

IN THE SUPREME COURT OF BELIZE, A.D. 2007

CLAIM NO. 614 OF 2006

ATTORNEY GENERAL

Applicant

BETWEEN AND

KUO, CHUN-HUNG

Defendant

—

BEFORE the Honourable Abdulai Conteh, Chief Justice.

Mrs. Andrea McSweeney McKoy for the applicant.

Mr. Rodwell Williams SC together with Mr. Wilfred Elrington SC for the defendant.

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DECISION

By its order dated 18 July 2007 in this case, the Court of Appeal referred this matter for my *“assessment of all other moneys covenanted to be paid by Abdul Hamze to the defendant under section 2 of the Deed of Mortgage dated 1st day of March, 1994.”*

2. Clause 2 (or section 2) of the said Mortgage Deed provides as follows:

“2. The Mortgagor AS BENEFICIAL OWNER hereby charges by way of First Legal Mortgage ALL THAT property described in Parts 1 and 11 of the Schedule hereto with all buildings and erections

thereon with the payment to the Mortgagee of the principal money and other moneys hereby covenanted to be paid by the Mortgagor subject to the provisions of the Law of Property Act.”

3. Quite what the “other moneys” that were covenanted to be paid by Abdul Hamze is not clear or plain from a read through of the Mortgage Deed. What is however, not in doubt, is that the **principal sum** covenanted to be repaid under the Deed is the sum of US \$1 million. This much is common ground between the parties.
4. As I have had occasion to remark before, the Mortgage Deed in issue in this case, with respect, leaves much to be desired in terms of precision and clarity. However, doing the best I can, I think, it is evident that by clause 3, the Mortgagor (Abdul Hamze), covenanted with the Mortgagee to do certain things. Some of these are quantifiable in monetary terms which could be said to be reasonably contemplated to be “other moneys.”
5. These are:
 - (i) Survey costs of the 7689 acres – clause 3(1)
 - (ii) The survey costs of 1000 and 1,689 acres respectively, which Abdul Hamze and the defendant had agreed to take off the total property subject to the Mortgage – clause 3(2).
 - (iii) The costs of surveying, sub-dividing, clearing and constructing road on the remaining 5000 acres of the property – clause 3(4).

By clause 3(3) Abdul Hamze covenanted to provide and convey to the defendant a road access with frontage of about 700 feet within the 1689 acres parcel for the benefit of the 1000 acres. These, it should be remembered, were the acreages that the parties had agreed to hive off the total acreage of 7689.

6. The costs of providing this road access with a 700 feet frontage was not addressed by the attorneys at the assessment hearing before me, nor did they address the costs of the surveying, clearing and constructing road as provided for in clause 3 of the Deed generally.
7. Instead, Mr. Rodwell Williams SC for the defendant, submitted that the “other moneys” covenanted to be paid is the value of defendant’s interest in the entire property mortgaged. This Mr. Williams SC submitted was made up as follows:
 - a) the defendant’s interest in the 1000 acres that he was to receive in specie (clause 4(1)) and
 - b) one-half of the proceeds of sale of the 5000 acres (clause 4(5)).

Therefore, he submitted, the defendant’s interest is in the value of 3500 acres. That is to say, 1000 acres and 50% of 5000 acres, that is, 2500 acres.

8. Mrs. McSweeney McKoy, the learned attorney for the applicant on the other hand, laid emphasis on clause 2 of the Mortgage Deed and Part I and II of its Schedule. She further argued that in fact the Government of Belize agreed to pay Abdul Hamze, the Mortgagor, the sum of \$9,500,000 for 8730.22 acres, which was one thousand acres more than in the

Mortgage Deed between the defendant and Abdul Hamze. She further argued that what the Government of Belize in fact paid to Abdul Hamze, was \$6,859,375.01 and not the \$9.5 million. She relied on para. 19 of Mr. Gian Gandhi's affidavit of 3 November 2006.

9. I have listened to both counsel in this matter carefully and I remind myself that the remit of any charge flowing from the Order of the Court of Appeal, is to make an assessment of all "other moneys" covenanted, pursuant to clause 2 of the Mortgage Deed, to be paid by Abdul Hamze to the defendant.
10. I have set out at para. 5 above, what, in my view, these "other moneys" covenanted for were.
11. Neither attorney addressed the costs of these various surveys as provided in clause 3 of the Mortgage Deed. Nor is there any evidence that any of the surveys or clearing or road construction was done.

Mr. Williams SC sought, however, to revive the issue of resulting trust by advancing the argument that the defendant had in addition to the 1000 acres agreed upon for him, that he, the defendant, was entitled to half of the 5000 acres, that is, 2500 acres, which together with the 1000 acres makes his entitlement in total 3500 acres. Mr. Williams SC therefore submitted that the value of defendant's interest in 3500 acres is \$5,385,990 made up as follows: \$1,531,140 (representing until price per acre on the payment of \$11,779.062.00 for 7,693 acres) multiplied by 3500.

12. I remain unconvinced that the defendant was entitled to 3500 acres under the Mortgage Deed.

13. In my view under section 2 of the Deed the other moneys covenanted to be paid are only referable to clause 3 of the Deed.
14. However, by the provisions of clause 3 of the Mortgage Deed, the defendant was entitled to 1000 acres as was Abdul Hamze to 1689 out of the total acreage of 7689, leaving a balance of 5000 acres. Abdul Hamze sold the whole 7689 acres to the Government of Belize. Is the value of the 1000 acres part of the moneys covenanted to be paid?
15. Abdul Hamze sold the whole property to the Government of Belize inclusive of the 1000 acres that had been agreed should go to the defendant.
16. I accept the evidence that the price the Government of Belize paid to Abdul Hamze for the whole property of 7689 acres was \$9.5 million spread over eight (8) years. However, it is fair to hold that the defendant is entitled to his 1000 acres or the equivalent in money.
17. I have therefore determined the value the defendant's interest in the 1000 acres as representing "other moneys" pursuant to clauses 2 and 3 of the Mortgage Deed, to be \$1,253,530. That is, \$1,253.53 (representing unit price per acre paid to Hamze) multiplied by 1000.
18. I will award interest on this sum at the rate of 6% from the date of the sale or transfer of the whole 7689 acres by Abdul Hamze to the Government of Belize.

A. O. CONTEH
Chief Justice

DATED: 24th October 2007.