

**IN THE SUPREME COURT OF BELIZE A.D. 2014  
(CIVIL)**

**CLAIM NO. 624 of 2014**

**BETWEEN**

**ANGEL TZEC**

**CLAIMANT**

**AND**

**THE ATTORNEY GENERAL  
MINISTER OF NATURAL RESOURCES  
SABINO PINELO**

**1<sup>st</sup> DEFENDANT  
2<sup>nd</sup> DEFENDANT  
3<sup>rd</sup> DEFENDANT**

**Before:** The Honourable Madame Justice Griffith  
**Date of hearing:** 22<sup>nd</sup> May, 2015  
**Appearances:** Mr. Said Musa S.C on behalf of the Claimant; Mr. Nigel Hawke, Deputy Solicitor General on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendant.

**DECISION**

**Introduction**

1. The Claimant Angel Tzec is a farmer of Bullet Tree Falls Village, Cayo, Belize. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants are the Attorney General and Minister of Natural Resources for the Government of Belize, (together 'the Government'). The 3<sup>rd</sup> Defendant, one Sabino Pinelo made no appearance in the matter but is a lessee of a portion of the land which is the subject matter of the claim. The Claimant had been granted a lease by the Government, of 250 acres of land situate in the Tu-Tu Camp/Duck Run Area of Cayo Belize in November, 1986. The lease was for a period of 25 years with an option to extend it for a further term of years, provided the conditions of the lease were fulfilled. The Claimant also alleges, that he applied to purchase the land.

2. The Claimant's case is that in November of 2011, prior to the expiration of his lease, he applied to renew the lease and was instructed to carry out certain tasks. The Claimant completed those tasks which included paying all arrears of rent, having the land surveyed and obtaining a recommendation from his Area Representative. In December, 2012 (actually as a result of the survey exercise), the Claimant discovered an unauthorised logging operation being carried out on the land and lodged a complaint with the Ministry of Natural Resources. For approximately two years thereafter, the Claimant continued his complaints to the Ministry. He states that he received certain assurances from the Minister that his lease was intact, and up to February, 2014, because of certain correspondence written by the Ministry, was of the opinion that the matter was being officially investigated and resolved by the Lands Commissioner.
3. In July, 2014 the Claimant discovered that the 3<sup>rd</sup> Defendant Mr. Pinelo and his brother had in fact been granted leases to a portion of the land previously held by the Claimant. After being afforded a meeting with the Chief Executive Officer of the Ministry, the Claimant further waited for the matter to be resolved and after receiving no response, brought his application for judicial review. The Government resists the application for judicial review on the basis that the Claimant's lease had in fact expired, with the result that he had no interest in the subject matter before the Court. Additionally, it is the Government's position that even if the Claimant did have any interest remaining in the property, the matter fell within the ambit of private law and as such was not amenable to judicial review.

## **Issues**

4. The following issues arise for determination
  - (i) Did the Claimant have any interest in the land?
  - (ii) Is the Claimant's case amenable to judicial review?
  - (iii) If so, what relief is to be granted to the Claimant?

### **Issue (i) - Did the Claimant have an interest in the land?**

5. Given the Government's position regarding the Claimant's interest (or lack thereof) in the land, the question of that interest will be examined in more detail. The lease for 250 acres of land was subject to certain conditions including payment of rent in the sum of \$250 per annum and development of the land, to be carried out at a rate of 50 acres per annum with maintenance of permanent improvements in accordance with good agricultural practices. At the time the lease was due to expire the Claimant had been in substantial arrears of rent, having made payment for only the first year and the state of development as he described it, was limited to planting of trees and crops, constructing a farmhouse and clearing the land upon which he intended to construct his dream of an environmental institute.
6. The Claimant says that before his lease expired in 2011 he applied for an extension and was told that he had to survey the land at his expense – the Claimant did so and that survey was authenticated in December, 2012. The Claimant was also told that he needed to obtain a recommendation from his Area Representative and pay off all arrears outstanding under his lease. He completed both tasks and in respect of the latter paid rent for one year in advance. The Claimant alleges that he also received oral assurance from the Minister that his lease was intact.

7. With respect to the alleged encroachment on his property, the Claimant states that it was when the survey was carried out that he discovered the presence of the 3<sup>rd</sup> defendant on his land. Leases of 2 parcels of land had in fact been granted to the 3<sup>rd</sup> defendant and another adjoining 2 parcels to the 3<sup>rd</sup> defendant's brother. Following his complaints to the Ministry, the Claimant points to letters issued (respectively) by the National Estates Officer from the Ministry in January, 2014 and the Lands Commissioner in February, 2014 which directed the 3<sup>rd</sup> defendant to desist from occupation of the land. The letters respectively referred to the Claimant as the 'lessee' of the land and to the situation as a 'land dispute'. In other words according to the Claimant, the Ministry did not in any way advance the position that the Claimant was not in possession of a lease.
8. The Claimant submits that these letters, along with the actions of the Government in accepting the rent, directing him to survey the land, coupled with the assurance of the Minister, clearly establish that he was regarded as having retained his interest as lessee. The Government through their Commissioner of Lands alleged that the Claimant's lease expired by effluxion of time as there had been no renewal even up to the current time. Furthermore, the Government alleges that the rent which the Claimant paid, was accepted in error and having been in arrears and having failed to carry out any meaningful development of the land, the Claimant had also been in breach of the terms of the lease.

### The Court's Consideration

9. With respect to the evidence, the Court notes that there was no written evidence of the Claimant's application to exercise his option to extend his lease (or as it has been interchangeably alleged – option to purchase). Further, the receipt for the arrears and year in advance of rent paid, recommendation of his Area Representative and permission to survey from the Ministry were all dated December, 2011 and after, which is subsequent to November, 2011 when the Claimant says his lease expired. The Claimant's evidence was opaque with respect to when he actually applied, at one point stating that he'd started the process some 6 months before the lease expired.
10. At best it is open for the Court to find that the Claimant applied for his renewal either very close to the expiration of his lease or in December, 2011 when the lease had already expired. Additionally, whereas the Claimant in his initial affidavits swore that he had diligently carried out all the conditions of his lease, including paying rent up to December, 2012, the true position was that until he sought to extend his lease, he had paid no rent save for the initial amount on execution of the lease. With respect to the condition of development of 50 acres per annum including permanent structures, the Claimant had also woefully underperformed in that regard, for by the end of his 25 year lease, the development he boasted was the planting of trees, clearing of land and construction of a farm house. Had the resolution of this issue turned on the Claimant's performance of the conditions of his lease, the outcome would have been unfavourable at this stage.

11. The lease however, contained an option to extend for a further albeit unstated term of years and termination of the lease (as opposed to its expiration), required the Government to take definitive action to forfeit the lease on non-performance of its conditions, which had not been done. With respect to the option to extend, if the Court accepts that the Claimant applied prior to the expiration of the lease for its extension, the actions of the Government in accepting his year's rent in advance, requiring the land to be surveyed and recommendation of the Claimant's Area Representative, in the Court's view amounted to the grant of an extension particularly given that the Claimant complied with their conditions for renewal of the lease. The absence of a specified term for the extension made the option no less an option capable, of being validly exercised. On the other hand, if the Court does not accept that the Claimant sought to extend the lease prior to its expiration, he nonetheless remained in occupation and in addition to taking no steps to dispossess him, the Government by their conduct, affirmed at worst, the creation of a yearly tenancy.
12. The Court finds that although the Claimant's evidence in relation to the actual date of the commencement and thus expiry of the lease was not specified other than as November, 2011, no issue was taken of the absence of specificity of the date by the Defendants and no evidence to the contrary of its expiration in November or of when the Claimant applied for its extension was produced. Given that the receipt of rent and letter of recommendation were produced in December, 2011 which was not long after the end of November, 2011, the Court finds on a balance of probabilities that the Claimant applied to extend his

lease before its expiration and therefore validly exercised his option to extend. In this regard the Court accepts as useful assistance, the decision of **Gardner v Blaxill et anor**<sup>1</sup>, submitted by the Claimant, in respect of the nature of an option to renew a lease as an offer which the lessor is contractually precluded from withdrawing, so long as it remains exercisable. It is therefore found that the Claimant did still retain a leasehold interest in the property.

Is the Claimant's case amenable to judicial review?

13. The claim for judicial review seeks the following relief (paraphrased) –

- (i) A declaration that the decision of the 2<sup>nd</sup> Defendant to refuse the extension or renewal of the Claimant's leasehold was unlawful, arbitrary and irrational;
- (ii) A declaration that the decision of the 2<sup>nd</sup> Defendant to refuse to approve the Claimant's purchase of the leasehold property was arbitrary, irrational and a denial of the Claimant's legitimate expectation to obtain the freehold title;
- (iii) A declaration that the lease granted to the 3<sup>rd</sup> Defendant in respect of land within the Claimant's leasehold property is unlawful, void and in breach of the Claimant's rights and interest over the property;
- (iv) An order of mandamus requiring the 2<sup>nd</sup> Defendant, the Minister of Natural Resources to extend or renew the Claimant's lease; or in the alternative;

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<sup>1</sup> [1960] 1 WLR 752

- (v) An order or mandamus requiring the 2<sup>nd</sup> Defendant to approve the Claimant's purchase of the property on reasonable terms;
  - (vi) An injunction to restrain the 3<sup>rd</sup> Defendant from occupying any part of the Claimant's leasehold property
  - (vii) Damages and costs.
14. Despite having been granted permission to file review proceedings, such permission was based on circumstances which have now been fully argued and ventilated before the Court. The Court has found the Claimant has retained an interest in the leasehold property by virtue of having exercised his option to extend the term prior to the expiration of the lease. Even if this finding is disregarded the circumstances of the case can nonetheless support a finding of the Claimant retaining an interest in the lease by virtue of his remaining in occupation and as opposed to taking steps to dispossess him the Government has by their conduct affirmed the Claimant's leasehold interest. The fact of the matter therefore is that the Claimant has available to him enforceable rights in private law.
15. With respect to the relief claimed in respect of purchase of the property, besides the Claimant's sporadic assertion, no evidence has been produced which supports any finding in relation to an application to purchase from or acknowledged or otherwise acted upon by the Government. There is therefore no question of consideration by the Court of any relief claimed with respect to freehold purchase.



Additionally, there could never have been any question of an order of mandamus to compel the grant of a lease, thus if the Claimant is to be afforded any remedy at all, only the declarations sought with respect to the extension or renewal of the lease can be considered.

16. Before considering the remedy, the Court must determine whether this case is one which is amenable to judicial review. There is no doubt that the Claimant's complaint derives from the exercise of a statutory power which is granted to the Minister under the National Lands Act to grant leases.<sup>2</sup> This exercise of this power nonetheless, concerns an administrative act by the Minister, of entering into contract which is what the lease is. The exercise of this power which results in a contractual undertaking for a lease, raises the presumption that the claim is one to be addressed, as submitted by the Government, in private law. In determining this issue, the Court examines a few cases which discuss what is sometimes referred to as 'the public law/private law divide' in the area of judicial review of administrative action.
17. Firstly the Court refers to **R (on the application of Gamesa Energy UK Ltd) v National Assembly for Wales and another**<sup>3</sup> per Gibbs J with reference to the issue of amenability to judicial review of a tender process. The following was stated which this Court finds of assistance:-

*"The boundary between public law and private law is not capable of precise definition, and whether a decision has a sufficient public law element to justify the intervention of the Administrative Court by judicial review is often as much a matter of feel, as deciding whether any particular criteria are met...*

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<sup>2</sup> National Lands Act, Cap. 191, section 7

<sup>3</sup> [2006] EWHC 2167

*Unfortunately in my view there is no universal test which will be applicable to all circumstances which will indicate clearly and beyond peradventure as to when judicial review is or is not available...*

*...It is a situation where the courts have, over the years, by decisions in individual cases, indicated the approximate divide between those cases which are appropriate to be dealt with by judicial review and those cases which are suitably dealt with in ordinary civil proceedings...*

*...A governmental body is free to negotiate contracts, and it would need something addition to the simple fact that the governmental body was negotiating the contract to impose on that authority any public law obligation in addition to any private law obligations or duties there might be.'*

18. Additionally, the Court makes reference to **Hampshire County Council v Supportways Community Services Ltd**<sup>4</sup> per Mummery LJ with respect to the issue of amenability of review of a Borough Council's refusal to renew a supply contract. It was stated by Lord Justice Mummery:-

*"...in order to attract public law remedies, it would be necessary for the applicant for judicial review to establish, at the very least, a relevant and sufficient public nexus between the aspect for the contractual situation of which complaint has been made and an alleged unlawful exercise of relevant public law powers."*

It was further found in this case that the fact that a contractual obligation is framed by reference to a statutory duty does not render that obligation a public law duty. Further, per Davies J in **Trafford v Blackpool Borough Council**<sup>5</sup> after examining a line of authorities on the issue of public versus private law remedies and amenability in judicial review, it was said:-

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<sup>4</sup> [2006] EWCA Civ 1035

<sup>5</sup> [2014] EWHC 85

*"...However, in other cases, including some I have cited, public law principles have been superimposed upon the private law relationships.*

*The two are not necessarily incompatible. The facts of each case will need to be carefully considered to determine whether they can properly coexist."*

19. What the Court gleans from the above authorities, is that the source of exercise of power is not the sole determinant of the question of amenability to review. The Court must examine the nature of the function or power exercised and the decision or action and its consequence, in order to ascertain whether judicial review should lie in any given case. In the instant case, the Claimant asserts a legitimate expectation created by the Government by virtue of their course of dealings with him which he says acknowledged that he was the lessee and a breach of that expectation by their refusal to him an extension. At the same time however, it is the Claimant's position, that in law his lease was in fact extended by virtue of the valid exercise of the option to do so, or alternatively by the Claimant's remaining in possession and the Government's acknowledgment of his interest as lessee.
20. It would seem to me, that the Claimant cannot at the same time assert the position in private law that he is in fact seized of an estate in the land, and seek remedies in public law which can only be granted on the basis of a conclusion contrary to that which he asserts. The state of the evidence of this claim is that no decision of the Minister has been provided which states that the Claimant no longer has a lease with the Government; the Claimant still remains in possession of the land he held under the lease (save for the 4 lots leased to 3<sup>rd</sup> parties); and no evidence has been provided of any attempt by the Government to remove the Claimant from the land held by the lease.

21. Short of the broad legal authority to enter into the contract that is a lease being underpinned by statute, the Claimant has not provided for the Court that 'relevant and sufficient public nexus' referred to by Mummery LJ in ***Hampshire County Council***<sup>6</sup> to render the claim subject to public law. Instead, the Court finds that the Claimant's entire case, revolves around considerations all in private law, of whether or not the Claimant has retained his leasehold interest by whatever means and of enforcement of that interest against the Government.

### **Conclusion and Final Disposition**

22. It is not considered that the circumstances of this matter involve any power beyond the Minister's administrative grant of a lease by contract and nothing has been advanced by the Claimant which introduces the requisite public element, to render the matter an appropriate subject for judicial review.

23. The Court makes the following orders:-

- (i) The claim for judicial review is dismissed.
- (ii) There is no order as to costs.

Dated this 17<sup>th</sup> day of July, 2015

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Shona O. Griffith  
Supreme Court Judge

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<sup>6</sup> Supra fn 6