IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV26 of 2019

BETWEEN:

[1] GERARDO REYES

Claimant

and

[1] THE MINISTER OF NATURAL RESOURCES

First Defendant

[2] COMMISSIONER OF NATURAL RESOURCES

Second Defendant

[3] THE ATTORNEY GENERAL

Third Defendant

Appearances:

Mr. Edwin Flowers SC for the Claimant
Ms. Alea Gomez with her Mr. Stanley Grinage for the Defendants

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2024: May 27;

July 15.

JUDGMENT

Trial – Land – Conditions for Sale – Notice of Purchase Approval – Full Purchase Price Paid – No Transfer of Title – No Land Certificate Issued – Sale to Different Entity – Breach of Contract – Repudiation – Principles – Successive and Continuing Breaches – Limitation – Damages.

[1] **ALEXANDER, J.**: This matter involves the lease and purchase of two lots of land by the claimant ("Mr. Reyes"), which were also sold by the defendants to other parties. It is a claim for breach of contract. Mr. Reyes' case is that the defendants have received their payments of the full purchase prices but refused to issue the Land Certificates and/or to complete the sale. Instead, the defendants gave title to the two parcels of land to separate third parties.

[2] The defendants deny that they have ever refused to issue the Land Certificates or to complete the sale. They averred that Mr. Reyes has made insufficient averments and descriptions to enable the defendants to properly trace the allegations made in reference to the property. The defendants also denied that there was any breach of contract and pleaded limitation as their defence. According to the defendants, the claim was wholly statute barred as at the time of filing and constituted an abuse of process.

[3] I find against the case advanced by Mr. Reyes and dismiss his claim. It is statute barred and he is simply not entitled to the remedies sought in his amended claim.

The Claim

[4] This is a tale of the purported sale of two lots of land – Lot 468 and Lot 7, to Mr. Reyes. Both properties are in San Pedro Town. Mr. Reyes' case is that initially, he applied to **lease** Lot 468 and Lot 7 from the first defendant. He received approval to lease Lot 468 on 23rd October 2007 and then approval to lease Lot 7 on 22nd January 2008. Both leases were each approved for a period of 7 years with an option to renew.

[5] By amended claim form dated 22nd February 2019, Mr. Reyes claims that he then applied on 12th December 2007 to **purchase** Lot 468 and he got the approval to purchase subject to a payment of BZ$2,775.62. On 3rd January 2008, he paid the full purchase price for Lot 468. On **15th December 2011**, he **applied to purchase** Lot 7 and on the same 15th December 2011 (sic), Mr. Reyes paid the full purchase price of BZ$3,000 for Lot 7. This payment was actually made on 1st February 2012, and a receipt was issued.[1] This payment was purportedly made on the advice of the then Commissioner of Lands (hereinafter "the Commissioner") to pay the Certificate Fee of BZ$15 and the Registry Fee of BZ$15.

[6] At the time of making his payment on 1st February 2012, he made enquiries about the title for Lot 468 and was told by the Commissioner that his title document would be issued

[1] Witness statement of the claimant filed on 18th October 2023 paras. 8 &9.

to him in due course and/or was still "in process". In both instances, he was never issued with the Land Certificates or titles.

[7] Mr. Reyes claims, further, that he made regular checks with officials at the Lands Department in Belmopan about his Land Certificates but to no avail. He waited for another year and sometime in May 2013, Mr. Reyes spoke to the Commissioner at his office in Belmopan. He was again assured that the first defendant ("the Minister") "will soon approve his Land Certificate." Mr. Reyes' case that after paying the full purchase price for Lot 468 and Lot 7 respectively, and despite requests for the title documents, he has only received false assurances from the Commissioner that his titles are "in process".

[8] Mr. Reyes now approaches the court seeking certain reliefs. He grounds his case on the fact that the defendants' actions were not in compliance with the conditions of sale and that they were in breach of the contract for sale.

[9] By his amended claim, Mr. Reyes seeks the following orders:

i. A declaration that the Claimant was approved a lease by the First Defendant under the National Lands Act, 1992 of Lot No. 7 in the Colonia San Diego Phase II Area, San Pedro Town for a term of 7 years with an option to renew.
ii. A Declaration that the Claimant is entitled to receive a Land Certificate for Parcel/Lot No. 7 in the Colonia San Diego Phase II Area San Pedro Ambergris Caye, Belize District.
iii. A Declaration that the Claimant was granted a Lease of Lot No. 468 San Pedro Town, Belize District by the First named Defendant on the 27th October 2007 for a period of 7 years with an option to renew.
iv. A Declaration that the Claimant is entitled to receive a Land Certificate for Parcel/Lot No. 468, Parcel No. 471900 in the San Pedro Registration Section.
v. Damages for breach of contract.
vi. Interest and Costs.

The Amended Defence

[10] The amended defence filed on 24th May 2019 contained denials of certain averments of facts and contention of the law set out in the amended statement of claim. The defendants put Mr. Reyes to strict proof of averments as to payments made and their alleged refusal to complete the sale and/or that he was given assurances that titles would be passed to him for Lot 468 and Lot 7.

[11] The amended defence pleaded that the Commissioner never instructed or directed Mr. Reyes to pay a certificate fee and that any such payments were done of Mr. Reyes' own volition. The defendants also denied that the Commissioner had made representations to Mr. Reyes that the Minister would in due course approve the issue of title to Lot 7. They asserted that any such representation, if given, was made without any requisite authority from the Minister.

[12] The defendants specifically addressed in their defence the alleged claim for breach of contract, stating that Mr. Reyes has failed to establish how the breach was occasioned or to produce any evidence of how it occurred. The defendants stated that if the purported delay in issuing title documents were to be accepted as a breach of contract, then the defence of limitation is relied upon. They stated, in clear answer to the claim, that policy dictates that title ought to be issued within four to six weeks of payment so the claim for breach of contract relating to Lot 7 will fail on limitation. It would be an abuse of process of the court to allow such a claim to proceed.

[13] As regards Lot 468, the defendants claim that the insufficient description of the parcel inhibits their ability to properly trace the allegations identifying the property. They also deny any alleged assurances given by the Commissioner about the passing of title to Mr. Reyes. They pleaded limitation as to the claim for breach of contract for Lot 468. The defendants claim that the allegations are misconceived, and the claim should be dismissed with costs to the defendants.

The Evidence

[14] Each party called one witness. Mr. Reyes gave evidence on his own behalf. Mr. Brackett, the current Commissioner of Lands, gave evidence for the defendants.

a. Mr. Gerardo Reyes

Lot 468

[15] Mr. Reyes stated that he lives in San Pedro Ambergris Caye. In October 2007, he applied and got approval to lease Lot 468, which was a parcel of land comprising one acre. The Minister approved the lease for a period of seven years with an option to renew. A copy of the lease approval dated 23rd October 2007 was attached to his witness statement.

[16] Subsequently, on or about 12th December 2007, and during the currency of the lease, he applied to purchase the said Lot 468 and his application was approved subject to the payment of BZ$2,775.62. He paid this sum in full on 3rd January 2008. He did not state the date on which notice of approval to purchase Lot 468 was given to him and how he was apprised of the approval. He provided no evidence of the approval to purchase. He did provide a copy of the receipt evidencing full payment, which was attached to his witness statement. He stated that at the time of making the payment, the Commissioner advised him that his title or Land Certificate would be issued in due course.

[17] Mr. Reyes stated, further, that when he did not receive title some three years after making the payment and/or he kept being told that it was still "in process", he approached his Area Representative who wrote the Lands Department asking them to finalise the sale to Mr. Reyes. He attached a copy of this letter dated 10th November 2011 to his witness statement.

Lot 7

[18] On or about 22nd January 2008, the Minister approved a second lease to Mr. Reyes this time for Lot 7. The lease was given No. 488/2008. It also contained a term of seven years with an option to renew. Mr. Reyes provided no evidence of the date on which he had first applied for **a lease** of Lot 7, but I assume that it would have preceded the approval date.

[19] He states at paragraph 6 of his witness statement that he received a letter dated 5th December **2011** from the Commissioner, informing him of the purchase price "that was approved to me" for Lot 7. He attaches this letter to his witness statement. I will discuss this letter in more detail below. After he received this letter, he applied on the 15th

December 2011 to purchase the said Lot 7, which comprised one acre, for the approved purchase price of BZ$3000. On 1st February 2012, he paid the purchase price and all requisite fees, and received a receipt for the payment from the defendants. He attaches a copy of the receipt dated 1st February 2012.

Title Documents

[20] Mr. Reyes' evidence is that he never received titles to his properties despite his best efforts. He averred that on the same 1st February 2012, he made enquiries at the Lands Department about his outstanding title document for Lot 468. Once again, he was told that it was "still in process" and that it would take a long time to complete. He waited for another year.

[21] Sometime in May 2013, Mr. Reyes stated that he again spoke to the Commissioner at his office in Belmopan and was assured by him that the Minister would soon approve the Land Certificates. Despite repeated assurances from various officials at the Ministry of Natural Resources, and from the Commissioner, the defendants failed to complete the sale of the properties to him by the provision of title documents.

[22] It was his evidence further that on 1st June 2014, when the lease for Lot 468 was about to expire, he again requested title for Lot 468. Once more, the Commissioner assured him that the Minister would soon approve the Land Certificate. The title was not issued.

[23] By 2018, when he still did not receive his title documents from the defendants, Mr. Reyes sought legal advice and his attorney-at-law sent a letter dated 2nd October 2018 demanding that the Land Certificates be issued to Mr. Reyes for both Lot 468 and Lot 7. He attached a copy of this letter to his witness statement. The Commissioner did not respond. Mr. Reyes instructed his attorney-at-law to write directly to the Minister to request his title documents. He attached the letter to the Minister dated 14th December 2018. The Minister did not respond to the letter of 14th December 2018.

[24] In early February 2020[2] (sic), he learned that a "For Sale" sign was placed on Lot 468 by Remax Real Estate. He attaches a photo of the Remax sign to his witness statement. He immediately caused a title search for both properties to be done at the Lands Department in Belmopan. I believe that "February 2020" might be a date given in error as his initial claim was filed on 15th January 2019 and the amended claim on 22nd February 2019.

[25] The title search for Lot 468 revealed that the Government of Belize ("GOB") had transferred ownership of Lot 468 to Temple Island Development Corporation Ltd ("Temple Island") of 33 New Road, Belize City on 18th June 2009. Further, on 6th January 2011, Temple Island mortgaged Lot 468 to British Caribbean Bank International Limited to secure the sum of US$2,000,000. He attaches a copy of the Land Registry Report for Lot 468, which was the same parcel sold to him on 3rd January 2008.

[26] The title search of Lot 7 revealed that Lot 7, now described as Parcel 8935, was transferred by the GOB to Killian James Azueta on 27th May 2011. Further, on 4th April 2012, Killian James Azueta mortgaged the said Lot 7 to Clifford and Virginia Nelder to secure the sum of BZ$90,000. Mr. Reyes stated that this was the same parcel of land that was leased to him as Lot 7 on 22nd January 2008 and which he bought and paid in full for on 15th December 2011 (sic). At stated at paragraph 5 above, the payment for Lot 7 was actually made on 1st February 2012. He attached a copy of the Land Registry Report for Lot 7 (now known as Parcel 8935) to his witness statement.

[27] He stated that the defendants were in breach of contract from 13th June 2009 for Lot 468 and from 27th May 2011 for Lot 7. He only became aware of the breach on 6th February 2020 when he received the Land Registry Reports.

b. Mr. Talbert Brackett

[28] Mr. Talbert stated that he is the Commissioner of Lands and Surveys of the Department of Natural Resources in the Ministry of Natural Resources, Petroleum and Mining. He was appointed to that position on 4th January 2021.

[2] Witness statement of Gerardo Reyes, para 15.

[29] He has overall management and administration duties for all national lands of Belize, which includes oversight of all issues concerning land disputes and conflicts in Belize.

[30] Regarding Lot 468, Mr. Talbert confirmed that pursuant to an application on 1st June 2007 for a lease of this property, the Minister issued a notice of approval to Mr. Reyes on 23rd October 2007. The lease for Lot 468 was for a period of seven years at a rental sum of BZ$60 per annum, with an option to renew. The lease number was 65/2007. He attached a copy of the lease approval to his witness statement.

[31] The records show that the first rental payment was made on 24th October 2007. A receipt issued on the same date was attached to his witness statement. Mr. Reyes then applied (date not given) to purchase Lot 468 and a purchase approval was issued on 12th December 2007 in the sum of BZ$2,835.62. This was subject to an instalment payment of BZ$472.60 within three months of the receipt of the said purchase price, and the balance to be paid within three years. This caution clause in the purchase approval clearly provided that non-payment of the instalment would void the purchase approval.

[32] The records show that Mr. Reyes paid the full purchase price for Lot 468 on 3rd January 2008. A copy of the Land Rent Statement was attached to Mr. Talbert's witness statement. The difference between the figures given by Mr. Reyes ($2,775.62) and Mr. Talbert ($2,835.62) is the sum of $60, which the Land Rent Statement shows as being deducted for Crown Rent. There was, therefore, no fundamental difference in the evidence of both witnesses.

[33] No transfer document for Lot 468 was executed in favour of Mr. Reyes, although he had paid the purchase price within three weeks after the purchase approval was given.

[34] It is Mr. Talbert's evidence that the records show that contemporaneous to the issuance of the purchase approval to Mr. Reyes, a purchase approval was also issued on 31st December 2007 to Temple Island in the sum of BZ$2,835.62. It required Temple Island to pay the first instalment of BZ$472.60 within three months from the date of approval or

the approval will be void. Temple Island also held a lease 1357/2007 for Lot 468. A copy of this purchase approval was attached to the witness statement.

[35] Temple Island paid the purchase price for Lot 468 on 3rd June 2008, which was some five months after the date of the purchase approval. A transfer instrument to Temple Island was executed by the Minister on 17th March 2009. Subsequently, on the 18th June 2009, a Certificate of Title was issued to Temple Island and an entry was made to the register reflecting the transfer of ownership from GOB to Temple Island. Copies of the Land Rent Statement and the transfer document were produced in evidence.

[36] The GOB has been dispossessed of Lot 468 since the 18th June 2009.

[37] Regarding Lot 7, the GOB issued Mr. Reyes with a lease 488/2008 and subsequent to this, Mr. Reyes applied to purchase this property on 22nd January 2008. By notice dated 25th January 2008, Mr. Reyes was notified that his request to purchase was approved. By way of this said notice, Mr. Reyes was notified that the GOB was desirous of selling the property for BZ$3,000 on the terms that BZ$500 must be paid within three months of the date of approval, failure of which would void the approval, and the balance either immediately or within three years. A copy of the purchase approval was produced in evidence.

[38] It is Mr. Talbert's evidence, further, that contrary to the terms of the agreement for Lot 7, Mr. Reyes failed to make the initial payment of BZ$500 within three months of the 25th January 2008, resulting in the voiding of the purchase approval. Mr. Talbert stated that based on the records, Mr. Reyes did not make payment of the full purchase price until 15th December 2011, some three years and eleven months after the purchase approval would have determined in any event, had it not been voided by Mr. Reyes' failure to pay the first instalment payment. He produced in evidence a copy of the Land Rent Statement.

[39] Mr. Talbert's evidence was that the defendants accepted Mr. Reyes' payment for Lot 7 in error. The sale agreement was already voided in April 2008, and it was ultimately determined on the 25th January 2011 due to a lack of compliance with its terms.

[40] On 2nd August 2010, a Minister's Fiat Grant 299 of 2010 was issued to Ms. Killian James Azueta in consideration of her payment of BZ$6,500. Ms. Azueta had procured an abstract of title that showed that there was no competing interest for Lot 7. On 13th July 2011, a Certificate of Title was issued to Ms. Azueta for Lot 7. A notation was made on the register of this transfer. Copies of the abstract, the Certificate of Title and of the register containing the notation of the transfer were produced in evidence.

Issues

[41] The issues, as the court finds them, are:

1. Whether the defendants acted in breach of contract?
2. Whether representations were made to Mr. Reyes resulting in continuing breaches?
3. Whether Mr. Reyes can be said to have slept on his rights?

Discussion

[42] This is a case where a series of unfortunate events unfolded that resulted in Mr. Reyes, who had leased and then purchased two parcels of land in San Pedro from the GOB, never being issued title documents. I will not here repeat the facts of the case, as I have set out the pleadings and evidence in detail above and there is *ad idem* on the factual context of the matter. Parties do not dispute that there were agreements between them for the lease and purchase of both properties. There is also no disagreement that Mr. Reyes had paid the full purchase prices for both properties, which were accepted by the defendants. It is not in dispute also that by the time this matter came before me, titles for both parcels of land had been transferred in the names of 3rd parties.

[43] Of note is that this is also not a case where there is insufficiency of evidence. Both parties came to court armed with a wealth of documents to support the cases that they have advanced. Interestingly, each counsel has argued vociferously that their cases align better with the law, so they ought to get their reliefs.

[44] The issues, as I find them, have been identified at paragraph 41 above and I intend to reference only those portions of the evidence, where necessary, that I find relevant in disposing of the questions being addressed. I assure counsel and parties that I have read and understood their cases and have thoroughly examined the evidence provided. I also thank them for their assistance in this matter. I will address the legal arguments in the context of the evidence.

Issue 1: Whether the Defendants Acted in Breach of Contract?

[45] The existence of a contract for sale between the parties is not in dispute nor is there any disagreement that consideration was passed and received for both parcels of land. As there are two parcels of land involved, I will treat with each one separately.

Lot 7

[46] The first question in determining if the defendants acted in breach of contract for the sale of Lot 7 is whether Mr. Reyes is in breach of any condition of the purchase approval? On the evidence, the dispute revolves around the alleged date(s) of the purchase approval. I find that the answer to this question will help resolve this dispute.

[47] Ms. Gomez asserted that the purchase approval was dated the **25th January 2008** and that Mr. Reyes had failed to make the initial payment of BZ$500, within three months of that date. It was a clear condition that the approval will be voided for such a default. By the time Mr. Reyes did make the full purchase payment on 1st February 2012, the purchase approval was already voided, and, in any event, he had failed to pay the first instalment of BZ$500 within the prescribed timeframe. Mr. Reyes also did not provide any evidence that the purchase price was paid immediately or within three years.

[48] Ms. Gomez argued that Mr. Reyes' failure to pay the first instalment within the stipulated time was a repudiatory breach, which voided the approval that was given and discharged the defendants from liability under the contract. The sale agreement was voided by Mr. Reyes' own inaction and/or by his non-payment in 2008. Further, even if the sale agreement was not voided, it was determined by effluxion of time in January 2011. She

sealed her argument by pointing to the fact that in cross-examination, Mr. Reyes conceded that he had made the payment for Lot 7 in February 2012.

[49] I noted that in his witness statement, Mr. Reyes did not mention the **25th January 2008** in his attempt to draw out timelines for my consideration of the question of a breach. His pleaded case is that he had received a purchase price on 5th December 2011; and he applied to purchase Lot 7 on 15th December 2011. On 1st February 2012, he paid the full purchase price for Lot 7. Mr. Reyes has maintained this position throughout. If this is his case for Lot 7, then by the time he "purchased" Lot 7 (or purportedly applied to purchase it), it was already owned by Ms. Azueta who got title on 13th July 2011.

[50] To dispose of the issue completely, I also need to look at the notice of purchase approval.

Notice of Purchase Approval

[51] At the heart of the dispute in this matter is when exactly was the approval to purchase issued and was Mr. Reyes in compliance with the timelines set for payment under this notice. Although the date of the purchase approval was central to the dispute and its resolution, both parties seemed to skirt around the issue and/or neglected to provide relevant information on important dates. Critical is the notice of purchase approval dated **25th January 2008** – a date conveniently ignored by Mr. Reyes, in his factual account of the events in this matter, and which the defendants have spotlighted and relied on to escape liability in this matter. In fact, it is this purchase approval notice of 25th January 2008 that is used by the defendants to pinpoint the non-compliance of Mr. Reyes with the instalment payment within three months of the approval.

[52] A pivotal question is whether there is a difference between **receiving** a purchase price approval and a notice of purchase approval. It appears that there is no material difference between being given **a purchase price**, which is calculated at valuation, and the **purchase approval notice** itself. This was confirmed by Mr. Talbert during cross-examination. According to Mr. Talbert, the notice of purchase approval is placed on the file and an official signature is affixed, so if a buyer visits the office and is shown the letter on the file, this suffices as notification of the need to make the first instalment payment

within three months. I find that, at best, this is a somewhat *ad hoc* notification system. If a buyer never visits the office, or has never had sight of the notice on his file, is notification effected once the notice is placed on the file? When exactly does time begin to run for the three-month compliance? This evidence was not clear from Mr. Talbert, and he certainly did not give an exact date on which Mr. Reyes was *notified* of the purchase approval. Despite this glaring uncertainty, the defendants held steadfastly to their view that the date on the notice was the point when time began to run.

[53] This evidence gives rise to several questions, as there is a wide gap between a notice of purchase approval dated 25th January 2008 (possibly placed on his file) and a payment by Mr. Reyes on 15th December 2011 of the purchase price for Lot 7. I have no clear evidence from either party that Mr. Reyes was actually notified of this date of 25th January 2008 and/or when exactly it was brought to his knowledge. However, it did not help Mr. Reyes' case that he was silent in his witness statement about the date of 25th January 2008 mentioned in the defence or that he held his position that he had bought Lot 7 on 1st February 2012.

[54] At the risk of repeating already stated evidence, I must point out that while Mr. Reyes maintained that he did receive **lease approval** on 22nd January 2008 for Lot 7, he conveniently stilled his tongue as to whether this was also the date that he first made the application to purchase Lot 7. It only came out in the evidence of Mr. Talbert that this 22nd January 2008 was the date that Mr. Reyes also applied to purchase the said Lot 7. Neither party provided me with evidence of any application by Mr. Reyes to purchase Lot 7 on 22nd January 2008. I was provided only with evidence that a notice of purchase approval dated 25th January 2008 was "issued" to Mr. Reyes. I assume that a purchase approval for Lot 7 would not be issued in a vacuum but would have flowed from a prior application to purchase the property.

[55] At this point, I find it necessary to quote directly from Mr. Talbert's witness statement at paragraphs 23 and 24:

> 23. **Subsequent to the issuance of the lease, the Claimant applied to purchase the said Lot 7 on the 22nd January 2008 and by way of notice dated the 25th day**

> **of January 2008 the Claimant was notified that his request to purchase was approved.** Particularly the Claimant was notified that the Government of Belize was desirous of selling the property to the Claimant in the sum of $3000.00 on the terms that $500.00 must be paid within three months of the date of the approval, failure of which would void the approval and the balance either immediately or within three years. A copy of the purchase approval marked TB8 has been shown to me and is attached hereto.
> 24. Contrary to the terms of the agreement, the Claimant failed to make the initial payment of $500.00 within 3 months of the 25th day of January 2008. Hence voiding the approval which was given. [My Emphasis].

[56] I do not believe that Mr. Talbert would have misrepresented the records over which he now has charge. In fact, he has produced the notice of purchase approval dated 25th January 2008. The question is whether this notice of purchase approval dated 25th January 2008 was brought to the attention of Mr. Reyes or dispatched to or notified to him and, if so, why his silence about it? This brings me to the next question that places a strange twist to these proceedings.

[57] In submissions, Mr. Flowers advanced, niftily I think, but quite erroneously, that it had come out during cross-examination that the notice of approval dated 25th January 2008 was prepared, but it was not sent to Mr. Reyes. Mr. Flowers then submitted that according to Mr. Talbert, this failure is a common mistake made at the Lands Department, where prepared notices often remain undelivered to applicants. Search as I did, even repeatedly, I did not locate this evidence in the transcript. In any event, given that Mr. Reyes has been mute as to whether he had made an application to get approval to purchase Lot 7 prior to 25th January 2008, there is simply no basis for this rather creative argument of his counsel. I noted also that Ms. Gomez did not address this purported admission of Mr. Talbert in her submissions. I, therefore, rejected Mr. Flowers' submission as it was unsupported by the evidence before me.

[58] I must next deal with Mr. Reyes' evidence, which was absent of any awareness that approval to purchase the said Lot 7 was granted on 25th January **2008**. He maintained only that he got the purchase price by letter dated 5th December **2011** and shortly thereafter, on the 15th December 2011, he applied to purchase Lot 7, paying the full purchase price and fees on 1st February 2012.

[59] Unfortunately, I do not believe that Mr. Reyes was being completely forthright or candid with the court. This lack of directness has tanked his credibility in my eyes. First, his witness statement was crafted to leave evidentiary loopholes about the date of" 22nd January 2008" when he had first applied for purchase approval of Lot 7. Instead, he averred that he had first applied to buy Lot 7 on **15th December 2011** and paid on 1st February 2012, a date well within the timeframe of the three-month condition. Assumedly, I am to believe that the purchase price was communicated to him in a vacuum and without him having applied to buy Lot 7. At paragraph 52 above, it was explained that there is no material difference between the purchase price and the notice of approval to purchase.

[60] I do not accept, therefore, that Mr. Reyes first got a purchase price via a letter dated 5th December 2011 without having applied for purchase approval. In fact, I am fortified in my position that an application to purchase the property pre-dated the grant of the purchase price for Lot 7 and that Mr. Reyes purposefully massaged his evidence to exclude that information. The letter dated 5th December 2011 states categorically that it relates to a purchase price **re-assessment**, based on a re-evaluation of purchase price to coincide with revised government rates. It clearly refers to "The purchase price previously offered to you" and states that it was made in error and was out of sync with the rates that government should have been using. The letter referred to both an *old purchase price* and a new or re-assessed purchase price.

[61] In my judgment, when Mr. Reyes received this ***re-assessed*** purchase price for Lot 7 and rushed to purchase the property, he should have been aware that something was wrong if he had never received an "Old Purchase Price". As noted above, an approved purchase price is as good as a notice of approval to purchase. I, therefore, take the letter dated 5th December 2011, which refers to an old purchase price, as inferring that a previous purchase approval was given to Mr. Reyes. I am not convinced that Mr. Reyes was unaware of a previous offer to purchase.

[62] Given the evidence before me, I formed the view that Mr. Reyes was not being forthright, but was selectively giving evidence, conveniently punctuated with missing information. I do not find it credible that he first made the application to purchase Lot 7 on 15th

December 2011. I preferred Mr. Talbert's evidence (quoted at paragraph 55 above) that Mr. Reyes first applied to purchase Lot 7 on 22 January 2008. It was incumbent on Mr. Reyes to bring clear evidence before the court and not leave evidentiary gaps. It did not help his case that his counsel would address Mr. Reyes' evidentiary default by strange, unfounded submissions about the notice of approval dated 25th January 2008 being prepared but not sent to Mr. Reyes and that Mr. Talbert had conceded that point.

[63] It is unfortunate that neither party brought clear evidence of when the old purchase price was notified to Mr. Reyes or if it was at all notified. I find it perplexing that both parties failed to address this glaring lacuna in the evidence. I was bound, however, by the evidence before me. The defendants maintained that by the time the full payment was made by Mr. Reyes on 15th December 2011, the purchase approval dated 25th January 2008 was determined, and, in any event, it was voided by Mr. Reyes' non-compliance with the condition for the first instalment. Ms. Gomez argued that based on her cross-examination of Mr. Reyes, the notice of approval to purchase Lot 7 dated 25th January 2008 was received by him, effectively notifying him of its contents and so rendering him in non-compliance with the three-month condition of the first instalment. Ms. Gomez submitted that in these circumstances, the purchase approval was voided by the non-payment of the first instalment and/or determined by the effluxion of time in January 2011. Mr. Flowers addressed this submission by pointing out that Mr. Reyes did not concede that he had received the approval notice of 25th January 2008. I agree with Mr. Flowers on this point, as I was not satisfied on the evidence that proper notification was given. In any event, Mr. Reyes' case is platformed on the **reassessed purchase price**.

[64] The question arises, therefore, as to whether the relevant offer was made via purchase approval made on 25th January 2008 or by reassessed offer in a letter dated 5th December 2011. Further, I have no explanation as to why the reassessed purchase price was sent since Lot 7 was already transferred to a 3rd party in July 2011. By December 2011, the GOB, being dispossessed of Lot 7, had no power to sell it.

The Law

[65] In Chitty on Contracts, Volume 1, 34th Edition at para 4-125 and para 4-129, it is stated:

> Para 4-125 **Specified time** - An offer which expressly states that it will last only for a specified time cannot be accepted after that time, and the same is true where the time limit is set, not in the offer itself, but in the course of later negotiations between the parties to the alleged contract,
> ….
> Para 4-129 **Provision for termination of offer** - An offer which expressly provides that it is to determine on the occurrence of some condition cannot be accepted after that condition has occurred.; and a similar provision for determination may be implied.

[66] Arguing on the basis of the 25th January 2008 purchase approval, Ms. Gomez maintains that the land purchase approval form given to Mr. Reyes clearly states that the purchase price can be paid immediately or within three years, after which title will be issued. She submitted further that a provision for determination may be implied in the circumstances, where an offeree fails to make payment within the prescribed time. In the instant case, there was no evidence that Mr. Reyes had complied with the set timelines so there was a repudiatory breach, which voided the approval given and discharged the defendants from liability under the contract or it was determined by effluxion of time in January 2011.

[67] On the facts of the present case, I considered whether repudiation was found or could be inferred. A repudiatory breach occurs when one of the parties to a contract shows, by words or conduct, that he has no intention of carrying out his side of the bargain.[3] If a party repudiates an agreement, it is considered a serious matter, so "repudiation … [is] not to be lightly found or inferred."[4] To be deemed repudiatory, the breach must be serious and relate to an essential aspect of the obligations under the contract. This notion of "seriousness of the breach" was established in **Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd**.[5]

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[3] Gilbert Kodilinye and Maria Kodilinye, Commonwealth Caribbean Contract Law (1st Edn, Routledge, 2014), page 242, Chapter 13: 'Discharge of Contracts'.
[4] Halsbury's Laws of England (5th Edn, 2019) vol 22, para 8(4).
[5] [1962] 2 QB 26.

[68] In the case of **Woodar Investment Development Ltd. v Wimpey Construction Ltd**,[6] Lord Wilberforce described repudiation as "a drastic conclusion which should only be held to arise in clear cases of a refusal in a matter going to the root of the contract, to perform contractual obligations."

[69] To find that a breach is repudiatory, I would have to be satisfied as to its seriousness and that it goes to the root of the contract. It will also be a repudiatory breach even if a party to the contract had an excuse for non-performance of the contractual obligations within the specified timeframe.[7] Moreover, a repudiatory breach may be expressly communicated or implied by the conduct of the parties. In **Bunge Corporation v Tradax SA**,[8] an implied repudiation of a contract was held sufficient to treat it as a repudiatory breach. The question of whether a refusal to perform part of a contract amounts to a repudiation of the whole contract will depend on the construction of the contract as well as the circumstances of each individual case.[9] This principle was confirmed by the Privy Council in the Trinidad case of **Sookraj v Samaroo**.[10] Repudiation entitles an innocent party, as of right, to treat the contract as being discharged if they so choose[11] or, alternatively, to affirm the repudiated contract and claim damages.[12]

[70] The jurisprudence underscores the need for a court to take into account the specific circumstances of each case[13] and the impact of the breaches on the contractual relationship. There must be prompt and full performance in contractual relationships, and failures in this regard could have serious consequences. Each case will be determined on its own factual context. Essentially, the court needs to assess the severity of the breach in each case[14] and determine if it fundamentally undermines the contract to be considered repudiatory.[15]

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[6] [1980] All ER 571 at 576.
[7] The Mihalis Angelos [1971].
[8] [1981] 1 WLR 711.
[9] Halsbury's Laws of England (5th Edn. 2019) vol 22, para. 8(4)(iii), 352.
[10] (2004) 64 WIR 401.
[11] Photo Production Ltd. (Respondents) v Securicor Transport Ltd (Appellants) [1980] AC 827.
[12] White & Carter (Councils) Ltd v McGregor [1962] AC 413.
[13] MSC Mediterranean Shipping Company S.A. v Cottonex Anstalt [2016] EWCA Civ 789.
[14] Grand China Logistics Holding (Group) Co Ltd v Spar Shipping AS [2016] EWCA Civ 982.
[15] Ampurius Nu Homes Holdings Ltd v Telford Homes (Creekside) Ltd [2013] 4 All ER 377.

[71] I have considered the factual context and evidence advanced in the present proceedings. The breach was serious and went to the root of the contract. There is simply no evidence of satisfaction of the instalment payment within the three-month timeline of the 25th January 2008 approval. Mr. Flowers sought to conflate the issue by arguing that with respect to Temple Island, they too did not make the instalment payment for Lot 468 within the three-month period but still got title. While Mr. Flowers is correct, this does not help Mr. Reyes' case for Lot 7. Moreover, while the practices at the Land Registry in Belmopan were negatively canvassed here, this is not the case that I am called to deliberate over. I agree with the arguments of Ms. Gomez, therefore, that as regards the 25th January 2008 purchase approval for Lot 7, there was repudiation. Mr. Reyes' failure to pay the first instalment within the stipulated three-month timeframe fundamentally undermines the contract and effectively voided that approval. The defendants are discharged from liability under that contract.

[72] Further, with respect to the reassessed purchase price in the letter dated 5th December 2011 and subsequent payment, as stated at paragraph 64 above, Lot 7 was already transferred to a 3rd party in July 2011. Since Mr. Reyes' case is that he only first applied on 15th December 2011 to buy Lot 7, it was incumbent on him and his counsel to investigate the title. Mr. Reyes could not lawfully purchase property belonging to another, from a vendor who no longer had title.

Lot 468

[73] Regarding Lot 468, Mr. Gomez conceded the point that Mr. Reyes did pay the full purchase price on 3rd January 2008 and was not given title to the property. She submitted that Temple Island, a 3rd party, had also paid the full purchase price for Lot 468 and had a transfer instrument executed by then Minister in its name on 17th March 2009. Further, a Certificate of Title was issued to Temple Island on 18th June 2009 and an entry was made in the register reflecting the transfer of ownership from GOB to Temple Island. The GOB was in breach of its agreement with Mr. Reyes. Mr. Flowers' argument that by the time Temple Island purchased Lot 468 on 3rd June 2008, its purchase approval was void because it had failed to meet the three-month instalment deadline does not alter the fact

that the GOB is now dispossessed of Lot 468. I next consider this issue in the context of representations, successive breaches and limitations.

Issue No. 2: Whether Representations were Made to Mr. Reyes Resulting in Continuing Breaches?

[74] Mr. Reyes stated that for several years after his "purchase" of both properties, he was given repeated assurances from officials or employees of the defendants that title would be issued to him in due course. Mr. Flowers submitted that these prolonged and repeated assurances constituted "a continuing breach with (sic) was consummated when the Defendants totally ignored the demand of the Claimant to complete the agreement for sale".

[75] I considered representation and its effect on an agreement below as well as the concept of successive and continuing breaches. Counsel for Mr. Reyes has canvassed these two concepts as the bases on which Mr. Reyes ought to secure a judgment in his favour.

[76] A representation is "a statement made by one party (the representor) to another party (the representee) which relates, by way of affirmation, denial, description or otherwise, to a matter of fact or present intention."[16]

[77] The defendants say that Mr. Reyes has not established his allegations of representations. Mr. Flowers countered that the Commissioner was aware that the lands were transferred to other parties but knowingly deceived Mr. Reyes that his titles were being processed. Mr. Reyes believed the Commissioner and kept waiting as the time passed. According to Mr. Flowers, the instant case falls into the category of exceptional cases, where there are successive and continuing breaches. He submitted that the breach of contract which gave rise to the action was the non-performance of the defendants' obligation to register title in Mr. Reyes' name before a third party acquired an interest in the lots.

[16] Halsbury's Laws of England (5th Edn., 2008) vol. 22, 2019.

[78] Mr. Flowers relied on **Bell v Peter Browne & Co (a firm)**[17] where Nicholls LJ discussed the distinction between the normal and the exceptional cases of breach of contract:

> For completeness I added that the above observations are directed in the normal case where a contract provides for something to be done and the defaulting party fails to fulfil his contract obligation in that regard at the time when performance is due under the contract. In such a case there is a single breach of contract. By way of contrast are the exceptional cases where on the true construction of the contract the defaulting party's obligation is a continuing contractual obligation. In such cases the obligation is not breached once and for all. But it is a contract obligation which arises anew for performance day after day, so that on each successive day is a fresh breach. A familiar example of this is the usual form of repairing clause in a tenancy agreement. Non-repair for six years does not result in the repairing obligation becoming statute-barred while the tenancy still subsists. The obligation of the tenant or the landlord to keep the property in repair is broken afresh every day the property is out of repair, as Bramwell B observed in *Spoor v Green* (1874) LR 9 Exch 99 at 111. [My Emphasis].

[79] As demonstrated by Nicholls LJ's example as observed in **Spoor v Green**, the issue of continuing contractual breaches often arises in tenancy claims, specifically, where there is a breach of a covenant to a tenancy. As articulated by the learned authors of **Claims to the Possession of Land:**[18]

> It is difficult to find a single explanation of the characteristics which make a particular breach of covenant either a continuing breach or a once and for all breach. Remediability of the breach is not the test (Farimani v Gates (1984) 271 EG 887).
> …
> The authors suggest that a breach of covenant will necessarily be a once and for all breach if:
>
> (i) the covenant requires something to be done on or by a certain date, or within a reasonable time; or
> (ii) the covenant prohibits one or more matters, and the particular breach cannot fairly be described as an activity.
>
> If this scheme is turned round the other way, a breach of covenant will necessarily be a continuing breach if:
>
> (i) the covenant requires compliance at all times throughout the period of the lease; and
> (ii) the covenant requires something to be done, or the particular breach is fairly described as an activity.
>
> It follows from the theory of once and for all and continuing breaches of covenant that if the tenant commits two breaches of covenant, one a once and for all breach and the other a continuing breach, a waiver will prevent the landlord from forfeiting for the once and for

[17] [1990] 3 All ER.
[18] Adrian Davis and Emma Godfrey, Claims to the Possession of Land (1st edn, LexisNexis 2000, repr 2010), B2-8 – B2-9.

all breach but will not bar him from forfeiting for the continuing breach. The exception to this is where the first breach is a once and for all breach, and the second a continuing breach which is really consequential upon and part and parcel of the first breach.

[80] I do not believe that **Bell** helps the case advanced by Mr. Reyes, as I find it can be distinguished. In any event, the UK Court of Appeal in **Bell** concluded in that case, that a solicitors' breach of its contractual obligations owed in a retainer for legal services did not amount to a continuing breach because the breach had occurred at the time the solicitors failed to register the client's proprietary interest. The Court of Appeal was not satisfied that the breach of retainer resulted in a continuing cause of action that arose each day.

[81] There is no evidence of successive or fresh breaches in this matter after the title was transferred to third parties. Notably, titles for Lot 468 were transferred to Temple Island on 18th June 2009 and for Lot 7 to Ms. Azueta on 13th July 2011, before Mr. Reyes (according to the case he advances) even applied to buy Lot 7.

[82] Further, there is no evidence of the purported assurances/representations that occurred over the several years from purchase to the filing of the claim. During cross-examination, Mr. Reyes admitted to knowing the names of persons who made the representations but did not provide the same in evidence or call them to corroborate his evidence. Mr. Reyes only identified the Commissioner at the Belmopan office as having given assurances and that he wrote to the Commissioner but got no response from him.

[83] I am without the necessary evidence to show that representations were made to Mr. Reyes on which he relied to his detriment. Further, Mr. Reyes has not satisfied me that there were continuing and successive breaches in this case. I find that he has not proved this aspect of his case.

Issue No. 3: Whether Mr. Reyes Can be Said to Have Slept on his Rights?

[84] The defendants pleaded limitation.

[85] According to section 4 of the Limitation Act Chapter 170 of the Substantive Laws of Belize, R.E. 2020:

> The following **actions shall not be brought after the expiration of six years from the date on which the cause of action accrued**,
>
> (a) actions founded on simple contract or on tort; [My emphasis].

[86] The limitation period of six years for actions in simple contract and tort has been re-stated and reaffirmed in several cases including **Sherrie Grant v Charles McLaughlin et al**.[19] Generally, time begins to run from the date the contract is broken. This was made clear by Harrison J in **Medical and Immuniodiagnostic Laboratory Ltd v Dorett O'Meally Johnson**:[20]

> [4] Now, the law makes it abundantly clear that an action shall not be commenced after the expiration of six years from the date on which the cause of action accrued: see the Limitation of Action Acts. A 'cause of action' has been defined as 'every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court': Read v Brown [1888] 22 QBD 128, 131.
>
> [5] The general rule in contract is that **the cause of action accrues <u>not</u> when the damage is suffered but when the breach occurred. Consequently, the limitation period runs from the time the contract is broken** and not from the time that the resulting damage is sustained by the plaintiff. [My Emphasis].

[87] With respect to Lot 468, Ms. Gomez argued, and I agree, that the defendants were dispossessed since 18th June 2009 when the GOB issued the Certificate of Title to Temple Island. Mr. Reyes' cause of action for Lot 468 arose on 17th March 2009, when the contract was broken. Mr. Reyes filed his claim on 15th January 2019, almost ten years after the cause of action accrued. This failure to institute the claim for Lot 468 before the expiration of 6 years subjects it to limitation. The defendants are now unable to perform the contract and were unable to do so since 17th March 2009, when they transferred the property to Temple Island.

[88] I, therefore, did not accept Mr. Flowers' counter argument that the cause of action arose when Mr. Reyes' attorney-at-law wrote to the Commissioner on 2nd October 2018 and to the Minister, as copied to the Attorney General of Belize, <u>and got no reply</u>. I wholly and fully rejected Mr. Flowers' submission to wit that the cause of action only arose "**when it became crystal clear** that the Defendants did not intend to complete the bargain despite

[19] [2019] JMCA Civ. 4.
[20] [2010] JMCA Civ. 42.

the demands made on them by the Attorney for the Claimant on the 2nd October 2018 and 14th December 2018." [My Emphasis]. Mr. Flowers must have misread the rule as reaffirmed in **Medical and Immuniodiagnostic Laboratory**.

[89] Limitation did not begin because of a non-response to his letter nor was the demand letter the marker for the occurrence of the breach. I find no basis in this argument.

[90] With respect to Lot 7, I also agree with Ms. Gomez's argument on limitation pursuant to the 25th January 2008 purchase approval. Limitation applies to the claim for Lot 7. The cause of action for Lot 7 accrued on 2nd August 2010 when the GOB sold the property to Ms. Azueta so a claim ought to have been brought before 2nd August 2016. The claim for Lot 7 was instituted on 15th January 2019 outside of time.

[91] Mr. Reyes is barred by limitation having failed to institute his claim for both properties within the statutory period.

Costs

[92] The general rule is that the losing party ought to pay the costs of the other side. Given the evidence in the matter, in particular the failures of the defendants to pass titles for which full purchase price or a reassessed price was solicited and received, I will exercise my discretion and order parties to bear their own costs.

Disposition

[93] It is hereby ordered as follows:

1. The claimant's case is dismissed.
2. Parties are to bear their own costs.

Martha Alexander
High Court Judge