IN THE SUPREME COURT OF BELIZE A.D. 1997

ACTION NO. 301 OF 1997

BETWEEN: EDWARD PENNER CLAIMANT

AND

1. CHARLES GARBUTT DEFENDANTS
2. ALBERT GARBUTT

Mr. L. Welch for the claimant.
Mr. Hubert Elrington for the defendant.

AWICH J.

5.6.2009 J U D G M E N T

1. *Notes: Lease – lease of 140 acres of Crown land (now national land) granted by Minister's Fiat; an agreement to sell the lease not approved by the Minister; lease cancelled for non-compliance with condition for developing the land, not for breach of condition not to sell without permission of the Minister; subsequently lease of smaller 70 acre portion of the same land granted to the defendants; whether the original agreement to sell subsists ; whether there has been a new agreement to sell the 70 acres; whether there has been sublease to the claimant; whether any of the agreements to sell or sublet would be enforceable; s:29 of Crown lands Act (now s: 8 of National Lands Act).*

2. In the year 1990, the defendants, Charles Garbutt and Albert Garbutt, were the owners of a lease over land belonging to the Crown. The lease was No. 17/89 over Parcel 300, Young Gal Road, Society Hall,

Cayo District. The parcel measured 140 acres. On 5.1.1990, the defendants, signed a written agreement to sell the land to the claimant, Mr. Edward Penner, for the purchase price of $39,000.00. The defendants also signed. The agreement is exhibit C(EP) 2. The claimant paid $14,500.00; he was to pay further, instalments of $14,500.00 and $10,000.00 to complete payment of the purchase price. The claimant took possession of the land immediately. Four days later on 6.1.1990, he paid $1,000.00 for which he obtained a receipt exhibit, C(EP)5.

3. On the same day, 10.1.1990, there was some other development in the Lands and Surveys Office. The Commissioner of Lands and Surveys cancelled the lease of the defendants. The reason given for the cancellation was, "non fulfilment of the condition regarding development". Later the Minister responsible granted to the defendants another lease over 70 acres of the 140 acres. From this point on, the evidence for the claimant and the evidence for the defendants are divergent.

4. The evidence for the claimant was as follows. Despite the cancellation of the first Crown lease, the defendants proposed that their agreement of sale be continued, but varied as to the size of the land, and the purchase price. The claimant agreed and continued to occupy the 70 acres. He asked the defendants to transfer the lease title to him, but the defendants refused. He said that, the defendants informed him that they would only transfer the 70 acres if they could succeed in getting more land from the Government. The defendants preceded to subsdivide the land into two portions of 35 acres each, so that each defendant owned a portion. Albert Garbutt then turned around and said that he would sell his 35 acre portion for a higher price of $3,000.00 per acre, to the claimant, and demanded that the claimant vacate the land, if he could not pay that price. Because the claimant had crop for the year on the land, he signed a one year lease of the land at the rent of $6,000.00 for the year.

5. According to the claimant, Charles Garbutt simply demanded on 17.2.1997, that the claimant quit the 35 acre portion that belonged to Charles immediately. In January 2003, both defendants entered the

land and planted coconut trees. They informed the claimant that they intended to keep cattle on the land in future.

6. Considering the evidence adduced by the claimant, the defendants did not need to adduce evidence to defend the claim for, among other court declarations, a declaration that the contract of 5.1.1990, between the claimant and the defendants, "is still valid and binding"; and the claims for orders for specific performance and damages. The claimant did not prove that the contract of 5.1.1990, for sale of the 140 acres was valid and not contrary to law. Likewise, he did not prove that, any agreement to sell the subsequent 70 acre portion was valid, or that any agreement for a sublease was valid.

7. Nevertheless, the defendants testified and presented documentary evidence. They confirmed that, the 140 acre land was Crown land leased to them jointly. They confirmed that, they entered agreement on 5.1.1990, with the claimant to sell the lease to the claimant, and they received part payment of $14,500.00; the claimant was to pay instalments of $14,500.00 and $10,000.00 subsequently. They confirmed that, the Crown cancelled the lease for the 140 acres shortly

after the agreement of 6.1.1990. They confirmed that subsequently they obtained a lease of 70 acres of the land. They said that they leased, other than sold the 70 acres to the claimant, and the period of the lease had expired.

8. The defendants gave an explanation for their denial that they entered into a new contract to sell the 70 acres. They said that they explained to the claimant that in their opinion from their experience in negotiating restoration of the lease for the 140 acres, it would not be possible to obtain the Minister's approval of sale of the Crown lease over the 70 acres. They explained that, they then agreed to lease the 70 acres to the claimant for six years; and that it was agreed that the $14,500.00 paid by the claimant would be regarded as the rent for the six years. According to the defendants, the six years have expired.

9. ***Determination.***

I accept the evidence for the defendants regarding the lease of the 70 acres. I reject the evidence for the claimant about agreement to vary the contract of 6.1.1990, so that it became an agreement to sell 70

acres of the 140 acres. Moreover, such a variation would have to be in writing.

10. I do not at all see the ground on which this claim was brought to court. I expected an application to strike it out. The case had passed through the hands of several judges before it came to me. That made me think that there might have been some reasonable ground to bring the claim, and so I left it to proceed to trial. There has been change of attorneys as well. The case was finally tried on 5.6.2007. At the end of trial, my view was that the claim should have been struck out early.

11. The agreement of 5.1.1990, between the claimant and the defendants for sale of the lease of the 140 acres of Crown land to the claimant, was invalid and unenforceable. Crown lease could not be transferred, sold or subleased without permission of the Minister responsible. ***Section 29 of the Crown Lands Act, Cap 147 of the Laws of Belize, Revised Edition 1980,*** prohibited transfer, sale or subleasing without permission of the Minister responsible. The section stated:

> *"29. No lessee shall transfer or sublet his lease without permission previously obtained of the Minister, and on*

payment of a fee of five dollars and if it be done without such sanction the lease may be forfeited".

12. That was the law that applied on 5.1.1990, when the claimant and the defendants entered the agreement of sale of the lease of the 140 acres. The claimant and the defendants did not claim that they had obtained the permission of the Minister.

13. The law in ***S: 29 of Cap 147, 1980 Edition,*** remained applicable during the "middle of January 1990", when the defendants obtained a new lease over 70 acres of the original 140 acres. Any agreement to sell or sublease the 70 acres was invalid because permission of the Minister had not been obtained. There is no need for the court to make a finding of facts as to whether the lease for the 70 acres was sold, or the 70 acres were subleased to the claimant.

14. Currently, ***s:8 of National Lands Act, Cap 191, Revised Edition 2000,*** has maintained the prohibition of transfer, sale or subleasing without the permission of the Minister. The language is more modern as expected. The section states:

"8.- (1) No lessee shall transfer or sublet his lease without the prior written permission of the Minister and on the payment of such fees and on compliance with such conditions as may be specified.

(2) If any lessee transfers or sublets his lease except in the manner provided in subsection (1), the lease shall be liable to cancellation and in every such case, the lessee shall not be entitled to any payment or compensation for development of the leased property".

15. The claim of Mr. Edward Penner is dismissed. He will pay the costs to be agreed or taxed, of Mr. Charles Garbutt and Mr. Robert Garbutt.

16. Delivered this Friday the 5th day of June 2009
At the Supreme Court
Belize City

Sam Lungole Awich
Judge
Supreme Court