

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 712 of 2021

BETWEEN:

[1] RUDOLPH RAMIREZ
[2] JULIUS ZABANEH

Claimants

and

[1] THE ATTORNEY GENERAL
[2] THE MINISTER OF NATURAL RESOURCES

Defendants

Appearances:

William A. Lindo for the claimants

Samantha Matute, Asst. Sol. Gen. and Jhawn Graham for the defendants

2023: October 5

2024: January 2

DECISION

[1] **FARNESE, J.:** The Minister of Natural Resources (MNR) admits to breaching an agreement for sale of land to Mr. Rudolph Ramirez and agrees to pay compensation in the form of damages

representing the market value on 13th April 2023 of 14.76 acres of land being a portion of Cats Caye situated approximately 8 miles Southeast of Riversdale, Stann Creek District, Belize. When the parties could not agree to the appointment of a joint expert to provide the court with a market valuation of the land, the court appointed two experts – Mr. Sheldon Mahung and Mr. Hallet Moody. Mr. Mahung was proposed by the claimants and Mr. Moody was proposed by the defendants. Each expert submitted an expert report, responded in writing to questions posed by the parties, and were cross-examined.

[2] Mr. Moody valued the property at BZ\$5,018,000. Mr. Mahung valued the property at BZ\$8,900,000. How each defined the highest and best use of the property and the comparable properties used are the primary reasons for the difference in values. Mr. Moody says the property's highest and best use is "residential, eco-tourism and related activities." Mr. Mahung believes "commercial" is the highest and best use.

[3] For the reasons provided below, I have determined that the market value of the property in 2019 was BZ\$2,087,938.28. The land is undeveloped. While Cats Caye may be suitable for commercial development, the claimants have not convinced me that there was a real prospect in 2019 that the property would be put to commercial use. I have not been provided with evidence that demonstrates that there was a general demand for commercial development of caye properties that justifies reflecting the potential for commercial use in its market value. Thus, I have accepted Mr. Moody's valuation, but adjusted the quantum to reflect the market value at the date the parties agreed.

Overview of Expert Reports

[4] The Parties agree that the normal measure of damages for the breach of a contract for the sale of land is the market value of that land at the time the contract was to be completed minus any amount paid as the purchase price.¹ Market value is defined as:²

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

¹ Spain v. The Commissioner of Lands and Surveys & Anor. Claim No. 373 of 2013 at para X.

² International Valuation Standards (IVSC) as cited in Belmopan Land Development Corporation Ltd. v The Attorney General [2022] CCJ 1 AJ (BZ) [Belmopan].

marketing and where the parties had each acted knowledgeably, prudently and without compulsion.

The parties agreed that the relevant time to assess the market value is on or about the 5th September 2019.

- [5] Each of the experts adopted a sales comparison approach to determining market value although they selected different properties to compare. They also applied a different time adjustment value. Mr. Mahung adjusted the sale prices of properties sold within the last 5 years by 6.5% per annum and by 3.5% per annum for 1 property sold 11 years ago. Mr. Moody adjusted the sale prices by 2.55% per month for all properties. He considered properties sold between 2018 and 2020.
- [6] The Parties tried to discredit each expert's report by arguing the expert did not have the sufficient qualifications or experience to perform the evaluation. The process for appointing an expert is outlined in Part 32 of the Supreme Court (Civil Procedure) Rules, 2005. The parties elected not to submit a joint expert for appointment. Instead, each identified an expert, and they were appointed with the consent of the other party. The purpose of an expert is "to help the court impartially on the matters relevant to his expertise" and to "provide independent assistance to the court by way of objective unbiased opinion."³ If a party has reason to question an expert's ability to assist the court, it is incumbent on the party to raise those issues at the time of appointment so as not to waste the court's time and incur expenses by appointing a person who is unqualified or biased. The experts' experience and qualifications were known at the time of their appointment. This is not a situation where new information has come to light after their appointment that raises questions about their ability to assist the court or their impartiality. Therefore, I am satisfied that no circumstances have arisen that justifies revisiting my decision that both experts have the sufficient expertise to assist the court with this matter.
- [7] The property, known as Cats Caye, is 14.76 acres and is located 8 miles southeast of Riversdale in the Stann Creek District. It is an undeveloped caye with no utilities or services except for a small pier, which appears from photos to be suitable for a single, small boat to moor. In addition, some fill has been added to 0.5 acres of the caye. According to the statement of claim, Mr. Ramirez

³ CPR 32.4(1) and (2).

purchased the property in 2008 for \$2,870.20 from the MNR. The claim arises because the property was previously sold by the MNR to Paumen's Pleasure Cove Limited's in 2005.

- [8] Mr. Moody compared 3 sales of undeveloped properties that are nearby Cats Caye. The choice to select undeveloped land reflects both the current state of Cats Caye and the fact that Mr. Moody has identified residential and eco-tourism as the property's highest and best use. He noted that the land has limited development potential because in 2022 it was included in the South Water Caye Marine Reserve.
- [9] He adjusted the listings to reflect that properties are more valuable when they are closer to developed communities and have services and access. Citing the lack of comparable properties, he used his own experience to adjust the value of the property to reflect these features. He, however, tested the reasonableness of his adjustments against 3 current realty listings of caye property. He demonstrated that his adjusted market values are comparable to current market values reflected in those listings.
- [10] In addition to an adjustment for inflation, Mr. Moody decided 2.55% per month was an appropriate time adjustment rate. He tested the reasonableness of this adjustment by identifying 2 sets of comparable properties and comparing the rate of change of their value over time. This analysis showed a rate of change of 1.19% and 4% per month producing a mean of 2.60%. He also cited a news article that referenced property values in coastal areas rose by 2.5% per month.
- [11] Mr. Moody's report notes that Paumen's Pleasure Cove Limited's interest in the property has been transferred a few times. The property was sold in 2017 for BZ\$217,111.78 per acre, or approximately BZ\$3,205,000. Applying a 2.55%-time adjustment, Mr. Moody calculates that today's value of the property is BZ\$340,000 per acre or BZ\$5,018,400. He did not use this sale in his comparison but asserts that this figure demonstrates that his valuation of the properties' market value is reasonable.
- [12] Mr. Mahung selected 9 vacant, caye properties for comparison based on their size, location, and use at acquisition. The comparison properties are presented with no identification number that can be used to verify their precise location, but all the properties are described as being between 5 and 20 miles of Placencia with the name of the caye where they are located given in his report. Mr.

Mahung testified that the sales data comes from his personal research and not the MNR database because many persons do not report the true sale price to avoid stamp duties. He says he conducts due diligence to ensure he is using the actual sale amount in his appraisals.

[13] A table of calculations shows that the properties were adjusted by either 3.5% or 6.5% per annum to arrive at their value in September 2019. In his written response to the defendants' questions, Mr. Mahung explained that these values were based on land sales, trends, and records. Under cross-examination he added that he does market studies and analysis for areas of the country, but none of his studies or analyses were provided to the court. Mr. Mahung concluded that BZ\$600,000 per acre or BZ\$8,900,000 is its fair market value as of September 2019.

[14] Finally, Mr. Mahung notes in his report that Cats Caye is in "close proximity" to a community with all the amenities. Under cross-examination, he explained that he was referring to Placencia and Riversdale. He also explained that Cats Caye was closer to these communities than many other islands, which would reflect favourably on its value and supports his conclusion that commercial development is its highest and best use.

Analysis

[15] In **Belmopan**, the Caribbean Court of Justice (CCJ) recently outlined several aspects involved when 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.⁴ 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.

This description aptly describes the present claim.

[16] Third, the determining market value is an objective exercise and not concerned with the owner's plans for the property.⁵ The court is also concerned with assessing the present market value of

⁴ Belmopan at para 11.

⁵ Belmopan at para 22.

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.”⁶ Thus, the market value can consider future uses provided the time period is not too remote.

[17] 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.⁷

[18] The claimants encourage me to reject Mr. Moody’s report because he dates his evaluation in 2023 rather than 2019 as the parties agreed. They argue that he has undervalued the property as he has defined its highest and best use to be eco-tourism and residential because of its inclusion in the South Water Caye Marine Reserve in 2022. They say, and I agree, that it would be improper to include the impact of this regulatory designation in the evaluation of the property’s value in 2019.

[19] However, I am not convinced that the property had a real potential for commercial use in 2019. The property was twice sold by the Government of Belize, including to Mr. Ramirez who received it for pennies in comparison for what it was worth, presumably on the basis that the public interest is served by placing national lands in private hands to promote its development. Yet, the property remains undeveloped. While the dispute over the competing titles may have hindered Cats Caye’s development, Cats’ Caye was privately held for 9 years before the claimants discovered that two grants were issued for the property. I was not presented with evidence that the claimants or the other set of landowners took steps, such as applying for permits and approvals, surveying the property, or conducting professional site assessments, in pursuit of Cats Caye’s development. While I appreciate that market valuation is an objective exercise and the specific owner’s use of the property is not determinative, investment in aid of the highest and best use can add support to the claim that there is a real prospect of the property being put to that use.

⁶ Belmopan at para 48.

⁷ Belmopan at para 47.

[20] In addition, no evidence was presented to the court that there was any demand for commercial development of properties similar to Cats Caye in 2019. I find the circumstances of this case akin to the example provided by the CCJ in **Belmopan**:

At times, throughout these proceedings, it seemed as if the phrase 'highest and best use' took on a life of its own and was regarded as referable only to the physical characteristics of the land, in complete isolation from social, demographic, commercial and other factors that impact upon the use and real potentialities of the land. That approach is flawed. If, for example, land can physically be built upon for high end residences or commercial enterprises but there is no demand for high end residences and there is negligible commercial activity in the particular area in which the land is located then it is difficult to see how the land can reasonably be valued for such uses.

In **Belmopan**, the court considered the fair compensation of 1,394 acres of property annexed next to the city. The CCJ concluded that land may have a highest and best use, but if there is no demand for that use, the land's market value will not reflect that use.

[21] Several of the caye's natural features were raised by the claimants' counsel during Mr. Moody's cross-examination to suggest that the caye was especially well-suited for commercial development and ought to be valued at Mr. Mahung's higher amount. In response, Mr. Moody was unwavering in his belief in the accuracy of his valuation. Mr. Mahung was not asked to comment on the impact of these natural features on the property's market value. Mr. Mahung also provided no specific rationale in his report or testimony to support a finding that commercial development is a real potential for this property other than to note that its proximity to amenities was an advantage. Consequently, without expert evidence in support of a finding that these features make Cats Caye more likely to be put to a commercial use, it would be improper for me to consider them in the face of Mr. Moody's expert opinion that they do not increase the market value beyond what he has determined.

[22] Mr. Mahung asserts that the development potential of Cats Caye supports a 6.5% annual increase in its market value. He says he derived this figure from his own market analysis of land sales, trends, and records. He did not present his market analysis, explain his methodology, or show his calculations. Mr. Mahung asks the court to rely on his expertise as a guarantee of the reasonableness of the 6.5% figure.

[23] In contrast, Mr. Moody included his calculations in his report to explain how he reached his figure of 2.55% per month and specifically identified his data. He also demonstrated the reasonableness of his results with an external comparator. While the court recognizes Mr. Mahung’s expertise, this expertise does not outweigh the actual data presented by Mr. Moody. The court may have taken a different perspective if Mr. Moody’s methodology was challenged by someone qualified, like Mr. Mahung. Consequently, I find the weight of evidence supports the use of a 2.55% per month time adjustment in this case.

[24] I also prefer Mr. Moody’s choice of comparable properties to Mr. Mahung. In his written response to the claimants’ questions, Mr. Moody explained why he felt the properties used by Mr. Mahung are not comparable to Cats’ Caye. He wrote that all but one property were vacant land on developed cayes and are further from the properties he selected. Mr. Moody’s choices are closer in proximity to Cats Caye and are not just vacant, but undeveloped land. While I am less concerned about the location of Mr. Mahung’s chosen comparable properties, I do find they were selected because of his finding that Cats Caye’s market value ought to be based on its potential for commercial use. Thus, he selected properties where commercial use was more likely because they were located on cayes with existing development. I also prefer Mr. Moody’s comparable properties because they are closer to the relevant time period (2019) than the majority of Mr. Mahung’s sales.

[25] Therefore, I accept that Mr. Moody’s report presents the fairest and most accurate market value of Cats Caye. The market value, however, is calculated as of April 2023. The property’s 2023 market value of BZ\$5,018,000 must be adjusted to reflect its value as of September 2019 as the parties agreed. By my calculation, the market value of the property as of September 2019 is BZ\$141,459 per acre or BZ\$2,087,938. The following chart demonstrates my calculations:

Items	Comp S1	Comp S2	Comp s3
Adjusted sale price	\$232,000	\$440,000	\$500,000
Size	1.27	2.35	3.657
Cost per acre	\$182,677.165	\$187,234.043	\$136,724.091

Date of sale	29/09/20	22/09/20	21/01/18
Adjusted sale price (per acre)	-12 months 182,677.165 – 30.6% \$126, 777.949	-12 months 131,334.832 – 30.6% \$91,146,3734	+20 months \$136,724.091 +51% \$206,453.377

- Average adjusted cost per acre $(\$126,777.949 + 91,146.3734 + 206,453.377)/3$
= \$141,459.233
- Market value of Property in 2019 $\$141,459.233 \times 14.76ac$
= \$2,087,938.28

The claimants are entitled to be compensated BZ\$2,085,068.08 (2019 market value less purchase price).

Disposition

[26] It is hereby ordered that:

- The claimants are awarded damages in the sum of BZ\$2,085,068.08;
- The defendants shall pay prescribed costs to the claimants; and
- The defendants shall pay interest of 6% per annum on the damages award from the 1 January 2014 until payment..

**Patricia Farnese
High Court Judge**