

IN THE SUPREME COURT OF BELIZE, A.D. 2009

CLAIM NO. 41 OF 2009

BETWEEN:

THE ATTORNEY GENERAL OF BELIZE

Claimant

AND

FLORENCIO MARIN SR.

First Defendant

JOSE COYE

Second Defendant

BEFORE: Hon. Chief Justice Kenneth Benjamin.

February 14 & 21, 2012.

Appearances: Ms. Lois Young, SC, Ms. Magali Perdomo - Crown Counsel with her, for the Claimant.
Mr. Edwin Flowers, SC, Mrs. Magali Marin-Young with him, for the First Defendant.
Mrs. Ashanti Arthurs Martin for the Second Defendant.

JUDGMENT

[1] Before the Court is an application by each of the two Defendants in identical terms for: an order for specific disclosure by the Claimant of certain documents; and permission to amend their respective Defences by the addition of a new paragraph to allow for the introduction of new evidence turned up by the disclosure being sought.

[2] The substantive Claim is being brought at the suit of the Attorney General for and on behalf of the Government of Belize. The Defendants are former Ministers of the Government. The cause of action is founded on the tort of misfeasance in public office. The allegation is that both Defendants between December 2007 and

February 7, 2008, wrongly and in breach of the National Lands Act, Cap. 191 of the Revised Laws of Belize 2000, arranged for and procured the transfer of 56 parcels of National Land owned by the Government of Belize for a price which the defendant knew was less than the value of the said land with knowledge that, or, being reckless that the consequence of disposing of the National Land at the price would cause damage to the Claimant. In essence, it is averred that the Defendants sold or caused to be sold residential lots of National Land at an undervalue resulting in loss to the Claimant. The Claim seeks special damages, exemplary damages and interest thereon at the statutory rate.

[3] Disclosure of the following documents are being sought by the Defendants pursuant to the applications:

- “(a) Certified copies of the valuation sheets of all residential lots sold by the Government of Belize in Block 16 Caribbean Shores Registration Section for lots in the same development as the lots in the Statement of Claim and/or lots in adjacent residential developments in the Caribbean Shores Registration Section for the years 2008 and 2009 and 2010.
- (b) Certified copies of transfer of land forms duly signed by the Minister of Natural Resources for all residential lots sold by the Government of Belize in Block 16 Caribbean Shores Registration Section for lots in the same development as the lots in the Statement of Claim and/or for lots in adjacent residential developments in the Caribbean Shores Registration Section for the years 2008 and 2009 and 2010.
- (c) Certified copies of all purchase approval forms for all residential lots sold by the Government of Belize in Block 16 Caribbean Shores Registration Section for .lots in the same development as the lots in the Statement of Claim and/or for lots in adjacent residential developments in the Caribbean Shores Registration Section for the years 2008 and 2009 and 2010.”

[4] It is to be noted contextually that the first case management conference in the matter has already been held on June 19, 2009. Indeed, a preliminary issue as to the viability of the cause of action has been thoroughly litigated exhausting all

avenues for appeals. Accordingly, the application for an amendment must not run afoul of Rule 20.1(3) of the Supreme Court (Civil Procedure) Rules 2005 which restricts the power of the Court from giving permission to change a statement of case after the first case management conference. Any such change is precluded unless the party applying for the amendment “can satisfy the Court that the change is necessary because of some change in the circumstances which became known after the date of that case management conference.”

[5] Each Defendant has deposed in his affidavit supporting the application that the findings of facts relied upon were made by learned Counsel after June 19, 2009. There has been no demur by way of affidavit by the Claimant, although learned Senior Counsel observed that it had always been open to the Defendants to plead that the Claimant did not suffer any loss.

[6] The said affidavits of the Defendants both state that enquiries at the Land Registry yielded documents related to the sale and transfer of documents for lots within the same development as well as within residential developments adjacent to or neighbouring to the parcels which are the subject of the Statement of Claim. The documents gathered were exhibited. These documents are related to specified parcels in ‘Block 16’ of the Caribbean Shores Registration Section. The Statement of Claim referred to 56 parcels of National Land in ‘Block 20’ of the said Registration Area.

[7] It was stated that the searches conducted by learned Counsel were restricted, as copies of purchase approval forms and valuation sheets for other lots in the vicinity and adjoining developments in the West Landivar Area in the Caribbean Shores Registration Section were not available to the public. A request in writing to the Lands Department was required as these are internal documents. It was submitted on behalf of both Defendants that the documents sought would provide objective evidence as to the values of parcels of land sold by the Government in Caribbean Shores.

[8] Learned Senior Counsel argued in response on behalf of the Attorney-General that the documents requested to be disclosed are not relevant to the tort of misfeasance in public office. It was said that transactions in the years 2008, 2009,

2010 as were requested would have no bearing on the elements of the tort as it related to the defendants, as what was done by a subsequent Minister of Government cannot be determinant of the situation as it prevailed when the Defendants were in office as Ministers.

[9] The duty of standard disclosure as set out in Rule 28.4 requires a party to disclose all documents which are directly relevant to the matters in issue in the proceedings. An order for specific disclosure can be made without an application or, as in the case, upon the application by a party (Rule 28.5(2)). The criteria for the ordering of specific disclosure are set out in Rule 28.6 as follows:

- “(1) When deciding whether to make an order for specific disclosure, the court must consider whether specific disclosure is necessary in order to dispose fairly of the claim or to save costs.
- (2) The court must have regard to -
 - (a) the likely benefits of specific disclosure;
 - (b) the likely cost of specific disclosure; and
 - (c) whether it is satisfied that the financial resources of the party against whom the order would be made are likely to be sufficient to enable that party to comply with any such order.”

The learning at para. 31.12.2 of the Civil Procedure White Book 2010 Vol. 1 states in relation to the Court’s power to make an order for specific disclosure:

“The Court will take into account all the circumstances of the case and in particular the overriding objective in Part 1 and the concept of proportionality.”

In the Caribbean Civil Court Practice 2011, note 24.16 expresses the same approach in these terms:

“Such an application will involve questions as to the reasonableness under CPR 1: The Overriding Objective.”

In this regard, provision is made under Rule 28.6(3) for the party seeking an order for specific disclosure to pay the other party's costs where the financial resources of the latter party are likely to be insufficient to enable compliance with any order for specific disclosure.

[10] The overriding objective in Rule 1.1 mandates that the Rules are to enable the Court to deal with cases justly inclusive of the saving of expense and in ways which are proportionate to the

- “(i) the amount of money involved;
- (ii) the importance of the case;
- (iii) the complexity of the issues; and
- (iv) the financial position of each party.”

In the submissions laid before the Court, neither side has raised any concern as to the financial position of the Claimant. However, in applying the overriding objective, the Court cannot ignore the obvious importance of this case given the cause of action being pursued as well as the amount of money being claimed as special damages.

[11] As previously set out, the crux of the Claimant's case is that the Defendants arranged for and procured the transfer of 56 parcels of National Land owned by the Claimant for a price which they knew to be below the value of the said parcels knowing or being reckless as to the consequence that damage would be caused to the Claimant by such transfer. This brings into focus the value of the parcels in question. It cannot be doubted that land values are relative to their location and the circumstances relevant to the location have a bearing on the value of the land. The value of contiguous parcels would be germane to determining the value of the 56 parcels.

[12] It was urged on behalf of the Claimant that the values of lands in 2008, 2009 and 2010 are not relevant and cannot affect the elements of the tort as it relates to the Defendants. The Court inquired whether the evidence from the disclosure requested would not be relevant to the state of mind of the Defendants, that is to

say, as to whether injury was specifically intended or whether the defendants acted with indifference as to the outcome of their actions. The response was in the negative for the reason that the documents being sought related to the actions of a different Minister of Government subsequent to the dates in issue.

[13] Upon a perusal of the documents exhibited to the affidavit in support of the application, it is to be noted that the parcels involved are all located in Block 16 of the Caribbean Shores Registration Section erroneously referred to in the Statement of Claim being from Block 20. The application seeks valuation sheets, transfer forms signed by the Minister of Natural Resources and purchase approval forms in respect of “all residential lots sold by the Government of Belize in Block 16 Caribbean Shores Registration Section for lots in the same development as the lots in the Statement of Claim and/or for lots in adjacent residential developments in the Caribbean Shores Registration Section for 2008, 2009 and 2010.” The proposed amendment to the Defence reads “The First/Second Defendant adds that during the years 2009 and 2010 the Government sold a number of lots in or near the same area as Block 16 for less than \$4,000.”

[14] Learned Senior Counsel for the First Defendant said in his reply that since the value of land does not depreciate, the documents sought to be disclosed would assist in demonstrating that the sale price of the land in issue did not represent an undervalue. Much emphasis was placed by both Defendants on the relevance of the disclosure being sought from an objective standpoint.

[15] I am concerned that the first criterion of relevance must be met. In addition, a determination has to be made as to the likely benefits of the specific disclosure. It seems to me that the Defendants cast a wide net. There is no specificity as to which lots can be treated as being in the same development as those in issue or in adjacent residential developments.

[16] In the light of the foregoing, the Defendants filed a copy of the plan for Block 16 of the Caribbean Shores Registration Section. On the basis of this plan, the lots in residential developments proximate to the lots referred to in the Statement of Claim were rendered identifiable.

[17] It is difficult to find fault with the argument that the value of any given lots of land is influenced by that of lots in close contiguity. Although subsequent years may give rise to changed circumstances, it is open to the Court to receive evidence as to such altered circumstances. Hence evidence as to land transactions for the years of 2008, 2009 and 2010 would not hamper the fair disposal of the case.

[18] Turning to the second limb of the Notice of Application by which the Defendants seek permission to amend their Defence by adding a paragraph, it can be surmised that transactions commenced in 2008 would be likely to be concluded in ensuing years. Upon a perusal of the documents exhibited, the transactions of 2009 and 2010 would have come to fruition subsequent to the filing of the First Defendant's Amended Defences on June 19, 2009 and the Defence of the Second Defendant on June 18, 2009.

[19] In the premises, the applications are granted as follows:

- (1) The Claimant shall disclose to the Defendants certified copies of the valuation sheets, transfer forms and purchase approval forms in respect of the residential lots adjacent to the lots referred to in the Statement of Claim as delineated in the plan attached to and forming part of this Order for the years 2008, 2009 and 2010 on or before March 30, 2012.
- (2) Permission is granted to the first Defendant to file and serve a Re-amended Defence in terms of the Draft Second Amended Defence exhibited on or before March 2, 2012.
- (3) Permission is granted to the second Defendant to file and serve an Amended Defence in terms of the Draft Amended Defence exhibited on or before March 2, 2012.
- (4) Permission is granted to the Claimant to file and serve a Reply (if necessary) on or before March 16, 2012.

- (5) Matter fixed for 17th April, 2012 for pre-trial review.
- (6) Costs of this application shall be in the cause.

KENNETH A. BENJAMIN
Chief Justice