IN THE SUPREME COURT OF BELIZE A.D. 2008

CLAIM NO. 26 OF 2007

DMV LIMITED CLAIMANT

AND

TOM L. VIDRINE DEFENDANT

Before: Hon Justice Sir John Muria

1 July 2008

***Ms Magali Marin Young* for Applicant/Defendant**
***Mr. Fred Lumor S.C.* for Respondent/Claimant**

Judgment

Muria J.: Is the Purchase Agreement dated 31 August 2006 subject to stamp duty? If so, what is the relevant stamp duty payable on that said Agreement? These are the central issues in this case.

Background

For the purpose of this application, the brief background facts to this case are that on 31 August 2006, the defendant/vendor and the claimant/purchaser entered into a Purchase Agreement. Whereby the vendor "*agrees to sell and the purchaser is agreeing to purchase the property described below for the sum of ONE MILLION*

THREE HUNDRED THOUSAND US DOLLARS ($1,300,000.00). The purchaser also acquires a 'First Option' as defined below." The land concerned is situated at San Pedro Registration Section Block 7, Parcels 5020 and 4181. The description of the property which is the subject of the purchase is:

> ***"The land being sold in this Purchase Agreement is identified as four tracts of property shown in the attached survey by William P. Neal. This survey is used to show the location and the dimensions of the specific tracts referred in this sale, and designated in the two parts below and identified in these drawings as Tracts 1, 3, 4, and 9."***

The 'First Option' referred to and said to have been acquired by the claimant/purchaser is described as follows:

> ***"<u>First Option:</u>***
> ***Now that this Purchase Agreement has been exercised and the non refundable consideration of $800,000 us (sic) dollars has been paid, the PURCHASE has a First Option of a right of first refusal to purchase Tract 2 in the survey below until December 31st, 2006 at the total price of TWO MILLION TWO HUNDRED THOUSAND US DOLLARS ($2,200,000) including the non refundable consideration. Due to this Tract being the homeplace of the VENDOR, if the option herein is exercised before October, 2006, the VENDOR will have until December 31st, 2006 to vacate. If purchase is made pursuant to the first option after***

that date and before December 31st, the VENDOR will have until January 31st, 2007 to vacate. During this time, the VENDOR has the right to remove any improvements that have been made since august 31st, 2005, as well as all his contents and possessions."

The main contention of the defendant in this application is that the claimant ought not to be allowed to enforce the above Purchase Agreement because it failed to pay the requisite stamp duty required under the ***Stamp Duties Act (cap. 64)*** as amended ("the Act"). In particular, emphasis is placed by the defendant on the ***Stamp Duties (Amendment) Act No. 22 of 2005*** ("the Amendment Act No. 22 of 2005")

The Defendant's Application

By his application dated 28th November 2007, the defendant seeks to strike out the claimant's claim and to have summary judgment in his favour. The orders sought are:

1. ***That Claim be struck out pursuant to Rules 26.3 1(b) and (c) of the Supreme Court (Civil Procedure) Rules.***

2. ***Summary Judgment be entered in favour of the Applicant/Defendant pursuant to Rule 15.2(a) of the Supreme Court (Civil Procedure) Rules.***

3. Costs.

The only ground relied upon in support of the application is that the "*Ad Valorem stamp duty has not been paid pursuant to section 71, 72 and 73 of the Stamp Duties Amendment Act No. 22 of 2005."* Consequently, it is the applicant's case that the respondent/claimant's claim discloses no reasonable cause of action and should be struck out. The applicant/defendant also relied on his affidavit sworn to on 28 November 2007 and filed herein on 29 November 2007 in support of the application.

To further buttress the defendant's case, Mrs. Marin Young of Counsel for the defendant, argued that the Purchase Agreement in question was executed on 31/8/06, and consequently the applicable rate of stamp duty is 15% as set out in section 72 of the Act, as amended by the Amendment Act No. 22 of 2005 which was in force from 25th June 2005. Counsel's dissention to the claimant's case for the 5% rate of stamp duty, stems from the contention that the 5% is the rate imposed by the ***Stamp Duties (Amendment) Act No. 6 of 2006*** ("the Amendment Act No. 6 of 2006") which came into force on 9th September 2006. Thus Counsel was resolute that the 5% rate does not apply in this case.

The Claimant's Argument

On behalf of the claimant, Mr. Lumor S.C. did not seek to duck from the proposition that an agreement of the nature of the one with which we are concerned in the present case is subject to stamp duty. Counsel in fact accepted that the purchase agreement executed by the parties, in this case, is subject to stamp duty and ought to be so duly stamped before it can be capable of creating or transferring any legal rights or interests in the land in question. Further, Counsel added, even if duly stamped, the agreement would still have to be registered before it can have effect.

In this case, however, Mr. Lumor S.C. submitted that pursuant to the Stamp Duties Act, the claimant paid the required stamp duty to the Commissioners of Stamps on 9th November 2007 at the rate of 5% which is the applicable rate established under the Amendment Act No. 6 of 2006. Counsel maintained that the rate of 15% relied upon by the applicant/defendant was ordained by the Amendment Act No. 22 of 2005, which rate was repealed by the Amendment No. 6 of 2006. Thus the question posed by Counsel: When the Claimant presented the Purchase and Sale Agreement to the Commissioners of Stamps, which law was applicable to the assessment and charge of stamp duty? As I posed at beginning of this judgment, this question is the crux of this application. It is to this issue that

I now turn. Before I do that, I feel it would be helpful that I set out first the provisions of the Rules relied upon by the applicant in this application.

Rules 15.2 and 26.3 (1)(b) and (c) CPR.

The starting point for considering the question of whether or not the claim should be struck out and summary judgment to be entered for the applicant/defendant is Part 15 of the CPR, in particular, Rule 15.2. That Rule provides:

> ***"15.2 The court may give summary judgment on the claim or on a particular issue if it considers that –***
>
> ***(a) The claimant has no real prospect of succeeding on the claim or the issue; or***
>
> ***(b) the defendant has no real prospect of successfully defending the claim or the issue."***

The Rule requires the applicant to file affidavit evidence in support of his application and the respondent to file affidavit if it wished to rely on any evidence in opposition to the application. The applicant relied on his affidavit sworn to on 28th November 2007 and filed on 29th November 2007 in support of his application. In response to the application, the respondent relied on two affidavits

of Mark Lizaraga sworn to 17th September 2007 and filed on 18th September 2007 and the other sworn to on 2nd October 2007 and filed on 3rd October 2007. The respondent further relied on the affidavit of Marie Escalante sworn to and filed on 22nd November 2007.

In the course of the hearing, Counsel for the applicant sought to have certain paragraphs in Mark Lizarraga's affidavit struck out on the basis that it would be unfair to admit them into evidence. In view of the nature of the issues raised in this application and in the confine of those issues, I do not need to deal with the objection raised against Mr. Lizarraga's affidavit. If need be, that can be dealt with at hearing of the claim.

Rule 26.3(1)(b) and (c) which is also relied upon by the applicant provide as follows:

> ***"26.3(1) In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court –***
>
> **……...**

> ***(b) that the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;***
>
> ***(c) that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim; "***

By their nature, the provisions confer power on the Court to ensure that a claim that do not disclose reasonable ground for bringing the claim or for defending it must not be allowed to clog the court's time and incur expenses unnecessarily. With the above provisions in mind, I now turn to the case advanced on behalf of the parties in the present application.

Consideration

I think it is to be noted that in the course of the hearing, the applicant's case has some what shifted. While the original ground of the application was that the claimant's claim should be struck out on the basis that "***ad valorem duty has not been paid,***" it has become clear that the focus of Counsel for applicant is on the alleged inadequacy of the amount ($349,000.00) of stamp duty paid by the respondent. The hub of the controversy is, therefore, on the applicable rate of stamp duty. Is it 15% or 5%?

Relevantly, section 71(4) of the Act is as follows:

> ***71(4) Any declaration of trust or other instrument of whatever kind, used to pass legal title or equitable interest to land or to give a person some interest in land shall be chargeable with ad valorem stamp duty."***

Pursuant to the Amendment Act No. 22 of 2005, section 72 of the principal Act was amended by setting out the rates of stamp duties to be paid on transfer of land, in Belize, by Caricom and Non-Caricom nationals, creating a distinction between the two clusters of nationalities. For a Non-Caricom national, the rate was 15% while for a Caricom national, the rate was 5% of the value of the land or on the amount of consideration *in respect of a transfer of land* whichever is the greater. Section 73.01(1), pursuant to the Amendment No. 22 of 2005, then obliged the purchaser or occupier of the land under the agreement to pay the requisite stamp duty as imposed by section 72. The Amendment Act No. 22 of 2005 was made on 24th June 2005 and gazetted 25th June 2005.

On the 8th September 2006, the *Stamp Duties Act* was further amended by the ***Stamp Duties (Amendment) Act No. 6 of 2006*** which was gazetted on the 9th

September, 2006. Among other provisions, the Amendment No. 6 of 2006, further amended sections 72 and 73 as follows:

"72. (1) subject to subsection (2) below, there shall be paid a duty at the following rates on the value of the land or of the amount of consideration, whichever is the greater, in respect of a transfer of land, whether by sale, exchange or gift.

Value of Land	***Rate of Stamp Duty***
Up to $20,000	***0% (Exempt)***
On amount in excess of $20,000	***5% "***

and section 73.01 is further amended as follows:

(i) in subsection (1), by repealing the words "for Caricom nationals and Non-Caricom nationals (including a company under the control of a Non-Caricom national), as the case may be". Occurring therein;

(ii) in sub-section (2), by deleting the letter "(a) or (b)";

(iii) In subsection (3)(b), by deleting the words "for Caricom nationals and Non-Caricom nationals (including a company under the control of a Non-Caricom national), as applicable" occurring therein;

(iv) by repealing subsection (6) thereof.

There can be no argument that the Agreement executed by the parties on 31 August 2006 is clearly subject to stamp duty provided that it is capable of transferring the land in question to the purchaser. See ***George Wimpey & Co Ltd v Inland Revenue Commissioners*** [1975] 1 W.L.R. 995. Neither Counsel for the parties in this case seek to assert otherwise on this aspect of the case. That duty is charged and payable at the rate set out in section 72(1) of the Act. I also do not detect any contentious views from either Counsel, on the requirements of section 73.01(5), and the need to fulfill those requirements before a transfer of land (thereby passing legal title or interest in land) can be effective. The hub of the controversy between the parties here, as I mentioned earlier, is the rate of stamp duty payable. In turn, the applicable rate is depended on the issue of which law applies in this case.

In this regard, I briefly revert to the argument advanced by Counsel for the applicant/defendant. The contention is that since the Agreement was executed on 31st August 2006, the applicable rate is 15% pursuant to the Amendment Act No. 22 of 2005. The 5%, which is the current rate of stamp duty, was imposed pursuant to the Amendment Act No. 6 of 2006 which came into effect on 9th September 2006. As such, asserted Counsel, it would not apply to the Agreement

in question. I think this is an attractive argument. However, it is a line of reasoning which does not find favour with the Court.

There are two downfalls of the applicant/defendant's contention based on 15% rate. First, the Purchase Agreement with which we are concerned in this case was, on 31 August 2006, incapable of transferring legal title or interests in land, not only because stamp duty had not been paid yet, but also the document had not yet been registered. The fact that it was executed on 31 August 2006 did not make it an instrument capable of transferring land to the claimant. Thus unless and until the requirements of section 73.01 (5) of the *Stamp Duties Act (Cap. 64)* are satisfied, the document is incapable of transferring any title or interest in land.

The stamp duty to be paid under section 72 of the Act is payable on the document that *transfers* property and calculated on the value of the property or the amount of consideration, whichever is the greater. ***See also sections 31(2)*** and ***64(2) of the Act.*** The effect of these provisions is that *ad valorem* stamp duty is payable on the document that transfers land or property. Mr. Lizarraga deposed to in his affidavit of the 2/10/07 and exhibited a letter 11/9/07 from the Registrar of Lands advising the claimant to the same effect, pursuant to section 64(2) of the Act.

The Agreement dated 31st August 2006 in our case here, is clearly one that does not transfer land. In fact in this case, no transfer or conveyance of land has been made yet, which is the whole basis for the claimant coming to Court seeking specific performance of the Agreement dated 31st August 2006. The defendant would therefore be on unsound footing to insist on payment of *ad valorem* stamp duty when the basis for such duty had not arisen, and did not yet arise on 31st August 2006.

Second, the stamp duty rate of 15% had been repealed by Amendment Act No. 6 of 2006 and replaced with 5%. Any action having the effect of reviving the repealed provisions is impermissible unless expressly allowed by clear words in the statute. Such provisions must be construed strictly. See ***Yew Bon Tew v Kenderaan Bas Mara*** [1982] 3 All ER 833; ***Richardson and Others v Richardson*** (1995) 50 WIR 178; See also Maxwell on ***The Interpretation of Statutes***, 12th edn. Pp. 16 – 20; and also ***Statutory Interpretation*** by Rupert Cross, John Bell and George Engle, 3rd edn. LexisNexis, U.K. (1995) pp. 187- 190. The Amendment Act No. 6 of 2006 removes the discrimination between Caricom national and Non-Caricom national with regard to the payment of stamp duty on transfer of land in Belize. Thus when the purchaser (claimant) paid the stamp duty of $349,000.00 on 9th November 2007, following a Court Order, and

receipted by the Commissioners of Stamps, the applicable rate of stamp duty was 5%. It still is. The assertion of inadequacy of the amount of $349,000.00 as stamp duty on the basis of a 15% rate, cannot therefore succeed.

Additionally, the amount of $349,000.00 calculated on the value of the land in question of $3.5 million, which amount includes the money consideration of $2,200,000.00 on an option to purchase Tract 2, had been accepted by the Commissioners of Stamps. See ***George Wimpey & Co Ltd v Inland Revenue Commissioners***. I accept Mr. Lumor's submission that this is evidence of the payment of stamp duty by the claimant in this case, despite any objection as to the duty paid (***Section 28 (5) of the Act***). Any objection to that amount has to be brought against the Commissioners under the Act. ***See section 29 of the Act***.

There is no evidence that any objection to the sufficiency of the amount paid has been placed before the Commissioners and decision has been taken on the objection nor is there any evidence to suggest that the Commissioners have assessed the stamp duty paid as "insufficient." In my considered view, as no objection on the adequacy of the amount paid being raised against the Commissioners' assessment under the Act, it is not open to the applicant/defendant to raise such objection now before this Court.

I need only add that the ***Stamp Duties Act (Cap. 64)*** confers wide ranging powers on the Commissioners of Stamps, including the power to assess duty payable, charge penalties for late or insufficient payment of duty or to give opinion on whether an executed instrument is chargeable with any duty, and if so, what amount of duty is chargeable with. ***See for example, sections 20, 21, 28 and 30 of the Act.*** When the Agreement was presented for stamping on 9th November 2007, the Commissioners, in the exercise of the powers available to them, accepted the amount of stamp duty, assessed at $349,000.00. The Court is bound to accept the amount so paid as stamp duty in this case.

There are issues which are still remaining between the parties to settle, including the fate of "Tract 2" which both parties accepted to be the real contentious issue in this case. See ***DMV Ltd v Tom L Vidrine*** (4 May 2007) Supreme Court, Claim No. 26 of 2007 (Ruling). With the stamp duty now paid and the contentious issues between the parties over the Agreement still pending before the Court, there is indeed good reason for not striking out the claimant's claim in this case. Cf ***John Diaz v Ivo Tzankov & Ors*** (10th October 2007) Supreme Court of Belize, Claim No. 186 of 2007, where *ad valorem* stamp duty was not paid and the

subject matter in dispute, namely a purchase agreement, no longer existed. Consequently the claim was struck out in that case.

Conclusion

The case for the applicant/defendant is that the respondent/claimant has not paid *ad valorem* stamp duty pursuant to sections 71, 72 and 73 of the stamp Duties Amendment Act No. 22 of 2005, and as such its claim should be struck out pursuant to Rule 26.3 (1) (b) and (c) Civil Procedure Rules (CPR). For the reasons stated in this judgment, the case advanced by the applicant/defendant in this application, cannot succeed and should be dismissed with costs to the respondent/claimant to be taxed if not agreed.

Order: 1. Defendant's applications to strike out Claimant's claim refused.

2. Consequently, summary judgment sought by the defendant is also refused.
3. Costs to the Claimant to be taxed if not agreed.

(Sir John Muria)