IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE, A.D. 2020

CLAIM No. CV147 of 2020

BETWEEN:

[1] VANESSA HULSE

First Claimant

[2] MATTHEW HULSE

Second Claimant

and

[1] ATTORNEY GENERAL OF BELIZE

Defendant

Appearances:

Ms. Stacey N. Castillo for the Claimants
Ms. Samantha Matute for the Defendant

2024: July 22 & 25;
August 07;
October 16.

JUDGMENT

Trial – Nuisance – Elements of Nuisance – Whether Noise, Vibration, Dust, and Flooding Caused by Bridge Construction and Highway Realignment Amount to Nuisance – Property Being Used for Commercial and Residential Purposes – Whether Excessive Flooding in November 2020 was Created by New Bridge – Mitigation Measures – Whether Measures were Reasonable or Effective – Negligence – Whether Negligence was Established including the Foreseeability of the Damages Suffered – Effect of Evidentiary Insufficiencies – Whether the Claimants are Entitled to Damages – Appropriate Measure of Damages – Diminution in Value of Land – Quantum of Damages.

[1] **ALEXANDER, J.**: I grant the claimants judgment on their claim. I am satisfied that the evidence presented establishes that they suffered nuisance to the extent identified below. I am also satisfied that the claimants (hereinafter together "the Hulses") are entitled to an award of damages for the wrongs done to them.

Background

[2] This claim arose because of the George Price Highway Rehabilitation Project ("the Highway Project") undertaken in 2017 by the Government of Belize ("GOB"). The GOB commenced the Highway Project sometime in or around November 2017. It involved, among other things, highway rehabilitation or realignment and the construction of a new bridge over Roaring Creek ("the Bridge"). It is this Bridge and the alleged impacts of its construction that occupy the centre stage of the present proceedings. In dispute also is the quantum of damages, if any, that is payable to the Hulses.

[3] The cruces of the dispute in these proceedings between the parties understandably emerged because the construction site of the Bridge passed through the Hulses' property then known as Parcel 813 and directly in front of their residence. Structures on Parcel 813 included the Hulses' home, a gas station and a shop, so the property was at the time being partly used for commercial purposes. The GOB compulsorily acquired a portion of Parcel 813 from the Hulses in order to carry out the Highway Project. It meant that the Hulses' property was subdivided into Parcel 4636, now owned by the GOB, and Parcel 4637, which was retained by the Hulses. The property acquisition having been completed; one would have thought that any dispute would be put to bed. Instead, the Highway Project gave rise to the present issues in dispute between the parties, with both sides taking entrenched opposite positions.

[4] At the trial, each party called the evidence of expert witnesses. Both Mrs. Vanessa Hulse and Mr. Matthew Hulse gave evidence on their own behalf, and they called the expert evidence of Mr. Albert Roches and Mr. Wilfredo Bautista. The GOB called Mr. Julio Chia, and Mr. Derick Calles as expert witnesses. Mr. Ramos Frutos also provided expert evidence.

The Hulses' Case

[5] The Hulses contend that the works that took place to construct the Bridge caused them to suffer losses. These losses include the exposure to increased noise pollution caused by the proximity of the Bridge to their home, and amplified noises from the motor vehicle traffic

passing on the realigned highway and the new Bridge. They also experienced extreme dust and vibration, both during and after construction. Another major loss suffered by the Hulses was flooding. The design and placement of the Bridge adjacent to their property resulted in Parcel 4637 (i.e. the Hulses' property) becoming more susceptible to extreme flooding.

[6] By their amended claim form and statement of claim, the Hulses pleaded nuisance, or alternatively negligence, as well as undue influence, the latter of which was abandoned. At the trial, the Hulses maintained only their claims in nuisance and negligence and sought to prove these torts, by calling expert evidence in addition to their own evidence.

[7] Essentially, the Hulses' case is that the GOB created a nuisance and/or acted negligently by causing noise, dust and vibration *during* the construction of the Bridge. The nuisance was self-evident in the increased unbearable noises, dust and vibrations that they were made to put up with. After the construction, they were faced with unprecedented floodings and continuing noises, the latter though to a reduced extent. The situation caused the Hulses to suffer losses including diminution in the value of Parcel 4637.

The GOB's Case

[8] The GOB's case is that the Hulses have not established their claims of nuisance and negligence. The GOB admitted that it undertook the Highway Project in the interest of the public and did so by employing all reasonable steps to mitigate any likely nuisance from the construction works. In fact, the evidence did not support any diminution in the value of Parcel 4637 so the Hulses' claim must be dismissed. Liability in nuisance and negligence having not been established, the Hulses are not entitled to any award of damages.

Issues

[9] I find that the issues that fall for the court's determination are as follows:

i. Whether the Hulses have established their case that nuisance and negligence were caused by the highway realignment project undertaken by the GOB and the construction of the Bridge in front of Parcel 4637?

ii. Whether the Hulses are entitled to damages and, if so, what quantum of damages should be awarded?

[10] I thank both counsel for the maturity and efficiency with which they conducted this trial. Their approach allowed for the smooth and efficient reception of evidence. I was particularly impressed with the focused cross-examination of the witnesses since this helped to realise the overriding objective of proper use and management of the time and resources of the court and litigants. The skilful and targeted cross-examination of the expert witnesses by both sides, in particular, provided a balanced perspective of the issues in dispute which helped with their resolution. This court commends counsel for their assistance in the above regard.

Discussion

Issue No 1: Whether the Hulses have established their case that nuisance and negligence were caused by the highway realignment project undertaken by the GOB and the construction of the Bridge in front of Parcel 4637?

[11] In disposing of the issues before me, I find it proper to commence by delinking the tort of nuisance from that of negligence. It is an approach that will serve to bring clarity to the issue of nuisance and do greater justice to the evidence that was before the court. I must say that there was a wealth of evidence presented in support for and against the cases of both parties. The learning and jurisprudence in the areas of both torts and the evidence presented helped me to arrive at a just disposal of these issues. I start with nuisance.

NUISANCE

[12] Nuisance as a tort has attracted a large body of literature and jurisprudence. In the present proceedings, the Hulses alleged that the issue of nuisance arises in two specific instances. First, there was nuisance **during** the construction of the Bridge. Secondly, there was nuisance **after** the construction of the Bridge. To properly address both scenarios, the first step is to explore what constitutes a nuisance in law.

[13] Having set out the not-so-difficult facts at paragraphs 2, 3 and 5 for context and the two-pronged nature of the claim for nuisance, I now turn to some helpful definitions of nuisance, which highlight the elements of this tort and/or the relevant tests that can be used to determine if the GOB is liable for nuisance.

[14] In **Sedleigh-Denfield** v **O'Callaghan**,[1] Lord Atkin stated:

> I think that nuisance is sufficiently defined **as a wrongful interference** with another's enjoyment of his land or premises **by the use of land** or premises either occupied or in some cases owned by oneself. The occupier or owner is not an insurer, there must be **something more than the mere harm done to the neighbour's property to make the party responsible**. Deliberate act or negligence is not an essential ingredient but **some degree of personal responsibility is required** which is connected, in my definition, by the word 'use'. This conception is implicit in all the decisions which impose liability only where the defendant has 'caused or continued' the nuisance. [My Emphasis].

[15] **Halsbury's Laws of England**[2] defines a private nuisance as:

> … one which **interferes with a person's use or enjoyment of land or of some right connected with land**. It is thus a violation of a person's private rights as opposed to a violation of rights which he enjoys in common with all members of the public. The ground of the responsibility is ordinarily the creation of the nuisance, and the person who creates a nuisance is liable even if he does not have occupation or control of the land from which the nuisance proceeds. [My Emphasis].

[16] In **Winfield and Jolowicz on Tort**,[3] it is stated that:

> The **essential feature of nuisance liability is that of the protection of private rights in the enjoyment of land**, so that the control of injurious activity for the benefit of the whole community is incidental. [My Emphasis].

[17] In **Buckley – The Law of Negligence and Nuisance (Common Law Series)**,[4] the test to apply for determining nuisance is reasonableness and is described thus:

> In resolving such disputes, the court attempts to balance the conflicting interests of the parties by using, as far as possible, **external gauges of the reasonableness** or otherwise of the defendant's conduct and the complainant's complaint. [My Emphasis].

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[1] [1940] A.C. 880.
[2] Halsbury's Laws of England, 5th Edn. Nuisance (Volume 78) 2018 at 107.
[3] Winfield and Jolowicz on Tort, 13th Edn, at page 375.
[4] Buckley – The Law of Negligence and Nuisance (Common Law Series) at 12.01.

[18] The salient points on what constitutes nuisance and what must be proved are clear from the above caselaw and literature. I reframe these requirements to establish nuisance as entailing five main ingredients:

(i) an act of wrongful interference with a person's private enjoyment of land;
(ii) this interference must be more than mere harm being done to property but involves a violation of a private right more so than a right shared in common with the public;
(iii) the interference must be unreasonable (i.e. the test is one of reasonableness);
(iv) the test is an objective one, garnered through the use of external gauges; and
(v) it is unnecessary to show proof of negligence or proof of the act being deliberate or malicious and/or proof of ownership of the land from which the nuisance flows.

[19] To determine if there was liability for nuisance, I would have to be satisfied that the construction and its effects were unreasonable, from an objective standpoint, in terms of its effects on the private enjoyment of Parcel 4637.

[20] The question of unreasonableness is one of fact. To conclude that nuisance existed, I would have to consider the time, place, and manner of commission of the act complained about. It means that the reasonableness of the conduct that allegedly caused the nuisance would require consideration to be given to the *locality* in which the alleged nuisance occurred, the *standard of comfort* that a person living in the area might reasonably expect in addition to the *time and duration of the nuisance*, especially regarding the noise and the nature of the effects of the interference on the Hulses' enjoyment of their property. I must also consider whether the interfering tortious conduct was transitory or permanent and its impact on the enjoyment of Parcel 4637, in the context of the Hulses being ordinary inhabitants of the area.

i. <u>Nuisance During Construction</u>

[21] There is no disagreement between the parties that the highway has always passed in front of the Hulses' property. Further, the old bridge was further away from the Hulses' home than the current location of the new Bridge. That apart, the Hulses have pointed to specified instances in their evidence as rendering the GOB liable for nuisance in the construction of

the Bridge and realignment of the highway. I will examine first the locality and the common usage of occupants of property in the surrounding community to determine the extent to which, if any, that the construction works wrongfully interfered with this.

a. Whether the Nature of the Construction Interfered With the Ordinary Usage of Properties of Persons Occupying Properties in the Vicinity?

[22] The act complained of was that the construction of the Bridge directly in front of the Hulses' residence caused excessive dust, noise and vibration to occupants of the Hulses' residence or Parcel 4637, both during and after the construction of the Bridge and highway. The Hulses have advanced evidence at trial to show that the GOB created circumstances which unreasonably interfered with their comfort and enjoyment of Parcel 4637.

[23] Vanessa Hulse averred that she is an elderly woman and the mother of the second claimant, Matthew Hulse, both registered owners of Parcel 4637. Mrs. Hulse stated in her witness statement that the Bridge was built uncomfortably close to the Hulses' residence. Whilst the previous old one lane bridge was also located closest to their property in that neighbourhood, the new Bridge was now constructed directly in front of their residence. It meant that construction work occurred directly in front of the Hulses' home. During cross-examination, Mrs. Hulse admitted that they were aware that the Bridge would be constructed near to their home and had not objected to its relocation. However, she maintained that the nature of the construction work involved created an extreme form of noise, vibration and dust that significantly interfered with the usage and enjoyment of their property.

[24] In contrast, the evidence of Mr. Derick Calles, the expert witness called by the GOB, painted a picture of the normalcy of the construction works and effects. He asserted that what occurred was "normal" construction noises and "expected" dust emissions for which mitigation steps were employed. The new Bridge was built adjacent to the old bridge and did not in any way change the character of the neighbourhood in its vicinity. Accordingly, the position of the GOB was that the construction work was reasonable and done with minimum, if any, disruption to the surrounding locality.

b. Whether the Time and Place Where the Construction was Carried Out was Unreasonable?

[25] It took the GOB approximately 27 months to construct the new Bridge and realign the highway. At paragraph 18 of Mrs. Hulse's witness statement, she stated that "it felt like we were living in hell because of the dust, noise and vibration caused by the construction." Mitigating steps, such as road wetting, were employed but these were not constantly or consistently done. Mrs. Hulse accepted that there was an Environmental Impact Assessment Report (EIA report) that set the hours of construction operation as 8 a.m. to 5 p.m., however, work was sometimes done *outside* of the normal working hours. In fact, at times and regularly so, the working hours extended sometimes to 10:00 p.m. during the week. On this issue of time, I will reproduce a part of Mrs. Hulse's responses to counsel when the case of the GOB was put to Mrs. Hulse during cross-examination:

Q. … well, I will put it to you that for the most part, they worked between 8:00 a.m. to 5:00 p.m.
A. I have witnessed where **I called the area representative one night, I called the Police Station in Belmopan, they told me to call Roaring Creek Police Station. I had to stop them. <u>Night after night, 10:00 p.m. in the night, they're working</u>**.
Q. Mrs. Hulse, I just want you to say if you agree or disagree with what I said, they worked for the most part between 8:00 a.m. to 5:00 p.m. You can agree or you can disagree.
A. The most part you said right?
Q. Yes. Most part because there are exceptions, so we'll get to that too, but I just want talk about for the most part, the work would've been done between 8:00 a.m. and 5:00 p.m.?
A. That was later on. Before, they were trying to push it.
Q. So then, you said that there were times when they worked until 10:00 p.m.?
A. Yes, ma'am. Uh-huh.
Q. But would you agree with me that the kind of work that they did past the 5: p.m. time period would have been much quieter work?
A. **No, ma'am. Lot of noise**. [My Emphasis].

[26] I accept the above evidence as a candid description of what transpired during construction from the perspective of Mrs. Hulse. According to Mrs. Hulse, the impact of the construction operations caused serious harm to the occupants of her residence, significantly limiting their enjoyment of their property and forced her to evacuate. Further, the mitigating measures were ineffective, minimalistic and not constantly deployed. The noise was unbearable, and it was excessive and for extended periods of time. This was compounded by the extreme dust

and air pollution that they were forced to endure. The nuisance was made worse when it was combined with the vibrations created by the use of vibratory machinery. Mrs. Hulse asserted that while construction also took place on weekends with reduced noises, it was still a nuisance.

[27] In response, the GOB called evidence to show that the situation resulting from the construction of the Bridge and highway was "normal" and by no means outside the bounds of the ordinary construction work site. The GOB relied on the evidence of Mr. Derick Calles and Mr. Julio Chia who stated that they were present at the construction site almost daily and that their evidence ought to be given more weight than that of the Hulses who were not present every day or throughout the entire day.

[28] Mr. Chia maintained that it was not all the time that the Hulses would have been exposed to excessive noise levels since the exposure would depend on the nature of the work being carried out at any given point in time. Construction work was done during 8 a.m. and 5 p.m. and, on the exceptional occasions when work was done outside of that period or on weekends, their operations produced considerably less noise than those operations done during peak hours. Mr. Chia testified that it was normal, expected construction disturbances, creating little to no inconvenience.

[29] According to Mr. Calles for the GOB, they used ordinary but proper construction equipment to do the work. Further, the selected pieces of equipment were not used for the entire construction period. He stated further that wherever more efficient and faster machinery could be utilised, these pieces of equipment were chosen. Mr. Calles also averred that driving piles was noisy, but not necessarily the noisiest part of the construction operations. However, the pile driving was only done for short periods at any given point of time. He admitted that pile driving was done over a total of only 4 to 5 weeks during the entire period of the 27 weeks of construction. Therefore, the noises associated with the construction were ordinary levels of construction noise and it was not at all times that the Hulses were exposed to excessive noise levels. The noisy exposure was limited to the nature of the work being done and, for the majority of times, they tried to keep the noise levels within the tolerance levels utilised in the construction sector.

[30] During cross-examination, Mr. Calles downplayed the noise nuisance of construction by stating, “Every construction site has a certain degree of noise and a certain degree of dust. However, there are mitigating measures that can be put in place that could minimise the effects that are caused by the construction.” Mr. Calles also agreed that the Hulses’ enjoyment of their property would have been affected by the noise and dust, qualifying this by stating “to a certain extent because … the construction process [which he described as the process of assembling different parts by way of screws or nuts and bolts or nails that generates noise] does generate noise but mitigating measures do assist to minimise the negative impact.” He stated that the noises caused by use of heavy machinery including vibratory equipment were kept at a minimum. However, sometimes to complete these jobs, the work went beyond the normal working hours.

[31] I was not impressed with Mr. Calles as a witness called to assist the court. I found his evidence excusatory, generalised and unconvincing. He claimed that throughout construction, noise is to be expected and was in fact an inherent part of it. However, this does not necessarily mean that it amounts to a nuisance, as there were construction standards, EIA report and set hours for operation. The conclusion of what constitutes nuisance was misplaced and a responsibility of this court that was not ceded to this expert witness. Further, when asked if he would agree that the Hulses were exposed to noise and dust during the construction of the Bridge, he responded “Naturally, to a certain extent, yes.” Mr. Calles’ response of “to a certain extent” was, in my view, a weak attempt to soften or reduce the impact of the noise nuisance created by trying to locate the nuisance in the realm of what is “normal” and not to be complained of by the Hulses.

[32] I find that Mr. Calles did not present as a witness who understood his role to the court. In my view, he came rehearsed and bent on selling the case that because noise was an inherent part of all construction, it was “normal” noise that the Hulses should have found bearable, so it did not amount to a nuisance. During cross-examination, Mr. Calles even pointed out that he was not aware of complaints from the Hulses and, in any event, any complaints received were addressed swiftly by the GOB. This contrasted sharply with Mrs. Hulse’s evidence of the several times when she did in fact call and complain to the onsite construction

supervisors, particularly about the unabated and unbearable loud noises at nighttime (see paragraph 25 above).

[33] Mr. Calles' evidence was confirmed, in some respects, by Mr. Chia who admitted, during cross-examination, that construction creates noise, dust emissions and vibrations even with the best mitigation systems in place. However, the GOB did take steps to alleviate the effects of the pollution, and that side personnel exercised "reasonable care and skills whilst employing engineering and administrative controls in an effort to limit any potential negative effects that may have been occasioned on the residents in the immediate area."[5]

[34] Pressed under cross-examination, Mr. Chia conceded that the mitigation measures employed would not have completely eliminated the noise and dust emissions created by the construction. When pushed further during cross-examination, Mr. Chia acknowledged that pile driving creates noise levels that are *above and beyond* what regular persons would consider normal. He explained that normal noise levels are those that are created by traffic and ordinary construction works. Mr. Chia then conceded also that there was one occasion when the works were extended for 36 hours straight, for the pouring of the west abutment pile in June 2019. He also acknowledged that given the proximity of the Hulses' home to the construction site, certain [additional] steps could have been taken. He puts it thus:

> Q: Her house was right next to the construction site, so could the noise really be limited given the proximity of the construction site?
>
> A: **Things could have been done, sound barriers to be installed for sure** things could be installed to mitigate it around construction site but since the majority of the time we tried to keep the noise within the tolerance and what we used to in construction we never went over that, **it was not sustainable to have installed those measures**, especially due to shorter time compared to other project duration when we were working in front of her property.
>
> Q: Why was it not sustainable to put these things in place?
>
> A: **The EIA did not call for us to do that**. **It was to keep the noise within the tolerance limit**. They didn't give a value, but they used to keep it around a value. There was **not a budget for that** so whatever we do for that it would have to be out of the budget.

[5] Witness statement of Mr. Julio Chia, at paragraph 13, Trial Bundle page 1166.

Q: You would agree though that the noise levels and dust emissions would have affected the claimants' enjoyment of their property?

A: I could agree that could create **some kind of discomfort**, yes. [My Emphasis].

[35] In my view, Mr. Chia was a valuable witness who spoke the truth about the mitigation steps employed and the noise levels. According to Mr. Chia, noise was to be kept within "tolerance" levels, however, because there was no specific budget provided for that, then necessary additional and/or alternative measures were not employed, though available. I accepted Mr. Chia's evidence as truthful. I understand it to mean that the noise nuisance from the construction was unavoidable. I also understand him as saying that the GOB employed mitigation steps within their budgetary controls to allay the effects of noise on the Hulses' enjoyment of their property. These steps were ineffective but additional measures were financially unviable or outside budgetary consideration. In fact, this position, as gleaned by me, is supported by the evidence before me.

[36] Regarding the issue of the dust nuisance specifically, the witnesses for the GOB in unison sought to convince me that dust is a natural consequence of living near a highway but that the GOB did all that it could to minimise the impact of dust emissions on the Hulses. Mr. Calles stated that the generation of dust particles from this type of construction work was unavoidable. The increase in dust emissions was a necessary effect of the construction so to combat it or, at the very least, to allay the effects of dust emissions, they implemented mitigation measures. These measures included the continuous wetting of the road, and traffic management. Mr. Chia also confirmed that the contractors dedicatedly carried out their obligations to regularly wet surfaces and manage traffic. The frequency of the road wetting was not revealed in evidence. I was not impressed with the attempts to influence me that these measures were sufficient, and/or that they were reasonable. I preferred the arguments advanced by the other side.

[37] Regarding mitigation measures for the dust, noise and vibrations caused by the construction, counsel for the Hulses, Ms. Stacey Castillo, submitted that whilst proper mitigation measures could have been adopted, they were not. Ms. Castillo argued that the evidence of Mr. Chia was clear that funds for certain mitigation measures were not in the budget for the highway construction. I agree.

c. Whether the Construction is Transitory or Permanent?

[38] Of note is that the noise and dust complained of were of a temporary nature. Construction lasted for approximately 27 months. This is evidenced by the Certificate of Completion exhibited to paragraph 11 of the witness statement of Mr. Chia. Therefore, that period constituted, in the round, the time of the noise, dust and vibration nuisance. Counsel for the GOB, Ms. Samantha Matute, argued that the disturbance was transitory given the limited timeframe of the work. She submitted that any nuisance, "was expected because of the specific characteristics of where the property is located in proximity to the highway and the old and new bridge, and that the construction work was temporary, lawful and carried out with reasonable skill and care." Ms. Matute then invited the court to adopt the position advanced in **Andreae v Selfridge & Co Ltd**[6] to wit that persons facing temporary disruptions consequent on development activities must put up with any discomfort of noise or dust to facilitate these operations or all development would be impeded.

[39] While I understand and, to a large degree, accept Ms. Matute's argument that an extent of inconvenience and discomfort is a necessary consequence of all advancement and for the greater good so must be endured, I do not accept Ms. Matute's broad-brush approach to the issue of nuisance raised in these proceedings. I also do not believe that this summation of **Andreae's case** effectively captures the true import of that court's statement and in my view, must be taken in its context. In fact, I will unapologetically take the liberty of quoting extensively from **Andreae** as that court's exposition on the law of nuisance was done with a clarity and economy that I am unable to reproduce. The test in **Andreae** is one of reasonableness and the use of proper care and skill in the conduct of activities that affect the enjoyment of the private rights of one's neighbour.

[40] On the issue of the transitory nature of the construction, I note the pronouncement on the transient nature of the activities in **Andreae** which is a case involving the implications of noise emanating from building operations. The court stated:

[6] [1937] 3 All ER 255.

> … when one is dealing with temporary operations, such as demolition and building everybody has to put up with a certain amount of discomfort, because operations of that kind cannot be carried on at all without a certain amount of noise and a certain amount of dust. Therefore, the rule with regard to interference must be read subject to this qualification, and there can be no dispute about it, that, in respect of operations of this character, such as demolition and building, if they are reasonably carried on, and all proper and **reasonable steps are taken to ensure that no undue inconvenience is caused to neighbours**, whether from noise, dust, or other reasons, the neighbours must put up with it. [My Emphasis].
>
> …
>
> I desire here to make one or two general observations on this class of case. Those who say that their interference with the comfort of their neighbours is justified because their operations are normal and usual and conducted with proper care and skill are under **a specific duty**, if they wish to make good that defence, **to use reasonable and proper care and skill**. It is not a correct attitude to take to say: "We will go on and do what we like until somebody complains." That is not their duty to their neighbours. **Their duty is to take proper precautions, and to see that the nuisance is reduced to a minimum**. It is no answer for them to say: "But this would mean that we should have to do the work more slowly than we would like to do it, or it would involve putting us to some extra expense." All those questions are matters of **common sense and degree**, and quite clearly it would be unreasonable to expect people to conduct their work so slowly or so expensively, **for the purpose of preventing a transient inconvenience, that the cost and trouble would be prohibitive**. **It is all a question of fact and degree, and must necessarily be so**… The use of reasonable care and skill in connection with matters of this kind may take various forms. It may take the form of restricting the hours during which work is to be done; it may take the form of limiting the amount of a particular type of work which is being done simultaneously within a particular area; it may take the form of using proper scientific means of avoiding inconvenience. **Whatever form it takes, it has to be done, and those who do not do it must not be surprised if they have to pay the penalty for disregarding their neighbours' rights.** [My Emphasis].

[41] Ms. Matute submitted that the construction inconveniences were expected, given the specific characteristic of where the property is located. Its proximity to the highway and to the old and new Bridge guaranteed some disruption but the work was temporary, lawful and carried out with reasonable skill and care. I disagree.

[42] In my judgment, the duration of the construction was temporary but for a period of two years, it was by no means "short". While the Hulses must expectedly endure a measure of inconvenience and "certain discomforts" of noise, dust and vibrations, the actions of the GOB must be reasonable. Instead, for that period the GOB acted with impunity, adopting minimalistic attempts at mitigation. The Hulses were made to endure the nuisance for not two months but two-plus years, with mitigation measures being taken with a sleight of hand.

The evidence of Mr. Calles that he did not recall receiving complaints from the Hulses was particularly telling in these circumstances, where the GOB was under a specific duty to take proper precautions to reduce the disruption. Therefore, I do not accept the evidence of the witnesses of the GOB who sought to portray the construction noise and dust as either "ordinary construction noise" or the "expected construction dust" or "normal construction noise" for the full period of two years. I also reject the dismissal of the inconvenience caused by this disruption to the enjoyment of their property, as something that should be expected or endured for the benefit of the common good. It is worse that these witnesses would aver that Mrs. Hulse was sometimes out of the jurisdiction, tendering to the medical needs of her cancer-ailing husband so was not affected much by the nuisance. I assume that on return, the accumulation of dust would have been tremendous, unsightly and unbearable, especially in the absence of daily cleaning, and over any lengthy stay away from the residence.

[43] I also accepted the evidence that on occasion, the works continued at night and during the weekends. I also accepted that the building of the Bridge was not "ordinary" or "normal" construction work similar to that done on a house. It involved the use of heavy machinery, vibratory equipment, pile driving and casting, which the witnesses of the GOB described as creating noise that was excessive and out of the ordinary. In the circumstances, I accepted Mrs. Hulse's characterisation of the experience as "living in hell".

[44] As stated by the court in **Andreae**, it is all about "a question of fact and degree" and, might I add that "degree" is to be objectively determined on the basis of common sense. The court in **Andreae** was clear that the duty of the persons doing the nuisance is a specific duty. The specificity is described thus, "Their duty is to take proper precautions, and to see that the nuisance is reduced to a minimum." Therein lies the common-sense notion of reasonableness and balance. If I might be forgiven for reiterating the words of the court in **Andreae**, "It is no answer for them to say: "But this would mean that we should have to do the work more slowly than we would like to do it, or it would involve putting us to some extra expense." Notably, the court in **Andreae** also expressed that in making a sensible determination as to "**degree**" it must be factored in that it would be unreasonable to expect people to conduct their work so slowly or so expensively so as to avoid a temporary inconvenience, where the likely outcome would be to make the cost of doing the work

prohibitive and useless. However, the evidence in the present proceedings was that "extra expense" was not employed.

[45] In submissions, Ms. Matute pointed out that Mrs. Hulse only returned to the property sometime in March 2018, after the construction work had started in January 2018. Also, she would have left from time to time to travel to the USA with her husband who was undergoing cancer treatment. Further, Mr. Matthew Hulse did not live at the Hulse residence full time but moved between Belmopan and the Hulse home to visit the property at different times of the day. I assume that by her submissions, the court is meant to accept that the nuisance affecting the enjoyment of the property was somehow reduced by the Hulses' absences or the irregularity of the visits to it by Mr. Matthew Hulse. In this regard, I bear in mind the evidence of Mr. Matthew Hulse that he visited the property every day.

[46] Ms. Matute also argued that the GOB witnesses have the skill and experience in construction and can "objectively" testify whether the dust and noise levels were reasonable or not. Ms. Matute also submitted that there was no breach of duty as the GOB had exercised all reasonable care and expertise to limit and/or mitigate the expected consequences of the construction. I am not satisfied that the evidence established or supported this position.

[47] I am not satisfied that "measured" mitigation of the nuisance occurred during construction, or that the road wetting was done regularly or consistently. There was a concession by the witnesses under cross-examination that work was done overtime, at times, and during the weekend but there was no clear evidence of the frequency of these occurrences. Therefore, I accepted the evidence of the Hulses as to the intrusive conduct of the work, which created loud noises and dust that were excessive and beyond what was normal or ordinary during the construction work. In my view, the GOB could have done more to alleviate the nuisance. Mr. Calles and Mr. Chia both referred to other steps that could have been taken to allay the nuisance. One such additional step was acquisition of the whole property. However, the GOB's failed or refused to acquire the entire property, exposing the Hulses to the nuisance.

ii. Nuisance After Construction

[48] The Hulses claim that after construction, the noise levels and flooding increased. I am not satisfied on a balance of probability that nuisance *after* the construction was established, in terms of both the elevated noise levels and flooding. The evidence simply did not support that conclusion. Both the Hulses and their expert witness, Mr. Albert Roches, gave evidence of the alleged nuisance after the construction of the Bridge.

a. Noise

[49] Mrs. Hulse averred that consequent on the Bridge being constructed so close to her residence, the noise, air and land pollution have now gotten worse. Mr. Roches' evidence was that the Hulses suffered from more noise pollution because of the location of the new Bridge and the realignment of the highway. In his expert report, Mr. Roches went further to say that exposure to this intermittent traffic noise pollution can and does affect sleep (day/nighttime), mood and heart rate. Mr. Roches relies on the literature, research and studies on noise pollution and its effects on sleep, which as an expert he is entitled to use to inform his opinion.

[50] Relatedly, Mr. Roches pointed out that the original highway was located about 85 feet away from the Hulses' residence, so the noise source was further away, but at an equal level to the ground floor/porch of their residence. There was a wall on the Hulses' porch that acted as a barrier, and which served to deflect much of the noise emanating from the highway traffic. However, the construction works raised the carriageway to almost the same height as the porch, which now allows any source of noise to travel along its transmitted path directly towards the Hulses' residence. This has basically nullified most of the noise reduction potential of the wall on the porch.

[51] Regarding the expert evidence of Mr. Roches, I noted that when asked under cross-examination about the methods that he had used to establish in any concrete way the veracity of the conclusions arrived at, Mr. Roches admitted that he did not measure the effect of the sounds from inside the Hulses' residence but only conducted his testing from outside

the building. When pressed further, Mr. Roches conceded that it was possible that the noise levels could have been lower if done from inside the building. Of note also was that Mr. Roches' expert evidence on the effects of intermittent noises on sleep was not supported by any medical or other evidence of the personal effects of the noise on any sleep deprivation faced by the Hulses. Further, this evidence of sleep deprivation was not replicated in the witness statement of Mrs. Hulse so no weight was given to it. Mr. Roches also testified that as long as one lives along a highway, one would be exposed to higher noise levels. He also testified that the noise levels created post-construction were neither consistent nor sustained for long periods. At most, the noise levels lasted only for a couple of seconds.

[52] Mr. Ramon Frutos gave evidence that underscores the Hulses' evidence of the noise nuisance. According to Mr. Frutos, the noise now faced by the Hulses was unreasonable and the GOB should have acquired the entire property or a larger portion than it did. I was unsure how the acquiring of a "larger portion" of the property would have affected noise nuisance since the location of the Hulses' residence would not have shifted from its current position. I was also uncertain as to Mr. Frutos' expertise or qualifications on noise pollution. I did not place much weight on Mr. Frutos' conclusions in this particular regard.

[53] Regarding nuisance caused by noise, Ms. Matute advanced, and I accepted, that given the locality and characteristics of Parcel 4637, particularly its proximity to the highway and the bridge, some level of noise is expected. I am also of the view that the noise levels were time sensitive. These would not be sustained throughout any given day and would be more elevated during peak hours. The location of the Hulses' residence presupposes that it would be exposed to varying levels of noise, fluctuating at different intervals throughout the day. I am not satisfied that this amounts to nuisance post-construction because the Bridge is now closer to the Hulses' residence.

Disposition of Issue No. 1

[54] In disposing of the first issue, I considered if the Hulses' evidence satisfied the test of nuisance *during* and *after* construction? The answer to this question is yes as regards during

the construction but that the evidence does not sufficiently support the claim of nuisance post-construction.

[55] In coming to my conclusion on the noise nuisance during and after construction, I bear in mind that reasonableness is not determined on a personal basis. It means that where the construction work is carried out in a reasonable and proper way, taking care to keep the noise at a minimum, that neighbours such as the Hulses must put up with it. This must be balanced against nuisance acts that materially interfere with and are inconvenient to the point of being disruptive of the ordinary and basic physical comforts of human existence. Here, the measurable standards are not pretentious or dainty or elevated but basic.

[56] I find helpful to determine if nuisance existed the test that is set out in **Halsbury's Laws of England**, which I have unapologetically lifted and reproduced below:

> Apart from any limit to the enjoyment of his property which may have been acquired against him by contract, grant or prescription, every person is entitled, as against his neighbour, to the comfortable and healthful enjoyment of the premises owned or occupied by him whether for pleasure or business. In deciding whether in any particular case this right has been invaded and a nuisance thereby caused, **it is necessary to determine whether the act complained of is an inconvenience materially interfering with the ordinary physical comfort of human existence**, not merely according to elegant or dainty modes and habits of living, but according to plain and sober and simple notions. It is also necessary to take into account the circumstances and character of the locality in which the complainant is living and any similar annoyances which exist or previously existed there. [My Emphasis].

[57] The closest neighbour to the construction site was Mrs. Hulse. I find as a fact that she suffered nuisance of high noise levels, vibrations and dust emissions, during the work, which affected the ordinary enjoyment of her property. At one point, the unbearable onslaught of the nuisance led her to vacate her home and seek refuge away from the construction site. This is no normal or usual nuisance of home construction nor is it one of a degree that a neighbour must put up with.

[58] In **Dhanasar et al v Al Meah-John Ltd and the Attorney General of Trinidad and Tobago**,[7] a case relied on by the Hulses in support of their claim, damages were awarded for nuisance during construction. The facts in **Dhanasar** are similar to those in the present proceedings and involved heavy and persistent dust that covered the claimants' property and goods. The **Dhanasar** claimants admitted that the defendants used water trucks to wet the ground but argued that this mitigation measure was inadequate and failed to meet its objectives. In his judgment, Harris J concluded thus:

> It is the view of the Court that the nuisance complained of by the plaintiffs was reasonably foreseeable, considering that the plaintiffs repeatedly complained of their plight and further, the defendants would have had more than ample experience in road works and would be well acquainted with the issues or inconveniences such as noise and dust that naturally flow from road works. Further still, **the road works extended for a considerable period during which the defendants would have had ample time to have observed for themselves the effect of the road works on the plaintiff and surrounding areas generally**. It is the view of the Court that the defendants' attempts to lessen such inconvenience were lacking. Reasonable and proper steps were not taken to ensure that no undue inconvenience and discomfort was (sic) caused to the plaintiffs.[8] [My Emphasis].

[59] I agree with the statements of Harris J in **Dhanasar** where he pointed to the fact that the nuisance was reasonably foreseeable and, thereafter that the defendants would have had ample time to observe the effects of the nuisance on properties in the vicinity of the road works. In the present case, I do not accept that the mitigating attempts of occasional road wetting and traffic management, for the over two years that it took to complete the highway project, were anything but failed attempts to allay the undue inconvenience and discomfort caused to the Hulses. Having decided not to acquire the entirety of Parcel 4637, and with the full knowledge of the proximity of the road infrastructural works engaged next to the property, the GOB would have reasonably foreseen the invasion of noise and dust complained of by the Hulses. I bear in mind also that other scientific mitigation measures were not deemed cost-effective, so were not considered by the GOB. In my view, road wetting, occasional or frequent, would not have completely lessen the dust nuisance created by the construction.

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[7] TT 2014 HC 295 delivered by Harris J. on 31st July 2014.
[8] Ibid at paragraph 53.

[60] I find the GOB liable for nuisance *during* the construction phase of the Bridge and highway. I also find that on a balance of probabilities that Mrs. Hulse was not faced with permanent exposure to noise pollution *post-construction*. In coming to my conclusion, I bear in mind the locality and characteristics of the property pre-construction. In my judgment also, any noises post-construction would not be at the same levels or intensity nor would the effects on the Hulses' ordinary enjoyment of their residence be of pre-construction equivalency in their impact on the property. Any award of damages below would reflect this distinction.

b. Flooding

[61] I next considered the claim that *after* construction, there was elevated and unprecedented flooding faced by the Hulses. I did not so find on the evidence before me, and I did not include this in my award. Notably, the Hulses pointed specifically to the November 2020 flooding, which saw unprecedented heights in water levels, causing huge losses to property owners in Belize. The evidence called for and against this position was thought-provoking, particularly the evidence of Mr. Ramon Frutos who provided his perspective in a straightforward and truthful way.

[62] The Hulses contended that the construction of the Bridge directly in front of their property made their home more susceptible to extreme flooding. The Hulses admitted that the location of their property next to the creek meant that it has always suffered from flooding in the past. However, after the construction of the Bridge, they experienced unprecedented flooding in November 2020, with the water levels rising to disastrous levels.

[63] The expert evidence of Mr. Frutos was relied on by both parties in support of their cases for and against elevated flooding caused by the construction activities. I find it helpful for context to quote liberally from Mr. Frutos' report:

> The horizontal and vertical alignments of the Bridge and **the proximity of its western inclined approach to adjacent private properties on either side is an undesirable introduction into the floodplain**, but a necessary one for public good. Another alternative, apart from those presented in the EIA, would have been for the GOB to acquire properties on either side of the western Bridge approach, which would have driven up the cost of the Bridge infrastructure; but regardless of this, GOB was obliged to acquire two

narrow strips of land on the side of the Bridge approach by the Claimant's property, to facilitate the placement of the western approach of the new Bridge. [My Emphasis].

[64] When cross-examined by counsel for the Hulses, Mr. Frutos explained that what he meant by "an undesirable introduction into the floodplain" was that the construction created an "obstacle" to any flood condition that occurs in that area. He then stated that while he could not say with any certainty what effect the obstacle would have on the residences in the area, there would be an effect. He also stated that it was his expert opinion that the best option would have been acquisition of all lands comprising of the right of way, but the cost factor was the usual challenge since banks do not approve the use of their loans for such purposes. According to Mr. Frutos, once the road infrastructure runs close to a property such as within 100 feet that path would be deemed the right of way, and the GOB would act to acquire the entire property or a piece of it. Had an acquisition of the Hulses' entire property occurred, it would have alleviated any likely inconvenience

[65] Regarding the extreme and unprecedented November 2020 flooding, Mr. Frutos evidence was that the November 2020 flooding was simply "not normal". Mr. Frutos was adamant that the November 2020 flooding was an extreme event that was characterised as "a 100-year flood". Under cross-examination, Mr. Frutos maintained that what happened in November 2020 was the natural consequence of the 100-year flooding given the locality and characteristics of Parcel 4637, with such close proximity to the creek. This unprecedented flooding was not created by the construction of the new Bridge and the realignment of the highway. According to Mr. Frutos "what do you expect if you build your home on the creek?" I accepted the evidence of Mr. Frutos on the issue of flooding.

[66] In my judgment, I am not satisfied that the construction created extraordinary flooding or was responsible for the 100-year flooding, such as to render flooding a nuisance post-construction of the new Bridge.

c. Diminution in Value of Parcel 4637

[67] Mrs. Hulse also claims that Parcel 4637 lost its value as a commercial property *after* the realignment of the highway and construction of the new Bridge. Her property was previously

utilised as a partly business premises. She relies on the evidence of Mr. Wilfredo Bautista, which was presented by way of a report.

[68] Prior to the construction, the Hulses' property had a dual function, being residential and commercial. Its prior location provided customers with ease of access, which was lost by the construction of the Bridge. Mr. Bautista gave evidence that decried the loss of easy and direct accessibility to and from the property. He stated that the Hulses had improved a portion of the road reserve next to the carriageway of the highway, to provide access to the gas station for parking of vehicles directly in front of the existing buildings.

[69] Ms. Castillo submitted that the construction totally removed the direct access to the Hulses' property and replaced it with a narrow street and a small turning bay for vehicles. Ms. Castillo argued that the evidence pointed to the impossibility of commercial size vehicles using the now narrow street as an ingress or egress to access Parcel 4637. Because Parcel 4637 is in part a commercial property, the construction has affected accessibility and visibility of it, because of the construction of a wall that blocks it. This wall also blocks or impairs the Hulses' view from their property. The Hulses also gave evidence of the loss of the security presence historically enjoyed by having the Roaring Creek Police Station, now relocated, directly in front of Parcel 4637.

[70] Of critical note was the evidence of Mr. Bautista who stated that Parcel 4637 was located in a flood-prone area, but the Hulses are still able to pursue any commercial arrangement that they wanted. The Hulses were not completely excluded from using their property for commercial purposes.

[71] In my view, the commercial value of Parcel 4637 might have slipped, to some extent, but it was not totally eroded. Having a highway frontage for a business does not guarantee commercial viability and I have no evidence that access to a business off the highway automatically renders commercial activities unviable or unprofitable. In fact, the evidence of Mrs. Hulse is that the gas station business folded because of her husband's cancer and her medical condition.[9] Also, I am not satisfied on the evidence that there is diminution in value

[9] Witness statement of Vanessa Hulse, paragraph 16.

of Parcel 4637 to the extent as claimed by the Hulses. They are entitled to a reasonable award for any slippages in value experienced by the nuisance.

NEGLIGENCE

[72] The claim for negligence was not specifically abandoned at the trial, but in submissions, Ms. Castillo advanced both negligence and nuisance as indistinguishable torts, without traversing the specific ingredients of negligence. Ultimately, the Hulses sought damages for nuisance.

[73] For completeness, I will with brevity address negligence. The pleaded case was that the GOB acted negligently by causing noise and vibration during the construction of the new Bridge. To establish negligence, it must be shown that the GOB owed a duty of care, breached that duty, and damage resulted that is not too remote: see **Donoghue v Stevenson**.[10] There is also the element of foreseeability of the damage caused by the negligent act, and proximity of the relationship between the parties.[11]

[74] Before imposing a duty, a court would ensure that there is proximity or sufficient relationship between the parties, it is fair and just to impose a duty of care and that the damage was foreseeable as resulting from the negligent performance of the construction. There is no debate that the duty of care existed, and there was a sufficient relationship of proximity between the parties. By carrying on the construction directly in front of the Hulses' property, the duty was fairly imposed, so the GOB was obliged to exercise proper care to avoid damages.

[75] Ms. Matute argued that the second limb of the negligence test (i.e. breach) was not satisfied. Both parties expected noise and dust from the construction, and the duty of the contractor was to employ best practices or mitigating measures to limit the effects of the nuisance. Mr. Calles' evidence was that these measures were contractually provided for and applied, with only exceptional cases of deviation. The construction noises were pitched at ordinary tolerance levels, and excessive noises were infrequent. Further, dust was unavoidable and was sufficiently combated by road wetting and traffic management. On this evidence, Ms.

[10] [1932] UKHL J0526.
[11] Errol Trowers v Noranda Jamaica Bauxite Partners Limited [2016] JMSC Civ. 48.

Matute invited the court to find that there was no breach of duty because the GOB had exercised all reasonable care and expertise to limit or mitigate the expected consequences of the construction. I have already stated above how I viewed the evidence of Mr. Calles and maintain my findings under this head of damages.

[76] Breach of duty is a question of fact for the court, and I am satisfied that the construction activities did cause loss and damage to Parcel 4637. However, the evidence to properly quantify the losses was lacking in specificity. The approach in pursuing the damages was skewed towards the tort of nuisance, which I have found as sufficiently established for the pre-construction works. Therefore, I make no specific award for damages for negligence, and, in any event, it was not separately sought.

DAMAGES

Issue No 2: Whether the Hulses are entitled to damages and, if so, what quantum of damages should be awarded?

[77] I did find that Parcel 4037 has suffered because of the dust, noise and vibration (during construction) but was not satisfied on the evidence that the extreme flooding of November 2020 or the otherwise usual flooding caused by the proximity of the property to the creek was created by the nuisance. The measure of damages in an action for nuisance is to compensate for whatever loss results to a claimant as a foreseeable consequence of the wrongful act.[12] Where nuisance causes damage to property, the general rule is that the measure of damages is the difference between the money value of the claimant's interest in the property before the damage and the money value of his interest after the damage; and this is not necessarily the same as the cost of repair and replacement: see **CR Taylor (Wholesale) Ltd** v **Hepworths Ltd**[13] where the basis of the assessment was the reduced value of the premises.

[12] The Wagon Mound (No 2) [a967] 1 AC 617.
[13] Taylor (Wholesale) Ltd v Hepworths Ltd [1977] 2 AER 784.

[78] In the above regard, I note the arguments of Ms. Matute, which pointed me to the learning in **St. Helen's Smelting Co.** v **Tipping**[14] as well as that in the Eastern Caribbean Court case of **Elton Scatliffe et al** v **Dwite Flax et al**.[15] The court in **St. Helen's Smelting** distinguished between nuisance causing "material injury" to property and nuisance "productive of sensible personal discomfort". It was found that regarding "sensible personal discomfort", a test of reasonableness is to be applied, taking into account all the surrounding circumstances.

[79] In **Scatliffe**, the court had to assess the intangible loss caused by nuisance so reiterated the English position to wit:

> Ultimately, the English courts have affirmed that private nuisance is a tort against land and not against the person and they have specifically rejected any suggestion that the tort of nuisance should be modernized in order to protect certain personal interests. This Court is guided by this approach.

[80] Ms. Matute argued that the Hulses have failed to establish that Parcel 4637 has suffered from nuisance caused by dust, noise, vibration or any and all matters connected to the construction of the Bridge. I disagree. Ms. Matute also advanced that the construction activities and its effects were lawful, proper and reasonable so there should be no award of damages. I also disagree. I assume that counsel wanted me to conclude that any nuisance caused to Parcel 4637 was done in the interest of the public, as a cost saving exercise, so this rendered the construction activities lawful, proper and reasonable, especially as acquisition of a portion of the Hulses' land was lawfully undertaken. I disagree. In fact, I find as a fact that the evidence supports the Hulses' claim of nuisance. Further, the mitigation measures adopted by the GOB such as the occasional road wetting might have been inexpensive and cost effective but, in my view, they were inadequate. They failed to minimise the nuisance created by the construction. I find that nuisance during construction was established to my satisfaction, however, it was not of a permanent or lasting manner, as claimed by the Hulses. In my judgment, further, the mitigation steps were ineffective and unreasonable in the present context and failed to combat the more than two years of dust and noise invasion of Parcel 4637. Therefore, I award damages to the Hulses.

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[14] (1865) 11 H.L.C. 642, 11 E.R. 1483.
[15] VG 2017 HC 12.

[81] Regarding the damages to be awarded, I bear in mind my conclusions on the flooding question as well as the fact that I was not satisfied, on the evidence, that Parcel 4637 was incapable of reasonably beneficial commercial or domestic use by the Hulses post-construction. I am not satisfied that the expert evidence tendered at the trial leads naturally to the conclusion that Parcel 4637 had no beneficial uses. I accept only that there might have been some slippage in the beneficial use of Parcel 4637 in terms of commercial value but not an outright erasing of how the property could be utilised. Therefore, I refuse to make any declaration as to the now non-beneficial commercial uses of Parcel 4637 nor am I prepared to make an order that the GOB must acquire or purchase Parcel 4637.

[82] Regarding the quantum of damages, I was mindful that in the context of a permanent or lasting interference with amenity or easement, I must assess the loss based on the diminution in the value of the land.[16] I am not satisfied that Parcel 4637 suffered permanent diminution in value because of the proximity of the Bridge to it or that the reduction in its value was in the amount as claimed, especially given Mr. Bautista's evidence during cross-examination.

[83] The Hulses claimed damages of BZ$246,449.50, which is the minimum based on the evidence of Mr. Bautista that pre-construction Parcel 4637 was valued at BZ$425,749.50 and post-construction of the Bridge, it is valued at BZ$179,250.00. I have no evidence that challenges these figures or of an opposing quantum. Mr. Bautista did present as a straightforward and honest witness. However, I do not accept Ms. Castillo's arguments that the Hulses are entitled to recover losses allegedly occasioned from "developing" the road reserve, relocation of the Roaring Creek Police Station, blockage of their visibility or loss of a view and the removal of easy accessibility to their premises. The Hulses would have benefitted from any developments undertaken to the road reserved and are not entitled to be compensated at this stage for same.

[84] I find only that there was nuisance created by noise, vibration and dust throughout construction activities, at times worse than others. I find also that the defendant did take certain steps such as road wetting, traffic management and limiting the hours of work, albeit

[16] Halsbury's Laws of England, 5th Edn. Damages, Volume 29 (2019) at 425.

not always. In my view, these steps did not prevent or minimise the nuisance to any reasonable degree. The evidence clearly established that construction sometimes took place beyond normal working hours including on weekends and I reject any argument that sought to justify these aberrations, as reasonable or necessary or in the public interest or for saving of expenses, given the prevailing circumstances of noise and dust nuisance assailing Parcel 4637. I also have no clear evidence of proper steps taken by the GOB to measure the noise and dust levels during the construction to effectively mitigate the nuisance. Road wetting, regular or not, and traffic management, in my view, fall far short of what were reasonable measures to allay the nuisance.

[85] In my judgment, the GOB and their contractors and employees were the ones vested with the skill and expertise in construction and the minimising of its effects, but they did not act reasonably to mitigate or limit the expected consequences of the construction. As indicated above, the nuisance was for a temporary period of two years, which was not by any means a brief, fleeting or short period. As described by Mrs. Hulse, it was tantamount to living "in hell". The nuisance occurred at times at inexcusable and unreasonable hours, causing serious inconvenience. I, therefore, find that the GOB did not utilise the best practices available to minimise the nuisance. Additionally, I find that the Hulses are consequently entitled to an award of damages for the nuisance. I bear in mind the evidence that the land was still capable of commercial uses, so whilst its beneficial use did dip to some degree, its viability for commercial enterprises was not completely eroded. In this regard, I will award a portion of the sum claimed as damages in recognition of this fact.

[86] In my judgment, further, the defence fails in part. The GOB is liable for nuisance created during the construction of the Bridge and the realignment of the highway. It is also my judgment that the GOB failed to employ best practices or reasonable mitigation measures to allay the effects of the nuisance. I do not find liability for nuisance post-construction. Therefore, I grant the Hulses judgment for nuisance during the construction works and award them damages as outlined below, representative of a portion of their total claim.

Costs

[87] The general rule is that the losing party ought to pay the costs of the other side, and I will so award to reflect the liability judgment.

Disposition

[88] It is hereby ordered as follows that:

1. Judgment on liability for nuisance created during construction is granted to the claimant.
2. The defendant is to pay the sum of BZ$147,870.00 to the claimant with interest of 6% from 12th March 2020 to the date of judgment.
3. I refuse to make the orders as sought for acquisition of Parcel 4637 or for relocation.
4. The defendant is to pay the claimants their costs on a prescribed basis.

Martha Alexander
High Court Judge