

IN THE SUPREME COURT OF BELIZE, A.D. 2012

CLAIM NO. 51 of 2011

**ANTONIO GUERRA
AND
RUDOLPHO URBINA
ERNESTO URBINA**

**CLAIMANT
DEFENDANTS**

CLAIM NO. 280 of 2011

**ANTONIO GUERRA
AND
ATLANTIC BANK LIMITED
RODOLPHO URBINA
ERNESTO URBINA**

**CLAIMANT
1st DEFENDANT
2nd DEFENDANT
3rd DEFENDANT**

Hearings

2012
30th January
15th February
23rd March

Mr. Oswald Twist for the claimant in both claims.

Mr. Orlando A. Fernandez for the defendants in Claim No. 51 of 2011 and for the second and third defendants in Claim No. 280 of 2011.

Mrs. Liesje Barrow-Chung for the 1st defendant in Claim No. 280 of 2011.

LEGALL J.

JUDGMENT

1. These two claims arise out of the same facts, and for the most part

involve the same parties. They were therefore heard together. The facts show that the claimant, a businessman, carried on the business of a hardware store and guest house at Burns Avenue, San Ignacio Town, Cayo District. The first defendant in Claim 280 of 2011 is a bank with several branches in Belize, including a branch at San Ignacio Town. The claimant, from around 2006 and onwards, obtained loans and overdraft facilities from the bank. Around June 2010, the claimant enquired as to the balance he owed the bank as a result of the loans and overdraft facilities, and was informed that, as of that date, the amount was \$804,116.64, and that daily interest rates would continue to accrue on the amount. The claimant therefore made a decision to sell his hardware store and guest house (the property) for the purpose of discharging his indebtedness to the bank. He entered into an agreement dated 24th June, 2010 with Rodolpho Urbina and Ernesto Urbina (the defendants) to sell the property to them. The agreement is important to this case, so I quote it in toto:

“This agreement made this 24th day of June 2010 between Mr. Antonio Guerra (Seller), Rodolpho Urbina and Ernesto Urbina (Purchasers) all of San Ignacio, Cayo.

Whereas the purchaser has agreed to purchase western hardware and Guest house situated on Burns Avenue. And whereas the seller has agreed to the price of \$855,631.57.

The Seller has agreed to receive a down payment of \$10,000.00. The Balance to be paid as soon as the Atlantic Bank processes the documents and make the monies available.”

2. The claimant, while not denying the written agreement above, states that there was also a verbal agreement for the sale of the property for \$854,116.64 which was to be used to pay off his indebtedness to the bank in the amount of \$804,116.64 and \$50,000 in cash to him.

3. The defendants for purposes of purchasing the property in accordance with the written agreement, applied to the bank for a loan of \$700,000 which was approved; and after taking out administrative fees, the amount of \$695,631.47 with the permission of the defendants was on 29th November, 2009 used towards the paying off of the claimant's indebtedness to the bank, which at that date had increased due to interest charges from \$804,116.64 to \$845,631.97. The defendants had made a prior payment of \$150,000 as part of the purchase price of the property towards the claimant's debt to the bank. The written agreement above also shows that the claimant received \$10,000 on the signing of the agreement to purchase the property. By November 29th, 2010, the defendants had paid the full purchase price for the property in accordance with the written agreement as follows:

“1.	\$10,000	on 24 th June 2010
2.	\$150,000.50	between 9 th September and 5 th October 2010
3.	<u>\$695,631.47</u>	on 29 th November, 2010
Total	<u>\$855,631.97</u>	

4. The claimant in his evidence in cross-examination admitted that he received the \$10,000 above, and the other amounts were credited to

his accounts at the bank, and that the total amount of \$855,631.47 was the amount he agreed to sell the property for. The claimant in spite of the above admissions, filed a claim against the defendant in Claim No. 51 of 2011 for the following:

“1. The sum of \$30,000.00 Belize dollars owed by the defendants to the claimant as a result of the breach of a written agreement entered between the claimant and the defendants on 24th June, 2010.
Amount claimed \$30,000.00
Court fees \$ 250.00
Legal practitioner’s fixed costs on issue \$3000.00”

5. It is to be noted that the claim is for a breach of the written agreement dated 24th June, 2010 above, and not for the breach of any verbal agreement. Yet the claimant insisted that there was a verbal agreement by the defendant to pay him the \$50,000 cash as stated above, as part of the purchase price of the property, and that the \$10,000 stated in the agreement of 24th June, 2010 was a part payment of the \$50,000; and that the defendants had paid another \$10,000 on 12th August, 2010 leaving a balance of \$30,000, the amount in the claim. The claimant has also tendered a receipt in which it is stated “Bal \$30,000.” The defendants have denied any agreement to pay the claimant the \$50,000 and have denied having any knowledge of the above receipt.
6. In the claim form for the \$30,000 the claimant did not plead a verbal agreement but a written agreement, though in the statement of claim

he claimed that he entered into a verbal agreement. Moreover, the total purchase price for the property, according to the written agreement, is \$855,631.57 which the claimant admitted he received by way of the \$10,000 and the \$845,631.97 was credited to his account at the bank. The claimant submits that although the defendants showed they paid the sum of \$855,631.97, that this, on the evidence does not represent the true state of affairs. The burden is on the claimant to prove on a balance of probabilities that there was a verbal agreement to pay him the \$50,000, and I am not satisfied, on the evidence above, that the claimant has discharged this burden. In fact the defendants have proven that they paid forty cents more than the price agreed for the property. For these reasons claim No. 51 of 2011 fails.

7. As mentioned above, a sum of \$695,631.47 was paid by the defendants towards the purchase price of the property and this amount was credited to the accounts of the claimant at the bank towards the satisfaction of his outstanding debt. The bank sent the claimant a letter dated 30th November, 2010 stating how the amount was applied to the debt. The letter states:

“Dear Mr. & Mrs. Guerra

We hereby confirm that as per instructions received from Messrs. Rodolpho and Ernesto Urbina the sum of \$695,631.47 being balance of purchase price on the Western Hardware property, was credited to your checking account No. 100163314 on November 29th, 2010.

This sum was further applied to your outstanding credit facilities as follows:

Account	Principal	Interest	Late Fees	Total Paid	Balance Remaining
304738635	138,408.85	3,201.92	30.00	141,640.77	0.00
304725823	420,470.54	57,265.26	90	477,825.80	0.00
100168462	32,982.44	536.76		33,519.20	0.00
100163314	41,678.35	967.35		42,645.70	12,349.23
Grand total applied to your outstanding debts				\$695,631.47	

Note that the remaining balance on account No. 100163314 accrues daily interest charges of \$8.58. Kindly visit the bank to make the necessary arrangements to cancel this debt.”

8. The first two accounts in the table above are loan accounts and the other two are overdraft accounts of the claimant. According to the above letter, the claimant owed the bank a balance of \$12,349.23. The claimant was of the view that he did not owe the bank the balance; that it was owed by the defendants, and the claimant therefore brought claim No. 280 of 2011 against the bank and the defendants for:

- “1. A declaration that the claimant is not indebted to the 1st defendant for the sum of \$12,349.23 or any other sums on account 100163314 open at the 1st defendant’s branch in San Ignacio Town, Cayo District, Belize.
2. A declaration that the 2nd and 3rd defendants are the ones indebted to the 1st defendant for the sum of \$12,349.23 or such other sums as is owing on account 100163314.
3. An order for an injunction requiring the 2nd and or the 3rd defendant to pay the 1st defendant the sum of \$12,349.23 or such other sums as is owing on account 100163314.
4. An order directing the 1st defendant whether by itself, its servants or agents or otherwise to sign discharge of charge document in relation to parcel 1054/1, Block

23, San Ignacio South Registration Section mortgage to the 1st defendant and which the 1st defendant had agreed to sign on payment of all debts by the claimant due and owing to the 1st defendant.

Further and or in the alternative:

5. An order directing the Registrar of the Ministry of Natural Resources to release or hand over to the claimant his land title to Parcel 1054/1 Block 23 San Ignacio South Registration Section being lodged at the said Ministry of Natural Resources.
 6. Such further and or other relief this Honorable Court deem just.
 7. Cost."
9. The bank filed a counterclaim against the claimant for the said \$12,349.23 less an amount of \$2,687.12 credited to the claimant's account being reimbursement of funds the claimant had paid on a cancelled insurance policy leaving a balance of \$10,520.69. The counterclaim is as follows:

“AND the defendant counterclaims:

- (1) the sum of \$10,520.69 for the outstanding balance owed on Account Number 100163314:
 - (2) interest on the outstanding balance at the rate of 24% per annum.”
10. When \$2,687.12 is subtracted from \$12,349.23 a balance of \$9,462.11 remains, less than the amount of the counterclaim. As can be seen from the letter above dated 30th November, 2010, the bank shared the \$695,631.47 among the four accounts of the claimant in the amounts and interest shown in the letter. This letter signed by Perla Gonzalez does not clearly explain the balance remaining in account No.

100163314 of \$12,349.23. Neither is this balance clearly explained in Ms. Gonzalez witness statement. It was not until the re-examination of Ms. Gonzalez that she produced an explanation. She explained that as at 23rd June, 2010, the balance owing by the claimant in Account No. 100163314 was \$49,645.03. This is in accordance with a letter dated the said 23rd June, 2010. The defendants had paid in relation to that account, and according to the letter dated 30th November, 2010, the amount of \$41,678.35 as principal and \$967.35 as interest, making a total payment of \$42,645.70. On 29th November, 2010 the \$49,645.03 was accumulating interest from June 2010 to November 2010 when the \$42,645.70 was paid, thereby leaving a balance due to the said accumulation of interest in the amount of \$12,349.23 as stated in the letter of 30th November, 2010.

11. The problem is that Ms. Gonzalez who wrote both letters could not recall the rate of interest used by the bank to calculate and explain the balance owing of \$12,349.23. There is therefore an absence of evidence to clearly explain how the amount stated in the letter as a balance remaining was arrived at. Ms. Simpson states that the said account No. 100163314 accrues daily interest charges of \$8.58, but she was referring to interest on the remaining balance of \$12,349.23. Moreover, the said letter of 30th November, 2010 gives the interest of \$967.35 on the principal amount of \$41,678.35 for that account up to 29th November, 2010. By letter dated 20th June, 2011 six months after the letter of 30th November, 2010 it is stated that interest “continues to accrue on a daily basis at 24% on excess.” Did this same interest apply at the date of the November 2010 letter and what is meant by

“24% on excess”? The burden is on the defendant bank to prove the counterclaim on a balance of probabilities. For the above reasons, I am not satisfied that the defendant bank has satisfied this burden.

12. Possession of the property and all stock and equipment were handed over to the defendants by the claimant on 24th June, 2010. The claimant says that from this date he did not take part in any matters in relation to the property, and there is evidence that the defendants became the owners of the property from 1st July, 2010. The claimant states that he is not indebted to the bank in the said sum of \$12,349.23 on account No. 100163314, nor in the amount of the counterclaim. For the reasons stated above, I am satisfied that the claimant is entitled to a declaration that he is not indebted to the bank in the sum of \$12,349.23 or the lesser sum of \$10,634.93. It is also not proven that the defendants owe the bank \$12,349.23 since there is evidence that the defendants paid the full purchase price of the property being \$855,631.597 which was used to cover debts owed by the claimant to the bank. The claimant also failed to prove that the defendants agreed to pay all his liabilities owed on the accounts at the bank, or to take over the claimant's credit facilities at the bank.
13. On 11th November, 2009, property owned by the claimant, namely parcel No. 1054 Block 23 Registration Section, San Ignacio South was mortgaged to the first defendant in Claim No. 280 of 2011 for the sum of thirty thousand dollars, and a charge was made on the parcel for that amount. Since the defendants paid the debt owing to the bank, the claimant applied to the bank to discharge the said charge

on the parcel. The claimant states that the first defendant refused to sign the discharge until the said amount of \$12,349.23 was paid. As a result, the claimant brought this claim asking for an order directing the said first defendant to sign the discharge document for the said parcel of land. But the said first defendant states that there is no need to sign the discharge document since the said parcel which is part of the property was lawfully transferred to the new owners – the defendants.

Conclusion

14. The claimant has failed to prove that the defendants in Claim No. 51 of 2011 is indebted to him in the sum of \$30,000. The claimant has also failed to prove that the No. 2 and 3 defendants in Claim No. 280 of 2011 are indebted to the first defendant in the said claim. It is proven that the property charged is transferred to the defendants. It has not been proven that the claimant is indebted to the No. 1 defendant in Claim No. 280 of 2011 in the amount of \$12,349.23 or \$10,520.69. Costs follow the event and are also in the discretion of the court. In the exercise of that discretion, there is no order as to costs.

15. I therefore make the following orders:
 - (1) The claims in Claim No. 51 of 2011 are dismissed.
 - (2) A declaration is granted in Claim No. 280 of 2011 that the claimant is not indebted to the first defendant in the amount of \$12,349.23 or \$10,520.69.
 - (3) Claims Nos. 2, 3, 4, and 5 in Claim No. 280 of 2011 are dismissed.

- (4) The counterclaims in Claim No. 280 of 2011 are dismissed.
- (5) There is no order as to costs.

Oswell Legall
JUDGE OF THE SUPREME COURT
23rd March, 2012