

IN THE SUPREME COURT OF BELIZE, A.D. 2009

CLAIM NO. 630 OF 2009

BETWEEN	(NEW RIVER PARK LTD.	CLAIMANT
	(
AND	(
	(THE BELIZE BANK LIMITED	1 st . DEFENDANT
	(
	(REGENT INSURANCE CO. LTD	
	(IN RECEIVERSHIP)	2 nd DEFENDANT

Before: Justice Minnet Hafiz-Bertram

Appearances: Ms. Nazira Uc Myles for the Claimant

Ms. Tania Moody for the first Defendant

No appearance for the second Defendant

J U D G M E N T

Introduction

1. The Claimant seeks a declaration of the court that it is not indebted to the first Defendant for any sums due or owing by reason of a discharge duly signed by the said Defendant and amounting to a valid accord and satisfaction. The Claimant also claims damages suffered as a result of inability to transact with its property because of impending threats of sale by the First Defendant.
2. The First Defendant says that the Claimant has failed to pay the balance due on a loan and overdraft facility with them. They counterclaim \$125,399.39 with interest on the loan and \$9,329.65 on the overdraft facility.

3. The Claimant, New River Park Ltd. (hereinafter referred to as “New River Park”) is a company with its registered address located at Tower Hill, Orange Walk District, Belize. The First Defendant, The Belize Bank Limited (hereinafter referred to as “Belize Bank”) is a company with its principal place of business being No. 60 Market Square, Belize City, Belize. The Second Defendant, Regent Insurance Company Limited (In Receivership) (hereinafter referred to as “Regent Insurance”) was a limited liability company with its registered address at Number 81, North Front Street, Belize City, Belize and carries on the business of insurance among other things.

Statement of Case

4. In an amended Statement of Claim dated 16th February, 2010, New River Park says that on or about the 16th day of January 2003, they purchased an indemnity policy, being Policy No. F-16024, on its assets with Regent Insurance which covered fire among other things. The property insured by New River Park included Parcel 723 in Tower Hill, Orange Walk Town for a total sum of \$835,000.00.
5. New River Park says at paragraphs 6 and 7 of the Claim that on or about the 27th day of January 2003, they applied to Belize Bank for a Demand Loan in the sum of two hundred thousand dollars (\$200,000) with interest at the rate of nineteen and one-half per centum per annum. The said loan was secured by a charge on Parcel No. 723 dated the 16th day of April, 2003 in favour of Belize Bank and a guarantee for two hundred and fifty thousand dollars. Additionally, New River Park endorsed its insurance policy with Regent Insurance to Belize Bank to the extent of the said Bank’s interests.
6. New River Park at paragraphs 8, 9, 10 and 11 of the claim says that on the 6th day of January 2004, there was a fire which caused extensive

damage to parcel 723 which was the property charged to Belize Bank as collateral and covered under Endorsement No. 9 of the insurance policy with Regent Insurance. As such, they submitted a claim to Regent Insurance to the extent of the policy which says that Belize Bank was covered to "the extent of its interests" or liability regardless as to the cause of the fire. Further, at the time of the fire the Bank's interest in the property as a result of the Charge document was for the total sum of \$274,061.80 together with interest until receipt of payment or settlement of the outstanding.

7. New River Park says that approximately one week after the fire, they requested that Belize Bank make a claim under the Endorsement No. 9 Insurance policy. That in May of 2005, they discovered that Belize Bank had settled with Regent for its claim arising from the fire on their property and that negotiations between them were done without any input or notice to New River Park who was the insured.
8. New River Park says that the Final Discharge signed by Belize Bank in the matter with Regent stated that it received the sum of Two Hundred Thousand Dollars being the amount they have agreed to accept in full satisfaction of their claim in respect of the fire and despite having accepted the said sum a letter was sent to them in May 2005 demanding a balance they claimed was owing under the mortgage deed and stating that if the balance was not paid forthwith, foreclosure proceeding would commence. In July of 2006, Belize Bank conducted an auction and accepted an offer on the charged property but the sale was not concluded. Further, that Belize Bank remains in control of the property which is completely deteriorated and they have failed to maintain same and New River Park is unable to make use of or utilize the said premises to its full ability.
9. New River Park therefore, seeks a declaration that they are not indebted to Belize Bank for any sums due or owing by reason of a discharge duly

signed by the said Defendant and amounting to a valid accord and satisfaction. They also claim damages suffered as a result of inability to transact with the property, being Parcel 723 because of impending threats of sale by Belize Bank.

10. In an amended Defence dated 21st February, 2012, Belize Bank says that on the 27th day of January, 2003, New River Park Limited applied to them for three loan facilities. At paragraph 4 of the Defence, Belize Bank says that the loan facilities borrowed were secured by: (a) A Charge recorded at the Lands Registry in favor of the Belize Bank Limited over Parcel 1499, Block 4, Tower Hill Orange Walk District; (b) A Charge dated 16th April 2003 recorded at the Lands Registry in favor of the Belize Bank Limited over Parcel 723, Block 4, Tower Hill Orange Walk District. Further, the loan facilities were secured by an assignment of an Insurance Policy No. F – 16024 with Regent Insurance to Belize Bank as Mortgagee.
11. Belize Bank further says that Parcel 723 was charged to Belize Bank and stamped to secure \$200,000. Further, New River Park received the loan facilities as monies lent and by 30th October, 2003 there was scarcely loan payments being made towards the debt.
12. Belize Banks says at paragraph 9 of the Defence that the Insurance Policy No F – 16024 with Regent Insurance Company Ltd at Endorsement No. 9 reads: *“Loss if any, shall be payable to Belize Bank Limited as Mortgagees or Assignees of mortgage interest to the extent of their interest.”*
13. At paragraphs 10, 13, 15 and 17 of their Defence, Belize Bank says that after the fire occurred on Parcel 723, New River Park submitted its claim to Regent Insurance and also requested that Belize Bank submit a claim under the mortgage clause of the Insurance Policy to Regent Insurance. Belize Bank submitted a claim under the mortgage clause of the insurance policy for \$286,000.00 since the principal and interest balance on the loan facilities at the time of the fire was \$235,000.00 and the overdraft facility

was \$52,000.00. Regent Insurance based on the mortgage clause of the policy and the charge over Parcel 723 which was stamped to secure \$200,000.00 paid Belize Bank the secured sum.

14. Belize Bank says that since New River Park submitted its own claim to Regent Insurance it had a responsibility to follow up on the claim. Further, Belize Bank is not privy to any negotiations nor issues made by Regent Insurance in respect to New River Park's claim. Also, it is not aware of any final decision made by Regent Insurance in respect of the claim by New River Park.
15. At paragraphs 18 and 19 of the Defence, Belize Banks denies that the receipt of \$200,000. releases New River Park from its liabilities and contractual obligations under the loan facilities. Further, that New River Park is still indebted to Belize Bank for the balance due on the loans which it has failed to pay, which is \$109,759.47 plus interest and the overdraft due is \$9,325.65.
16. Belize Bank says that it exercised its rights under the Charge over Parcel 723 in accordance with **section 75** of the **Registered Land Act, Chapter 194** by demanding payment of the balance due and commencing foreclosure proceedings on Parcel 723. Despite several auctions held the said parcel of land has not been sold and still remains in the name of New River Park Limited. The deny any allege loss and damage by New River Park.
17. Belize Bank at paragraphs 14, 29, 30, 31, and 32 says that it is not the proper Defendant and the issues raised by New River Park ought to be addressed by Regent Insurance. They referred to the investigations done by Regent Insurance and Clauses 13 and 19 of the Policy.
18. Belize Bank repeats its defence and counterclaims for the balance due and owing to them in the sum of \$125,399.39 as of the 17th February, 2012 plus interest at the rate of 19 ½ % per annum on demand loan as per the

promissory note dated 26th May, 2003, and the balance due and owing in the sum of \$9,329.65 on the overdraft facility as of 17th February, 2012, plus interest and costs.

19. In an amended reply dated 6th March, 2012, New River Park denied that they applied for three loan facilities on the 27th January, 2003. They said that on that date an application was made only for the Demand Loan of \$200,000 which was secured by the charge on Parcel 723 and the guarantee signed on the 1st April, 2003 for the sum of \$250,000. Further, the two other loan facilities, the Action Plan Loan and the Overdraft facility were already granted.
20. In relation to the investigations done by Regent Insurance about the fire, New River Park says that the investigation revealed that the fire was set and accelerant was used, however, there was no expressed or implied assertion that the fire was set by New River Park.

Witnesses

21. The witness for the Claimant, New River Park is Norman Kaufman, Director of New River Park. The witness for the Defendant is Mr. Elmer Herrera, Senior Recovery Officer of Belize Bank. The documents disclosed were put into evidence by the consent of the parties.

22. Issues for determination

The issues for determination as agreed by the parties are:

1. *Whether “to the extent of their interest” under Endorsement No. 9 in the Policy means only the principal the Charge was stamped to secure or the sum due and owing by the Claimant to the First Defendant at the time of the fire.*

2. *Whether the Charge on Parcel 723 limits the First Defendant's interest to the principal sum of \$200,000.00 or covers the entire sum the First Defendant can demand as due and owing on the Loan.*
 3. *Whether the First Defendant's acceptance of Two Hundred Thousand Dollars (\$200,000.00) as "Final Discharge" under Endorsement No. 9 of the Insurance Policy amounts to an accord and satisfaction discharging the Claimant's debt to the First Defendant.*
 4. *Whether there is a balance outstanding under the Demand Loan and the Overdraft Facility plus interest due and owing by the Claimant to the First Defendant.*
 5. *Whether the Claimant has suffered loss as a result of the inability to freely transact with the said property because of impending threats of sale advanced by the First Defendant and the property's state of deterioration.*
23. In my view, issues number one and two can be conveniently disposed of together as they are inextricably linked to each other.

Issues: 1 and 2

Whether "to the extent of their interest" under Endorsement No. 9 in the Policy means only the principal the Charge was stamped to secure or the sum due and owing by the Claimant to the First Defendant at the time of the fire.

Whether the Charge on Parcel 723 limits the First Defendant's interest to the principal sum of \$200,000.00 or covers the entire sum the First Defendant can demand as due and owing on the Loan.

24. New River Park says that pursuant to Endorsement No. 9 of Policy No. F-16024 of the Insurance policy with Regent Insurance, it was covered to

“full extent of its interests” or liability regardless of the fire. Mr. Kaufman, Director of New River Park, in his witness statement at paragraph 2 stated that on 16th January, 2003, he purchase a fire insurance policy on its assets with Regent Insurance for a total sum of \$835,000.00, being policy No. F-16024. He exhibited a copy of the policy at **N.K. 1**. He said the property insured by New River Park included Parcel 723 in Tower Hill, Orange Walk Town, that is:

A two storey wood/concrete building with zinc roof used as a hotel/nightclub/restaurant situated in Tower Hill for \$685,000.00

Business and office furniture, fixtures, and unused stationery all located in the building mentioned above for \$135,000.00

Stock in trade consisting principally of food and beverage, linens for \$ 15,000.00

25. Mr. Kaufman stated that on 27th January, 2003, New River Park applied to Belize Bank for a Demand Loan in the sum of \$200,000. with interest at the rate of 19 ½% per annum. He signed a promissory note for the said loan in the sum of \$201,080.00 in favour of Belize Bank which he exhibited at **N.K. 2**. Further, he stated that the loan was also secured by a Charge on Parcel 723 dated 16th April, 2003 which he exhibited at **NK. 3**, a Power of Attorney dated the 16th day of April, 2003, exhibited at **N.K. 4** and a guarantee dated the 1st April, 2003 for \$250,000.00 exhibited as **N.K. 5**, all in favour of Belize Bank.
26. At paragraph 7 of the witness statement, Mr. Kaufman stated that New River Park endorsed the insurance policy with Regent Insurance, which is exhibited at **N.K. 6**, to the Bank to the extent of the Bank’s interest.
27. Mr. Kaufman further stated that on 6th January, 2004 there was a fire which caused extensive damage to Parcel 723 which was the property charged to the Bank. The cause of the fire was never concluded. He exhibited at **N.K.**

7, a Police report. At paragraph 12 of the witness statement, he said that at the time of the fire the Bank's interest in the property as a result of the Charge was \$274,061.80 together with interest until receipt of payment.

28. Mr. Kaufman stated that after the fire New River Park submitted a claim to Regent Insurance to the extent of the policy. This is exhibited as **N.K. 8**. He stated that the Bank had submitted its own claim to Regent Insurance and there was a settlement without any consultation with New River Park Limited. At paragraph 18 of his witness statement he stated that on 22nd March, 2005 the Bank accepted the sum of \$200,000. from Regent Insurance and signed a final discharge accepting \$200,000. in full satisfaction of their claim. This was signed by the Assistant Manager of the Bank. The Discharge is exhibited as **N.K. 9**. A second copy was exhibited as **N.K. 10**.
29. At paragraph 23 of Mr. Kaufman's witness statement he stated that despite the Bank accepted the sum of \$200,000. from New River Park Insurance Policy in full satisfaction of its interest, the Bank demanded the balance on the loan and threatened foreclosure proceedings on Parcel 723. A demand letter from the Bank's attorneys is exhibited as **N.K. 11**.
30. The evidence of Mr. Elmer Herrera, Senior Recovery Officer of the Belize Bank says that on the 27th day of January, 2003, New River Park Limited applied to the them for three loan facilities:
 - a) A Demand Loan in the sum of \$200,000.00 payable over 66 months with interest at the rate of 19 ½ % per annum- Demand Loan number 20529;
 - b) An Overdraft facility in the sum of \$35,000.00;
 - c) An Action Plan Loan in the sum of \$14,000.00 in the name of Norman Kaufman, in addition to interest and fees of \$10,153.00 for 60 months – Action Plan Loan Number 19881.

31. He stated that the loans were all secured by a Charge on Parcel 1499 and Parcel 723. The Charge over Parcel 723 was stamped to secure \$200,000. Also, the loan facilities were secured by the assignment of the Insurance Policy with Regent Insurance. Mr. Herrera stated that the fire over Parcel 723 destroyed the building which was held under the Charge in favor of Belize Bank stamped to secure the \$200,000. Belize Bank thereafter submitted a claim of \$286,000.00 to Regent Insurance being \$235,000. as principal and interest balance on the loan, and \$52,000. as overdraft facility. At paragraph 18 of the witness statement he stated that Regent Insurance responded to Belize Bank by letter dated 27th April, 2004 stating that they are bound by the mortgage clause to pay the amount on the stamps charged at the time of the incident, the charge being, \$200,000.00.
32. Mr. Herrera at paragraph 20 of his witness statement stated that that they were paid the \$200,000. and they signed an acknowledgement receipt which was disclosed at **Tab 7** of their bundle. He further stated at paragraph 21, that even with the receipt of the said sum, New River Park still remained with its liabilities and contractual obligations under the loan facilities and they are still indebted to Belize Bank for the balance due on the loan which they have failed to pay.

Determination

The loan and the Charge

33. The court, for the purposes of this trial, is concerned about the Charge on Parcel 723. The evidence shows that on the 27th day of January 2003 New River Park applied to Belize Bank for a Demand Loan in the sum of two hundred thousand dollars (\$200,000) with interest at the rate of nineteen and one-half (19 1/2) per centum per annum. The said loan was secured by a charge on Parcel No. 723 dated the 16th day of April 2003 in favour of Belize Bank which is exhibited at **NK 3**. The Charge states that New River Park Charge Parcel 723 :

.....

Of the principal sum of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) with interest at the rate of NINETEEN AND ONE-HALF (19 ½) per centum per annum or any other such rate as the Bank shall charge from time to time payable on demand subject to section 70 of the above law, unless hereby negated, modified or added to. This charge shall be subject in all respects to the provisions of the Accompanying Memorandum which shall be deemed to be a part hereof.

34. The Memorandum accompanying the charge shows that the said Charge on Parcel 723 is a continuing security as it was for *all moneys now owing or which shall hereafter become owing*. Further, Clause 6(9) of the Charge specifically states that the said Charge is a continuing security to the Bank.
35. Clause 3 of the Memorandum Accompanying the Charge shows that it was impressed in the first instance with stamp duty to cover \$200,000.00. It states:

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3. The Charge shall be impressed in the first instance with stamp duty to cover an aggregate liability to the Bank whether as principal, guarantor or surety of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) but the Bank shall be at liberty and are hereby empowered at any time or times hereafter (without any further licence or consent on the part of the Chargor) to impress additional stamp duty upon the Charge and so to vary same to cover any sum or sums by which the total liability of the Chargor to the Bank may exceed the said sum of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) it being the intent hereof that the Charge shall cover all sums to any aggregate for which the

Chargor may be liable to the Bank whether as principal, guarantor or surety at any time.

36. Clause 5 of the Memorandum Accompanying the Charge provides for insurance of the charged property. It states:

5. The Chargor hereby further covenants and agrees with the Bank as follows:

.....

*(2) That the Chargor will during the continuance of the security created by the Charge keep all buildings and other property of an **insurable nature** now or for the time being comprised in or subject to the said security in the case of leasehold in such a state of repair and insured against loss or damage by fire*

The Insurance Policy

37. The fire insurance Policy No. F-16024 dated the 16th January, 2003 which is exhibited as **N.K. 1.** shows that New River Park Ltd. is the Insured and Regent Insurance is the Insurer. The assets of New River Park was insured for a total sum of \$835,000.00. The property insured included Parcel 723 which was charged to Belize Bank. There were nine endorsements to the Policy. The No. 9 endorsement is a mortgage clause - Belize Bank Limited, Orange Walk Town.

No. 9 Endorsement of Insurance Policy assigned to Belize Bank

38. New River Park endorsed its insurance policy with Regent Insurance to Belize Bank to the extent of the said Bank's interests. The No. 9

endorsement is dated the 16th January, 2003 and it forms part of the policy. It states that:

Loss, if any, shall be payable to Belize Bank Limited, Orange Walk Town, as Mortgagees or Assignees of mortgagee interest to the extent of their interest.

39. The question to be answered is the meaning of “*extent of their interest*”, that is, the extent of Belize Bank interest under the Charge. As can be seen above, Clause 5 of the Memorandum Accompanying the Charge is a covenant for Fire Insurance. The Insurance Policy is in the name of New River Park who is the Mortgagor and Belize Bank who is the mortgagee has an interest by way of the Charge in the proceeds. This took effect by the number 9 endorsement or assignment of the Insurance Policy by New River Park to Belize Bank. The extent of Belize Bank’s interest under the Charge is stated in the Charge itself. The Charge says *the principal sum of TWO HUNDRED THOUSAND DOLLARS(\$200,000.00) with interest at the rate of NINETEEN AND ONE-HALF (19 ½) per centum per annum.* The amount of interest was not quantified as there was none at the time. Further, Clause 3 of the Memorandum Accompanying the Charge shows that the Charge was impressed in the first instance with stamp duty to cover an aggregate liability to the Bank of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00). The mortgage was therefore, limited to the said \$200,000.00. since there was no interest quantified.

40. The provisions of the **Stamp Duties Act, Chapter 64** is helpful in clarifying this issue as to value. **Sections 59 (4) and (5)** provides:

(4) Where the total amount or value secured or to be ultimately recoverable is in any way limited, the mortgage shall be deemed a mortgage for the amount or value so limited.

(5) Where such total amount or value is unlimited, the mortgage shall be deemed duly stamped for such an amount or value only as the stamp thereon is sufficient to cover according to the ad valorem scale, and if subsequently money or money's worth in excess of that amount or value is advanced or becomes owing, the mortgage shall, as regards that excess, be stamped as a new and separate mortgage executed on the date when such excess is advanced or becomes owing.

41. The Mortgage in this case of parcel 723 to Belize Bank, in my view, was limited to \$200,000.00 and the evidence proves that it was stamped for that amount. There was no variation of the charge of parcel 723 to include interest or any other loan causing the said mortgage to be up-stamped. Accordingly, the court finds: (i) that “to the extent of their interest” under Endorsement No. 9 in the Policy means the sum the Charge was stamped to secure which was Two Hundred Thousand Dollars (\$200,000.00); (ii) The Charge on Parcel 723 limits Belize Bank’s interest to the principal sum of \$200,000.00 and not the sum outstanding and owing to Belize at the time of the fire which was Two Hundred and Eighty Six Thousand Dollars (\$286,000.00).

Issue: 3

Whether the First Defendant’s acceptance of Two Hundred Thousand Dollars (\$200,000.00) as “Final Discharge” under Endorsement No. 9 of the Insurance Policy amounts to an accord and satisfaction discharging the Claimant’s debt to the First Defendant.

42. New River Park claims that despite Belize Bank having accepted the sum of \$200,000.00 from the Claimant’s insurance policy in full satisfaction of its claim from Regent Insurance, a letter was sent to them in May 2005

demanding a balance they claimed was still due and owing to them under the mortgage deed. Belize Bank denied that the receipt of \$200,000. releases New River Park from its liabilities and contractual obligations under the loan facilities. They claim that New River Park is still indebted to Belize Bank for the balance due on the loans which it has failed to pay, being \$109,759.47 plus interest and the overdraft due is \$9,325.65.

43. Mr. Herrera's evidence is that despite the receipt of the said sum, New River Park still remained with its liabilities and contractual obligations under the loan facilities and they are still indebted to Belize Bank for the balance due on the loan which they have failed to pay. The Receipt which is exhibited by New River Park as **N.K. "9"** (Tab 7 of Belize Bank bundle of documents) states:

REGENT INSURANCE CO LTD

FINAL DISCHARGE

Policy No. F-16024

Claim No. F03/016

Received from REGENT INSURANCE COMPANY LIMITED

The sum of Two Hundred Thousand and Nil Cents being the amount I have agreed to accept in full satisfaction of my claim in respect of Fire-New River Park Ltd. which occurred on or about the 6th day of January 2004.

\$ 200,000.00

Signature of Belize Bank

Manager

Signature of witness

Address

Submissions

44. Learned Counsel, Ms. Myles submitted that the acceptance of the funds was not a partial acceptance. Further, that the facts of the case demonstrate that an accord and satisfaction was concluded between Belize Bank and Regent Insurance when the final discharge was signed in March 2005. In relation to accord and satisfaction, Learned Counsel relied on several authorities, one being, the case of **British Russian Gazette and Trade Outlook, Limited v Associated Newspapers, Limited [1933] 2 K.B. 616** where accord and satisfaction was defined as:

...the purchase of a release from an obligation arising under contract or tort by means of any valuable consideration, not being the actual performance of the obligation itself. The accord is the agreement by which the obligation is discharged, and the satisfaction is the consideration which makes the agreement operative.

45. Learned Counsel, Ms. Moody for Belize Bank submitted that the evidence shows that it was the final decision of Regent Insurance Company by letter dated 27th April 2004 to only pay the amount on the stamps charged at the time of the incident which was \$200,000.00, and it was a decision which Belize Bank was forced to accept since the Bank was not given any opportunity to appeal, nor were there any clauses of appeal under the insurance policy. Learned Counsel further submitted that it is clear from the wording of the Discharge that this was a receipt signed by Belize Bank and it was in respect to the payment of \$200,000.00 received from Regent Insurance as payment for the claim under the Mortgage Clause of Endorsement No. 9 for the fire of New River Park Limited, and not a Discharge of the Liability of the Claimant under the Loan it had with Belize Bank.

Determination

46. The evidence of Belize Bank is that Regent Insurance paid them \$200,000. based on the mortgage clause to pay the amount on the stamps charged. This evidence is supported by a letter dated 27th April, 2004 from Anthony Flynn, Chief Executive Office of Regent Insurance to Belize which is at Tab 12 of Belize Bank's disclosure bundle. The letter states:

.....

Re: F 03/016, Policy # F-16024 – New River Park Ltd.

*Reference to our conversation, even if we did not admit the claim we **are bound by the mortgage clause to pay the amount on the stamps charged** at the time of the incident. (emphasis added)*

47. It can be seen by this letter that Regent Insurance made the payment of \$200,000. to Belize Bank pursuant to the Charge stamped to secure a limit of \$200,000.
48. I am in agreement with Learned Counsel's Ms. Myles submission as to the meaning of accord and satisfaction. I also agree with her that it was not a partial acceptance by Belize Bank from Regent Insurance Company. The receipt is clear as it states that it is a final discharge between Regent Insurance and Belize Bank for the sum of \$200,000.00. I believe the important question to be asked is whether it is a final discharge in relation to the claim under the Endorsement No. 9 of the fire policy or a discharge of the liability of New River Park under the loan it had with the Bank.
49. The evidence shows that Regent Insurance is the Insurer and the Insured is New River Park and the policy amount was \$386,000. New River Park endorsed its Insurance Policy with Regent Insurance to Belize Bank to the

“extent of its interest”. As shown by the evidence, Belize Bank is not entitled to the sum owing by New River Park but the sum charged which is limited to \$200,000.00. So although, Belize Bank claimed \$286,000. from Regent Insurance they were only entitled to the limit of \$200,000. which is the amount of the stamps charged at the time of the incident. It cannot be read into the receipt that Belize Bank was giving up the balance of 86,000.00 owed to them, thereby discharging New River Park of the balance owing on the debt.

50. The court agrees with Ms. Moody’s submissions that that the receipt signed by Belize Bank was in relation to the assignment of the fire policy and not a discharge of the liability of New River Park. Accordingly, the court finds that Belize Bank’s acceptance of Two Hundred Thousand Dollars (\$200,000.00) as “Final Discharge” under Endorsement No. 9 of the Insurance Policy does not amount to an accord and satisfaction discharging the debt of New River Park to Belize Bank.

Issue 4:

Whether there is a balance outstanding under the Demand Loan and the Overdraft Facility plus interest due and owing by the Claimant to the First Defendant.

51. Mr. Herrera at paragraph 27 of his witness statement stated that New River Park has had receipt of the money lent under the loan facilities to its own benefit, and there is a balance due and owing of which New River Park is indebted to the Belize Bank and is obliged to repay. As such he says that Belize Bank counterclaims for the balance due and owing in the sum of \$125,399.39 as of the 17th February, 2012 plus interest at the rate of 19 ½ % per annum on the demand loan as per the promissory note dated 26th May, 2003 and the balance due and owing in the sum of \$9,329.65 on overdraft facility as of 17th February, 2012 plus interest and costs.

52. Tab 18 of Belize Bank Bundle shows the balances and transactions of New River Park account with Belize Bank in detail. The balance on the demand loan as at 5th February, 2012 shows that it was \$125,104.77 plus interest of 91,097.99. The balance on the overdraft facility is \$9,329.65.
53. New River Park's position is that the final discharge in relation to the Fire Insurance policy discharged any remaining liability to the Bank. It has been proven above, under Issue No. 3, that this is not the case. The court accepts the evidence of Belize Bank which is supported by the Bank's statements that as of the 17th February, 2012 the sum of \$125,399.39 plus interest at the rate of 19 ½ % per annum was owing on the demand loan as per the promissory note dated 26th May, 2003 and that the balance due and owing on overdraft facility as of 17th February, 2012 is \$9,329.65. Accordingly, Belize Bank is entitled to the sum of \$125,399.39 on the demand loan plus interest at the agreed rate. Further, Belize Bank is entitled to \$9,329.65 on the overdraft facility.

Issue 5:

Whether the Claimant has suffered loss as a result of the inability to freely transact with the said property because of impending threats of sale advanced by the First Defendant and the property's state of deterioration.

54. New River Park claims damages suffered as a result of inability to transact with the property, being Parcel 723 because of impending threats of sale by Belize Bank. They also claim that Belize Bank remains in control of the property which is completely deteriorated and they have failed to maintain same and as such they are unable to make use of or utilize the said premises to its full ability.
55. Mr. Kaufman at paragraph 28 and 29 of his witness statement said that on 23rd June, 2006, he was informed that Parcel 723 would be auctioned on

the 28th June, 2006. He exhibited a copy of the publication at **N.K. "13"**. He stated that he was present when the auction occurred at the property and he informed the only person present at the said auction that the Bank could not sell the property as the same was lawfully his and the Bank had no right to do so.

56. At paragraph 33 of his witness statement, Mr. Kaufman stated that because New River Park is unable to use the property, this has caused it to deteriorate to the extent that it is untenable and any repairs thereto would be costly. He exhibited at **NK. "14"** a copy of an estimate showing deterioration cost.
57. Mr. Elmer, for Belize Bank, at paragraph 23 of his witness statement said that as a result of the non-payment of loan facilities, Belize Bank exercised its rights under the Charge over Parcel 723, and in accordance with **section 75** of the **Registered Land Act** by demanding payment of the balance due and commencing foreclosure proceedings on Parcel 723. **Tab 13** of Belize Bank's Disclosure shows a demand letter dated 4th May, 2005 to New River Park demanding payment of its loan account payment.
58. At paragraph 24 of his witness statement, Mr. Herrera stated that Belize Bank by notice issued by registered post to New River Park dated 30th June, 2005 commenced foreclosure proceedings on Parcel 723. This Notice was disclosed at **Tab 3** of Belize Bank's bundle of disclosures.
59. Mr. Herrera at paragraphs 25 and 26 of his witness statement stated that the auction was held on the 10th February, 2006 and no one made an offer to purchase. The other auction held on the 28th June, 2006 attracted an offer but the buyer decided not to pursue the purchase and forfeit the down payment. Mr. Herrera further stated that despite several auctions held for the sale of Parcel 723, it has not been sold and still remains in the name of New River Park. The copy of the offer from one Leonard was disclosed at **Tab 14** of Belize Bank's disclosure bundle.

Ms. Myles submissions for New River Park

60. Learned Counsel, Ms. Myles submitted that the charge over Parcel 723 should have been discharged in 2005 when Belize Bank accepted the \$200,000.00 in full satisfaction of the loan of the Claimant. Further, that failure to discharge the charge coupled with failed attempts at sale and notice of foreclosure resulted in Belize Bank's willful neglect of its duties to maintain the said property and extreme loss to New River Park. Learned Counsel relied on **section 83** of the **Registered Land Act, Chapter 194** which provides:

Upon proof to the satisfaction of the Registrar- (a) that all money due under a charge has been paid to the chargee or by his direction; or (b) that there has occurred the event or circumstances upon which, in accordance with the provision of any charge, the money thereby secured ceases to be payable and that no money is owing under the charge, the Registrar shall order the charge to be cancelled in the register, and thereupon the land, lease or charge shall cease to be subject to the charge.

61. Learned Counsel submitted that Belize Bank made couple attempts to sell the said property which is the subject of the mortgage and the insurance policy, the last being in June 2006. Thereafter, there were no efforts made by them to either repair or maintain the said property for use or further attempts at sale. Ms. Myles referred the court to an Estimate which shows damages as, \$111,100.00 as at March 2009.

Ms. Moody's submissions for Belize Bank

62. Learned Counsel, Ms. Moody submitted that the Bank cannot obtain possession unless there was a sale under foreclosure of Parcel 723. Further, that Parcel 723 was not sold so the Bank never obtained possession of Parcel 723. Ms. Moody relied on **section 78 (2)** of the **Registered Land Act** which states:

Where the chargor is in possession of the charged land or the land comprised in the charged lease, the chargee shall become entitled to recover possession of the land upon a bid being accepted at the auction sale.

63. Learned Counsel, Ms Moody further submitted that since New River Park remained as the registered proprietor of parcel 723, it was their responsibility to upkeep and maintain the property as shown by the provisions of the Memorandum Accompanying the Charge over the said property.

Determination

New River Park inability to transact with Parcel 723

64. It has been proven above that New River Park is still indebted to Belize Bank and that the payment of the \$200,000.00 by Regent Insurance was not a final discharge of the debt. As such, I respectfully disagree with Learned Counsel, Ms. Myles that the Charge should have been discharged pursuant to **section 83** of the **Registered Land Act**. Further, as shown by the evidence, the said Charge on Parcel 723 is a continuing security. The Memorandum accompanying the Charge on Parcel 723 shows that it is a continuing security as it was for *all moneys now owing or which shall hereafter become owing*. Further, Clause 6(9) of the Charge specifically states that the Charge is a continuing security to the Bank. Monies are

still owing by New River Park so Belize Bank can still maintain the charge. Although the Charge was impressed in the first instance with stamp duty to cover an aggregate liability to the Bank of \$200,000.00, Belize Bank is empowered by the provisions of the Charge to impress additional stamp duty upon the said Charge and to vary the same to cover any sum that is owing to Belize Bank by New River Park.

65. Since New River Park is still indebted to Belize Bank, it is my view, that New River Park cannot maintain a claim for loss suffered as a result of the inability to freely transact with Parcel 723 because of impending threats of sale by Belize Bank. The evidence of Mr. Herrera of Belize Bank shows that as a result of the non-payment of loan facilities, Belize bank exercised its rights under the Charge over Parcel 723 in accordance with **section 75** of the **Registered Land Act** by demanding payment of the balance due from New River Park and commenced foreclosure proceedings on Parcel 723 with Notice to New River Park. The evidence also shows that despite several auctions held by Belize Bank for the sale of Parcel 723, it has not been sold and still remains in the name of New River Park. There was one offer but, it has been proven that Mr. Kaufman of New River Park prevented that sale.
66. The court agrees with Learned Counsel Ms. Moody that the Bank could not obtain possession unless there was a sale under foreclosure of Parcel 723. Further, that Parcel 723 was not sold so the Bank could not take possession of Parcel 723. **Section 78 (2)** of the **Registered Land Act** applied. Further, there is no evidence that the Bank has taken possession of the property. New River Park as shown by the evidence is still in possession of the property.
67. Accordingly, the court finds that the inability of New River Park to transact with the property, being Parcel 723 stems from the Charge on the said property which is a continuing security and which has not been discharged.

State of deterioration of Parcel 723

68. The court agrees with the submission of Learned Counsel, Ms Moody that since New River Park remained as the registered proprietor of parcel 723, it is their responsibility to upkeep and maintain the property. By the Memorandum Accompanying the Charge over Parcel 723 dated 16th April 2003 under the Chargor's covenants, Clause 5 (2), New River Park covenants and agrees with Belize Bank, *"That the Chargor will during the continuance of this security created by the Charge keep all buildings and other property of an insurable nature and in the case of freeholds in good and substantial repair and insured against loss or damage by fire....."*
69. In my view, it is for New River Park to maintain Parcel 723 pursuant to the provisions of the Charge. Further, I must add that Belize Bank is not responsible for the non-payment of insurance claim to New River Park. The Insurance Policy was for \$386,000.00 and the evidence shows that Regent Insurance has refused to pay New River Park as claimed. This issue is not before this court. Accordingly, the court finds that Belize Bank is not responsible for the state of deterioration of Parcel 723.

Conclusion

70. New River Park is not entitled to damages against Belize Bank because of their inability to transact with Parcel 723 as there is a Charge on the said property which is a continuing security and which has not been discharged. Further, Belize Bank is not responsible for the state of deterioration of Parcel 723.

71. Summary of findings

The findings of the court are:

1. The words *"to the extent of their interest"* under Endorsement No. 9 in the Insurance Policy means the sum the Charge was stamped to secure which was Two Hundred Thousand Dollars (\$200,000.00). Further, the

Charge on Parcel 723, at the time of the fire, limited Belize Bank's interest to the principal sum of \$200,000.00 and not the sum outstanding and owing to Belize at the said time, which was Two Hundred and Eighty Six Thousand Dollars (\$286,000.00).

2. The acceptance of Belize Bank of Two Hundred Thousand Dollars (\$200,000.00) as "Final Discharge" under Endorsement No. 9 of the Insurance Policy does not amount to an accord and satisfaction discharging the debt of New River Park to Belize Bank.
3. On the counter-claim, Belize Bank is entitled to the sum of \$125,399.39, being the balance due and owing as of 17th February, 2012 by New River Park on the demand loan plus interest at the agreed rate of 19 ½ percent per annum. Further, Belize Bank is entitled to \$9,329.65 on the overdraft facility as of 17th February, 2012.
4. New River Park is not entitled to damages against Belize Bank because: (1) the Charge on Parcel 723 is a continuing security and it has not been discharged; (2) Belize Bank is not responsible for the state of deterioration of Parcel 723.

72. As a result of the findings of the court the following order is made:

Order

The Claim by New River Park Ltd. is dismissed.

Judgment is given on the counterclaim for Belize Bank in the sum of \$125,399.39, being the balance due and owing by New River Park as of 17th February, 2012 on the demand loan plus interest at the agreed rate of 19 ½ percent per annum. Further, Belize Bank is entitled to

\$9,329.65 being the balance due and owing on the overdraft facility by New River Park, as of 17th February, 2012.

Cost is awarded to Belize Bank in the sum of \$ 27,709.00 to be paid by New River Park.

.....
Justice Minnet Hafiz-Bertram

Delivered by: Chief Justice Kenneth Benjamin

6th day of March, 2013.