IN THE SUPREME COURT OF BELIZE A.D. 2004

ACTION NO: 5 OF 2004

BETWEEN: EMY GILHARRY RAMIREZ CLAIMANT

AND

1. THE ATTORNEY GENERAL OF BELIZE
2. ALMA BARTLEY
3. ANNA JACOBS
4. GEORGIA ELIZABETH MARSHALL DEFENDANTS

Ms. Deshawn Arzu, for the claimant.
Mrs. Andrea. McSweaney-McKoy for the Attorney General.
Mr. Anthony Sylvester for the second, third and fourth defendants

AWICH J.

23.12.2009 J U D G M E N T

1. *Notes: Land Law – an application by the claimant to the Minister responsible for his approval of sale of national land to the applicant ; application was approved, but subsequently the Minister approved lease to three others, and sale to one of them, of parcels said to be part of the same land, or of land in the same area; whether the claimant is entitled to title to the land and damages.*
Law of Contract – offer and acceptance; whether the offer of 'a lot' in an area, (BEC Layout Area) is a firm offer and sufficiently definite and certain, and not too vague an offer to be accepted; stipulated manner of

acceptance of offer, whether offeree must comply with that manner of acceptance without departure; communication of acceptance, whether acceptance was communicated.
Civil Case Procedure – whether notice to a public authority prior to filing a claim in contract against the public authority is required in this claim - s: 3 of Public Authorities Act Cap 31; an application for an order to strike out proceedings on the ground of irregularity must be made in reasonable time, in any case, latest at case management conference or at pre-trial review. Time limitation of a claim in contract, s: 4 of Limitation Act Cap. 170.

2. The claim of Ms. Emy Gilharry Ramirez, the claimant, is that the Government of Belize on 24.8.1998, offered to sell to her, "a parcel of land situate in the B.E.C Layout, Freetown Area, Belize City; containing 568.5832 square yards", and that she accepted the offer and paid the purchase price, $1,500.00, on the same day, but the Government has refused to give her title to the land, despite numerous demands. She further claimed that, the Government has since given the land to Alma Bartley, Anna Jacobs, and Elizabeth Marshall, the second, third and fourth defendants, to lease, and they have occupied and built on the land wrongfully.

3. On the above complaint, Ms. Ramirez has claimed upto eight reliefs. I set out those that were necessary to state. They were the following:

"1. a declaration that the plaintiff is the owner of an estate in fee simple of all that piece of land, situate in the BEC Layout comprising 568.5382 square yards and being the subject of the Government of Belize Land Purchase Approval dated 24th August, 1998;

2. a declaration that the plaintiff is entitled to immediate possession of the said property;

…

6. in the alternative, damages for breach of contract.

…"

4. The Attorney General, the first defendant, acting on behalf of the Minister of Government, denied that, "an agreement was made with respect to the land in question", and further that, "there was an agreement for sale of any specified parcel of land between the claimant and the [Government]". The Attorney General expanded his defence by an explanation that, the claimant did not accept the offer to sell land to her, since she did not sign the form for acceptance provided as part of the letter of approval, and did not return the copy of the offer and acceptance duly signed.

5. In addition to the defence based on the transaction in question, the Attorney General raised two technical defences: (1) that contrary to s: 3 of the Public Authorities Protection Act, Cap.31, the claimant did not give one month notice to the Attorney General, on behalf of the Minister, a public authority, before the claimant issued her claim; and (2) the claim in contract, made nine years after the cause of action arose against the Government was time barred by s: 4 of the Limitation Act, Cap. 170.

6. The Attorney General, however, admitted that on 24.8.1998, the Minister issued a land purchase approval letter to the claimant, offering to sell to her land measuring 568.5832 square yards in the B.E.C. Layout Area, Belize City, for $1,500.00. That the claimant paid $1,750.00, inclusive of tax to the cashier at the Lands and Surveys Office was also admitted, but the Attorney General contended that the payment was not performance of any contract between the Government and the claimant.

7. The joint defences of the other three defendants were that: (1) each of them separately applied in November, 2002, to the Minister

responsible, for grant to each a lease of national land, and that on 18.7.2003, each of them was given a separate approval letter for lease of a lot each in the B.E.C Layout Area, Freetown, Belize City, and each of them has since taken possession of the respective lot and built a house on; (2) when each of them applied and obtained a lease from the Minister, each did not know about any agreement for purchase of land between the Government and Ms. Ramirez; and (3) the third claimant, Anna Jacobs, has since obtained approval of the Minister for her to purchase the lot leased to her, and she has purchased it; Ministers' Fiat Grant has issued to her for title to the land, now Parcel No. 1987.

8. ***Determination.***

Notice to a public authority.

The defence that, the claim cannot be entertained by court because one month notice was not given of the cause of action and place of abode of the claimant and address of her attorney, to the Attorney General, representing the Minister, a public authority, is summarily rejected. As a procedural question, it should have been raised at the earliest opportunity or within reasonable time, in any case, latest at

case management conference. The first part of that rule was stated in the appeal case, ***Belize City Council v Gordon 3Bz LR 363.*** It was stated therein that an application for an order to set aside proceedings based on irregularity must be made within a reasonable time, and will not be granted if the applicant had taken fresh step after knowing of the irregularity.

9. It is my humble view that, ***the Supreme Court Civil (Procedure) Rules 2005,*** modified the above rule. An application for an order to set aside proceedings on the ground of irregularity may be made within reasonable time before case management conference, if need be, otherwise at case management conference notwithstanding that the defendant, if he is the applicant, will have filed his defence, even if filing the defence may be a fresh step after knowledge of the procedural irregularity. If the irregularity occurred after case management conference, the application may be made within a reasonable time after case management conference, but latest at pre-trial review. That view is based on ***R 11.3*** which provides that, *"so far as practicable, all applications relating to pending proceedings must be listed for hearing at a case management conference or pre-*

trial review". Case management conference takes place only after a defence has been filed – see ***R 27.3 (2) and (3).***

10. The procedural point about lack of notice was raised late at trial; had it been raised at case management conference or pre-trial review, I would have upheld it. The reason is that although this claim is based on a contract, it arises from the statutory duty of the Minister to offer lease or sell national land under ***ss: 7 and 13 of National Lands Act.*** In my view, the action of the Minister in this claim is different from the action in, ***Castillo v Corozal Town Board and Acosta 1 Bz LR 365,*** a claim in tort, or ***the Belize City Council v Gordon Case***, a claim in contract, or ***Milford Docks Company v Milford Haven Urban District Council (1901) 65 J.P. 483,*** also a claim in contract. The well settled interpretation of ***s: 3 of the Public Authorities Protection Act,*** that prior notice to a public authority is not required in a claim in contract or tort against the public authority, does not apply in this claim because the Minister was acting, "*in the exercise of his office",* under ***ss: 7 and 13 of National Lands Act.***

11. *Time limitation of action.*

In regard to the defence of limitation of action, it is my view that the submission of learned Crown Counsel, Mrs. McSweaney-McKoy is correct. The claim is time barred. It is a claim based on a contract; the time within which to bring such a claim is six years after the cause of action first arose. In this claim the cause of action first arose when the first demand for title to the land was made by the claimant nine years before this claim was filed. The rule is in ***s: 4 of Limitation Act, Cap 170, Laws of Belize.*** I do not consider this claim to be one for recovery of land or possession of it based on a right to land. The claimant did not have any title or interest in the land, upon which the claim could be based. She did not even take actual occupation of the land. Her claim was based on a simple contract which was yet to lead to obtaining an estate in land. The contract was not of itself an instrument conferring property right. On this decision alone, I strike out the claim of Ms. Ramirez.

12. The decision I have made on the technical point of time limitation ends this claim. I shall, however, as a matter of deference to learned counsel for their submissions, decide all the points that they raised.

13. *Whether there has been a contract.*

Regarding the existence of a contract to sell land between the claimant and the Minister responsible, the claimant relied on the letter of approval dated 24.8.1998, for her to buy a, “parcel 568.5382 square yards in B.E.C. Layout, Freetown, Belize City”. A copy of the letter is exhibit C (ER) 4. She did not produce a copy signed by her accepting, or a copy of the copy she might have kept. She testified that she returned to the Lands and Surveys Office a copy that she had signed accepting the approved sale, but that she did not make a copy to keep.

14. On the other hand, Mrs. McSweaney-McKoy made two submissions. First was that, an offer was made to sell an unidentified land to the claimant, and a specific manner of acceptance of the offer was stipulated; the claimant did not comply with the manner of acceptance and so there has been no acceptance of the offer made, there has been no contract between the Government, the offeror, and Ms. Ramirez, the offeree.

15. The second submission was that, the offer of a lot measuring 568.5382 square yards in the B.E.C Layout Area, was not an offer of a specific land; the usual steps such as surveying the land, valuation of the land and determination of the purchase price of the land needed to be carried out, in order for the offer to be for a specific parcel of land. Mrs. McSweaney-McKoy repeated that, a signed acceptance in the format provided should be on the office file, as evidence of acceptance of the offer of land for sale.

16. I suppose the point of law made about the specific identity of the parcel of land was that the offer claimed was not yet a firm offer, it was vague and not certain as to the identity of the land; it was still necessary to add to the terms the specific identity of the land.

17. I start by stating the all important general principle that for a contract to be regarded as created, an offer must be made, and be accepted by some overt act, and the acceptance must be communicated to the offeror. Lindley LJ made the point in the time honoured case, ***Carlill v Carbolic Smoke Ball Co. [1893] 1 QA.B. 256.*** The principle was also discussed in, ***Robophone Facilities Ltd v Blank [1966] 3 All***

E.R. 128. Given the schematic approach of offer and acceptance, I shall proceed to consider first the law in the latter submission of Mrs. McSweaney-McKoy about offer, if any, in this claim.

18. *Offer.*

It is indeed the law that an offer which is capable of being converted into a contract must be a firm offer. It must consist of a definite promise to be legally bound, provided the terms specified therein are accepted by the offeree. What is said, written or indicated by conduct must not suggest that the person was merely feeling his way towards an agreement, merely negotiating. He must have reached the firm position that he will be legally bound on the promise that he has offered, provided the terms of the promise are accepted. Further, the terms specified in the offer for an agreement must be definite and certain so that when accepted, the offer is converted into a term or terms of a contract, that are definite and certain. In addition to the ***Carbolic Smoke Ball Case,*** the cases of, ***Montreal Gas Co. v Vasey [1900] A.C. 595,*** and ***Hillas & Co v Arcos Ltd (1932) 147 L.T. 503,*** make the point about whether a term of a contract is vague and uncertain, or may be made certain by previous course of dealing.

19. Because sale and purchase of land usually involves several details such as the exact boundaries, the area, the state of title and encumbrances, if any, to be attended to, what appears to be a firm offer of definite and certain terms may turn out to require more investigation, negotiation and adjustments before the final agreement. I think that is true in this claim. I accept the submission of Mrs. McSweaney-McKoy that, the land offered was not a specific land. It was not yet properly identified and demarcated. Before I point out some of the evidence that led me to that conclusion, I shall give as examples, two cases in which offers for sale of land were found to be lacking in definite and certain terms, and therefore less than firm offers.

20. The first case is, ***Harvey v Facey [1893] AC 552.*** In the case, the plaintiffs sent a telegraph which read: "Will you sell us Bumper Hall Pen? Telegraph lowest cash price". The defendants telegraphed in reply: "Lowest price for Bumper Hall Pen £900". The plaintiffs then responded: "We agree to buy Bumper Hall Pen for £900 asked by you. Please send us your title deeds". The Privy Council held that there was no contract; the telegraph from the defendants was not an

offer, that is, not a firm offer; it was merely an indication of the price at which the defendants would sell, if they decided to sell.

21. The second case is, ***Clifton v Palumbo [1944] 2 All E.R. 497.*** In the case, the plaintiff wrote to the defendant this: "I am prepared to offer you or your nominee my Lytham estate for £600,000… I also agree that a reasonable and sufficient time shall be granted to you for the examination and consideration of all the data and details necessary for the preparation of the schedule for completion". The Court of Appeal (England) held that the letter was not, "a definite offer to sell"; it was a preliminary statement as to price which in a transaction of that magnitude was, but one of the many things to be considered.

22. On the evidence in this claim, it is my view that, the letter of approval was not yet a firm offer with definite and certain terms. It was merely an indication that a parcel of land in the B.E.C Layout Area measuring 568.5832 square yards would be sold to the claimant at $1,500.00, after a specific parcel in the area would have been properly identified by carrying out survey. B.E.C. Layout Area was demonstrated by

evidence to be a very large area. Moreover, the particular part of the area that Ms. Ramirez claimed was a road reserve at the time.

23. In contrast to the 'offer' claimed by the claimant, each letter of approval for lease to the second, third and fourth defendants was followed by a survey and demarcation of the specific parcel of land, and each survey report was approved by the Commissioner of Lands. Further, each defendant took actual occupation of the respective parcel of land. Had the claimant taken actual occupation of any area of land within the B.E.C. Layout Area, that might have been sufficient evidence of the definite identity of the land and the "offer" might have been firm because of the definite identity of the land.

24. I do point out though, that the Government had decided on the price at which it would sell parcels of land in that area. A parcel measuring 568.5832 square yards would sell for $1,500.00. The market price would of course, be far greater.

25. It is my decision that, because the letter of approval, claimed to be an offer, was not definite and certain in its terms, it was not a firm offer

capable of conversion into a contract; it's term regarding the subject matter, the land, was vague. Any acceptance of the uncertain term would not result in a contract between the Minister and Ms. Ramirez.

26. The claim against the Attorney General for, "a lot in the B.E.C Layout Area", cannot succeed because there was no firm offer of definite and certain terms, and so there was no contract. It follows that the claim against the other three defendants who got land in the same B.E.C. Layout Area from the Minister also cannot succeed because the evidence does not prove that the parcels of land leased to them were parts of the exact land that had been offered to the claimant.

27. *Acceptance of offer.*

The submission that there was no contract because the claimant did not comply with the stipulated manner of acceptance is also accepted. The general rule is that acceptance must correspond with the offer; the exact terms of the offer must be accepted without modification or qualification, so that there is *consensus ad idem,* 'agreement on the same thing', more commonly expressed as, 'the meeting of the mind'.

28. An illustration of the rule is in, ***Brogden v Metropolitan Railway Co. (1877) 2 App. Cas. 666.*** Brogden had in his business supplied coal and coke to the Metropolitan Railway Co. without written or formal agreement. Subsequently they decided to enter a formal agreement. A written contract was drawn up by the company and sent to Brogden. He filled in blank spaces including the name of an arbitrator, and marked the contract approved, signed and returned it to the agent of the company. The agent kept it in his drawer. The parties went on to supply and buy coal and coke in accordance with the terms of the contract. A dispute arose and Brogden contended that he was not bound by the terms of the contract.

29. The House of Lords held that by inserting the name of an arbitrator, Brogden altered the draft agreement in a material particular, the draft agreement could not be regarded as a definite offer which had been accepted by his endorsement, *"as his acceptance was not made in the same terms as the offer"*. The mere fact that the agent put the indorsed amended draft contract (offer) in his desk was not sufficient for acceptance, because silence was not in itself acceptance of an offer – ***Felthouse v Bindley (1862) H 11 C.B N.S. 869***. The House of

Lords, however, held overall that there was a contract by conduct, by ordering and accepting the goods on the terms of the draft. The point to note in that judgment, in regard to this claim, is that acceptance must correspond with the exact terms of the offer.

30. Another example is in the case of, ***Hyde v Wrench (1840) 3 Beav. 334, (England).*** In the case, the offeror offered to sell land for £1000. The offeree replied that he would buy for £950. Then before he got a reply, wrote accepting to pay £1000. It was held that the offeree rejected the offer to sell at £1000, and made a counter offer of £950. The original offer of £1000 was no longer available when the offeree subsequently sent a letter accepting to pay £1000.

31. Often the words of acceptance, or the manner of acceptance is given together with the offer. It is safer to regard the stipulation as to the manner of acceptance as part of the offer, so the words or manner of acceptance must be complied with, unless the offeree waives the words or manner. The old case, ***Eliason v Henshaw (1819) 4 Wheat 225,*** from the Supreme Court of USA, provides a guide. It was said in the case that, an offer imposed no obligation on the offeror until it was

accepted by the offeree, according to the terms in which the offer was made; any qualification of, or departure from those invalidated the offer.

32. In this claim, ‘the offer’ by the Minister was made on a standard form exhibit No. C(CE) 4. The form provided at the bottom part, a standard statement of acceptance as follows:

> "I ________________________________ have read, understood and accepted the following as a binding contract between myself and the Government of Belize
>
> __________________ ___________________
>
> Signature Date ".

33. The statement of acceptance was a stipulation of the words of acceptance which must be complied with without departure, in my view. The evidence confirms that view. The Minister approves many applications for lease and for purchase of national land by people who need a home or business premises. The claimant alone had 44

approvals to be processed, that were on files that were regarded as inactive in the Lands and Surveys Office. Because there were large numbers of approvals and acceptances, there was need to have standard, perhaps researched words of acceptance, and a record of acceptance readily available in an easily recognizable format.

34. It is also my view that, the stipulated words required by inference, that a signed copy of the statement of acceptance must be returned to the Lands and Surveys Office, although the manner of returning it was not stated. It is certain, however, that whatever means of returning the acceptance was adopted, the offeree was to ensure that it reached the Lands and Surveys Office in reasonable time.

35. From the evidence, I also concluded that the claimant accepted in her claim that, the manner of acceptance was stipulated and must be complied with. Her testimony was that she signed and returned a copy of the combined letter of approval and acceptance form in person on the same day, 24.8.1998, when it was given to her.

36. It was suggested to her that a copy of the approval letter and acceptance form in which the acceptance part was signed was not on the office file, whereas the original copy which included the unsigned stipulated acceptance form remained on the file. Her reply was an insistence that she returned the signed copy and even paid the purchase price and tax on the same day. That sounded convincing until one noticed that among the exhibits was a standard acknowledgement receipt No. 005114, exhibit C(ER) 2, which showed that the claimant had received an application form on which to make an application for lease or purchase of land in the B.E.C Area. One would expect a similar acknowledgment receipt to issue on the return of a copy of the form on which the stipulated acceptance was signed, because that was even a more important document.

37. The evidence for the Attorney General was that a signed copy of the approval and acceptance form was not returned, it was not on the file. On a balance of probabilities, and given that the burden of proof is on the claimant, I find that the claimant did not returned a copy of the combined approval letter and acceptance form on which she said she had signed accepting the offer. She failed to comply with the form of

acceptance stipulated and failed to accept. Payment of the purchase price was not sufficient acceptance. Had I accepted that there was a firm offer, I would have held that there was no acceptance of the offer and therefore there was no contract between the Minister and Ms. Ramirez.

38. *Communication of acceptance.*

The question of communication of acceptance was also raised. I have already said that by providing standard stipulated words of acceptance, the Government implied that the offeree, the claimant, was to sign, date and return to the Lands and Surveys Office a copy of the combined letter of approval and acceptance form on which the stipulated words were set out. The combined letter and acceptance form was collected from the office by the claimant, so the rule regarding posted offer and acceptance did not apply. It could not be inferred from the manner the 'offer' was sent that, the acceptance was to be communicated by post. Further, the offeror did not instruct so. In my view, no particular manner of communicating the acceptance was given, and could not be implied, but whatever means of

communicating the acceptance was adopted, the offeree was to ensure that the acceptance was received at the Lands and Surveys Office.

39. Generally, where the manner of communicating acceptance is stated, the offeree should comply with it, but should he depart, he must adopt a manner which is equally expeditious, and I might add, convenient, and in addition, the acceptance must be received in time. That was the decision in, ***Tinn v Hoffman & Co. (1873) 29.LT. 271,*** and ***Manchester Diocesan Council of Education v Commercial and General Investments Ltd. [1969] 3 All E.R. 1593.***

40. It must be pointed out however, that where the offeror has made it clear that he will accept only the manner of communication he has stipulated, that must be complied with, unless the offeror himself waives that manner and accepts some other manner of communication. Communication of acceptance is for the benefit of the offeror anyway.

41. The claim against the Attorney General for, "a lot in the B.E.C Layout Area" has not succeeded because there was no firm offer of a definite

and certain term, and in any case, there has been no acceptance. It follows that the claim against the other three defendants who got land in the same area from the Government also fails. The claim of Emy Gilharry Ramirez against: (1) the Attorney General, (2) Alma Bartley, (3) Anna Jacobs, and (4) Georgia Elizabeth Marshall is dismissed.

42. Ms. Ramirez will pay costs of each defendant. If costs are not agreed in thirty days, the defendants will file their bills of costs immediately.

43 Pronounced this Wednesday the 23rd day of December 2009
At the Supreme Court
Belize City

Sam L. Awich
Judge
Supreme Court