

IN THE SUPREME COURT OF BELIZE A.D.2010

CLAIM NO. 437 OF 2010

BETWEEN

MARTIN PETER LEWIS

CLAIMANT

AND

**THE ATTORNEY GENERAL
THE MINISTRY OF LANDS**

**1st DEFENDANT
2nd DEFENDANT**

Before:

Hon. Mde Justice Rita Joseph-Olivetti

Appearances:

Mr. Leo Bradley Jr. of counsel for the Claimant.

Mr. Nigel Hawke, Acting Solicitor General, Iliana Swift
counsel for the 1st and 2nd Defendants.

J U D G M E N T (On assessment of compensation)

Dated: 2013, November, 29

(Hearing dates: 24 October, 4 & 5 November.)

[Compulsory Land Acquisition- delay in making compensation- how was interest to be calculated- whether Claimant can also claim for expenses incurred in seeking compensation- Land Acquisition (Public Purposes) Act Cap. 184 considered]

1. **Joseph- Olivetti J:** A soldier's recompense from a grateful country was, one could say, the kernel from which this litigation sprouted. In essence, it is a claim by the son of a deceased soldier for compensation for the acquisition of land. The soldier had been given a grant of land by the Government for his services in the Second Great War of the 20th century. The land was later acquired by the Government after the soldier's death. The son now alleges that full compensation was never paid for it. The Government does not challenge the acquisition but alleges that they paid in excess of full compensation for the land.
2. On 9 October 2013 the action came on for trial. The Defendants had failed to file and serve witness statements pursuant to the case management order and accordingly their defence fell to be struck off and judgment entered for the Claimant, Mr. Martin Lewis in accordance with the Supreme Court (Civil Procedure) Rules 2005 rule 39.4 and the court's case management powers thereunder. However, on the eloquent plea of Mr. Hawke (whose request was not opposed) the case was adjourned to 24 October to enable him to seek instructions from the Government to try to effect a compromise if possible. This effort, not surprisingly, bore no fruit. And so, on the return date the court heard the evidence of Mr. Lewis and his witness, Mr. Castro, in relation to the

quantum of compensation only. Mr. Hawke was permitted to cross-examine the witnesses. At the end of the hearing I reserved my ruling pending filing and exchange of written submissions.

3. I have considered the evidence and the written submissions of the parties. The main issue relates to the calculation of interest. The value of the land had been agreed at \$400,000.00 but payment was delayed and the parties recognised that interest was payable and interest was agreed on at 8% per annum. However, the Defendants in their Amended Defence claimed that interest was to be simple interest payable from the date of acquisition in 1994 to payment of the first instalment and thereafter compound interest and that they had paid all sums due and owing.
4. On the other hand, Mr. Lewis claims compound interest from the date of acquisition which he alleges took place in 1989 and so claims compound interest from 1 January 1990. It can readily be appreciated that if he is correct then the Government could not have completed the payments as they calculated interest on a very different basis from him.

Background Facts.

5. The Government of Belize in Central America compulsorily acquired 20 acres of land in the vicinity of Hopkins Village, a rather picturesque seaside village on the southern shores of the country. Part of the land

appears to have been located on the seafront. This acquisition was apparently to extend the village.

6. At all relevant times the land was owned by Mr. Lewis' father, Mr. Peter Charles Lewis now deceased (11 November 1987). As already adverted to, this parcel of land had been granted by the Government to Mr. Peter Charles Lewis for his services as a soldier in World War II. Mr. Lewis is now the administrator and sole beneficiary of his father's estate.
7. The actual date on which the Government acquired the land is disputed. One would have thought that the exact date could readily have been ascertained from the records of the relevant Ministry- apparently a vain musing as no such records were produced by the Government. Mr. Lewis testified to the date being sometime in 1989 not 1994 as pleaded by the Government. However, pleadings are not evidence and the Government called no evidence to substantiate that. Accordingly, this issue falls to be decided on the evidence of Mr. Lewis.
8. Despite the valiant attempts of Mr. Hawke at cross-examination, in my judgment, Mr. Lewis's credibility was not shaken and I accept his evidence that the acquisition took place sometime in 1989 when the Government through the agency of the then Minister of Lands, Hon. Dito Juan and the Area Representative, Hon. Melvin Hulse caused the

buildings on the land to be bulldozed. Mr. Lewis was living in Belize City at the time. Thereafter they commenced to distribute the land and by the early 1990's persons had begun developing the lands as their own. However, the incredible occurrence is that for **nigh on 14 years** the Government did not pay one red cent to Mr. Lewis for the land while they continued to enjoy the full benefits of it and deprived him of its use. This neglect certainly appeared to fly in the face of Article 17 of the Constitution which speaks to reasonable compensation being paid within a reasonable time for land acquired.

9. Finally, after ineffective meetings starting in 1996 with officers in the relevant Government departments, on 2 February 2004 Mr. Lewis wrote to the Chief Valuation Officer, Ministry of Natural Resources claiming \$2.8 million compensation. Then he was referred to the Chief Land Valuer, Mr. Rodriguez to determine the compensation payable.

10. I accept his evidence that he held discussions with Mr. Rodriguez and that they agreed the value of the lands at \$20,000.00 per acre. They did not speak of interest then. Mr. Lewis assumed that full payment was to be made thereafter. That did not happen. Subsequently, he raised the issue of interest with the Senior Valuer and the Chief Land Valuer who referred him to the Finance Officer. On 12 November 2004 the Finance Officer

wrote to him making no reference to interest but she verbally told him that interest was to be at 6% per annum. He was dissatisfied with that and met with the Chief Valuer who told him that 8% per annum was the precedent and they agreed to that and that the interest would be compounded annually on the remaining balance. He also told him that the settlement might include him receiving another parcel of land as partial compensation. This did not happen. He received a first instalment of \$5000.00 on about December 22 1994 which was then followed by irregular payments.

11. With respect to the date on which interest was to commence, Mr. Lewis testified that the Government unilaterally decided to pay him compensation from 1994 and he accepted the instalment payments as he felt he had no choice although all along he had posited 1990. His position is understandable as Governments are often tardy in making payments and often a person sees a kiskadee in the hand as better than two in the bushes. But by so doing does this mean that he waived his claim to compensation and interest from the date of actual occupation? I find not. A bargain made under duress is no bargain at all. I therefore find that Mr. Lewis was entitled to be paid compensation including interest, if payment were

delayed, as it was, from the date his land was acquired until full payment was made.

12.A word about Mr. Castro, the accounting expert called by Mr. Lewis. By order of the court Mr. Castro was appointed to carry out an accounting exercise. His instructions were contained in the Registrar's letter of 7 May 2012 to him on file, which enclosed a document entitled "**questions for court appointed expert Ernest Castro CPA**" and attached receipts issued by the Government. The document stated some facts, key being that the land was acquired in 1990, that it was agreed that Mr. Lewis be paid \$400,000.00 with compound interest at 8% per annum from 1990 to date of final payment. (These no doubt were complied having regard to the original defence.) He was asked to answer 3 questions- "**did Mr. Martin Peter Lewis receive full payment of the agreed \$400,000 with compound interest; does the Ministry of Natural Resources and the Environment/Government owe Mr. Martin Peter Lewis any compensation and if so how much ;was Mr Martin Peter Lewis overpaid compensation and if so how much**".

13. In his witness statement Mr. Castro says-

“Para 7- On the 21st day of May, 2012, I answered the questions listed in the Registrar’s letter to the best of my ability as an accounting expert.

Para 8 - In my report and I reiterate, I made the following assumptions on which the calculation was made:

- 1) The principal sum to be compensated to Mr. Lewis is \$400,000.00;**
- 2) The interest rate to be applied is 8% per annum;**
- 3) The interest is to be compounded annually;**
- 4) The date of commencement of the interest is 1st January 1990;**
- 5) The outstanding balance continues to attract interest until the final payment is paid.”**

14. And, he makes the following pertinent observations at para 9-

“Para 9- Further on examining the accounts in respect of the claim herein, I found the following findings:

- 1) No payment was made in respect of the \$400,000.00 for fourteen (14) complete years.**

(Emphasis mine)

- 2) At the end of those fourteen (14) years the outstanding balance was \$1,174,877.45.**
- 3) The total payments made by the Ministry of Natural Resources and the Environment according to the records amounted to \$897,000.00**
- 4) That as at 31st December, 2011, the balance outstanding is \$898,025.72**
- 5) That the discrepancies exhibited among the different stakeholders is so big that the exercise warrants greater scrutiny”.**

16. It must be noted that after Mr. Castro submitted his report (he did so on 21 May 2012) the Defendants on 8 October 2012 filed an amended defence and added a counterclaim. In those pleadings they claimed that they had agreed with Mr. Lewis to pay simple interest at 8% from the date they alleged that the acquisition took place, 1994, until the first payment and thereafter compound interest at the same rate. They also alleged that they had paid Mr. Lewis in full by 4 July 2008 and in fact had overpaid him by \$46,882.79. Of course they called no evidence as already noted and so the Defence has not been established.

17. I perforce must remark that it appears to be an egregious failure on the part of the responsible persons to give witness statements in support of the Crown's case and to attend at trial to testify. The trial lawyers in the Attorney General's Chambers cannot be expected to put forward a proper case if the evidence is not forthcoming and they ought to be able to rely on the full assistance and cooperation of the relevant officers in the various Ministries, always. What is more if in reality the Government did meet its obligations to Mr. Lewis as alleged then it means that the Government and the taxpayers are being doubly pressed as Government's revenues as we all appreciate come from taxpayers in the main. So, in short, the men and women in the workforce pay again.

18. Mr. Castro's figures have not been contradicted and I accept them as the basis or assumptions on which they were made were borne out by Mr. Lewis' evidence. This means that at 31 December 2011 the balance outstanding to Mr. Lewis was \$898,025.72 and that he should be entitled to that sum. However, Mr Hawke submits that he pleaded \$201,626.30 and that therefore he can only recover that sum as he has not amended his pleadings. Counsel cited **Perestrello .E. Companhia Limitada v United Paint Co.Ltd [1969] 3 ALL ER 479 at 486** and **Rahaman v Attorney General of Guyana 73WIR 274 at 282**.

19. Of these authorities I note that the former was pronounced well before the advent of any procedure similar to CPR 2005 and that the latter concerned the failure to plead substantive claims based on proprietary estoppel and prescription thus taking the other party by complete surprise. This is not the case here.

20. In my judgment, having regard to the pleadings and to how this matter was managed in the court it was clear that the substance of Mr. Lewis's claim was for compensation and that an accounting exercise was needed and hence Mr. Castro was appointed to ascertain if any monies were indeed owed. It was also implicit at the time that the parties would be guided by his figures and this would have been so had the Government not amended their Defence. The Government are not prejudiced by Mr. Lewis' omission to amend. Pleadings are not to be vehicles of injustice as their main function is to set out the substance of a party's case. Surely, too the court has power under the Supreme Court of Judicature Act Cap. 91 s. 38¹ to give judgment for the amount actually found on the evidence

¹ 38. The Court, in the exercise of the jurisdictions vested in it by this Act, shall, in every cause or matter pending before it, grant, either absolutely or on such terms and conditions as the Court thinks just, all such remedies whatever as any of the parties thereto may appear to be entitled to in respect of any legal or equitable claim properly brought forward by them in the cause or matter, so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of those matters avoided.

to be due and owing in a case such as this where the matter is properly before the court. See also CPR r.8.7 and 8.6(1) (b).

21. Mr Bradley Jr. further claimed for the expenses incurred by his client in trying to obtain compensation over the years. This is not a case of personal injuries and those claims cannot properly be advanced in a suit of this nature. (I note in passing that Mr. Lewis only advanced at trial the claims and the evidence of alleged loss). Moreover, by statute- the Land Acquisition (Public Purposes) Act Cap. 184- Government is required to pay compensation **for the value of lands acquired** and those losses cannot be brought under that umbrella. (See sections 19 and 22) In any event, to my mind, Mr .Lewis has been amply compensated by the award of compound interest for any further losses he might have suffered in relation to this acquisition and he cannot now be heard to cavil about the reasonableness of the compensation awarded here.

Disposition

22. Accordingly, judgment is given for Mr. Lewis for the sum of \$898,025.72 with interest compounded at 8% per annum from 1 January 2012 until payment. The court has discretion on costs. In all the circumstances this matter did not involve any complexity and therefore it is just that having regard to the value of the claim he is awarded a

percentage of the costs he would generally have been entitled to under CPR 2005 r. 64.5 and Appendix C,item5. In my judgment costs are not meant to be a windfall and therefore 50% of those costs would be reasonable in all the circumstances and I so order.

Rita Joseph-Olivetti

Supreme Court Judge Ag.

Supreme Court of Belize, Central America