

IN THE SUPREME COURT OF BELIZE, A. D. 2019

CLAIM NO. 124 OF 2019

(OLIVIA SYLVIA VILLANUEVA (BETWEEN (AND ((THE ATTORNEY GENERAL OF BELIZE (MINISTER OF NATURAL RESOURCES		CLAIMANT DEFENDANTS
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BEFORE THE HON. ACTING CHIEF JUSTICE MICHELLE ARANA

APPEARANCES:

**Mrs. Deshawn Arzu-Torres for the Applicant/Claimant
Mrs. Samantha Matute -Tucker, Assistant Solicitor General, and Mr.
Kileru Awich, Crown Counsel for the Respondents/Defendants**

J U D G M E N T

1. This is an Application for the Assessment of Damages for the unlawful acquisition of property comprising 102.53 acres situate at Turneffe Island Range, Belize District.

Facts

2. The Claimant, Olivia Villanueva, is a Businesswoman of Belize City, Belize. On January 30th, 2008, Mrs. Villanueva purchased by Minister's Fiat Grant No. 312 of 2008 properties from the Government of Belize comprising of 105 acres of land situate at Hicks Caye, Belize District and

another Minister's Fiat Grant No. 312 of 2008 comprising 102.53 acres situate at Turneffe Island Range, Belize District (hereinafter referred to as "*the properties*").

To date, the Defendant has issued title to the Hicks Caye property, Plan No. 2242, New Grant No. 105 of 2016, to the Claimant and remaining issue for determination surrounds compensation for the Turneffe property as no alternate property was located.

The Claimant filed a Fixed Date Claim Form seeking declaration and damages for loss of use or of opportunity of these two properties. Upon the matter being called up, the Parties entered into a Consent Order one of the terms being that:

- "i. The Defendants are to transfer and issue title to the property situate at Hicks Caye and comprising of 105 acres of land, as shown in Survey Plan No. 2242, situate along the Northern Seacoast near the center of Hicks Caye, approximately 13.5 miles northeast of Belize City, Hicks Caye, Belize District (Plan No. 2242, File No. NES-201600157) to Olivia Villanueva on or before the 25th June, 2019.*
- ii. The Defendants are to locate alternate property for issuance to the Claimant in respect of property situate at Turneffe Caye*

comprising of 102.53 acres of land, situate along the East Coast of the Turneffe Islands. Approximately 29.9 miles southeast of Belize City, Turneffe Atoll, Belize District on or before the 25th June, 2019. Failing a satisfactory settlement of the matter, the Claimant shall file an application for assessment of damages on or before the 28th June, 2019. The application shall be heard by way of Affidavit evidence.”

The Defendants were able to comply with paragraph 1 and have since issued title to the Claimant for property located at Hicks Caye. The Defendants say that the parties have been unable to agree on a satisfactory alternative property. The instant application seeking an assessment of damages has been filed by the Claimant in order to determine the amount payable to the Claimant by the Defendants for the alleged breach of contract in relation to the property situated at Turneffe Caye comprising 102.53 acres.

The Claimant has filed its application for assessment of damages which is supported by the evidence of the Claimant herself and is the Affidavit of Talbert Brackett Sr., Certified Land Valuer. The Turneffe property is said property to be valued at BZ\$5,639,000.00.

Legal Submissions on behalf of the Claimant

3. Mrs. Arzu-Torres argues on behalf of the Claimant that in light of the Defendants' failure to locate alternate property in respect of the Turneffe Island property, damages must now be assessed for breach of contract. Mrs. Villanueva duly paid to the Government of Belize the purchase price for the Turneffe Property and she received titles thereto. She was, however, informed that there was an issue with the title which had to be rectified but was later informed that the land had been sold off to another individual or entity by the Government of Belize. Mr. Talbert Brackett, licensed Valuer, has caused a valuation of the property to be undertaken. In his report, Mr. Brackett states the following:

“I have personally inspected the subject property and considered all available factors affecting the property value and to determine a fair market value of the existing property to be SAY FIVE MILLION SIX HUNDRED AND THIRTY NINE THOUSAND DOLLARS.”

4. Mrs. Arzu-Torres urges the reasoning of the Court in the Court of Appeal decision in *Emy Gilharry Ramirez v the Attorney General* (Supreme Court Claim No. 5 of 2004) where the Court found that the value of the land was to be treated as the adequate measure:

*“At common law, the measure of damages is aimed at putting the purchaser in the position he would have been if the contract had been completed. (Engell v Fitch (1869) L. R. 4 Q.B. 659 Ex. Ch. At p666). The usual measure of damages for the failure of the vendor to complete is the market value of the property as at the date specified for completion under the contract less the contract price (McGregor on Damages, 18th Edition para 22-005). However, as was recognized in **Suleman v Shahsavri et. al.** [1988]1 WLR 1181 at p1183, this general rule is not absolute and the damages may be assessed referable to the value at some other date depending on the circumstances of the cases.”*

5. Learned Counsel for the Claimant also relies on Claim No. 373 of 2013

Deborah Spain v. The Commissioner of Lands and Surveys and the AG.

In that case, the Claimant had applied in 2006 to lease a parcel of land in San Pedro Town and was granted permission to do so. In 2009, the Commissioner of Lands and Surveys cancelled the lease.

At trial, the Defendant submitted that the compensation sought should be calculated on the basis of the leasehold interest and that the measure of damages where the lessee’s land is cancelled without just cause is the value of the unexpired term of the lease. The Claimant submitted that the Lessee

was to be treated as a purchaser of the property and the measure of damages ought to be the market value of the property at the contractual time for completion less the contract price.

The Court in finding for the Claimant held that the “*the failure to complete the contract for the sale of the property attracts the normal measure of damages which is the market value of the property at the contractual time for completion less the contract price.*” (**McGregor on Damages**, 18th Edition, paragraph 22-005).

6. Mrs. Arzu - Torres also relies on the decision of this court in Claim No. 380 of 2013 **Compton Fairweather v The Belize Defence Force** where the court went on to review the method of assessment of damages by the Valuer and reported as follows:

“I find that the property should be assessed based on the current market value. I accept as correct the submissions on the law made by Mr. Lindo SC. I have perused the valuation report submitted by Mr. David Aguilar. I note his academic credentials and experience. I also note that in determining the market value Mr. Aguilar used the Direct Comparison Method or Sales Comparison Approach which is determined by direct units of comparison where value can be converted to price per square foot, acres, rooms, units or income

multipliers and overall rates. The theory is that a prudent investor would pay no more than what the typical market purchaser would pay for a comparable facility, all things being equal. The comparison method of valuation is used mainly for residential property. The method applies to capital values. He also considered the present Open Day Value of the land occupied by the Government of Belize in its existing condition, as well as the fair rent due to the landowner for use of his property between the years 1986 to the present date. Mr. Aguilar stated that the highest and best use for property in this location is for its subdivision into lots for sale for residential use and /or commercial/industrial use. I therefore award the sum of \$328,741.85 to Mr. Compton Fairweather to be paid by the Defendants as damages.”

7. In the case at bar, Mrs. Arzu-Torres submits that the market value of the property was assessed as at BZ\$5,639,000.00 and that a similar methodology was utilized by the Valuer, Talbert Brackett. Damages ought to be paid to the Claimant in the said amount together with interest and costs. In respect of loss of use of the Claimant’s property, it is submitted that damages be paid on account of the Claimant’s inability to construct or develop her property from the date of cancellation of her title to today’s date.

Legal Submissions on behalf of the Defendants

8. Mrs. Matute-Tucker concedes on behalf of the Defendants that the general rule is that where there has been a failure to complete a contract for the sale of land, the normal measure of damages is the market value less the purchase price. Learned Counsel cites *McGregor on Damages* 15th Ed. at Paragraph 904:

“The normal measure of damages is the market value of the property at the contractual time for completion less the contract price...”

It is submitted on behalf of the Defendants that the most comparable properties in Mr. Brackett’s “*Table of Comparable Data*” in his Valuation Report would be Units 1, 2, 5, and 6 highlighted in yellow which would provide a reasonable range of value. However, it is noted that Unit 3 which is within the same Block number and Entry number as Unit 5, and which is bigger than Unit 5, was not considered a comparable property. Two are similarly categorized as unimproved land, but there are distinguishable differences between Unit 3 and Unit 5, the price paid for each property and period within which the properties were purchased. The price paid for **Unit 3 is BZD\$205,000 or \$24,641.00 per acre for 8.21 acres in February 2018, while the price paid for Unit 5 is USD\$175,000.00 (BZD\$363,175) or BZD\$109,375.00 per acre for only 3.2 acres in September 2012.**

Based on this comparison, it may be suggested that the purchase of Unit 5 in 2012 may have been a unique situation, since from the values provided for the other Units, most of which were purchased in 2018 show a significant difference and decline in the value of land in the area, being within the range of BZD\$21,551.00 and BZD\$25, 641.00 per acre for between 8 to 9 acres of land.

The Defendants say that, a similar conclusion can be reached as in Unit 5, in relation to the purchase of Unit 6 for \$600,000 for only 3.03 acres, or \$198,019.00 per acre, in that it may have been a unique situation when that property was purchased, since all recent purchases in 2018 have shown a decline in the value of land in the area. The Defendants also say, that stamp duty payable on the transfer of land is on the consideration or value of land as stated in Section 72 of the Stamp Duty Act Chapter 64 of the Laws of Belize.

The Defendants ask that the court disregard Mr. Brackett's suggestion that property buyers submit a price lower than the price at which properties are sold for in order to pay lower stamp duty and he adjusted the values on the properties accordingly. The Defendants say that the higher values for Units 5 and 6 are anomalies and not true reflections of the market value in an open market for undeveloped acreage of land on Turneffe Caye.

In conclusion, the Defendants asked that the Court appoint an expert to determine the true market value of the property on Turneffe Caye, or that the Court accepts the comparable Units 1 and 4, as reflecting the true market value of property in the area being between BZD\$21,551.00 and BZD\$25,641.00 per acre.

Decision

9. I thank both Counsel for your legal submissions on this assessment of damages. It is true and indeed beyond question that the true measure of damages is as stated by *McGregor on Damages* 18th Edition:

“The usual measure of damages for the failure of the vendor to complete is the market value of the property as at the date specified for completion under the contract less the contract price.”

I note the objections to the value of this property as articulated by Counsel for the Defendants in their submissions on this application. It is unfortunate that the Defendants did not seek to cross-examine Mr. Brackett on his report and have him address these concerns or any challenges they wished to make to his report, nor did they apply to the court to have their own Valuation Expert offer an alternative report for the court to consider in determining the quantum of damages to be assessed and awarded to the Claimant.

As it stands, the Court has examined the report of Mr. Brackett. He is a Senior Certified Land Economist and Valuation Surveyor, trained at the University of Technology in Jamaica; he is a member of the Belize Association of Valuation Surveyors and the Commonwealth Heads of Valuation Agencies. He also holds a Certificate in Property Valuation from the National Institute of Valuation in Malaysia, South Asia, and has testified before these courts on many occasions as an expert.

Mr. Brackett has informed the Court in his report that in assessing the value of this property, he used the Direct Comparison Approach of Valuation.

This approach is based on the economic principle of substitution. The principle expresses the fact that the given value of a property should be no more than the cost of buying another substitute property. Other recent property sales are compared to the subject property on factors such as legal, physical, location and economic characteristics.

He stated that the property being evaluated consist of 102.53 acres of land situate on the Turneffe Islands. The main industry in the area is fishing and tourism where the vicinity is situated along a natural migration routes for fish and feeding ground for conch and lobster. The fishing industry supports many families on the islands. The Turneffe Islands has long been recognized as one of Belize's premier saltwater fly fishing, scuba diving

and marine ecotourism destinations. The property has approximately 2,715.812 on the South of Sea Frontage.

In his estimation, the highest and best use of the land is for commercial land use. I also bear in mind the fact that the Claimant has not had the use of her land since the Defendants cancelled her title to this valuable property. Using the Direct Comparison Approach, Mr. Brackett has valued this 102.53 acres of property is \$BZD 5,639,000.

The Court therefore, accepts this Valuation as an accurate estimate of the value of this property and awards the sum of \$BZD 5,639,000 to be paid to the Claimant by the Defendants. Costs awarded to the Claimant to be paid by the Defendants to be agreed or assessed.

Dated this day of March, 2021

Michelle Arana
Chief Justice (Acting)
Supreme Court of Belize