**IN THE SENIOR COURTS OF BELIZE**

**IN THE HIGH COURT OF BELIZE**

**CLAIM No. CV 725 of 2022**

**BETWEEN:**

**[1] FOWLER WORKS ENTERPRISES LTD**

Claimant

**and**

**[1] MINISTER OF NATURAL RESOURCES, PETROLEUM & MINING**
**[2] THE ATTORNEY GENERAL**

Defendants

**Appearances:**

Rt. Hon. Dean O. Barrow, SC and Adler G. L. Waight for the claimant
Imani Burgess, Israel Alpuche, and Jhawn Graham for the defendants

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2023: September 28

November 10

2024: January 12

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**JUDGMENT**

[1] **CHABOT, J.**: Fowler Works Enterprises Ltd. ("Fowler Works") entered into four agreements dated 6th August 2020 by which the Minister of Natural Resources, Petroleum & Mining (the "Minister") agreed to sell Fowler Works national lands known as Parcels E19560-B1, E19560-B2, E19560-B3, and E19560-B4 (collectively, the "Parcels") for the total purchase price of BZ$266,894.50 (the "Sale Agreements"). The

entire purchase price was paid. The Minister failed to complete the transfer of the Parcels to Fowler Works. Fowler Works filed this claim seeking damages for the Minister's breach of the Sale Agreements.

[2] The Minister admits Fowler Works paid the entire purchase price under the Sale Agreements, but denies Fowler Works is entitled to damages for breaches of the Sale Agreements. The Minister alleges Fowler Works failed to conduct an Environmental Impact Assessment ("EIA") as provided for under the National Lands Act[1] before the determination of its application for lease. The Minister further alleges that pursuant to the Finance and Audit (Reform) Act,[2] the sale or lease of any national land in excess of 500 acres by the Government must first be authorized by a resolution of the National Assembly. No resolution was passed. As a result, the Minister's position is that the Sale Agreements are invalid for illegality and contrary to public policy. The Minister further argues that, if the Parcels are to be considered separately, the Sale Agreements are still illegal and contrary to public policy because they failed to comply with the laws of Belize and the policies of the Minister.

[3] On 27th April 2023, the court ordered the bifurcation of the issues of liability and quantum. This judgment therefore only deals with the issue of liability.

[4] The following issues must be resolved:

1. Does the Sale Agreement for Parcel E19560-B1 breach section 9(4) of the NLA?

2. Does the Sale Agreement for Parcel E19560-B1 breach section 22(2) of the FARA?

3. Do the Sale Agreements for Parcels E19560-B2, E19560-B3, and E19560-B4 breach the Minister's policy or requirement to apply for, conduct, submit, and authenticate a survey prior to purchase approval?

4. What are the consequences, if any, of a breach of the statutory requirements or Minister's policy or requirement on the Sale Agreements?

[1] Cap. 191, Rev. Ed. 2020 ("NLA").
[2] Cap. 15, Rev. Ed. 2020 ("FARA").

**Evidence**

[5] Mr. Calvin Reimer testified on behalf of Fowler Works. Mr. Reimer was a director of Fowler Works between 2019 and 2021, and is now its manager. Mr. Reimer recounted that around 2018, he sought to develop a large-scale sustainable farming/homesteading project in the Duck Run Area. He identified an area of roughly 1,900 acres of national land as suitable for the project. In December 2018, Mr. Reimer, along with others, applied for permission to survey parts of the area. The goal was for the group to come together to pool the parcels in the name of a common entity. In May 2019, the Minister approved some of the applications for permission to survey.

[6] In 2019, Fowler Works was incorporated to act as the specific vehicle to undertake the acquisition and development of the area. Fowler Works made fresh applications for permission to survey the area, which the Commissioner of Lands and Survey (the "Commissioner") granted on 24th June 2020. Of note, is that the letter from the Minister granting permission to survey originally stated that permission was given to survey 1,850.428 acres. However, Mr. Reimer testified this was an error and it was corrected on the letter itself. The number "1920" is hand written along with the signature of the representative of the Commissioner who signed the letter. Fowler Works also made an application to lease Parcel B1, which was granted by the Minister on 24th June 2020. However, no lease was issued for Parcel B1 prior to its purchase.

[7] The survey was completed on 16th July 2020. The survey plan was authenticated by the Commissioner on 22nd July 2020. On 22nd and 23rd July 2020, Fowler Works lodged four separate applications for purchase of the surveyed parcels. On 6th August 2020, the Minister approved the applications. According to Mr. Reimer, the sales were represented as being approved direct sales from the Government of Belize. Mr. Reimer paid the purchase price with the understanding that all internal approvals had been given.

[8] On 22nd October 2020, Mr. Reimer paid the purchase price for each parcels as follows:

1. Parcel No. E19560-B1 consisting of 1850.43 acres - $257,349.50 ("Parcel B1");
2. Parcel No. E19560-B2 consisting of 27.31 acres - $3,500.00 ("Parcel B2");
3. Parcel No. E19560-B3 consisting of 25.12 acres - $3,500.00 ("Parcel B3"); and
4. Parcel No. E19560-B4 consisting of 19.33 acres - $2,500.00 ("Parcel B4").

[9] On 11th November 2020, general elections were held in Belize, and a new Government was installed. Mr. Reimer testified that after the elections, the Government of Belize refused to transfer the four Parcels to Fowler Works even though their purchase price had been paid. Mr. Reimer testified that he met with some high-ranking functionaries, including Ms. Nelda Tulsey, the then Chief Executive Officer. Mr. Reimer admitted that Ms. Tulsey told him that he did not have the required development declaration and that a resolution of the National Assembly would be required for Parcel B1 because it is more than 500 acres. However, this was stated to him after the purchase price had been paid. He denied that Ms. Tulsey said anything about an EIA.

[10] The defendants called as witnesses Mr. Talbert Brackett Sr., the Commissioner, Ms. Jerjet Gutierrez, the Deputy Commissioner of Lands, Lands and Surveys Department at the Ministry of Natural Resources, Petroleum and Mining (the "Ministry"), and Mr. Owen Herrera, a District Lands and Surveyor Officer at the Ministry.

[11] In his witness statement, Mr. Brackett indicated that the procedure for applying for national lands is the following:

1. An application for permission to survey (for land that is not yet surveyed);
2. An application for lease;
3. An application for purchase; and
4. An application for Land Certificate/Grant Fiat.

[12] Despite stating that this procedure "must" be followed, in cross-examination Mr. Bracket admitted that making an application for a lease before an application for purchase is, in fact, optional. According to Mr. Brackett:

*It's optional because if an applicant is applying for purchase, one of the major concern is we look at how risky it is varying the land size. If you are applying for small acreages or a small household residential lot, it's optional. It's risky based on land size. So you must, in essence, but it is optional.*

*[…]*

*It's a must, but I am saying there are incidence… it's varying because if I apply, and I stated, a residential parcel, the risk is lower because the residential parcels are said to be, noted to be less than an acre. Anything over an acre is not termed residential. So I am saying, if you are over an acre and it's a large parcel of land, then… this is why I used that term… then we must, we must, on large parcels…*

[13] In cross-examination, Mr. Brackett agreed with the suggestion that the use of this discretion is not something the law requires or speaks to. When it was put to him that neither the NLA, nor the subsidiary legislation under the NLA expressly state that a lease is required for larger parcels but not for smaller parcels, Mr. Brackett admitted that the decision to require a lease is made based on what is just:

*If I look at what you're saying, my judgement, based on equity and law, you could move away and you could act on that behalf and say, I am protecting, so I see it as rightly, so I would say yes […]*

[14] The following exchange sums up Mr. Brackett's evidence in relation to the discretionary nature of the procedure:

*Q- Don't you agree then, that it is no more than a discretion, perhaps a practice that has grown up, but it is not a discretion or a practice that is set out in the law?*

*A- Ok yes.*

*Q- Would you agree with that?*

*A- Yes*

[15] In his witness statement, Mr. Brackett further stated that in the case of an application for a lease of national land of 500 acres or more, the applicant must conduct an EIA and provide it to the Minister before the determination of the lease application in accordance with the NLA. In cross-examination, Mr. Brackett specified that this

requirement does not apply to an application for purchase, only to an application for a lease.

[16] In addition, Mr. Brackett stated that an application for a lease and sale of national land in excess of 500 acres must be authorized by a resolution of the National Assembly in accordance with the FARA.

[17] That an application for a lease is not necessary for the purchase of national land where the land is for a residential lot was confirmed by Ms. Gutierrez in cross-examination. Other than these instances, Ms. Gutierrez denied knowing of any instances of direct purchase of national land.

[18] In her witness statement, Ms. Gutierrez stated that "the Ministry, in particular the National Estate Section, is guided by established policies and regulations that were developed to ensure the proper distribution of national land whether for leasehold or freehold title". In cross-examination, Ms. Gutierrez admitted that these policies are contained in internal memos. The public is informed of these policies through information sheets given as part of the application process. Pressed on the issue, Ms. Gutierrez admitted that the public is simply informed of what is required to be included in the application.

[19] Ms. Gutierrez further admitted there is no legislative provision or written documentation showing a requirement to apply for a survey before proceeding to the direct purchase of land. She agreed that under the NLA, an application for a lease is a different process than an application to purchase land.

[20] Mr. Herrera was tasked with reviewing Fowler Works' four applications for national lands after the purchase price for them had been paid. He was not involved in the process that led to the applications being granted. Mr. Herrera testified that the file had many components missing. According to the file Mr. Herrera reviewed, Fowler Works applied and was granted permission to survey Parcel B1. No application for permission to survey was made, nor any permission to survey granted in relation to Parcels B2, B3, and B4. Despite no application to survey being made or granted, a survey plan for

Parcel B1, which included Parcels B2, B3, and B4, was authenticated by the Commissioner.

[21] According to Mr. Herrera, Fowler Works applied for a lease of Parcel B1 and it was approved on 24th June 2020, but no formal lease agreement was issued to Fowler Works. In cross-examination, Mr. Herrera admitted the department "missed a step" because the approval was given for a land that had been surveyed but for which an authenticated plan had not yet been approved. No lease was approved or granted for Parcels B2, B3, and B4.

[22] Mr. Herrera confirmed that an EIA was not carried out in relation to Parcel B1 despite its 1,850.42 acres size. In addition, no resolution by the National Assembly was obtained in relation to the lease and sale of Parcel B1.

**Analysis**

[23] The court takes note of the defendants' submission that they "intend to forgo pleadings filed on their behalf which suggests that the contracts for sale of parcels of national lands known as E19560-B1, E19560-B2, E19560-B3, and E19560-B4 be considered together or conjunctively". This judgment therefore begins from the starting point that the four Parcels are to be considered individually. Of the four Parcels, only Parcel B1 exceeds 500 acres in size.

*Does the Sale Agreement for Parcel E19560-B1 breach section 9(4) of the NLA?*

[24] Pursuant to section 9(4) of the NLA, a person applying to lease 500 acres or more of national land is required to carry out an EIA prior to the determination of the lease application:

> 9(4) Every person who applies to lease 500 acres or more of national land shall be required to carry out, at his own expense, an environmental impact assessment and provide the same to the Minister before the determination of his application for lease, and if the lease is approved, the lessee shall cause such assessment to be revised and provided to the Minister in like manner after every five years until the expiry of the lease.

[25] Fowler Works applied for a lease of Parcel B1, a parcel which exceeds 500 acres, prior to purchasing Parcel B1. The copy of the application form provided to the court does not specify the date the application was made, but shows that the application was approved by the Commissioner, and signed by the Minister on 24th June 2020. While the evidence is that a lease was never issued despite being approved, the requirement in section 9(4) of the NLA is that the EIA be carried out *before* an application for a lease is made. The EIA must accompany the application for the lease to be approved.

[26] It is not disputed that an EIA was not carried out on Parcel B1. I am therefore satisfied that section 9(4) of the NLA was breached. However, the breach relates to the application for the lease of Parcel B1, and not to the Sale Agreement for Parcel B1. The consequences of this breach are discussed below.

*Does the Sale Agreement for Parcel E19560-B1 breach section 22(2) of the FARA?*

[27] The Sale Agreement for Parcel B1 breached section 22(2) of the FARA. Section 22(2) of the FARA provides as follows:

> 22- (2) The disposal of national land, or any dealing or transaction relating to national land, shall continue to be dealt with under the procedures specified in, and the provisions of the National Lands Act, Cap. 191 and Regulations made thereunder,
>
> Provided that the sale or lease of any national land in excess of five hundred acres, or any caye of whatever size, by Government shall first be authorized by a resolution of the National Assembly.

[28] Parcel B1 exceeds 500 acres. Its sale, and prior lease, was subject to the FARA's requirement that it be authorized by a resolution of the National Assembly. It is not disputed the National Assembly did not authorize the lease or the sale of Parcel B1. Section 22(2) of the FARA was breached.

*Do the Sale Agreements for Parcels E19560-B2, E19560-B3, and E19560-B4 breach the Minister's policy or requirement to apply for, conduct, submit, and authenticate a survey prior to purchase approval?*

[29] The Sale Agreements for Parcels B2, B3, and B4 do not breach a policy or requirement to apply for, conduct, submit, and authenticate a survey prior to purchase approval because no such policy or requirement is prescribed by the Minister.

[30] Parcels B2, B3, and B4 are less than 500 acres each. Fowler Works alleges all Sale Agreements, including the Sale Agreements for Parcels B2, B3, and B4, were direct sales from the Minister, and as such they are governed by section 13 of the NLA and Rule 3 of the National Land Rules. Section 13 of the NLA provides as follows:

> 13.–(1) National lands may be sold at such prices and on such terms and conditions as to improvements and otherwise as the Minister may prescribe on the advice of the Advisory Committee.
>
> (2) An application to purchase national lands shall be made in the form in Schedule II.

[31] Rule 3 of the National Land Rules reads as follows:

> 3. Every application to purchase land shall be made in the form shown in Schedule II to the National Lands Act and shall be accompanied by-
>
> (*a*) the appropriate fee;
>
> (*b*) a rough plan, if possible, of the land applied for.

[32] According to Fowler Works, these provisions do not support the defendants' contention that an applicant seeking to purchase or lease national land is first obliged to obtain permission to survey that land, or that an applicant seeking to purchase national land is first obliged to lease the parcel to be acquired. Such requirements are, at best, internal policy decisions. In the case of a sale of national land, the intended acquirer is only required to submit a rough plan of the area to be acquired, along with the duly completed application. There is no obligation or requirement to submit an authenticated survey to the Minister responsible for lands.

[33] Fowler Works argues that it actually exceeded what the NLA and the National Land Rules require. Fowler Works obtained an authenticated survey over the four Parcels of national land prior to making its applications to purchase in the approved form. The Minister accepted those applications, along with the purchase price and issued four land purchase approvals for the Parcels. Despite the defendants' contention that the Minister is entitled under section 13 of the NLA to insist upon certain conditions of sale, Fowler Works notes that the Minister did not do so in this case. The Minister accepted Fowler Works' applications to purchase national lands and approved those sales without anything additional.

[34] The defendants contend the Sale Agreements for Parcels B2, B3, and B4 are illegal and contrary to public policy because they fail to meet the Ministry's policy or requirement to apply for, conduct, submit, and authenticate a survey prior to purchase approval. The defendants invite this court to infer from section 13 of the NLA and Rule 3 of the National Land Rules that there is such a requirement. According to the defendants, "this is a just and reasonable requirement in that an applicant must substantiate their application with proof of subject-land, establishment of permanent boundaries and other relevant infrastructure in order for the relevant authority to approve or reject the said application". The defendants note that section 13 of the NLA confers on the Minister discretion when selling national lands, which is broad enough to allow the Minister to prescribe certain processes, procedures, and policies to be followed when considering applications for the purchase of national land. An important procedure prescribed by the Minister in applying for purchase of national lands is the requirement for an applicant to procure and have authenticated a plan of survey for the requisite land. The requirement for a "rough plan" in Rule 3 of the National Land Rules is the minimum threshold provided for by the law. The Minister has the discretion to require an authenticated survey plan.

[35] The court is unclear as to the nature of the defendants' complaint. It appears they fault Mr. Reimer for not having made separate applications to survey the four Parcels. However, Mr. Reimer entered into evidence a letter dated 24th June 2020 signed by an unidentified person "for Commissioner of Land and Surveys" which states that

"permission is being granted to survey 1,850.428 acres of national land situated in Duck Run 111 Area, Cayo District". The number "1,850.428" is underlined and superseded by the number "1920", followed by the signature of the same person who signed the letter. While the copy the defendants appear to have on file does not contain this notation, it is not the defendants' contention that this letter is forged. It appears, therefore, that Mr. Reimer was granted permission to survey 1,920 acres of national land in the Duck Run 111 Area.

[36] Further, Mr. Reimer entered into evidence a copy of a survey plan titled "Plan showing survey of 4 parcels of national land, situate in the Duck Run 111 area". The plan shows Parcels B1, B2, B3, and B4. The plan is clearly authenticated, as evidenced by the signature in the box to that effect on the right side of the document. The signature is dated 7th July 2020. Mr. Reimer submitted Fowler Works' four applications to purchase the Parcels on 22nd July 2020, after the survey plan was authenticated. It appears to the court that the Minister's alleged policy or requirement "to apply for, conduct, submit, and authenticate a survey prior to purchase approval" has been complied with by Fowler Works.

[37] For the sake of completion, the court has considered whether a breach of this alleged policy or requirement can be a ground for a finding that the Sale Agreements for Parcels B2, B3, and B4 are illegal and contrary to public policy. It is not. While the Minister is conferred discretion under section 13 to "prescribe" terms and conditions for the direct sale of national land, there is no evidence supporting the Minister having prescribed any such policy or requirement. There is also no evidence of any advice having been received from the Advisory Committee, which is a condition precedent to the prescription of terms and conditions for the direct sale of national land. The court declines to "infer" from section 13 of the NLA and Rule 3 of the National Land Rules any such policy or requirement. The court's role is not to engage in policy making; it is to resolve disputes based on the facts and the law as it exists.

[38] Rule 3 of the National Land Rules provides that an applicant for the direct purchase of national land is to provide "a rough plan, if possible, of the land applied for". Schedule

II, which prescribes the form for an application for a grant of national land, also refers to a “rough plan”. A “rough plan” is not an authenticated survey.

[39] That the personnel of the Ministry developed a practice by which they require an applicant for the direct purchase of national land to survey the parcel and obtain a lease prior to purchasing the land does not make the practice a policy or requirement “prescribed” by the Minister. In cross-examination, Ms. Gutierrez admitted there is no written policy to that effect. Despite initially stating that applicants are provided with an information sheet setting out the policy, she later explained that the policy is in fact in the form of internal memos which are not available to the public. These internal memos were not entered into evidence.

[40] While the defendants made submissions in support of their position that the above-noted policy or requirement is beneficial from a public policy perspective, there is nothing preventing the Minister from prescribing its adoption in accordance with section 13 of the NLA. The Minister cannot, however, rely on a practice, which is not a policy and has not yet been prescribed, to avoid being held liable for the breach of the Sale Agreements.

[41] As a result, I find that the Sale Agreements for Parcels B2, B3, and B4 do not breach any of the Minister’s policy or requirements. These Sale Agreements are valid, and were breached by the defendants.

*What are the consequences, if any, of a breach of the statutory requirements or Minister’s policy or requirement on the Sale Agreements?*

[42] The lease obtained by Fowler Works prior to purchasing Parcel B1 breached section 9(4) of the NLA, and the Sale Agreement breached section 22(2) of FARA. The issue is whether the Sale Agreement for Parcel B1 is void for illegality and failure to comply with public policy.

[43] Relying on **Warrington v Dominica Broadcasting Corporation**,[3] Fowler Works argues that in the absence of a specific prescription of invalidity for non-compliance, the court must consider what result Parliament would have intended as the consequence of that non-compliance. The court must be slow to imply the statutory prohibition of contracts, and should do so only when the implication is quite clear.

[44] Fowler Works submits that non-compliance with section 9(4) of the NLA does not result in the invalidity of the Sale Agreement for Parcel B1. The court should not imply any sanction when Parliament has not so mandated. Control of the process and the decision whether to grant the sale of national land to Fowler Works was always in the hands of the Ministry. Failure to comply with the requirements was for the Minister and his officials to flag, and it was for the Minister to decide whether to proceed with the sale notwithstanding the omissions. In the circumstances, Fowler Works argues that for the Minister to be allowed to invalidate the sale to Fowler Works when such invalidity is not prescribed by the statute, would be draconian and unfair.

[45] Similarly, Fowler Works argues that section 22(2) of the FARA does not provide a sanction, and the court should be slow in implying such a sanction. The breach of section 22(2) is the defendant's breach. In **Senator Michael Peyrefitte v Minister of Finance & Ors**.[4] Young J. found that a breach of the FARA did not invalidate a procurement contract. Fowler Works asks this court to reach the same conclusion.

[46] The defendants note there exists two types of illegality: statutory illegality, and common law illegality. Statutory illegality arises when a statute expressly or impliedly renders the contract unenforceable. Common law illegality arises when the formation or performance of the contract is illegal or contrary to public policy. According to the defendants, the test applicable to a claim for common law illegality was laid out in **Patel v Mirza**,[5] and was recently confirmed by the Caribbean Court of Justice as applicable

[3] [2018] CCJ 31.
[4] Claim No. 563 of 2021 ("Peyrefitte").
[5] [2016] UKSC 42.

in Belize. As stated by Mr. Justice Burgess, JCCJ in **Belize International Services Limited v The Attorney General of Belize**:[6]

> [218] This Court has on numerous occasions stated that it considers that the role of our courts cannot be limited to determining the rights of the parties and not be troubled about whether a just outcome is reached on the facts. In this Court's view, that would be to hark back to a bleak period in our history and would be inimical to developing and maintaining the integrity of our Caribbean legal system. For this reason, I agree with the proposition of Lord Toulson in *Mirza v Patel* that an approach consistent with upholding the integrity and harmony of the law must be adopted. Such an approach must have as a fundamental objective achieving equitable and transparent results in individual cases even if it may be said that the precedential value of those cases may be limited.
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> […]
>
> [241] Based on the review of the recent case law in common law jurisdictions, three steps are to be followed in assessing whether the integrity of the legal system would be harmed in enforcing a contract which is rendered illegal by a statute. These are what may be called (i) the interpretation step; (ii) the public policy analysis step, and (iii) the proportionality analysis step.

[47] The defendants allege the Sale Agreement for Parcel B1 is void *ab initio* because it is illegal and contrary to public policy for its failure to comply with the NLA and the FARA. The first step in the defendants' analysis is the "interpretation analysis step". The court has already considered the defendants' arguments in relation to the breaches of the NLA and the FARA and will not repeat those arguments here. The court agrees the lease agreement for Parcel B1 breaches the NLA, and the Sale Agreement for Parcel B1 breaches the FARA.

[48] With regards to the "public policy analysis step", the defendants submit that the purpose of section 9(4) of the NLA is to ensure that an EIA is conducted for lease of national lands that exceed 500 acres, as this is a mechanism used to sustainably manage and promote environmentally sound development practices. The purpose of section 22 of the FARA is to ensure there is National Assembly approval before the sale of national lands over 500 acres for imperative environmental and asset

[6] [2020] CCJ 9 (AJ) ("BISL").

management purposes. These purposes will be enhanced by the denial of the claim since it will ensure good governance and administration in Belize. The defendants argue that if the ultimate decision is in favour of Fowler Works, it will result in the abrogation of the proper application of section 9 of the NLA and section 22 of the FARA, which likely will bring disarray to the integrity of the legal system in Belize. In addition, the legal system will be compromised by allowing the claim because Fowler Works will enjoy damages on the basis of their failure to comply with the laws of Belize.

[49] On the "proportionality analysis step", the defendants submit that the seriousness of Mr. Reimer's conduct and its centrality to the contract came into evidence when Mr. Reimer confirmed that he was informed and knew the onus was on him to conduct an EIA prior to obtaining a lease but failed to do so. Mr. Reimer's conduct contravened the laws of Belize and was central and necessary for the completion of the contract for sale in relation to Parcel B1. The defendants fault Mr. Reimer for relying on Government functionaries because they are "not law and should not be rendered just in the circumstances as the requirement of an Environment Impact Assessment is not at the discretion of any Government functionary". The Government cannot uphold a contract where there is a clear violation of the laws in Belize that renders the contract illegal.

[50] As for the breach of the FARA, the defendants claim Fowler Works cannot hide behind the veil of an assertion that FARA is a legislation which is concerned with the responsibility of the State. The onus is on both parties to an agreement to be certain that the scope of their agreement is legal. Mr. Reimer had a responsibility to ensure the defendants had satisfied any legislative or regulatory requirements, as failure to do so may have impacted the validity of the titles Fowler Works expected to receive.

[51] I find the Sale Agreement for Parcel B1 to not be void for illegality or failure to comply with public policy. First, it bears repeating that there is no statutory requirement for an applicant for the purchase of national lands to first lease that land from the Government, and no such policy or requirement has been prescribed by the Minister. Therefore, whether the requirements for the granting of a lease for Parcel B1 under

the NLA have or have not been complied with has no bearing on the validity of the Sale Agreement which has subsequently been entered into by the parties.

[52] Second, neither the NLA nor the FARA specify a sanction for a breach of their provisions. As Young J. noted in **Peyreffite**, where Parliament intends a breach of the FARA to result in the invalidity of a contract, it specifically says so. For example, section 7(2) of the FARA provides as follows:

> (2) Any agreement, contract or other instrument effecting any such borrowing or loan to the Government of or above the equivalent of ten million dollars shall only be validly entered into pursuant to a resolution of the National Assembly authorizing the Government to raise the loan or to borrow the money.

[53] In **Peyreffite**, Young J. held that:

> 261. This breach is serious, but the section does not say it will invalidate the contract. Significantly, nowhere in the FARA does it say what will happen to a contract which is signed before it is or which is never submitted for scrutiny. The offender may suffer the peril of criminal prosecution, but what of the contract. If these contacts could all be invalidated that could cause serious problems not only to the Government but also to the other party or parties to the contact and how fair would that be generally.
>
> 262. I am of the view that if Parliament intended that a contract which was not submitted to the Contractor General would be invalid it would have said so clearly as was said in section (7). I am not convinced that a contract signed in breach of section 18(2) of the FARA renders it invalid.[7]

[54] Similarly, section 22(2) of the FARA does not pronounce the invalidity of a contract for the sale of national land in excess of 500 acres that is not first authorized by a resolution of the National Assembly.

[55] Section 9(4) of the NLA also does not pronounce the invalidity of a lease for 500 acres or more of national land obtained without an EIA having been carried out prior to the application. That a failure to comply with the requirement to obtain an EIA does not

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[7] Peyrefitte at paras. 261-262.

result in the invalidity of a lease is confirmed by section 46 of the NLA, which provides as follows:

> 46.–(1) Where a person fails to carry out an environmental impact assessment or any other duty imposed by this Act or any Regulations made thereunder, the Commissioner or the person referred to in section 3 may issue an order in writing to such person directing him to cease, by such date as specified in the order, the activity in respect of which the environmental impact assessment or duty, as the case may be, is required.
>
> (2) Where a person to whom an order is issued under subsection (1) fails to take such steps as he considers appropriate to ensure the cessation of the activity to which the order relates, he commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding five years, or to both such fine and period of imprisonment.

[56] Section 46 is clear that a failure to carry out an EIA when a lease has been issued does not lead to the invalidation of the lease. The Commissioner is entitled to make an order for an activity to cease. Failure to comply with an order from the Commissioner may result in a conviction for a criminal offence. Nothing in section 46 affects the validity of the lease. No activity has been undertaken by Fowler Works on Parcel B1, so section 46 of the NLA is not applicable. Section 46 however provides an indication that it is not Parliament's intention to invalidate a lease for a failure to comply with the requirement in relation to the EIA.

[57] From a public policy perspective, the court considers that the underlying purpose of the requirement for an EIA would not be enhanced by the denial of the claim. Under the NLA, an EIA is only necessary where one seeks to lease national land in excess of 500 acres from the Government. An EIA is not required where national land is being sold. This indicates that the public policy underlying the requirement for an EIA is about the Government's management of national land where it remains national land, not when and after it is being sold to a private entity. Here, although Fowler Works applied for and was granted permission to lease Parcel B1, the lease was never issued. As discussed above, a lease was not necessary before Fowler Works could purchase Parcel B1. Having purchased Parcel B1, denying the claim for a failure to carry out an EIA would have absolutely no bearing on the underlying policy governing the lease of

national land. The defendants' contention in respect of the breach of the NLA fails at the public policy analysis step.

[58] The defendants' contention in respect of the breaches of both the NLA and the FARA fail at the proportionality analysis step. I agree with Fowler Works that it was entirely within the Minister's control to ensure the mandatory requirements for the direct purchase of national land were complied with.

[59] With respect to the lease, putting aside the fact it was not mandatory to obtain a lease before Fowler Works could purchase national land, section 9(4) of the NLA makes it clear that the provision of an EIA to the Minister is mandatory "before the determination of his application for lease". In order to determine an application for lease, the Minister must satisfy himself that an EIA has been provided. Here, no EIA was provided. Yet, the Minister granted Fowler Works' application for a lease despite non-compliance with this mandatory requirement. The granting of the application for lease in those circumstances is prejudicial to Fowler Works because Fowler Works was deprived of an opportunity to perfect its application before its determination. The result is that the defendants are now denying the validity of the Sale Agreement, and Fowler Works had to file this claim. The defendants failed to explain why Fowler Works' application for a lease was granted in the face of an obvious failure to comply with section 9(4) of the NLA.

[60] With respect to the breach of the FARA, I do not accept that the blame falls on Fowler Works for the absence of National Assembly approval. The burden of securing authorization by a resolution from the National Assembly before national land is disposed of does not fall on an applicant. Section 22 squarely places that burden on the Government:

> 22.-(1) The Government shall, before disposing of any public assets with an aggregate value of or above two million dollars, obtain the approval of the National Assembly, to be signified by a resolution made in that behalf and published in the Gazette.
>
> (2) The disposal of national land, or any dealing or transaction relating to national land, shall continue to be dealt with under the procedures specified

> in, and the provisions of the National Lands Act, Cap. 191 and Regulations made thereunder,
>
> Provided that the sale or lease of any national land in excess of five hundred acres, or any caye of whatever size, by Government shall first be authorized by a resolution of the National Assembly [emphasis added].

[61] While the defendants argue Fowler Works had a duty to ensure all legislative or regulatory requirements were met, they do not explain how this would have been possible. Presumably, a resolution of the National Assembly authorizing the sale or lease of national land in excess of 500 acres would have been the last step in the process. The court has been provided with no evidence or submissions showing that Fowler Works had an opportunity to verify that a resolution had been secured, or any opportunity to engage with the Government at all between the filing of its completed applications for purchase of national land and the granting of the applications by the Government.

[62] In **BSIL**, the Caribbean Court of Justice took a strong stand against rewarding the Government for its own breaches of its legal obligations:

> [265] Another reason why denying BISL's claim would not enhance the purpose of section 114 is that that section on its plain language is not intended to regulate BISL's conduct, nor to impose any duty on BISL. The responsibility to ensure that there is compliance with that section is placed squarely on the shoulders of the Government. Yet, in the teeth of its responsibility, the Government contracted BISL and agreed for the monies to be collected by BISL and paid into the two sets of escrow bank accounts rather than into the consolidated revenue fund. To deny BISL's claim would be to undermine, rather than enhance, the underlying purpose of section 114 in that the Government would be rewarded for its breach of its undeniable constitutional obligation and thereby encouraged to ignore that obligation [emphasis added].

[63] For these reasons, the court finds that, in the particular circumstances of this case, it would not be proportional to declare the Sale Agreement for Parcel B1 to be invalid for illegality or failure to comply with public policy.

[64] All four Sale Agreements are declared to be valid, and the defendants are liable for their breach. Fowler Works is not seeking the specific performance of the Sale

Agreements; it is seeking compensation in damages for the defendants' breach of the Sale Agreements. I find damages of a quantum to be assessed are appropriate in this case.

**IT IS HEREBY ORDERED THAT**

(1) The claim is granted.

(2) The court remains seized of this matter for the purpose of assessing damages.

(3) Costs in an amount to be determined at the conclusion of this matter are awarded to the claimant.

**Geneviève Chabot**
High Court Judge