

**IN THE SENIOR COURTS OF BELIZE**

**IN THE HIGH COURT OF BELIZE**

**CLAIM No. CV 393 of 2017**

**BETWEEN:**

**BELMOPAN LAND DEVELOPMENT CORPORATION LIMITED**

Claimant

**and**

**THE ATTORNEY GENERAL**

Defendant

**Appearances:**

Naima Barrow for the claimant

Samantha Matute, Asst. Sol. Gen. for the defendant

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2023: October 13

2024: January 2  
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**DECISION**

- [1] **FARNESE, J.:** The Caribbean Court of Justice remitted this matter back to the High Court for a further hearing on the quantum of damages owed to the claimant for the breach of Belmopan Land Development Corporation's (BLDC) constitutional right not to be deprived of property except by law

arising from the compulsory acquisition of 1, 394 acres.<sup>1</sup> I find no need to repeat the facts of this dispute as they are readily available in any of the related published decisions in this claim.<sup>2</sup> I will, however, summarize the procedural history of this matter to provide context for this decision.

- [2] Arana J (as she then was), awarded damages to BLDC of BZ\$11,549.00 per acre (BZ\$16,099,306.00 total) at the initial hearing on assessment of damages, preferring the valuation of Mr. Neal who considered the property's highest and best use to be city expansion over Mr. Cruz, who valued the property as undeveloped agricultural land. The Attorney General (AG) appealed the decision to the Belize Court of Appeal where Arana J's decision was set aside, and the matter was remitted to the High Court for a new assessment by a new Judge. BLDC appealed the Court of Appeal's decision to the CCJ. The CCJ upheld the Court of Appeal's decision to remit the case to the High Court for a further hearing on damages in a split decision. The dissenting judges would have restored Arana J's decision. The CCJ also ordered the AG to make interim payments totalling BZ\$6,000,000.00 with interest from 1<sup>st</sup> January 2014, less sums already paid with prescribed costs.
- [3] After hearing from the parties, Shoman J ordered that the rehearing would proceed on the existing expert valuations but allowed further questions to be put to the experts. Shoman J also expressly stated that she may appoint an assessor if, after reviewing the existing record and expert's responses, she felt a need for the assistance of an assessor to weigh the technical evidence. When Shoman J demitted office, the case was transferred to me, and I granted BLDC's application to admit fresh evidence. This evidence related to a voluntary payment of BZ\$3,030,000.00 by the Ministry of Natural Resources, Petroleum and Mining to acquire 202 acres of land adjacent to the property that is the subject of this claim.
- [4] The majority of the CCJ found that Arana J relied upon an expert valuation that improperly concluded that city expansion was the property's highest and best use despite no evidentiary foundation that this use was a real prospect. The majority also found the valuation irrational because it did not factor in that, even if part of a city expansion, all land may not be put to a commercial use. Mr. Neal also made no adjustment for land lost due to roads, drainage, and utilities. Therefore, the CCJ held that the per acre value was artificially inflated. The majority was

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<sup>1</sup> *Belmopan Land Development Corporation Ltd. v The Attorney General* [2022] CCJ 1 AJ (BZ) [CCJ decision].

<sup>2</sup> See the previous trial decision of Arana J of 4<sup>th</sup> December 2018 [Trial decision]; Civ. App. No. 39 of 2018; [2022] CCJ 1 AJ (BZ) [Appeal decision].

not prepared to accept Mr. Cruz's valuation because he failed to factor in city expansion use and valued the property solely on the basis of agricultural uses.<sup>3</sup>

[5] For the reasons outlined below, I find that the weight of evidence supports an award of BZ\$13,277,153 with interest from 1<sup>st</sup> January 2014, less sums already paid. I find Mr. Neal's valuation, although reflecting the comparable properties available at the time, adopted a correct approach to determining the market value of BLDC's property. The CCJ's concerns with Mr. Neal's assessment have been addressed by the new evidence provided to the court in preparation for this assessment. In contrast, Mr. Cruz's assessment continues to exclude city expansion use in the valuation and therefore does not reflect the fair market value of the property at the relevant time period.

[6] Despite finding Mr. Neal's approach was correct, the court permitted new evidence of a transaction involving a comparable property that cannot be ignored. Mr. Neal stated he would have considered the comparable property had the record of that transaction been available to him. When the time adjusted per acre value of the new comparable is considered, the fair market value of BLDC's property in 2014 was BZ\$9,524.50 per acre.

## **Analysis**

[7] The CCJ directed that a new trial judge conduct a fresh assessment of damages based on, but not limited to the evidence already presented, to determine the fair market value of the expropriated land.<sup>4</sup> The CCJ encouraged the trial judge to use Part 32 of the Supreme Court (Civil Procedure) Rules, which deals with experts and assessors, if there was insufficient evidence available to decide the fair market value. After reviewing the evidence and submissions, I see no benefit in appointing yet another assessor to provide an opinion to the court. Mr. Neal and Mr. Cruz each provided helpful clarifications to their existing reports that permit the court to determine the property's fair market value.

[8] The CCJ has defined market value as:<sup>5</sup>

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<sup>3</sup> CCJ decision at para 63.

<sup>4</sup> CCJ decision at para 79.

<sup>5</sup> CCJ decision at para 10.

the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.

The CCJ decision outlines several aspects involved in determining the market value of land. First, the exercise requires expert evidence. Second, the court should not "ordinarily substitute" its own opinion unless the expert bases the appraisal on a faulty premise, considers irrelevant material, or reaches conclusions based on mistaken facts or law.<sup>6</sup> The CCJ also held, however, that:

...where there was land suitable for mixed use, or when there were widely differing valuations, whether equally apparently deficient or seemingly cogent, selecting one valuation to the entire neglect of the other is also not the best approach for arriving at a fair market value.

Third, the determining market value is an objective exercise and not concerned with the owner's plans for the property.<sup>7</sup> The court is also concerned with assessing the present market value of land based on its real potential as it is "only the present value of the advantages of the land to the owner which fall to be considered."<sup>8</sup> Thus, the market value can consider future uses provided the time period is not too remote. Finally, social, demographic, commercial and other factors besides the physical characteristics of the land determine a property's highest and best use. Thus, the CCJ held it is not reasonable to reflect the value of a potential use in the property's current market value if there is no demand for that use regardless of how well-suited the property is for that use.<sup>9</sup>

[9] The two assessments resulted in widely differing valuations because of the methodology employed. Mr. Neal adopted a comparison approach that looked at verifiable sales of similar properties. Mr. Cruz used a residual value approach to determining the property's market value. This approach estimates the current value of undeveloped land and subtracts all the costs of development (including the cost purchase, construction, marketing and reselling the property) to determine the property's "residual value" after the development has been completed. Residual value is used when there are few comparable properties on the market.

[10] I find the weight of evidence largely supports Mr. Neal's assessment and his use of the sales comparison method. Mr. Cruz's assertion that there are insufficient properties available for

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<sup>6</sup> CCJ decision at para 11.

<sup>7</sup> CCJ decision at para 22.

<sup>8</sup> CCJ decision at para 48.

<sup>9</sup> Belmopan at para 47.

comparison is based on his belief that the property's highest and best is for agriculture. I find that city expansion use was a real potential use on 1<sup>st</sup> January 2014, the relevant time frame, and would influence the property's value. Mr. Cruz's assessment continues to exclude city expansion use in the valuation and, therefore, is excluded due to this deficiency.

[11] Moreover, the CCJ's concerns with Mr. Neal's assessment have been addressed by the evidence provided to the court in preparation for this assessment. In his response to questions posed to him by Shoman J, Mr. Neal clarified that his appraisal was based on the value of the land as measured against the comparable properties, and not the purpose of the acquisition. I recognize, however, that his choice of comparable properties excluded purely agricultural lands and instead looked to land that was acquired for other purposes.

[12] I find the exclusion of agricultural lands with no city expansion potential appropriate in the circumstances. I further find that city expansion onto this land was more than a possibility in 2014 given the current and expected growth rate of Belmopan and the barriers that exist to expansion in other areas. Mr. Neal explained that between 2000 and 2010, Belmopan grew by approximately 17% per year and its population is expected to double by 2030. The city is already expanding east to accommodate that growth because the city is naturally bounded by a river on the west, the south of the city is generally more hilly/mountainous and relatively more costly to develop, and the north of the city borders a park reserve and a major arterial highway, beyond which there is a river. Therefore, I do not find it surprising that there is no evidence of recent acquisitions of property in the immediate vicinity for agricultural production or investment of high-value agricultural production. The lack of investment in agriculture in this area likely reflects the anticipated city expansion. Therefore, I find no fault in Mr. Neal excluding the sale of agricultural lands, like the CIL land,<sup>10</sup> from the list of his comparable properties.

[13] A close read of Mr. Neal's initial valuation and responses to the questions also address the CCJ's concerns that his valuation did not consider that all land may not be put to a commercial use and that no adjustment was made for land lost due to roads, drainage, and utilities. Mr. Neal referenced the "commercial transactions" he used as comparable properties in his initial valuation to

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<sup>10</sup> The CIL Land is approximately 1,316.63 acres north of the Armenia Village were acquired by the Government of Belize at \$2,450.00 per acre in September 2015.

distinguish them from a transaction between the Belmopan City Council and the University of Belize (Parcel 6302), which he believed may have attracted a lower price because the transaction was not between two “commercial entities”. Thus, his comparable properties involved transfers with commercial entities and not governmental or quasi-governmental institutions. I find no evidence that the properties selected were all subject to or anticipating high-value, commercial uses. Rather, they are properties acquired for city expansion and their value reflects that future zoning regulations may limit future uses. Furthermore, I find that Mr. Neal considered this uncertainty of use in the value he ascribed to BLDC’s property by selecting a conservative value below the lowest per acre value of all but one of the comparable properties.

[14] Mr. Neal derived his per acre value from the time adjusted per acre value of Parcel 6302, the one property available to him that was most like BLDC’s property. Parcel 6302 was sold in 2002 by the University of Belize to a land development agency controlled by the Belmopan City Council. The University of Belize received \$5000 per acre for just over 100 acres. Using appreciation rates based on confirmed Ministry of Natural Resources’ data, Mr. Neal determined that the per acre value of land on 31<sup>st</sup> December 2013 was BZ\$11,459.

[15] Mr. Neal also clarified that his valuation factored in the impact on land value of the costs for access, and infrastructure, such as streets, roads, drains, sewer disposal, electricity, water, and social amenities. The inclusion of these costs is reflected in the discount of the per acre value he assigned to BLDC’s property when compared with the average price range of BZ\$25,000 to \$70,000 per acre of smaller, developed parcels in 2012. Based on his expertise, Mr. Neal estimated that the cost of infrastructure is 30% and sub-dividing 12.5% of the lands value. Using the lower BZ\$25,000 per acre figure, the cost per acre would be BZ\$14,375 per acre after the development costs are discounted. He used this figure to further demonstrate the reasonableness of his decision to assign a value of BZ\$11,459 per acre. Mr. Neal’s development costs are also higher than those used by Mr. Cruz in his valuation.

[16] Mr. Neal’s valuation of the property at BZ\$11,549 per acre in 2014 is not out of line with the Government of Belize’s recent acquisition of 202 acres immediately adjacent to the BLDC’s property. Land of the same quality and character was valued at BZ\$15,000 per acre in that transaction, almost 10 years after the relevant time period. Mr. Neal’s assessment confirms that

Belmopan continues to experience exceptional growth rates, well beyond the national average. Based on Mr. Neal's evidence, property values in this area doubles every 10 years. Thus, the per acre value of the adjacent parcel would have been BZ\$7,500 in 2014.

[17] Therefore, using the comparison approach to land valuation requires that Mr. Neal's assessment be reconsidered in light of the recently obtained comparable. I find the per acre value of BLDC's property in 2014 to be the average of the time adjusted per acre value of the two comparable properties - BZ\$9,524.50 per acre. BLDC is entitled to damages in the amount BZ\$13,277,153.

### **Disposition**

[18] IT IS HEREBY ORDERED THAT

- a) The Defendant shall pay the Claimant damages in the amount of BZ\$13,277,153 with interest from 1<sup>st</sup> January 2014, less sums already paid.
- b) Costs are ordered on a prescribed basis less sums paid.

**Patricia Farnese  
High Court Judge**