IN THE SUPREME COURT OF BELIZE A.D. 2005

CLAIM NO. 327 of 2005

BETWEEN

NEMENCIO ACOSTA **CLAIMANT**

AND

ATTORNEY GENERAL **DEFENDANT**

Coram: Hon Justice Sir John Muria

Hearing: 8 May 2007
Judgment: 31 August 2007

Advocates:
H.E. Elrington for the Claimant
Ms N. Cho for the Defendant

JUDGMENT

Delivered this day of 2007

Lease – approval of application for lease under National Lands Act 1992 (Cap.191) by Minister – approval given "subject to the provisions" of the Act and conditions stated in the letter of approval – requirements of Registered Land Act (Cap.194) – whether only an "agreement to lease" or actual lease granted – preliminary objection that claim brought more than six (6) years from date of cause of action accrued – section 4 of Limitation Act (Cap. 170) - whether claim statute barred.

MURIA J: The substantive claim by the claimant against the defendant in this case is for a number of declaratory orders in respect of an alleged lease of a land in Corozal District said to be granted by the Minister Natural

Resources to the claimant on 28 April 1998 (the date of approval by the Minister). This judgment is concern only with the preliminary objection raised in the application by the defendant that the claimant's claim is time barred and therefore it should be struck out.

Brief background

It would be useful to set out briefly the background of this matter before I deal with the respective contentions by Counsel for parties. On 8 August 1997, the claimant applied in a prescribed form as set out in the *First Schedule* to the *National Lands Act* (Cap. 191) for a lease of seven (7) years, of Parcel No. 2623 in the Corozal District, Belize. Having recommended for approval by the Commissioner of Lands and Surveys, the Minister responsible approved the application on 28 April 1998. The approval was communicated to the claimant by a standard letter of approval dated 27 May 1998.

For all intentions and purposes, the date of approval of the application must be 28 April 1998. The letter dated 27 May 1998 was to communicate that approval.

I pause here to add that the *National Lands Act* provides a comprehensive scheme for dealing with national lands in Belize. It confers wide powers on the Minister responsible to deal with national lands including, among other things, the disposal of such lands by way of lease or sale: *The Attorney General v Henry Young & Ors* (June 25, 2002) Court of Appeal of Belize, Civil Appeal No. 15 of 2001.

On 6 September 1999, the Commissioner of Lands and Surveys issued a letter to the claimant informing him that his "lease" was void for non-compliance with the conditions stipulated in "your Lease No. 177/98 dated 27 May 1998" in respect of Parcel No. 2623. The letter also advised the claimant that he no longer had any right or interest in the said land.

It is common knowledge that the same land has now been transferred to and registered in the name of Corozal Catholic Mission.

The claimant, consequently and being aggrieved, has come to the Court seeking a number of declaratory orders against the defendant. To appreciate what the claimant is seeking in his substantive claim, I set out here the nature of those orders sought as part of the background to this judgment. They are:

i. *That the lease entered into between the Ministry of Natural Resources and the Claimant, on the 28th May 1998 is valid and subsisting.*

ii. *That the purported cancellation of the said lease by Notice of cancellation dated the 6th September 1999 is null void and of no effect.*

iii. *That it was at all material times a term to lease that the Claimant would have an option to purchase the freehold.*

iv. *Damages for trespassers to the said land by unlawfully purporting to grant a lease of the said land to Mary Hill School."*

The defendant's application

Having been served with the papers in the claimant's action, the defendant has now applied to the Court asking the Court to decline jurisdiction in the action, and that it should set aside service and strike out statement of claim. The basis for the defendant's application is that the claim has been issued after the limitation period has expired. Thus the defendant says, the claim asserted by claimant in his action is an abuse of court process. It is also the defendant's case that the document dated 27 May 1998 (Letter of approval of the application for a grant of lease) upon which the claimant relies, does not constitute a Lease but simply an agreement to lease.

The issues

The main contention of the defendant is that the claim was brought after the limitation period has expired and so the issue is whether the claimant's claim is statute barred. Allied to that issue is the question of the status of the Letter dated 27 May 1998 issued by the Commissioner of Lands and Surveys to the claimant.

Submissions by Counsel

Ms Cho of Counsel for the defendant submitted that the Letter dated 27 May 1998 did not constitute a valid lease, but simply a letter notifying the claimant that the Minister had, on 28 April 1998, approved his application

for a lease of the land mentioned in the application. Counsel further argued that at most the Letter could only amount to an agreement to lease rather than a lease itself. That being the case, the claimant's cause of action is in contract for specific performance.

However, Counsel contended that even a claim in contract in this case would be time barred, relying on section 4 of the *Limitation Act* (Cap.170). That provision sets out the categories of actions which shall not be brought after the expiration of six years from the date on which the cause of action accrued, and for our purposes, paragraph (a) is relevant:

> *"4. The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued –*
>
> *(a) actions founded on simple contract or on tort;*
>
> ---------- "

Thus the claim by the claimant in the present case, argues Counsel, is time barred and cannot succeed. It should be stopped at this stage.

Mr. Elrington of Counsel for the Claimant was unmoved in his submission that the claimant has a valid lease approved and issued to him by the Government of Belize. Counsel contended that the document namely, the Letter of Approval dated 27 May 1998, from the Commissioner of lands and Surveys, constitutes a lease in favour of the Claimant. It is therefore an interest in land protected by law. Counsel further submits that the only way

in which the claimant can be deprived of the lease is by default on his part to comply with the terms and conditions of the lease.

On the premise that the Claimant holds a lease in the land in question, Mr. Elrington submits that the limitation period for bringing an action is twelve years from the date the action accrued to the Claimant. That period, Counsel says, has not yet expired.

The letter dated 27 May 1998

Not only the letter of 27 May 1998 but its status and effect are crucial to resolving the defendant's objection in this matter. This letter was issued to the Claimant by the Commissioner of Lands and Surveys following the approval by Minister of the Claimant's application to lease Lot No. 2623 of National Land in Corozal District for seven years. The Minister's approval was also endorsed in the prescribed application form (First Schedule) as stipulated in section 9 of *National Lands Act* (Cap. 191). Section 9 (1) and (3) of the Act are relevant for our purpose in this case, and I set them out here:

> *"9.-(1) Every application for a lease of national lands shall be made to the Commissioner in the form of the First Schedule.*
>
> ……..
>
> *(3) In every case where the application for lease is approved by the Minister but the lessee fails to occupy the leased property within six months from the date of notification to him of such*

approval, the lease shall become void unless the Minister in his discretion extend the time for such occupation on reasonable cause being shown to him.

……."

The Letter of 27 May 1998 notified the Claimant of the Minister's approval and then set out the conditions under which the lease was to be granted. This is clearly borne out by the Letter which in part, sets out as follows:

"Your application to lease Lot No. (Parcel No. 2623) ... situated in Corozal North Reg. Section, Corozal District ……was submitted to the Honourable Minister of Natural Resources on the 28 April, 1998 …….when it was approved subject to the provisions of the National Lands Act, 1992 and to the following conditions."

The letter then sets out the various conditions, among which are the following, to which the grant of the lease was subject:

(1) The term of the lease shall be for seven years, however, the lessee will have the option to extend the lease for a further term of years provided that the conditions of the lease are fulfilled and the land is surveyed; and provided further that the lessee shall have the option to obtain a registered lease for a term of 30 years.

(2) The rent payable shall be $50.00 per annum payable in advance and subject to a review every 3 years provided that the adjusted rent shall not exceed 5 % of the prevailing open market value of unimproved land in the locality.

(3) Payment of the rent of $50.00 for the year 1998 must be made to the Lands and Surveys Office, Corozal Town or this Office within two months from the date of this letter of approval.

(4) Where the lessee fails to occupy the leased property within six (6) Months from the date of notification to him of such approval, the lease shall become VOID unless the Minister in his discretion extends the time for such occupation on reasonable cause being shown to him.

……."

The Claimant paid $50.00 as first years rent on 10 June 1998. Apart from that one payment, there is no evidence that the Claimant did anything further on the land, to fulfill the conditions stipulated in the letter approval. There is also no affidavit evidence from the claimant filed in support of his position or to rebut the defendant's position in this case.

As noted earlier, for the Claimant it was argued that the letter dated 27 May 1998 and headed "National Lands, Act 1992 – Lease Approval" constituted a lease and as such it is an interest in land that is protected. For the

Defendant, it was submitted that the said letter does not create a lease. At best, it was argued, the letter only amounts to an agreement to lease which may only be enforced by specific performance. In my judgment, despite the heading of the letter dated 27 May 1998 in the words "National Lands Act 1992 – Lease Approval", that document (Lease Approval Letter) cannot amount to a Lease. The claimant would still have to fulfill the conditions under the *National Lands Act* (Cap.191) and those set out in the Letter. This is especially evidenced by the double conditions imposed, that is to say, that the application for a lease was approved "subject to the provisions of the National Lands Act, 1992" and the "conditions " set out in the letter, among which is the requirement that the claimant must occupy the land within six months of the approval of his application. Failure to do so, would render his lease void.

I deal briefly with the other point also raised by Ms Cho regarding the application of the provisions of the *Registered Land Act* (Cap. 194). It is not disputed that the land in question is within the Corozal North Registration Section in the Corozal District which was declared by the Minister to be a compulsory registration area (*Belize Gazzette,* July 7, 1979, page 342). Consequently, by virtue of section 14 of the *Registered Land Act*, the provisions of sections 14 to 22 of the *National Lands Act* do not apply to the land in question. Section 14 of the Registered Land Act is as follows:

> *"14.-(1) On the declaration by the Minister of a compulsory registration area under section 4, the Commissioner shall notify the Registrar in writing of the particulars of all parcels of national land*

within such area, whether or not such land is available for disposition, and the Registrar shall –

(a) prepare a register for every parcel of national land contained in the notification and for each lease required to be registered under this Act;

(b) by notice inform each lessee of national land that his lease has been registered under this Act and, if any lessee so requests, issue a certificate of lease under this Act without payment of any fee therefor; and

(c) file the notification.

(2) On the declaration by the Minister of a compulsory registration area under section 4, sections 14 to 22 of the National Lands Act shall cease to apply to national land in such area."

It is therefore incumbent on the claimant to comply with the requirements of the *Registered Land Act* which requires, among other things, a formal lease of two years or more to be registered. Assuming, of course, that a lease had been created in favour of the claimant in this case. That had not been done, and it is not the case here.

In any case, in my judgment, what the Claimant obtained in this case, is a permission given by the responsible authority (the Minister), to acquire a lease subject to the conditions stipulated in the Letter of 27 May 1998. That letter cannot be viewed as a lease. For a document to amount to a lease, it

must comply with the statutory requirements, constituting a lease, namely, it must be in writing, setting out the rights and obligations of each party, containing words of demise and signed by the parties. It is clear that no legal interest in land is intended to pass until the provisions of the *National Lands Act* and conditions in the letter are fulfilled.

On the other hand Ms Cho conceded, at most, the Letter of 27 May 1998 constitutes an agreement to lease. With respect, I am of the view that Counsel's concession is very generous and correct. The approval contained in the Letter of 27 May 1998 is an agreement to lease and not a lease. The distinction between an *agreement to lease* and a *lease* has been reiterated in other jurisdictions. The Supreme Court of the United States, in *NDC Health Corporation and Subsidiaries, Petitioners v. United States of America*, has stated:

> "an agreement to lease is not a lease, just as a contract to sell is not a sale. The distinction between these two concepts is well established: The distinction is that a lease is a transaction that is already partially executed, while a contract to lease creates obligations that are purely executory."

It has also been said that a contract to lease conveyed, transferred, assigned or vested nothing: *I.R.C. v. Angus* [1889] 23 Q.B.D. 579 (a case of a purely executory contract for the sale of property); *Limmer Asphalte Paving Co Ltd v. Inland Revenue Commissioners* [1872] L.R. 7 Exch. 21; *Commissioner of Stamp Duties (N.S.W.) v. Yeend* (1929) 43 C.L.R. 235, 243.

The Letter of 27 May 1998, in this case, contains the terms of the bargain which the parties intended to be bound by: *Masters v Cameron* (1954) 91 C.L.R. 353 at 360, and the law must, of course, be slow to thwart the parties' bargains. Those terms of the bargains are executory and the claimant's enforcement remedy in this case, therefore, lies in an action for specific performance if he can establish that.

The letter dated 6 September 1999

The next event that took place was the letter from the Commissioner of Lands and Surveys dated 6 September 1999 informing the Claimant that his "Lease" No. 177/98 dated 27 May 1998 was void and had been cancelled for failing to comply with the conditions stipulated therein. It was not mentioned in that letter which conditions were not complied with although the evidence of Wilbert Vallejos contained in his affidavit sworn to on 16 April 2007 shows that the Claimant failed to occupy the said land as required under section 9(3) of the *National Lands Act* and paragraph 4 of the Letter of Approval. There is the receipt before the Court that the Claimant paid $50.00 on 10 June 1998 and the defendant issued to him an official receipt for the rent for the year 1998 as required by paragraph 2 of the conditions stated in the letter of 27 May 1998. In fact, the receipt of payment for the 1998 rent was attached to Counsel's written submission.

The defendant filed three affidavits in support of his application. No attempt was made by the Claimant to file any affidavit to respond to any of the matters raised in those affidavits. The Court is only left with the evidence for the Defendant. Apart from the submission by Counsel that the claimant had not breached the terms of the "lease," there is no evidence to counter the

defendant's position in this case. Thus the Claimant's case is premised on the contention that he has a lease granted to him by the Government of Belize and as such, the time limit applicable under the law is twelve years, not six years as contended for by the Defendant.

On the evidence before the court, there is clearly no lease granted to the Claimant. The letter of 27 May 1998 did not constitute a grant of lease and so no lease could be validly conveyed under that document. As the Court has found, at most the Letter of 27 May 1998 is an agreement to lease, in which case it may be enforced by specific performance. However, an action for specific performance to enforce the contract can only be brought within six years from the date the cause of action accrued. In this case that cause of action arose on 6 September 1999 which is more than six years to the date this case was commenced on 3 October 2005. In such a case it is a complete defence that the proceedings have been commenced out to time, even if it is a day later. See *Donovan -v- Gwentoys Ltd* [1990] 1 WLR 472.

In the Court's mind, it is not without significance that no evidence by way of affidavit or otherwise has been produced to show that the Claimant had taken any action following the Defendant's letter of 6 September 1999. Thus for six years the Claimant had done nothing to vindicate his right. He waited until the limitation period had lapsed by almost one month (28 days) before bringing the action against the Defendant. Unfortunately, he is time barred, and as *Donovan v Gwentoys Ltd* stated, even if it is a day later.

In those circumstances, the only conclusions that the Court can come to, is that the Letter of 27 May 1998 confers no leasehold title over the land in

question in the claimant. The said Letter, however, constitutes only an executory contract or an agreement to lease between the parties and which is enforceable by specific performance. As the only remedy available to the claimant in this case is a claim for specific performance, such a claim is now statute barred pursuant to section 4 of the *Limitation Act* (Cap 170) which prohibits *actions founded on simple contract or on tort* being brought after the expiration of six years from the date on which the cause of action accrued.

The objection by the Defendant in this case is well grounded and it must succeed. I grant the Defendant's application dated 13 October 2005 and order that:

1. The claimant's claim No. 327 of 2005 be struck out as being time barred.
2. Costs of defendant to be paid by the claimant to be taxed if not agreed.

Order accordingly

Hon Justice Sir John Muria