lands that because she and her staff could not find in the records of the Ministry of Natural Resources the copy of the Land Purchase Approval Form that the appellant said she had signed and handed

in the same day that it was issued to her, when she paid the purchase price and stamp duty, that the appellant had not returned the form. The judge began his determination on this fact by saying the appellant sounded convincing when she insisted she had paid the purchase price and stamp duty and returned the signed acceptance form all on the same day. But then, he said, he noted the appellant had produced in evidence the certificate of receipt of her application to lease the land (referred to at [3] above). The judge continued: "One would expect a similar acknowledgement of receipt to issue on the return of a copy of the form on which the stipulated acceptance was signed, because that was even a more important document." The judge concluded, given the evidence for the Government that the form was not on file and given that the burden of proof was on the appellant, that on a balance of probabilities the appellant had not returned the form.

[18] With respect, the reasoning is untenable. The judge found convincing the testimony of the appellant that she had returned the form so the credibility of the appellant was not in issue. It was because the appellant did not produce a certificate of receipt for the signed form that the judge rejected the appellant's testimony on the issue of fact. The witness statements and the transcript of the testimony reveal there was simply no evidence that it was the practice of the Lands Department to issue a receipt for the signed form. It was sheer assumption by the judge that if the appellant had returned the signed form she would have been given a receipt for it. It was, therefore, an error to attach any significance to the fact that the appellant did not produce such a receipt. Even if the fact had been as the judge assumed, that a receipt is normally given, the appellant was never asked why she had not produced the assumed receipt. There is no need to speculate as to the possible answers the appellant would have given.

[19] The judge reinforced the effect on his mind of the appellant's failure to produce the assumed receipt by adding in the balance the failure of the Lands Department staff to find in their records the signed form. From the absence of the form from the Department's records the judge inferred that the form had not been returned. It was impermissible to draw this inference because it was

an equally available inference that the form had been returned but had been misplaced or even improperly removed from the Department's records. There was nothing that made the inference the judge chose a more likely one than other available inferences.

[20] The aspect of the missing form that most engaged the judge was the significance of the bottom portion of the form. It will be recalled this portion contained provision for a purchaser to sign a statement that she has "read, understood and accepted the following as a binding contract between myself and the Government of Belize". (It appears one should read the word 'foregoing' in place of the word 'following'). As I stated earlier, the contract for the sale of land on the facts of this case was constituted by the Minister's approval of the appellant's application to purchase and the Minister's statement of the purchase price and other conditions followed by the appellant's payment of the purchase price and stamp duty. The appellant thereby specifically performed her side of the contract. She took the contractual relationship beyond offer and acceptance and into the realm of performance. It therefore would have made no difference on the facts of this case if the appellant had indeed failed to sign and return the bottom portion of the form.

[21] The remaining issue on which the judge found against the appellant was that there had been no identification of the parcel of land the appellant claimed to have purchased and, therefore, there could have been no completed contract. This conclusion overlooks significant pieces of evidence. Fundamentally, it ignores the fact that the appellant had been given a lease of the parcel of land since 1994 and had been paying rent for the land since that date, as other documentary evidence established. Further, it was obviously an extremely precisely determined quantity of land the Minister had agreed to sell the appellant: 568.5382 square yards in the B.E.C. Layout. It was not the appellant who conjured up that measurement. That measurement was given to the appellant in the Land Purchase Approval Form signed on behalf of the Commissioner of Lands. The Lands Department must have either surveyed the land on the ground to determine the boundaries or computed the parcel

on a plan or otherwise identified the precise parcel of land to arrive at that measurement.

[22] In addition the location of the land was far more certain than the judge appreciated when he took the view that B.E.C. Layout is a large area and that the land needed to be specifically identified by carrying out a survey for the appellant to be able to maintain a claim to the land (at paras 19 and 22). It was manifest from the evidence, including the dealings between the parties that both the appellant and the Lands Department knew exactly where the land was located. The appellant was not contradicted in her testimony that it was located adjacent to lands already owned by the appellant; indeed the Commissioner confirmed that fact in her witness statement. When the other respondents went into occupation of the land, even before they got their leases, the appellant was able at once to protest this was a trespass on her land.

[23] It is an old principle of law that land need not be surveyed for it to be sold and, further, that even the most vague description will suffice for a contract to be created, because parol evidence is admissible to identify a parcel of land agreed to be sold; **Shardlow v Cotterell** (1880) 20 Ch. D. 90; **Plant v Bourne** [1897] 2 Ch. 281. In the latter case the contract simply stated that the plaintiff agreed to buy and the defendant to sell "twenty-four acres of land, freehold, at T., in the parish of D. …" It was held on appeal that parol evidence was admissible to show what was the subject-matter of the contract. Crown counsel submitted it made a difference in that case that the parties had inspected the land the day the agreement was signed. In this case there was ample evidence that the Government had precisely identified the parcel of land it had leased to the appellant for over nine years as at the date of the breach of the agreement and the parcel was easily identifiable on the ground. It does not diminish the legal position that a contract for the sale of land had been created even if, in truth, there had been no survey and even if it was Government policy or regulation that before title issued a survey had to be done. The appellant amended her statement of claim to abandon her claim for specific performance so, as the judge found, her claim was simply for breach

of the contract for sale. It made no difference to that claim that there had allegedly been no survey and no title had been issued to the appellant. The claim should have succeeded.

BARROW JA