

IN THE SUPREME COURT OF BELIZE, A.D. 2011

Claim No. 220 of 2011

BETWEEN: DWIGHT MONTERO CLAIMANTS  
WILLIAM BOWMAN II  
SAN MIGUEL LTD.  
VALLEY ORCHARD LTD.  
MULLINS RIVER HOLDINGS LTD.

AND

CITRUS GROWERS ASSOCIATION DEFENDANT

BEFORE: Hon. Madam Justice Minnet Hafiz-Bertram

Mr. M. Chebat SC for the Claimants  
Mr. Hubert Elrington SC for the Defendant

By written submissions

**DECISION**

**1. Introduction**

By fixed date claim form dated 12<sup>th</sup> May, 2011, the claimants seek the following Orders of the court:

1. A declaration that membership to the Defendant Association is in accordance with section 22(2) and (3) of the Citrus (Processing and Production) Act, Chapter 277 of the Laws of Belize.

2. A declaration that the rights and privileges accorded to the members of the Association cannot be suspended on the basis of the non-payment of membership fees.
3. A Declaration that the payment of membership fees to the Defendant are voluntary and that the payment and rate of such fees are to be determined by the Annual General Meeting of the Defendant's Association.
4. A Declaration that the Committee of Management cannot arbitrarily exclude members from attending special meetings or the Annual General Meetings of the Association on the basis of non-payment of membership fees.
5. An Injunction restraining the Defendant whether by themselves, servants, agents or whosoever from denying the Claimants access to any special general meeting or annual general meeting to be held by the Defendant.
6. An injunction restraining the Defendant, whether by themselves, their servants, agents or whosoever from denying the Claimants the rights and privileges accorded to them as members of the Defendant.
7. An Order for damages suffered by the Claimants as a result of being unlawfully denied membership to the association and for the denial of their rights to the benefits and privileges accorded to members.

## Background

2. The Claimants are all citrus growers and for the past fifteen years have made financial contributions to the Defendant Association (“Association”) which is a body corporate established by virtue of the **Citrus (Processing and Production) Act, Chapter 277 (“Citrus Act”)** of the Laws of Belize. They enjoyed the rights, benefits and privileges accorded to them as members but that changed when they refused to pay their membership fees. On 26<sup>th</sup> February, 2010, they were excluded from a meeting held by the Association on the basis that they failed to pay membership fees for the period 2010/2011. The Claimants have not denied the non-payment of membership fees but say that they do not have to pay the fees since no resolution was passed addressing the fees for that period.
3. As a consequence of not paying membership fees, the Claimants names were not included in the Register for members for the 2010/2011 period. However, the Association is willing to accept them as members providing the fees are paid for membership.
4. On 15<sup>th</sup> April, 2011, the Claimants obtained an ex-parte injunction by the court restraining the Association from excluding them at a meeting which was to be held on 16<sup>th</sup> April, 2011 and from any subsequent meeting of the Association. The Order further restrained the Association from denying the Claimants the rights and privileges accorded to them as members of the Association. On 16<sup>th</sup> June, 2011, the injunction was extended until trial or further Order of the Court.

5. The Claimants rely on the affidavits of Dwight Montero dated the 13<sup>th</sup> day of April, 2011, 29<sup>th</sup> April, 2011 and 6<sup>th</sup> June, 2011 which were filed in relation to the injunction. The Association filed affidavits from Henry Anderson dated 20<sup>th</sup> July, 2011, 18<sup>th</sup> May, 2011, 16<sup>th</sup> May, 2011 and 1<sup>st</sup> June, 2011 in response to the claims made by the Claimants.
  
6. The issues that arise for determination are:
  - 1) Whether membership is in accordance with section 22 (2) and (3) of the Citrus Act.
  
  - 2) Whether there is provision under the Citrus Act for payment of membership fees.
  
  - 3) Whether the Claimants should continue to abide by the rules that are currently in place for the payment of membership fees.
  
  - 4) Whether the Claimants should have been included in the register of the Association for 2010/2011.

**Issue 1:**

*Whether membership is in accordance with **section 22 (2) and (3) of the Citrus Act.***

7. The Claimants seek a declaration that membership to the Association is in accordance with section 22(2) and (3) of the Citrus Act. Section 22 (2) and (3) provides:

*22.-(1) Members of the Association shall be of two kinds, namely full members and provisional members.*

*(2) Any person who satisfies the Committee that he has not less than three acres of citrus trees and has produced not less than three hundred boxes of citrus in the year of operation preceding his application shall be entitled to become a full member of the Association on application to the Committee and **on payment of the prescribed fee** and on furnishing such other information relating to his citrus trees as may be required by the Committee.*

*(3) Every other person who satisfies the Committee that he has at least one acre of citrus trees to come into bearing shall be entitled to become a provisional member of the Association on application and **on payment of the prescribed fee**. Provisional members may attend meetings of the Association and participate in the discussions thereat, but may not vote and shall not be eligible to hold office in the Association. (emphasis added).*

8. It is clear that section 22 provides for membership to the Association and also shows that an application has to be made to the Committee and a payment of a prescribed fee has to be paid. Learned Senior Counsel, Mr. Elrington accepted that section 22 is the applicable section for membership but contends in his written submissions that in **Claim No. 730 of 2009, HTA Bowman et al v Attorney General et al**, the court declared that section 22 of the Citrus Act violated the constitutional right to freedom of association. Learned Senior Counsel, Mr. Chebat in response submitted that the court did not pronounce on the validity of section 22 of the Citrus Act. I agree with Learned Senior Counsel, Mr. Chebat as it is clear from the declarations granted that section 22 was not declared unconstitutional. The court declared the following:

*declare that the operation and effect of the provisions of Sections 7(1), 7(2) and 37(1) of the Citrus (Processing and*

*Production) Act are ultra vires the Belize Constitution in that they contravene the Claimants' rights, conferred by Section 13(1) of the Belize Constitution, not to be hindered in the enjoyment of their freedom of association.*

*declare that the operation and effect of the provisions of Sections 7(1), 7(2) and 37(1) of the Citrus (Processing and Production) Act are ultra vires the Belize Constitution in that they contravene the Claimants' rights, conferred by Section 15(1) of the Belize Constitution, not to be denied the opportunity to gain a living by work which they freely chose.*

9. What the court said in paragraph 54 which was relied on by Mr. Elrington must be put in its proper context. The court said that section 22 does not expressly mandate that all producers must be members of the Association but the combined effect of sections 7(1), 7(2) and 37(1) of the Citrus Act is to force membership on the Claimants. The court went on to say that this is so because a producer who does not want to join the association will be forced to do so in order to get a licence to sell his produce. As such, sections 7(1), 7(2) and 37(1) were declared to be unconstitutional, but not section 22.
  
10. In the case at bar, the situation is different as the Claimants want to be members of the Association and are seeking declarations concerning their rights as members. If the Claimants satisfy the requirements laid down under section 22 then they are entitled to be members of the Association. I find and so declare that membership is in accordance with **section 22 (2) and (3) of the Citrus (Processing and Production) Act, Chapter 277.**

**Issue 2:**

*Whether there is provision under the Citrus Act for payment of membership fees.*

11. It can be seen from section 22 above that a prescribed fee has to be paid upon application for membership to the Association. That prescribed fee is not stated in the Citrus Act. Further, section 29 of the Citrus Act makes provisions for the making of Rules by the Association in general meetings and to state that fee. **Section 29 (1) (c)** provides:

*Subject to this Act, the Association in general meeting may  
make rules for –*

*(c) prescribing the entrance fees and annual subscriptions  
to be paid by members of the Association;*

12. There is no doubt that pursuant to section 29 (1) (c) of the Citrus Act that the Association in General Meetings can make rules for entrance fees and annual subscriptions. As such, I find that 29(1) (c) of the **Citrus (Processing and Production) Act, Chapter 277** makes provisions for the payment of membership fees by members of the Association.

**Issue 3:**

*Whether the Claimants should continue to abide by the rules that are currently in place for the payment of membership fees..*

13. The evidence before the court is that there are no rules made pursuant to section 29(1) ( c) of the Citrus Act. Mr. Henry Anderson in his second affidavit sworn to on 16<sup>th</sup> May, 2011 deposed at paragraph 8 that the system used by the Association, its members and the factory is purely voluntary. He said that members approval were sought in making voluntary payments after cess was declared to be unconstitutional by the court in another matter.
14. This system of voluntary payment is confirmed by the evidence of Mr. Dwight Montero for the Claimants, in his first affidavit sworn to on 13<sup>th</sup> April, 2011. At paragraph 11 he deposed that even if the Defendant were to claim that the “Cess”, or “membership fee” which it continues to impose on growers is voluntary, the fact remains that the last time the Defendant sought the consent of the growers to pay the said fee was for the crop year 2009/2010 when it was determined that there would be a deduction of 15 cents per box of orange and 12 cents per box of grapefruit. Further, that no resolution was passed by the Association determining the Annual fees payable by its members for the period 2010/2011.
15. Mr. Montero by his evidence confirms that of the Association that the system which is presently in place, is for a voluntary payment by members of the Association. In my view, the fact that no resolution was passed for the year 2010/2011 does not mean that



membership becomes free for all. The Claimants who are willing to continue to be members of the Association and who has consented to pay a fee for the previous years should continue to make payments to the Association which are being paid by other members until there are changes made at the Annual General Meeting. Accordingly, I find that the Claimants should continue to abide with the rules that are currently in place for payment of membership fees.

**Issue 4:**

*Whether the Claimants should have been included in the register of the Association for 2010/2011.*

16. Learned Senior Counsel, Mr. Chebat in his written submissions contends that since there are no rules which provide for the expulsion of members on the basis of non-payment of fees, then the Committee of Management has no power to expel any of its members on that basis.
17. I have carefully considered the affidavit evidence before the court and I am satisfied that the Claimants were not expelled from the Association. The evidence from the Association shows that the Claimants names were not included in the Register for members for the period 2010/2011 because of the non-payment of membership fees. The evidence also shows that if the membership fees are paid the Claimants would have all right to have their names entered on the register and continue to enjoy all the rights, benefits, and privileges as members.

18. Mr. Montero in his affidavit deposed to on 13<sup>th</sup> April, 2011 stated that on the 26<sup>th</sup> day of February , 2011 the Association held a special annual general meeting and refused to allow approximately forty growers, including himself, from attending the meeting on the basis that they had not paid their membership fees. At paragraph 17 of his affidavit, he deposed that the Chairman of the Association advised them that they would be allowed to participate if they signed a membership application, paid outstanding dues and commit to pay dues for the rest of the crop season. Mr. Montero further deposed that the Claimants have not resigned as members from the Association and believe that the collection of membership fees without the sanction of the members in a General Meeting is illegal.
19. Mr. Henry Anderson in his affidavit sworn to on 18<sup>th</sup> day of May, 2011 responded as to why the Claimants names were not on the register for the year 2010/2011. He deposed that the Association keeps a register of its members as is required by section 23 of the Citrus Act which is updated each year and in order for a producer to be listed as a member of the Association for the particular year, he must comply with the requirements for membership which includes payment of the annual subscriptions among other things.
20. In my view, the evidence falls short of expulsion or suspension. The question to ask, however, is whether it is reasonable for the Association to exclude the names of the Claimants from the 2010/2011 Register on the basis that membership fees were not paid for that period. The failure to pay membership fees shows that the Claimants are no longer willing to abide by the rules governing membership and as such, I find that the Association in

updating the register did not have to include the Claimants as members.

### **Right of Appeal**

21. A perusal of the **Citrus Act** shows that refusal of membership to the Association can be appealed to the **Citrus Control Board** pursuant to **section 16(i)** which provides for the powers and the duties of the Board as:

.....

(i) ***to hear and determine appeals by any person aggrieved at the refusal by the Association to issue a licence to him or to accept him as a member of the Association or at the terms and conditions of his licence.***

22. The Claimants therefore have a remedy for the refusal of membership to the Association under the Citrus Act which they can pursue.

### 23. **Comment**

The court has no evidence as to why no resolution was passed for the year 2010/2011 with regards to payment of membership fees. However, the evidence shows that the Claimants are willing to continue as members of the Association and the Association is willing to accept them as members. The difference between the parties concern the payment of membership fees and as such I urge all parties to meet and address this issue bearing in mind that the Association cannot survive without financing from its members.

24. **Conclusion**

The findings of the court are:

Membership is in accordance with **section 22 (2) and (3)** of the **Citrus (Processing and Production) Act, Chapter 277.**

Section 29(1) ( c) of the ***Citrus (Processing and Production) Act, Chapter 277*** makes provisions for the payment of membership fees by members of the Association.

The Claimants who are desirous of continuing their membership with the Association should abide with the rules which are currently in place for the payment of membership fees.

The Claimants refusal to pay membership fees show that they are no longer willing to abide by the rules governing membership and as such, the Association in updating the register did not have to include their names as members.

The Claimants have a right of Appeal to the Citrus Control Board.

As a result of the findings of the court, the following order is made:

25. **Order**

A Declaration is granted that membership is in accordance with **section 22 (2) and (3)** of the **Citrus (Processing and Production) Act, Chapter 277.**

A declaration is granted that section 29(1) ( c) of the **Citrus (Processing and Production) Act, Chapter 277** makes provisions for the payment of membership fees by members of the Association.

The other Declarations, orders for injunction and damages sought are refused.

Each party to bear its own costs.

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Minnet Hafiz-Bertram  
Supreme Court Judge

Dated this 10<sup>th</sup> day of May, 2012