

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

CLAIM NO. 321 OF 2005

	(FORMOSA INVESTMENT COMPANY LIMITED	Claimant
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BETWEEN	(AND	
	(
	(
	(ARCHIE LEE	
	(WILSON LI	
	(WILLIAMS Y.C. WEN	
	(BELIZE CITY COUNCIL	Defendants
	(THE REGISTRAR OF LANDS	Interested Party

—

BEFORE the Honourable Abdulai Conteh, Chief Justice.

Mr. Michael Young SC for the claimant.
Mr. Fred Lumor SC for the 1st, 2nd and 3rd defendants.
Mr. Lionel Welch for the 4th defendant.
Mr. Arthur Saldivar for the Interested Party.

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JUDGMENT

Introduction

This case concerns a piece of land which is Block 16, Parcel 775 in the Caribbean Shores Registration Section (the “property” for the purposes of this judgment and so referred to hereafter). The property was bought by the claimant, Formosa Investment Company Limited, in 1994 and it became the holder of Land Certificate No. 2557/94 dated 12th July 1994

registered under the Registered Land Act – Chapter 93 of the Laws of Belize, Revised Edition 2000. The property's dimension is 3.012 acres and it lies along the Northern Highway. The claimant bought it for the sum of \$540,000.00.

2. The sole beneficial owner of the claimant company is a Mr. Houngh Wen Lin of Shijr City in the Republic of Taipei, Taiwan. He made a witness statement in these proceedings.
3. The claimant company however, is a Belizean Corporation with its address at #160 North Front, Belize City which is its registered office and this address appears on its Land Certificate at the Lands Registry.
4. After purchasing the property, the claimant paid property taxes due on it to the Belize City Council until 2001.
5. The Belize City Council is joined by an order of the Court dated 17th August 2006 as a defendant because on 10th August 2005, the claimant's property was sold at a public auction pursuant to an order of the Belize Municipal Court for its delinquency on property taxes on an application by the Belize City Council.
6. The first and second defendants aver that they bought the property at a public auction conducted by a Mr. Doyle Prince pursuant to an order of the Municipal Court. They subsequently transferred the property to the third defendant, despite an injunction of the Court. However, there is an interim injunction ordered by the Court (an earlier judge) on 17th August 2005 restraining the third defendant from dealing with the property or erecting any structure thereon until the determination of this matter. The third defendant was also added as a party by an order of the Court.

7. I should state at this point that the claimant contends as well that no public auction of the property was held as required by law.
8. The interested party, the Registrar of Lands, is appearing in these proceedings because the claimant is seeking an order from the Court directing the Registrar to rectify the lands register by cancelling the name of William Y.C. Wen, the third defendant.

The Essence of the Claim

9. From the pleadings, the pith and substance of the claimant's case is that it was adjudged ex parte as owing property taxes on the property in issue in this case, in the amount of \$27,000.00 plus \$5.00 costs on 9th February 2005, by the Municipal Court, on the application of the Belize City Council, and that it was never served summons or received any before the adjudication contrary to the provisions of the Towns Property Tax Act – Chapter 65 of the Laws of Belize, Revised Edition 2003; the “Act” hereafter. The claimant avers as well that there was in fact no public auction of its property as is required by law and that there was in fact collusion between the Belize City Council and the first and second defendant for the sale of its property at \$200,000.00 instead of its true market value. Furthermore, the claimant avers that the sale of its property was not in compliance with the relevant and applicable provisions of the Act. In its written submissions by its learned attorney, Mr. Michael Young SC, it is contended for the claimant that the sale of its property in the circumstances offends section 17(1) of the Belize Constitution guaranteeing protection from the arbitrary deprivation of property. The claimant however did not press its claim as a constitutional claim. It was content to press it as a civil claim.
10. In these proceedings, the claimant therefore claims the following relief:

1. *An order that the purported public auction for the sale of the property being parcel 775, Block 16, Caribbean Shores Registration Section (“the Property”), be set aside and that the transaction be reversed.*
2. *An order directing that the Registrar of Lands rectify the register (section 143 of the Registered Land Act) by canceling the registration of the Property in the name of Williams Y.C. Wen.*
3. *In the alternative, Damages for loss of the value of the Property payable by the First, Second and Fourth defendants.*
4. *In the alternative, the balance of the proceeds paid to the Fourth Defendant pursuant to the purported public auction after deduction of the applicable property taxes.*
5. *Such order as the court deems fit.*

The Defence to the Claim

11. Against the claim, the first to third defendants have put up a stout defence. In particular, they admitted that the property was transferred to the third defendant but aver that this was after the claimant had failed to obey the conditions contained in the injunction order made by the court (by another judge) dated 9th November 2005. The defendants aver further that:

- i) *The Claimant has not (sic) cause of action against any of the Defendants and/or the Auctioneer, Mr. Doyle Prince.*
- ii) *The Belize City Council, the Fourth Defendant, sold the property in accordance with the Order of the Municipal Court.*
- iii) *The Licenced Auctioneer sold the property at the reserved price at a public auction held on the 10th day of August, 2005 where the members of the public lawfully bid.*
- iv) *The First and Second Defendants purchased and paid for the property after the same was sold at a public auction by a Licensed Auctioneer.*
- v) *Failure of “an attorney for a corporate client” to attend a public auction earlier advertised and his protests thereafter give the Claimant no cause of action against the First, Second and Third Defendants.*

12. This last averment is in respect of the testimony of Mr. Emil Arguelles who testified that he attended at the site of the public auction for the property about the appointed hour – 10:00 a.m. on 10th August 2005, but there was no public auction.
13. The essence of the defence of the fourth defendant, the Belize City Council, is that the claimant’s property was sold at a public auction pursuant to section 28(1) of the Act. The fourth defendant further avers that the property was advertised for sale and that it was sold by public auction on 10th August 2005 by a licensed auctioneer, Mr. Doyle Prince.

Although the fourth defendant did not state that the property was sold because of the claimant's failure to pay property tax on it, this is implicit from the tenor of its Defence. It however averred that the reserve price for the property was Two Hundred Thousand Dollars (\$200,000.00). The fourth defendant also denied any collusion between it and the buyers, Archie Lee and Wilson Li, the first and second defendants of the property, in order to circumvent a public auction.

The issues in the case

14. In the light of the parties' statements of case, I think it is fair to say that the principal issue joined between them is this: **Was the sale by public auction on 10th August 2005 of the claimant's property in accordance with the provisions of the Towns Property Evaluation Act?**

There is also the issue whether the property was in fact sold at public auction. The claimant charges that it was not. But this is denied by the defendants.

There is as well, the issue as to whether In fact, the claimant should have been served with or received a summons: to answer for unpaid property taxes instead of the **ex parte** application made by the fourth defendant to the Belize Municipal Court, which on 9th February 2005 adjudged the claimant liable for unpaid property taxes on the property in the sum of \$27,000.00 plus \$5.00 costs. This was what set the train of events in motion resulting in the sale of the claimant's property. The claimant avers that it received no notice of the proceedings or summons.

The Evidence

15. There was a surfeit of evidence by way of witness statements filed on behalf of the parties: i) Three witness statements for the claimant; ii) Eight witness statements for the first, second and third defendants, and iii) Three witness statements for the fourth defendant, Belize City Council.
16. The witnesses were also extensively cross-examined by the attorneys for the respective parties, save that Mr. Houn Wen Lin, the alter ego and beneficial owner of the claimant who lives in Taipei, Taiwan, could not for health reasons, attend for cross-examination, although his witness statement was tendered. Also, two formal witnesses, the respective valuers retained by the claimant and the first to third defendants, did not attend for cross-examination. But they tendered witness statements giving their respective valuation of the property.
17. I shall therefore, where necessary, for the determination of the issues in this case, refer to relevant parts of the evidence. I am however convinced that the issues are primarily to be determined in the light of the statutory provisions applicable to this case.

Time-Line in relation to the Property and its liability for property tax

18. Having studied the statements of case of the parties, and having read the witness statements and having heard the testimony of the witnesses under cross-examination and after studying the various documents in this case, I am of the view that a time-line relating how the property in question came up for public auction, will help to throw the principal issues in this case into, I hope, a clearer relief for its resolution in the light of the relevant and applicable statutory provisions of the Act. I accordingly assay a time-line as follows:

- i) The claimant bought the property in 1994.
- ii) The claimant paid property rates on the property for five years, from 1996 – 2001 (see para. 2 of the Amended Defence) of the fourth defendant, the Belize City Council.
- iii) The Belize City Council published summons in **Gazette** for 9th, 16th and 23rd October 2005 against the claimant for unpaid rates on the property.
- iv) On 9th February 2005, the Municipal Court made an order ex parte on the application of the fourth defendant, the Belize City Council, adjudging the claimant liable for property taxes on the property in the amount of \$27,500.00 plus \$5.00 in costs, for the tax periods of 2000 – 2005.
- v) On 18th June 2005, the fourth defendant, the Belize City Council, had published in the ***Belize Gazette*** two notices as Ad. 181 and Ad. 182: a) Notice of the ex parte order and b) Notice of its intention to apply to the Magistrate to appoint a suitable person as auctioneer to dispose of the property. (These two notices are reproduced below at para. 19). Ad. 181 expressly stated that the Belize City Council was acting pursuant to section 27(3) of the Act.
- vi) On 16th July 2005, the Belize City Council again had published in the ***Belize Gazette*** as Ad. 212 containing a list of properties and their owners, including the claimant and the property in question here, against whom ex parte hearings were done from 1st February and 28th February

2005, stating that it was acting pursuant to section 27(3) of the Act.

- vii) On 17th July 2005, the Belize City Council, the fourth defendant, published in the *Belize Times* a notice of public auction sale of certain properties, including the property in issue here, pursuant to section 28 of the Act. In this notice, the fourth defendant stated its intention to have the listed properties sold by public auction on **August 15th 2005**.
- viii) On 5th August 2005, on an ex parte application by the fourth defendant, the Belize City Council, the Municipal Court ordered the property “to be sold by public auction on or before 5th September 2005 in accordance with section 28(1) and (2) of Chapter 63 of the Town Property Act, Revised Edition 2000.” The Court then in the same order, proceeded to appoint “Licensed Auctioneer Doyle Prince as Auctioneer in accordance with the Town Property Act, Chapter 65.”
- ix) On **10th August 2005**, there was published in the *Amandala* newspaper a “Public Auction Sale” by order of the Magistrate of the property by Licensed Auctioneer Doyle Prince. The terms of the sale were stated to be “strictly cash.” On **10th August 2005** Mr. Doyle Prince, the auctioneer sold the property by public auction to the first and second defendants.

Whether there was a public auction of the property in fact was an issue at trial of this case.

19. Reproduced below are the two notices referred to at (v) above being extracted from the Belize Gazette for 18th June 2005:

Ad. 181

BELIZE CITY COUNCIL NOTICE

Pursuant to Section 27(3) of Towns Property Evaluation Act, the Belize City Council hereby publishes the following property matter heard ex-parte.

<i>Name of Last Known Registered Owner</i>	<i>Description</i>	<i>Arrears</i>	<i>Date of Hearing</i>	<i>Court Order</i>
FORMOSA <i>Investment</i>	<i>Caribbean Shores Registration Section, BLOCK 16, Parcel 775</i>	<i>\$27,505.00 for periods 2000 to 2001 2001 to 2002 2002 to 2003 2003 to 2004 2004 to 2005</i>	<i>9th February, 2005</i>	<i>To pay arrears of \$27,500.00 + \$5.00 Cost of Court by 15th April 2005 I/d distress</i>

Ad. 182

NOTICE OF PUBLIC AUCTION OF SALE OF PROPERTY
(SECTION 28 OF CHAPTER 65 OF LAWS OF BELIZE)

*Whereas judgment was entered against Messrs Formosa Investment Ltd. on 9th February 2005 for payment of **twenty seven thousand five hundred and five dollars (\$27,505.00)** for property fees arrears for period 2000 to 2001; 2001 to 2002; 2002 to 2003; 2003 to 2004; and 2004 to 2005, and whereas the said arrears has not been paid, the Belize City Council hereby publishes its intention to apply to the Magistrate to appoint a suitable period to act as auctioneer within three (3) months from the 17th day of April 2005 (the last date of publication) to dispose of property to settle towns property fees arrears.*

SCHEDULE

Registered section Caribbean Shores, Block 16, Parcel 775 now or formerly the property of Formosa Investment Co. Ltd.

20. I now turn to a consideration of the issues in this case. First, the principal issue:

Was the sale of the claimant's property by public auction on 10th August 2005 in accordance with the provisions of the Towns Property Evaluation Act?

I should first say that I agree entirely with the written submission of Mr. Young SC for the claimant on the solicitude for and protection of the ownership of property stipulated in the Belize Constitution, in its Preamble, section 3(1) and section 17. Indeed, protection of the individual's right to property forms part of the architecture of Part II of the Constitution's Protection of Fundamental Rights and Freedoms. This right to own property is as valuable as other fundamental rights in the Constitution such as the right to life or personal liberty. But fundamental rights are not absolute and unlimited, and in the case of property, subsection (2) of section 17 of the Constitution states that

“Nothing in this section shall invalidate any law by reason only that it provides for the taking of possession of any property or the acquisition of any interest or right over property –

(a) in satisfaction of any tax, rate or due (Emphasis added)

(b) ... “

21. Therefore the principal issue does not raise the constitutionality of the sale by public auction of the claimant's property in satisfaction of property taxes or rates. It is common ground between the parties that between 2000/2001 – 2004/5 the claimant did not pay property taxes on the property. Indeed in these proceedings the claimant has not contended otherwise.
22. The question for determination here therefore is: was the sale of the claimant's property in satisfaction of overdue rates or taxes on the property in conformity with the law governing this?

The Statutory Scheme for the Recovery of overdue Rates on Property

23. The Town Property Evaluation Act provides in section 3 for the imposition of rates and fees upon real property and holdings of real property within the boundaries of towns by the local authority of towns, which includes Belize City. The Act provides for the preparation of valuation rolls which provide the basis for all rates determined by a local authority. The rates are to be declared yearly.
24. **Section 18** of the Act makes it clear that the levying of rates by a local authority is for the purpose of providing such funds as may be required for carrying out the lawful functions and duties of a local authority during the financial year beginning on 1st April each year.
25. Undoubtedly therefore, rates are a primary source for financing local authorities such as the Belize City Council.
26. The Act accordingly provides in **section 22** for when rates are due and payable and when payments may be made. It provides as well in section

23 that all rates payable shall be a **charge on the property** in respect of which they are due and take priority over any other charge or debenture.

27. The Act provides in **section 24** that rates are recoverable by a summary process.

28. And **section 25** provides for the service of summons for the recovery of rates and it states in terms:

“25. Whenever in any proceedings under section 24 the owner of property cannot be found in Belize or is proved to be evading personal service, the summons may be served by -

(a) leaving it at the usual or last known place of abode of such owner with some adult inmate and explaining the purport thereof to such inmate; or

(b) leaving it affixed to the door or any external wall of any building, or if there be no building, to a tree or post (the driving or placing of which post for such purpose shall not be actionable), on the property for which the rate is sought to be recovered; or

*(c) **publishing a copy of the said summons in the Gazette and a***

national newspaper.” (Emphasis added).

I have at para. 18(iii) above mentioned the publication of the notice of the summons in the **Gazette**; but there is no evidence of publication in any national newspaper.

29. **Section 26** provides for when the name of the owner of the property need not be inserted in the summons and it provides:

“26. In any information laid, summons or warrant issued or order made under section 24, it shall not be necessary to insert the name of the owner of the property in respect of which any rate is due and unpaid if after reasonable inquiry it cannot be ascertained what is the name of the owner of such property or whether there is any owner of such property, but instead of the name of the owner of such property the words “the owner of”, followed by a reasonable description of the said property, may be inserted.”

It should be noted that this section only dispenses with the need for the insertion of the name of the owner of the property on which rates are due and unpaid in **any information laid, summons, warrant or order made under section 24. It does not however, dispense with service of the summons required under section 24 for the summary process to recover overdue rates.** (More on this later when the issue of summons is considered).

30. **Section 27** accordingly provides:

“27. (1) Every summons issued under section 26 shall be served by –

(a) affixing and leaving affixed a copy of the summons upon any building, wall, tree, post (and for this purpose the driving or placing of a post shall not be actionable) or other prominent place upon the property described in the said summons; and

(b) affixing and leaving affixed a copy of the summons upon some prominent place within or about the court house building in which the information specified in such summons is intended to be heard; and

(c) **publishing a copy of the said summons in three consecutive issues of the Gazette.**

(I have at para. 18(iii) stated that the fourth defendant published notices of summons on the claimant in the **Gazette** for 9th, 16th and 23rd October 2004).

(2) *At the time and place appointed in or by any such summons for the hearing of the information therein specified, any person having or claiming any estate or interest in the said property may appear in the same manner as if the summons had been directed to him by name, but if no such persona appears, then **upon proof that the summons has been served as provided in this section and that the reasonable inquiry mentioned in section***

26 has been made, the information specified in the summons may be heard and adjudicated upon ex parte:

Provided that if upon such hearing it is found that the whole or any part of the rate specified in such information is due, the owner of the property shall be adjudged to pay the rate so found to be due, together with such costs, if any, as may be awarded, but no further order shall be made as to distress or imprisonment in default of payment.

(3) Every order made ex parte upon such summons shall be published in the Gazette and a national newspaper and, if after the expiration of three months from the date of the later of these publications the amount of the rate and the costs specified in such order has not been paid, section 28 shall apply, and it shall be deemed that the costs of the proceedings and the amount of the rate due and recoverable cannot be raised by the sale of the goods and chattels of the owner of the property.” (Emphasis added).

31. It is to be noted that the Belize City Council's Notice giving details of the ex parte order made in respect of the property by the Magistrate on 9th February 2005, was published in the Belize Gazette on 18th June 2005 as Ad. 181, reproduced at para. 19 above. This may therefore, strictly be in keeping with section 27(3) of the Act in respect of publication of the ex parte order in the Gazette. But the Act speaks about publication of the ex parte order in the Gazette and a national newspaper.

32. **There was a further publication on 16th July 2005 again pursuant to section 27(3) of the Act as Ad. 212 in the Belize Gazette.** This time the publication was a list of property matters heard ex parte from 1st – 28th February 2005. The list included the claimant and its property, the address of the property, the years of overdue rates, the amount due, the date of the order of the Court with last column under “Remarks” the words “*To pay \$27,500 + \$5.00 cost by 15.4.05 i/d distress.*” The notice was said to be pursuant to **section 27(3)** of the Act.
33. In this case, there is no other evidence of the publication of the ex parte order pursuant to section 27(3) of the Act other than these two publications in the **Belize Gazette**, one for 16th June 2005 and the other for 16 July 2005.
34. Yes, there were two other publications in national newspapers concerning the property, namely, **The Belize Times** for **17th July 2005** and the **Amandala** for **10th August 2005**. The first, in the Belize Times was announcing the intention of the Belize City Council, pursuant to section 28, to sell by public auction the properties listed, including the claimant’s. The other publication in the **Amandala** was simply announcing the public auction sale by order of the Magistrate by auctioneer Doyle Prince, of the property and the place and time of the auction and its terms of sale.
35. Both these newspaper publications were not, I apprehend, the required publication of the ex parte Court order, pursuant to section 27(3) of the Act.
36. Moreover, the dates of these publications, as well as those in the **Belize Gazette**, already referred to at para. 33 above, would put them well short of **the period after which section 28 of the Act on the sale by public auction in satisfaction of rates, would come into play: three months**

after the date of the publication of the ex parte order made on a summons for the recovery of overdue rates in the Gazette and a national newspaper, whichever is later published.

More fundamentally, the **Gazette** notices by the Belize City Council regarding the claimant's property explicitly cited section 27(3) of the Act.

Sub-section (3) of section 27, on the need for publication of an ex parte order ordering a public auction of delinquent rate payer, will, I think bear repetition. It states:

“(3) Every order made ex parte upon such summons shall be published in the Gazette and a national newspaper and, if after the expiration of three months from the date of the later of these publications the amount of the rate and the costs specified in such order has not been paid, section 28 shall apply, and it shall be deemed that the costs of the proceedings and the amount of the rate due and recoverable cannot be raised by the sale of the goods and chattels of the owner of the property.” (Emphasis added).

37. I am satisfied that it is only **after the expiration of three months** of the publication in the Gazette or a national newspaper, whichever is later, of the ex parte order granted on the summons for the recovery of overdue rates **and** the rates and costs specified in the order remaining unpaid, then and only then can recourse be had to section 28 of the Act for the sale and conveyance of the property by public auction. But this itself is contingent on if the rate due and recoverable **cannot be raised by the sale of the goods and chattels of the owner of the property.**

38. In this case, I find that given the dates of publication of the information on the ex parte order in the **Belize Gazette** (respectively for 18th June 2005 and 16th July 2005) there was some egregious rush to invoke section 28 of the Act to have the claimant's property sold by public auction. Quite why the rush, well short of the statutory period necessary to bring section 28 into play can only leave one wondering ... Moreover, there is no evidence of any publication of the ex parte order in any of the national newspapers as is required by section 27(3) of the Act. I find that the publications in both the **Belize Times** and the **Amandala** referred to in para. 34 above, were nothing short of only announcing a *fait accompli*, instead of publishing the ex parte order as required by law.
39. I therefore find and hold that the purported auction of the claimant's property on 10th August 2005, was not in compliance with the provisions of the Act which the Belize City Council itself had referred to in the Gazette publication which were necessary to have authorized or validated that auction.

Public Auction of property in satisfaction of rates

40. The Act, as a tax statute, not unexpectedly contains provisions for the sale of property on which rates remain unpaid. This is to be done by public auction. But it is to be noticed that this power of sale of the property itself under the Act is not a recourse of first option but one of last resort: it only comes into play if the amount of rate due and recoverable cannot be raised by the sale of the **goods and chattels** of the owner of the property and the amount remains unpaid.
41. In the instant case however, there is no evidence adduced that the sale of the goods and chattels of the claimant could not have raised the amount its property was adjudged as owing in rates. In my view, to sell the

claimant's property which was bought for \$540,000.00 in 1994 and variously valued for the purposes of the trial at \$2.6 to \$3 million by Mr. Emerson Burke, a Real Estate Appraiser at the request of the claimant, and at \$725,000.00 by Mr. Clinton Gardiner on behalf of the first defendant, is in my view wholly disproportionate to meet outstanding rates of \$27,500.00. I am not unmindful that the property was said to be sold for a reserved price of \$200,000.00; but, I think, in the circumstances to have recourse to a public auction of the property without first ascertaining that the amount of rates due (\$27,500.00) could not be raised by the sale of the goods and chattels of the owner, as section 28(1) requires, is, I think, not proportionate or in keeping with the law. There is no evidence that any attempt was made to first have recourse to the goods and chattels of the claimant in satisfaction of the rates owed on the property.

42. Moreover, section 28(1) does grant some power to the magistrate in charge of the sale of the property before whom recovery of the rates was sought, when requested by the local authority owed the rates, in writing, to sell either the whole of the property or such part of it as he in his discretion may select and mark off as sufficient to realize the amount due. The property in question here is of some quantity. Three plus acres, in all, located in a prime and accessible location. It would not have been unreasonable therefore for the Magistrate to have ordered only a portion of it to be sold to raise the amount involved. For the claimant this line of action was contended for by Mr. Young SC; but for the first three defendants, its impracticality was advanced by Mr. Lumor SC. In the light of the issues considered in this case however, I do not think it is profitable to dwell on this aspect.
43. It is therefore important that local authorities and magistrates before whom proceedings are brought for recovering of rates, follow the provisions of the Act when they want to proceed against the property of the owner of a

rate-defaulter in satisfaction of overdue rates. **The sale of such property at a public auction for unpaid rates will only be valid to convey an indefeasible title on a purchase if, as sub-section (4) of section 28 itself stipulates, the provisions of the Act necessary to authorize such a sale have been complied with.**

44. The rationale for this is not, in my view, too difficult to discern. The Act, unlike analogous enactments in other jurisdictions, does not, after an order adjudging default in payment of rates and ordering sale of property in satisfaction, provide any power of redemption in the property owner. Only the three months window specified in sub-section (3) of section 27 stands between the property owner and the public auction of his property process provided in section 28.
45. I think it is important for local authorities to bear this point in mind especially in these dire times when notice of public auction of property in satisfaction of rates are now so ubiquitous in the Gazette and newspapers. This, of course, is not in anyway to diminish the necessity and importance of paying rates on which local authorities are increasingly dependent to meet their multifarious tasks and functions.
46. It is, I think, helpful in view of the issues raised in this case, to set out the provisions of the Act governing the sale and conveyance of property in satisfaction of rates. Section 28 provides:

“28. (1) If after legal proceedings have been taken under section 24 the costs of the proceedings and the amount of the rate due and recoverable cannot be raised by the sale of the goods and chattels of the owner of the property in respect of which the rate or any portion thereof is due but

remains unpaid, the magistrate before whom recovery of such rate was sought or some person appointed by him shall, upon being required in writing to do so by the local authority in question, sell either the whole of such property or such part thereof as in his discretion may be selected and marked off by him as sufficient to realize the required amount. (Emphasis added).

(2) *All sales under this section shall be by public auction at such time and in such manner as the magistrate in charge of the sale may think fit, and a reserve price shall be fixed consisting of the entire amount of the rates due at the time of the sale in respect of the property sold, and the costs and expenses of all proceedings attending the recovery thereof, including those of the sale.*

(3) *Should the bid of the highest bidder reach the amount of the reserve price, such highest bidder shall be declared the purchase.*

(4) On payment by the purchaser of the purchase money, the magistrate in charge of the sale shall execute a conveyance of the property sold and disposed of to the purchaser in the form in the Second Schedule and such conveyance when signed and recorded in the manner required by law shall, if the provisions of this Act necessary to authorise such sale have been complied with, operate to confer on the purchaser an indefeasible title to such property free

from all encumbrances, fraud excepted. (Emphasis added).

(5) *If a part only of the property, in respect of which the rate or any portion thereof is payable but remains unpaid, is offered for sale, and there is no bid for it equal to or in excess of the reserve price, the magistrate in charge of the sale shall put up for sale in the manner before provided a larger part of the whole of such property as he may in his discretion think necessary to realize the required amount.*

(6) *In the event of the whole of such property being offered for sale and there being no bid for it equal to or in excess of the reserve price, then such property shall vest in Her Majesty for the use of the district in which it is situate, and the magistrate shall issue a warrant containing a written statement of the particulars of such land and the name, so far as it is known to him, of the owner thereof and the date or dates of such abortive sale or sales, and shall cause it to be recorded in the general Registry in the manner provided by law, and on being so recorded such warrant shall, if the provisions of this Act necessary to authorise such sale have been complied with, constitute an indefeasible title in Her Majesty, free from all encumbrances, fraud excepted.*

(7) *Notwithstanding anything contained in the General Registry Act, the Registrar General may receive without proof of execution, and record, any document purporting to be signed by a magistrate under this section.*

(8) *When the proceeds from any sale exceed the amount of the entire rate due as aforesaid, and the costs and expenses of all proceedings attending the recovery thereof (including those of the sale), the surplus shall, when arising from the sale of property, be paid to the local authority of the town in which such property is situate, and shall on demand be paid over to such person as proves himself to the satisfaction of the local authority to be entitled thereto.*

(9) *Should any difficulty arise in ascertaining the person entitled to any such surplus proceeds of sale paid to a local authority on account of the disability of the person entitled, or the existence of trusts or settlements or other complication, such surplus may be paid into the Supreme Court to abide any order or direction of that Court:*

Provided that after the expiration of seven years to be computed from the day of the sale, such surplus, if unpaid, shall be appropriated to the funds of the local authority in question.”

47. I agree with Mr. Young's submission that a tax statute must be strictly complied with when he cited the Canadian case of **Bay Colony v Wasaga Beach (Town) 1997, Carswell Ont. 1578**. It is generally accepted that statutes which encroach on right of individuals or impose burdens are strictly construed – see generally Maxwell on **The Interpretation of Statutes 12th ed.** at pp. 251 – 256. I accordingly, with respect, agree with the statement by the Ontario Court of Appeal in the **Bay Colony** case **supra** that:

*“The purpose of tax sale statutes is to see that municipalities are able to collect taxes to assure that the tax burden is distributed fairly among municipal tax payers ... **However, given the drastic result of a tax sale ... it is important that the statutorily required procedures are strictly complied with.**”*
(Emphasis added).

That case was concerned with whether the appellants had been served with notice of tax assessment of their property in accordance with the Municipal Tax Sales Act of Ontario. The Court of Appeal found that it was not.

48. In this case, I have found that there was non-compliance with section 27(3) of the Act. This is the trigger to bring section 28 into play. Therefore, given the drastic consequences for a delinquent rate payer of the sale by public auction of his property in satisfaction of overdue rates, the statutory provisions leading to this must strictly be followed.
49. According, I find and hold that the purported public auction of the claimant's property on 10th August 2005, was, at the very least, premature and not in conformity with the law authorizing such public auction sale. Sub-section (4) of section 28 on the sale and conveyance of property in satisfaction of rates itself, makes compliance with the provisions of the Act necessary to authorise such sale, mandatory.
50. This conclusion is sufficient to decide this case in the claimant's favour. However, there were two other issues agitated by the claim: One is whether the claimant was served notice of the summons leading to the adjudication ex parte, by the magistrate on 9th February 2005, that outstanding rates were due on the property.

On the issue of service of summons for recovery of rates

51. Admittedly, the provisions of the Act on summons for the recovery of rates are not without some confusion. There are in fact two sections of the Act dealing with service of summons. The first is in **section 25** which I have set out at para. 28 of this judgment. The other is provided in section 26 which is set out at para. 29 in this judgment. But this latter section speaks as well of **“information laid, summons or warrant issued or orders made under section 24”** (which deals with the recovery of rates) and it addresses the situation where the name of the owner of the property owner cannot, after reasonable inquiry, be ascertained, or whether there is any owner of such property. Then this section permits the insertion of the words **“the owner of”** on the information, summons, warrant or order made ex parte. The section, I think, is only for the purposes of describing the owner of the property.

The confusion may arise when **section 27(1)** in turn states the method of service of such summons in which the words “the owner” followed by a reasonable description of the property concerned are inserted as provided by section 26. I say confusion may arise when it is remembered that **section 25** already provides for the service of summons for recovery of rates. There is to be noticed some similarity between the methods of service under both sections, save that in the case of service under section 25, the summons in addition to the two similar provisions of subparagraphs (a) and (b) of both sections, its service, may be effected by **“(c) publishing a copy of the said summons in Gazette and a national newspaper.”** The service of a summons under section 26 may be done as provided in section 27(1)(a) and (b) (common to both sections 25 and 27 **and** by **“(c) publishing a copy of the said summons in three consecutive issues of the Gazette.”**

52. It is therefore, I think, that for service of the summons under section 25, the methods are, **alternative**, whereas service of the summons under section 26, the modes of service are **cumulative**: this is the effect of the word “**and**” appearing at the end of both paragraphs (a) and (b) of section 27(1).
53. In the instant case however, I do not think that section 26 or 27(1) are applicable for the service of the summons. This is for the simple reason that from the evidence, it cannot be said that the name and address of the owner of the property, Formosa Investment Co. Ltd., were not known to the fourth defendant, the Belize City Council. These were evidently known, as Mr. Young SC correctly submitted, given the fact they had assessed rates on the claimant’s property before.
54. However, on the evidence, I am satisfied that service of the summons was effected on the claimant by publication of the notice of the summons in the **Gazette**: see the **Belize Gazette** issue for 9th October 2004, Ad. 315; 16th October 2004, Ad. (315); and 23rd October 2004 (Ad. 315). I am prepared as I must, to take judicial notice of this fact. But the provisions of paras. (a) and (b) of section 27(1) which are cumulative to para. (c) were not complied with. Although for the purposes of section 25(c) only **a** copy of the said summons needs to be published in the **Gazette and a national newspaper**, as an alternative to the other two modes specified in section 25 itself. Mr. Welch, the attorney for the Belize City Council, in his written submissions stated that there were notices of the summons published as well in **The Belize Times** Newspaper for the 4th October 2004, 10th October 2004 and 17th October 2004; but this is not a requirement of section 25 on the service of summons generally for recovery of rates.
55. I am according not satisfied that there was notice of the summons by the Belize City Council as required by the Act to the claimant. There is as well

the confusion cause by the gratuitous reference to section 27(1) in the notices when the claimant's position, its name and address were clearly known to the Belize City Council and was not therefore a section 26 situation to bring section 27(1) into play.

56. In any event, on the evidence in this case, I am not satisfied that there was compliance with the provisions of the Act on the service of the summons, whether under section 25 or section 27(1) which resulted in the sale of the claimant's property at a public auction. There simply was no service of the summons as required by the Act.
57. The need for notice to the owner of property of proceedings to recover rates cannot, of course, be over-emphasized, as the process may well result in the loss of property and without such notice such loss can only result in an unlawful deprivation of property. But where the name of the owner of the property and his address are known, section 25 of the Act prescribes the three alternative modes of effecting service of the summons for the process to recover rates. It is important, I think, that local authorities know the distinction between sections 25 and 26 and by extension section 27(1) of the Act and issue summonses accordingly.
58. The publication of any order made ex parte on such summons is what is addressed in section 27(3) of the Act. This I have found, was not complied with in this case to have brought section 28 into play authorizing a sale of the delinquent property by public auction.

Was there in fact a public auction of the claimant's property?

59. This is the other issue agitated by the claim in this case. It is contended for the claimant that there was in fact no sale of its property by public auction.

60. The first to third defendants deny that there was no public auction of the property and aver that the property was sold at a public auction to the first defendant by Licensed Auctioneer, Mr. Doyle Prince at the reserve price of \$200,000.00. This is the heart of their defence on which they stood pat at the trial of this case.
61. For the fourth defendant, Belize City Council, it is contended that the property was advertised for sale and sold by public auction on 10th August 2005. It denies that the sale was carried out by it and avers that the sale was the responsibility of the Magistrate and that even if the sale was a nullity, which it denies, it was the responsibility of the Magistrate, and it therefore is not liable for damages for loss of the value of the property.
62. It is not in doubt that the sale of property in satisfaction of overdue rate is, by the stipulations of the Act in section 28, to be done by a **public auction** with a **reserve price**. Sub-section (2) of section 28 provides in terms:

“(2) All sales under this section shall be by public auction at such time and in such manner as the magistrate in charge of the sale may think fit, and a reserve price shall be fixed consisting of the entire amount of the rates due at the time of the sale in respect of the property sold and the costs and expenses of all proceedings attending the recovery thereof including those of the sale.” (Emphasis added)

63. It is clear from this provision that:
- a) the sale must be by public auction

- b) the magistrate is in charge of the sale
 - c) a reserve price for the property to be sold shall be fixed consisting of the entire amount of the rates due at the time of sale plus costs and expenses attendant on the proceedings for recovery of the overdue rate and the costs of the auction sale
 - d) the reserve price for the sale of the property is fixed by the Magistrate.
64. There is in evidence in this case a Memorandum dated 5th August 2005, from the Magistrate to the then Mayor of the fourth defendant, ordering the sale of the claimant's property by public auction and appointing Licenced Auctioneer Mr. Doyle Prince, as the auctioneer. (See document exhibited to Mr. Prince's affidavit of 4th November 2005 and filed on behalf of the defendants on 7th November 2005 in this case).
65. But singularly omitted from this Memorandum or "Order of Sale", is any mention of any **reserve price**. This I find is not in conformity with sub-section (2) of section 28 of the Act which is expressly mentioned in the Memorandum. Indeed, under cross-examination by Mr. Young SC for the claimant about the reserve price for the sale of the property, Mr. Prince had to admit that it was the then Mayor of the Belize City Council who told him about the reserve price in a discussion he had with him. This is unacceptable, especially when, from the provisions of section 28, it is manifest that the sale of property in satisfaction of overdue rates is a judicial process with the Magistrate in charge. It is the magistrate who sets the reserve price taking into account the matters stated in section 28(2), which necessitated the sale.

66. However, the question whether in fact there was a public auction of the property, is I think, essentially one of fact.
67. From the evidence surrounding the so-called “public auction” of the property, I am not convinced or satisfied that there was, in fact, a public auction, or any public auction in conformity with sub-section (2) of section 28.
68. I find, in particular, the witness statement of Mr. Emil Arguelles who even Mr. Welch in his written submission for the fourth defendant describes as a reputable person, and his testimony under cross-examination by both Mr. Fred Lumor SC for the first to third defendant and by Mr. Welch, to be impressive and convincing. The gist of his evidence is that on the morning of 10th August 2005 (the day advertised for the public auction), he attended the site at about 9:30 to quarter to 10:00 a.m.), (the advertised hour for the auction), he parked his vehicle in front of a tree on the property in the hope of making a bid on behalf of a corporate client. Mr. Arguelles stated that he attended at the site of the proposed auction sale to await the arrival of the auctioneer so that he could read the conditions of sale. At paras. 6, 7, 8 and 9 of his witness statement, Mr. Arguelles states:

“6. That the auctioneer did not arrive within a reasonable time and consequently, I began making telephone calls to the Auctioneer and the Belize City Council to ascertain the status of the public auction and spoke to an employee Sean Grant whom I have known for over 20 years at about 10:00 a.m. who informed that I was at the correct site and notified me that the auctioneer was on his way. Attached hereto are copies

of my cell bill for the relevant times showing the BCC and Auctioneer numbers and the call times (highlighted).

7. *That I again spoke to Sean Grant at 10:30 a.m. as to the sale of the property and he then visited the site of the scheduled auction. I left the site without an auction taking place seeing that the auctioneer did not attend.*

8. *That the auctioneer telephoned me on the following day being August 11th, 2005 stating that the property was sold to A and W Limited on August 10th, 2005.*

9. *That I informed the auctioneer that I was present and that no auction was held at the site.”*

69. Mr. Arguelles then wrote a letter to the Mayor of the Belize City Council on 11th August informing him of his discontent and objection to the purported auction. He then personally served a copy of the letter he sent to the Belize City Council. A copy of this letter is annexed to Mr. Arguelles' witness statement. Both Mr. Lumor SC for the first three defendants and Mr. Welch for the Belize City Council vigorously cross-examined Mr. Arguelles. But he held steady as per his witness statement I found him a truthful and sincere witness on the issue of whether there was a public auction or not of the property.

70. I am persuaded by the clarity of his witness statement and his answers under cross-examination to conclude that there was not in fact any public auction of the property on 10th August 2005 at 10:00 a.m. This conclusion is confirmed, in particular, by the contradictory statements under cross-

examination by Mr. Young SC of both Mr. Prince, the Licensed Auctioneer, and Ms. Marie Lewis, who used to work for Mr. Prince but at the time of the trial worked part-time and would accompany him to public auctions. The contradictions in my view relate to a material aspect of any auction: the hitting of the auctioneer's hammer or gavel signifying that a bid has been accepted as the highest for an item or auction,

71. This was the exchange on this aspect of the purported public auction between Mr. Young SC and Mr. Prince and Ms. Lewis:

First Mr. Prince:

Q: You had an auctioneer's hammer?

A: Unfortunately I don't have it with me. I had it here last week but I can send and bring it.

THE COURT: At the auction?

Q: You had it at the auction?

A: That is correct.

Q: And so what did you hammer on?

A: My vehicle.

Q: You hammered on your vehicle?

A: On my vehicle.

Q: Which part of your vehicle you hammer?

A: The bonnet.

Q: You have a strong vehicle, a Toyota?

A: A Bronco sir, a big Bronco. I have two of them parked in my yard right now.”

And then Ms. Lewis:

“Q: And when the winning bid was made, what did he do with the hammer?

A: He take it and knock it on a book.

Q: On a book?

A: Yes, sir.

Q: He did not knock it on any vehicle?

A: No, we did not have any vehicle around. The vehicle parked far apart from where the auction was.”

72. I must say both these witnesses gave me the clear impression of prevarication as to whether there was any public auction of the property at all.
73. The first defendant, Mr. Archie Lee, in addition to his witness statement, was vigorously and extensively cross-examined by Mr. Young SC for the claimant. I am bound to say that he did not make a favourable impression on me as an honest witness as to the issue of a public auction being held on 10th August 2005 by Mr. Prince, for the property. When, for example, he was asked about how he came to arrive at the sum of \$200,000.00 as his bid for the property, he said it was just by chance. He also said among other things, that he only learnt of the property being sold for tax reasons from a witness in court. I am unable, on a balance of probability, to accept

Mr. Lee's testimony as credible that a public auction of the property was in fact held on 10th August 2005 by the licensed auctioneer, Mr. Prince.

74. From the evidence, I find as a fact that there was no public auction of the property as required by law. The sale strikes me more like one by private treaty between the supposed highest bidder, the licensed auctioneer and possibly officials in the Belize City Council.

Conclusion

75. It is for all the reasons stated in this judgment that I must enter judgment for the claimant in this case and grant the following relief and orders accordingly:
1. I order that the purported public auction of the claimant's property being Parcel 775, Block 816, Caribbean Shores Registration Section on 10th August 2005 be set aside, and I so order.
 2. I order and direct the Registrar of Lands to rectify the register of lands by cancelling the registration of the said property in the name of Williams Y.C. Chen and restoring the name of the claimant on the register as the registered owner.

3. I award the costs of these proceedings to the claimant which are to be agreed or taxed and borne in the proportion of $\frac{3}{4}$ by the first three defendants and $\frac{1}{4}$ by the fourth defendant.

A. O. CONTEH
Chief Justice

DATED: 11th November 2009.