IN THE SUPREME COURT OF BELIZE A.D. 2004
(SUMMARY PROCEDURE)

ACTION NO. 60 OF 2004.

	(W. FORD YOUNG REAL ESTATE LTD.	**PLAINTIFF**
	(	
BETWEEN	**(AND**	
	(	
	(AMOS WRIGHT	**DEFENDANT**

Ms. T. Moody for the Plaintiff.
The defendant in person.

AWICH. J

26.4.2005. JUDGMENT

1. *Notes:* *Money debt; an agreement to accept a portion of a larger parcel of land in settlement for the debt; duties of a transferor (vendor) and of a transferee (purchaser), in conveyance. Contract for disposition of land or any interest in land is unenforceable unless the contract or some memorandum or note thereof is in writing, S: 40(2) of the Registered Land Act, Cap 194, and S: 55 of the Law of Property Act Cap, 190.*

2. The Plaintiff's claim is for $5,000.00 and interest at 12% per annum from 14.8.2003. The sum was money lent to the defendant, Mr. Amos Wright, by the plaintiff, W. Ford Young Real Estate Limited, on 14.8.2003. It was agreed that interest at 12% per annum would be charged. Because of the defence advanced, the claim which is for a very small sum of money, has raised several issues in conveyance.

3. The defendant readily admitted that the plaintiff, through Mr. Lester Langdon, the first witness (PW1) for the plaintiff, lent the money to him and that the money was payable with interest at 12% per annum. His defence was that he was released from the debt on 14.6.2004, when the plaintiff, acting by Mr. Langdon, offered to take a portion of the defendant's land measuring 59 x 74 yards in full settlement for the debt and he, the defendant, agreed. He said the land at Miles 26 on the Northern Highway, was available, it was for the plaintiff to survey it and prepare the transfer documents, he, the defendant, remained ready and willing to sign all documents to effect the transfer. He also said that the plaintiff has possession of the document of title belonging to the defendant for the whole 37.24 acres, a portion of which was used to settle the debt. The defendant did not state whether the document of title was a deed of conveyance or a land certificate of registration of title. He called a witness, Mr. Carlton Michael Villanueva, DW2, who supported the testimony about the portion of land having been taken to settle the debt. The defendant contended that the law is that the buyer does the survey and prepares the conveyance at his own expense.

4. Then arising from the testimony of Mr. Langdon for the plaintiff, the defendant has also contended that the loan was payable in two years from the date of lending, 14.8.2003, so the case was brought prematurely.

5. The plaintiff's case would fail on that opportunistic defence alone, picked up

fortuitously by the defendant from the testimony of Mr. Langdon. Even if the Court were to accept that the money was due for payment in a period of "up to about two years", there has been no evidence to prove that according to the agreement, any part of the money had become due by the date the case was filed, 16.9.2004. Evidence was adduced only to the effect that the plaintiff demanded payment and the defendant failed to pay. There has not been evidence to prove that according to the agreement, the money has become due for payment.

6. So far as the main defence is concerned, several issues of law regarding conveyance have arisen which I suspect the plaintiff did not contemplate. I appreciate that in proceedings by summary procedure under ***Order 74 of the Rules of the Supreme Court, Cap. 82,*** applicable then, the plaintiff might have had the disadvantage of not knowing the defendant's defence in advance of trial. But the choice to proceed under Order 74 was consciously made by the plaintiff. May be the plaintiff contemplated that the defence would be a flat denial by the defendant that he received the money as a loan. In the event, the defendant readily admitted receipt of the loan, but contended that the plaintiff accepted land measuring 59 x 74 yards in payment.

7. The defendant advanced that defence right at the start of his crossexamination of Mr. Langdon. The defendant rightaway laid his case open to be disproved by the plaintiff. For instance , the defendant suggested that a Mr. McKay, a surveyor acting for Mr. Langdon on behalf of the plaintiff, was present when the agreement to give the portion of land in

settlement for the debt was reached, and that Mr. Langdon's secretary carried out the photocopying of the settlement agreement, which was an alteration of an earlier agreement, written below it, and that the secretary wrote receipts issued to the defendant. The plaintiff was put on sufficient notice to cause it to call those persons as witnesses if the balance of probabilities of evidence was to tilt in its favour. Mr. McKay and the secretary were associated with the plaintiff, despite that the plaintiff did not call them as witnesses.

8. The plaintiff instead chose to refute, without adducing contrary evidence, that there has been an agreement to settle the debt and that the agreement, exhibit P(LL)1 altered as in D(AW)5, was written proof of the settlement. I took the two exhibits as important proof. Ms. Tanya Moody, learned counsel for the plaintiff, had objected to the admission into evidence, the agreement, exhibit D(AW)5, on the ground that the document was a photocopy, not an original. I overruled the objection. Although D(AW)5 was a photocopy, it was presented to Court as the original document given to the witness (the defendant), by Mr. Langdon who was said to have kept the original. It was therefore not a copy of the evidence, it was the evidence.

9. As to whether the original agreement P(LL)1, was altered by agreement, that is, varied as in D(AW)5, the testimony of Mr. Langdon was unsatisfactory; it was equivocal about all the material facts. Mr. Langdon admitted that he wrote the words, "200 x 200 on Highway". He denied that he wrote the words, "59 yards x 74 yards", but expressed uncertainty and admitted the signature near the words. He admitted that he instructed that the 59 x 74

yards portion of land be transferred to him, but added that he never got any transfer. The Court asked him: "Was the sale made to pay off the loan?" His answer was: "It could have been, but I never got title?" I do not think Mr. Langdon was telling lies, he seemed to have honestly forgotten the details of the several transactions and discussions with Mr. Wright. Mr. Langdon is advanced in age. His testimony as a whole gave me the impression that he relied much on his secretary.

10. On the evidence, I have to accept that the agreement P(LL)1, by which the plaintiff lent $5,000.00 to the defendant was subsequently varied by them on 14.6.2004, as in exhibit D(AW) 5, and that Mr. Langdon on behalf of the plaintiff accepted a portion of land measuring 59 x 74 yards out of a larger land belonging to the defendant, in full settlement for the loan.

11. The crucial point is then, whether the plaintiff got or would be able to get transfer and therefore title to the portion of the land, that is, whether it received or would be able to receive beneficial interest and legal tittle to the land so that the settlement may be regarded as effective. The answer is in the law of conveyance.

12. I have already decided that there has been an agreement between the plaintiff and the defendant to transfer a portion measuring 59 x 74 yards of the land of the defendant. The agreement, D(AW)5, was in this form:

"C144

I, Amos Wright received BZE45,000.00 as a loan on 37.24 acres situated at along the New Northern Highway, Belize(Maskall area). Interest at 12%.

(Signature)

Amos Wright

Received: BZE $4,500.00 - August 14, 2003

BZE $500.00 - August 7th , 2003

200 x 200 on Highway

59 yds x 74 yds (signature of Amos Wright)

Signed: Lester Langdon

(Signature)

Carlton Villanueva

Witness

June 14 2004".

The document was a *"contract or memorandum or note thereof ... in writing and ... signed"* by the defendant, the party disposing of the land, so the agreement is enforceable - see ***S: 40(2) of the Registered Land Act, Cap 194 Laws of Belize and S: 55 of the Law of Property Act Cap 190, Laws of Belize.*** The plaintiff also signed by its agent, Mr. Langdon.

13. I shall regard the defendant as the vendor and the plaintiff as the purchaser. It is usual in conveyance to regard a transferee even if he is not a transferee for money payment, as a purchaser, and the transferor as the vendor.

14. The agreement between the defendant and the plaintiff on 14.8.2003, was, but only a part of the whole which would be completed by the defendant executing the deed of conveyance or transfer instrument - see ***S: 40 of the Law of property Act and S: 86 of the Registered Land Act.*** The agreement, however, operated to immediately pass the beneficial interest, the equitable interest, in the portion of the land to the plaintiff. The legal estate, remained in the defendant and would be transferred upon the defendant executing the deed of conveyance or the transfer instrument. He would execute by signing the deed or transfer, which would then be registered and would create the legal title. That is the law in ***SS: 40 and 41 of the Law of Property Act***. The agreement entitled the plaintiff to claim specific performance should the defendant refuse to transfer the portion of land - see ***Shaw v Foster [1872] L.R. 5 H.L. 321 and Howard v Miller [1915] A.C. 318.*** It would also entitle the plaintiff to rescission and or damages if the defendant's title is found to be bad. For the defendant in this case, the agreement entitled him to release from the debt of $5,000.00 instead of to the payment of the price of the land, simultaneously with the execution of the deed or transfer.

15. The main points of disagreement in this case may be reduced to: (1) whether it was the duty of the plaintiff to survey the land and therefore prepare a plan of the portion for subdivision; and (2) whether it was the responsibility of the plaintiff to prepare the deed of conveyance or transfer instrument. From the evidence it seemed the agreement stalled at these points.

16. The parties undertook the transaction between them without assistance by an

attorney and without the benefit of a report by a surveyor. It was like buying a prescription drug without seeking advice from a doctor and assistance from a chemist. It could be dangerous and expensive.

17. The question of surveying the property is usually included in the agreement to sell, in this case, the agreement to transfer title and release the defendant from the debt. An attorney would have specified who would be responsible for having the land surveyed and who would pay the costs. The agreement, D(AW)5, did not mention surveying. The evidence in my view, pointed to an understanding that the plaintiff was responsible for surveying. He sent a surveyor, Mr. McKay, to convey the defendant to the plaintiff's office, and upon completing the variation of the loan agreement the plaintiff handed a copy to Mr. McKay. Further, Mr. Langdon mentioned that the surveyor said, "the property was in a mess". That, although was not proof of the state of the property, proved that the plaintiff may have undertaken surveying or at least inspection as is normally adviseable for a purchaser to undertake to ascertain the identity of the property or any defect in the property. I find that the responsibility for surveying the property was understood by the parties to rest with the plaintiff.

18. The agreement required severing the 59 x 74 yards portion from the larger land belonging to the defendant and transferring it to the plaintiff. The law is that: "*no part of land comprised in a register shall be transferred unless the proprietor has first subdivided the land...*" That is in ***S: 89 of the Registered Land Act.*** Subdividing has to be carried out in accordance with the provisions in ***Part II of the Land Utilization Act, Cap 188, Laws of***

Belize. An application together with a plan prepared by a surveyor would be submitted to the Land Subdivision and Utilization Authority - see ***SS: 3,4, and 5 of the*** **Act.** The expenses involved needed to be included in the agreement, it was not. Given that the land was given in settlement for a debt, and that the plaintiff knew or must be taken to have known that subdividing was required, I am inclined to find that the responsibility for the costs of the application for approval of subdividing the land was the responsibility of the plaintiff, but the responsibility to ensure that the application was submitted and was successful remained with the defendant. Section 89 of the registered Land Act requires the proprietor to first subdivide land a portion of which he wishes to transfer.

19. It is correct that in law, in the absence of an agreement to the contrary, the purchaser, in this case the plaintiff, prepares the deed of conveyance at his own expense. And it is statutory law in ***S: 58 of the Law of Property Act,*** that: *" there shall not be stipulated in a contract of sale of land that the transfer shall be prepared or registration of the title of the purchaser shall be carried out at the expense of the purchaser by a solicitor appointed by or acting for the vendor, and any stipulation which might restrict a solicitor to act on his behalf in relation to any interest in land agreed to be purchased."* Those laws, however, cannot be interpreted to mean that the vendor has no responsibility or duty until the signing of the deed or transfer. In this case, as is usual, the defendant agreed to transfer good title to the purchaser. That required him to deliver the document of title to the land that included the portion measuring 59 x 74 yards, to the purchaser, the plaintiff, for investigation and preparation of the deed or transfer - see ***Clayton v Clayton***

[1930] 2 Ch 12. The defendant said the title was with the plaintiff. The defendant may also be required to deliver an abstract of title to the plaintiff. The plaintiff may requisition title. As the result of the abstract and requisition, the defendant may be required to remove removeable defects in the title such as a mortgage charge, at his own expense.

20. It was in evidence that the plaintiff discovered that a power of attorney in favour of Atlantic Bank existed, and that there subsisted a contract of sale in favour of one Cabral. The answer by the defendant was that he had long paid off the loan for which the power of attorney had been granted, and collected his document of title which he gave to the plaintiff; further, that he gave only a portion measuring "100 feet square" to Cabral who is his wife.

21. The defendant should have been asked by the plaintiff, to remove the defect in respect of the power of attorney since the testimony of the defendant was to the effect that the power of attorney was an easily removeable defect. The power of attorney could not be ground for rescission of the contract between the parties, unless the plaintiff demonstrated that it was not removeable.

22. There has been no evidence to show that by alienating the "100 feet square" of the land, the defendant left not enough land to satisfy the agreement to transfer to the plaintiff a portion measuring 59 x 74 yards. The contract of sale to Cabral has not been shown to be a defect in the title of the defendant so as to entitle the plaintiff to rescission of their agreement to give land in

settlement for the debt.

23. Finally, the defendant would be required to execute the deed of conveyance or transfer instrument, and deliver vacant possession of the portion of land measuring 59 x 74 yards. He said he remained willing.

24. In my view, the plaintiff has not done his part to move their agreement of settlement far enough to the points where the defendant would be called upon to remove defects in title, assist in making application for subdividing the land and execute transfer. The agreement releasing the defendant from the $5,000.00 debt was a good contract and is still operative. No right to rescind it has accured to the plaintiff so that the plaintiff may now claim the debt of $5,000.00. The claim of the plaintiff is dismissed with costs of $400 to be paid to the defendant.

25. For clarity sake, it is noted that the plaintiff will have liberty to bring a claim for rescission of the contract and for the loan, in the event that the defendant will have been unable to transfer good legal title and vacant possession of the land measuring 59 x 74 yards situate as described in the evidence, a portion of the 37.24 acres of the defendant's land on the Northern Highway.

26. Exhibits may be returned to the party who had it produced.

27. Pronounced this Tuesday the 26th day of April, 2005.

At the Supreme Court

Belize City.

Sam Lungole Awich

Judge

Supreme Court.