

IN THE SUPREME COURT OF BELIZE, A.D. 2014

CLAIM NO. 241 of 2014

**ABNER VALLADARES
DIANA VALLADARES**

**1st CLAIMANT
2nd CLAIMANT**

AND

**BELMOPAN CITY COUNCIL
MAYOR-SIMEON LOPEZ
COMMISSIONER OF POLICE**

**1st DEFENDANT
2nd DEFENDANT
3rd DEFENDANT**

BEFORE THE HONOURABLE MADAM JUSTICE SONYA YOUNG

Hearings

2014

2nd September

3rd October

Mrs. Audrey Matura-Shepherd for the Claimants.

Ms. Darlene Vernon for the 1st and 2nd Defendants.

No involvement by third Defendant.

Keywords: Statutory Interpretation – Partial Implied Repeal – Private Act v Public Act – General Act v Specific Act – By-laws v Act of Parliament – Repugnance – Inconsistency – Primarily Wooden Development in Belmopan – Approval of Plans – Permit to Build.

DECISION

1. In the matter of a simple wooden structure whose journey to its intended

foundation in Belmopan City, was abruptly stopped, by the Mayor of that City just as its bearer truck was positioning itself to deposit its load.

2. This is a decision on a preliminary issue of law as it relates to the authority to grant building permission in Belmopan City. The Claimants contend that the sole authority is that given under the Belize Building Act No. 7 of 2003 (The BBA) to the Central Building Authority (The CBA) and by delegation to the Local Building Authorities (The LBA). The 1st and 2nd Defendants (The Defendants) agree that these two entities do have general authority but claim that building approval as it relates to satisfactory fire proofing of wooden structures under Section 13 of the by-laws of the Belmopan (Zoning and Control over Building Construction) By-laws (The By-laws) of the Belmopan City Council Act (The BCCA) remains with Reconddev.

3. The Mayor claimed to derive authority for his action under this section by delegation from Reconddev.

4. **Issue:**

Whether the BBA by implication partially repealed The By-laws and in particular Section 13.

5. **Backdrop:**

Before we consider the issue it seems imperative in the circumstances to take a brief historical look at the development of the City of Belmopan. After the devastating effects of Hurricane Hattie it was decided that the Capital of Belize should be moved to a safer part of the island. That was the genesis of Belmopan. From its creation in about 1970, Reconddev, a statutory body, incorporated in 1962 under the Reconstruction and Development Corporation Act Cap 193 was vested with the authority to provide the municipal functions necessary for the effective development of the City and its infrastructure. Belmopan was designed to mirror the layout of ancient Mayan cities. It was expected to be a place not only of safety but equally of beauty. Through a referendum in 1999 Belmopan become a city with its own local government. A City Council (The Council) lead by a

Mayor was elected and appointed under the Belmopan City Council Act, Cap 86.

6. **The BCCA Duties, Power & Purpose to regulate:**

By this Act the Council was entrusted with the general rule and good governance of the City of Belmopan and empowered to do all things necessary to carry out such trust. The Act particularized a number of matters including at:

Section 29

- (c) to impose such restrictions upon owners of land as may be necessary to prevent any building upon such land from being or becoming a source of danger to surrounding properties whether from fire or from its insecure construction or dilapidated condition;*
- (k) to do all such other things or matters for the purpose of increasing the convenience and amenity of the City of Belmopan.*

30. Without prejudice to any other powers conferred upon, or duties imposed on, the Council by this or any other Act or Regulations made thereunder, the Council shall have the obligation to perform the following duties in the City of Belmopan in an efficient and timely manner:-

- (e) to issue residential and commercial lots within the City limits, on such terms and conditions as may be agreed upon by the Council from time to time, to persons who make application therefor;*

7. **The Council was also given power to make by-laws under Section 49:**

Section 49. (1) The Council may from time to time make By-laws on all matters connected with the rule and good order of the City of Belmopan and for the proper carrying out of the objects and purposes of this Act.

(2) Without prejudice to the generality of subsection (1) above, such By-laws may provide for all or any of the following, namely:-

- (h) for the service of notices, orders, and other documents required or authorized to be served by or on the Council under this Act or any regulations made thereunder; and*
 - (i) Generally for all matters connected with the rule and good government of the City of Belmopan and the proper carrying out of the objects and purposes of this Act.*
- (3) All By-laws made by the Council under this section shall be laid before the House of Representatives through the Minister after the making thereof and shall be subject to negative resolution by that House.*

8. **The By-Laws:**

The By-laws, divided Belmopan into designated construction zones and gave Recondex (not the Council) control over building construction. Of its thirty-three sections, three deal with zoning. Sections 6 – 30 regulate building construction while section 31 criminalizes and penalizes the failure to comply with the regulations. Sections 6 and 7 prohibit any person from undertaking any form of development in Belmopan without the written permission of Recondex and such development is, of course, subject to The By-laws. Development is defined as “the carrying out of building, engineering, mining or operations in, on, or under land, or the making of any material change of use of any building or other land and includes the various operations specified in Regulation 8”

9. The By-laws then outline the application process and certain standard which ought to be met. The applicants must submit their application forms, plans and other information as the Corporation deems necessary. They must also state the use of the building. Recondex would then consider the application and within 28 days of submission of a complete application convey its approval/disapproval in writing. There is no appeal process after disapproval. One of the conditions for approval is found in section 13 which states: *“The construction of any development using wood as the primary material shall not be allowed, unless the building is fire proofed to the satisfaction of Recondex. This is in the interest of safety against fire.”*

10. **The Court's Observations on The By-laws:**

Parliament, via statute, may delegate its power to legislate to another body or individual. Any legislation made pursuant to this power is known as secondary legislation. Such legislation by its very nature ought never to be a widening or departure from the underlying purpose of its primary source (the Act). Nor should it go beyond the regulating powers given by the Primary Act.

11. Having considered the particular regulating powers given to The Council under the BCCA, I cannot agree with Counsel for the Defendants, that Section 29(c) (see paragraph 6 supra) gives an expressed duty to regulate standards generally, or fire proofing standards particularly, prior to the construction of any building. The words used are clear when given their ordinary meaning. For example: “any building upon such land” (emphasis mine) and “from being or becoming” clearly indicate that the building must already be in existence on the land. It has nothing to do with building standards or building approval. Furthermore, the Section goes on to say “from fire, insecure construction or dilapidated condition.” If we allow fire to gain colour and content from the words which follow we must accept the view this court holds. Regulations pursuant to Section 29(c) seems to me to be included in what is called ‘dangerous buildings’ under Section 29 of the By-laws, nothing more. This court therefore finds that there is no specific power to regulate construction in the Act. Consideration must now be given to the general regulating powers.

12. The BCCA was enacted primarily for the very broad and very general “rule and good government of the City of Belmopan.” As the most local form of government in Belize, The Council is expected to lead and represent the community. They must also meet the Community’s need for good quality, local infrastructure and public service. Perhaps control over building construction was determined to fall under the very broad, almost limitless, power to make By-laws under Section 49(1), “for all matters connected with the rule and good order of the City of Belmopan and for the proper carrying out of the objects and purposes of the Act.”

13. It is accepted that By-laws ought not to deal with matters of substantive policy. Building control is undoubtedly a serious policy matter. Nonetheless, it was allowed to be dealt with by secondary legislation. Unfortunately, the more general and none specific the purpose or the power, the greater the likelihood that the delegated legislation would deal with matters more appropriate for parliamentary enactment. This actuality concerns the court for two reasons – (1) A far different approach was taken in Belize City with the enactment of The Belize City Building Act (now expressly repealed) and (2) The By-laws were in fact not made by the City Council pursuant to its delegated power as they are signed by the Chairman of Recondex and confirmed by the Minister of Finance.
14. Recondex has no delegated power to make regulations under its enabling legislation - The Reconstruction and Development Corporation Act Cap 193. However by Section 15(1) of that Act, Recondex is given all the powers of the Central Authority under the provisions of the Housing and Town Planning Act. There is included in that power the delegated authority to make regulations in certain instances. Section 80(1)(g) allows for regulations “generally for the administration of the Central Authority and for the purpose of carrying out the provisions of the Act.” This is another wide power which may include Building Regulations but the regulations in issue were clearly not made by Recondex under this Act or Section 15(1) of its own Act for that matter. However, the validity of The By-laws have not been challenged in the pleadings so I shall say no more. I would however urge that perhaps these By-laws need to be thoroughly reviewed and reconsidered.
15. **The BBA Duties, Power & Purpose:**
Subsequent to The By-laws, The BBA was passed in 2003. Its specific purpose as stated in the preamble being *“to control building operations in Belize in the interest of public health and safety and to enable the introduction of regulations prescribing standards relating to the use of materials and methods of construction, repair, maintenance and demolition of buildings and the control of building development; and to provide for matters connected therewith or incidental thereto.”*

16. Section 3(1) then says: *The provisions of this Act shall apply to the construction of any building in Belize. Building is defined as any structure or erection of whatever kind or nature whatsoever, whether temporary or permanent, and every part thereof, including any fixture thereto. This definition excludes public roads, bridge, culverts, public sewers or water mains, aerodrome runways, railway, telegraph and public electricity supply lines and supports and public reservoirs.*
17. The Act creates The CBA and The LBA, both charged with the responsibility of approving building developments and issuing building and occupancy permits. The LBA doing so on behalf of the CBA only through delegation of duties. The Act sets out the select members of the CBA, and the duties of both the CBA (including its Director) and the LBA.
18. Part II of The BBA entitled ‘Building Control’ explains the application process. It must be in writing, accompanied by such plans, descriptions, calculations and specifications as the LBA or the Director of the CBA may require on a prescribed form. It goes on to give the period (45 days) for consideration and eventual approval or rejection. Rejection is based on whether the CBA, The Director or the LBA determines that any plan, application or other documents submitted by an applicant is defective or contrary to the BBA, any regulations made there under or any other applicable law. It further sets out a procedure for reconsideration of a rejection by a Tribunal.
19. **Consideration of the Issue:**
When Parliament repeals legislation they generally do so clearly and expressly. Sometimes though Parliament may enact laws that are inconsistent with existing statutes. The mere fact that a later law may relate to the same subject matter as that of an earlier statute is not of itself an inconsistency effecting the implied repeal of the prior law. What is necessary is a manifest indication of legislative purpose to repeal and substitute the earlier Act with the later through convincing irreconcilability. A.L. Smith J in *Kutner v. Phillips [1891] 2 QB 267* sets out the court’s traditional response to this: *“If ... the provisions of a later enactment are so*

inconsistent with or repugnant to the provisions of an earlier one that the two cannot stand together, the earlier is abrogated by the later.”

20. This principle was outlined and relied upon in later cases like ***Paradise Island Ltd. and others v AG [1986] 36 WIR 8 and at page 17:*** “Again the general position of law is not in dispute between the opposing side. It is agreed that where two Acts are repugnant or inconsistent the later will be held as having repealed the earlier.”

And

Antigua and Barbuda and others v Lewis Artland [1995] 51 WIR 89 at page 91: (2) *Implied and partial repeal, I acknowledge the principle that in appropriate circumstances, a particular enactment (which prescribes a particular rule) should be deemed to have impliedly and partially repealed an earlier general enactment (which prescribes a general rule) to the extent of making the particular rule an exception to the general rule. “The principle applies where the particular enactment is inconsistent and irreconcilable with the general enactment and where the language and other components of the statutory context of the particular enactment clearly indicate a legislative intention to effect such partial repeal and to create such exception.”*

21. Ergo, conflicting commands which cannot both be obeyed or which produce legal rights or obligations which cannot be reconciled or provisions which are directly in conflict so that it is impossible for both to have full operation are understandably considered explicit inconsistencies. However, it is no easy matter for a court to hold that Parliament has repealed one of its own statutes without expressly saying so. In fact, the courts would first strive to reconcile both statutes and would only find an implied repeal as a last resort.
22. The presumption against the intent to repeal by implication rests upon the assumption that the legislature enacts laws with the complete knowledge of all existing laws pertaining to the subject. Failure to add a repealing clause reasonably indicates that the intent was not to repeal existing legislation on the matter. This approach minimizes judicial incursion into the legislative sphere and at the same time provides a clear, predictable and administrable rule. Given this background, one can safely assume that since the BBA did not expressly repeal The By-laws, the presumption, against its partial or complete repeal, by implication, survives. This presumption is somewhat

strengthened by the existence of clauses within the BBA which deal expressly with other repeals and the non-existence of a clause which states that the BBA is to override all other laws on the subject. There is no doubt that these two pieces of legislation overlap considerably. But it remains to be shown clearly and convincingly that they both cannot co-exist and the later Act fully embraces the subject matter of the earlier.

23. **Clear and Convincing Conflict:**

a. Primary vs Secondary Legislation

Section 22 of the Interpretation Act Cap 1 states that “*subsidiary legislation shall have the same force and effect and shall be as binding and shall be construed for all purposes as if it had been contained in the Act under which it was made.*” So, where secondary legislation does not conflict with expressed statutory provisions they have the full force and effect of law. Where they do conflict, general principles of statutory interpretation will apply.

24. When parliament, in its wisdom, subsequently enacted The BBA (primary legislation) it was with the specific aim of establishing a uniformed system of construction approval with accepted and regulated standards thereby ensuring the protection of the people and compliance with international commitments. I see no reason why the By-laws in so far as they militate against uniformity, should not be considered as having been repealed by implication. Consider the case of *Daw v The Metropolitan Board of Works (1) [1862] 142 LR 1104* and the observations of Erle CJ “*I think that where the same power is given in two different bodies to number houses, the exercise of these powers concurrently by both bodies should be entirely destructive of the object for which they were conferred; they cannot, therefore, exist together, and in accordance with general principles, the power more recently conferred included that which was conferred by the prior Act.*” In this case the laws with which the court was concerned covered more or less the same subject matter and had the same object to serve.

25. **b. Private law v Public law:**

Great Central Gas Consumers Co. V Clarke [1908] 7 CLR 16 demonstrated that an inconsistent clause in a prior private Act (The BCCA and its By-

laws) must be impliedly repealed by an inconsistent clause in a public Act (The BBA). The foundation of this decision was that the later statute was a general one where as the previous one was a special one and therefore, the special statute had to give way to the later general statute.

26. **Did the BBA intend to lay down an exhaustive code in respect of the subject matter thereby replacing the earlier law?**

There is no doubt that the BBA is a specialized piece of legislation on the area of building construction in Belize. Nonetheless it does in my view, contemplate that there will be other legislation relating to that area. Consider for example its approach to the repeal of the Belize City Building Act in Section 38:

38(1) The Belize City Building Act is hereby repealed.

(2) ...

(3) Notwithstanding the above cited repeal, all subsidiary legislation made under that Act, in so far as they are not inconsistent with this Act, shall continue to remain in force until repealed and replaced by subsidiary legislation made under this Act.

27. Parliament has expressly stated its approach to subsidiary legislation. They may remain in force unless they are inconsistent. This leaves the Act open to queries such as the instant.

28. Then there is Section 14(1)(c) and 14 (7) that set out the grounds on which the CBA, its Director or the LBA may reject plans. These include, contravention of the provisions of any zoning by-laws, or non-compliance with the provisions of Part III of the BBA or any applicable law (emphasis mine). Clearly the Act contemplates the existence of other law which may impact the Authorities' decision to reject plans or issue building permits.

29. Additionally, even Section 37 of the BBA, which gives the Minister responsible for Housing, authority to make regulations, seems to support the view of specified approval by someone or somebody other than those authorized by the BBA. Subsection (2)(a) states that those regulations may make provision: *“requiring a matter affected by the regulations to be in accordance with a specified standard for a specified requirement; or approved by or to the satisfaction of, a specified person or body, or a person or body of a specified class of persons or bodies.”*

It must be stated here that although the Act has strong and specific powers to make regulations only one has been passed to date (relating to construction over water). It is my measured view that the fact that there are no regulations adds to the confusion in this area of the applicable law.

30. More importantly however is Section 15 where the Act speaks of the procedure for a waiver from the observation of any condition of the BBA. It adds at Subsection (4) *“compliance with provisions of this Act shall not prevent the applicant or builder from compliance with any other Act which refers to the construction or use of special classes of buildings or to the storage or use of hazardous materials.”*

31. The BBA was obviously not intended to be exhaustive on the subject matter and seems open to the reality of other Acts supporting its operation to a certain extent. Therefore its introduction of a new criteria for approving all structures need not necessarily entail that The By-laws be repealed in their entirety as they relate to building approval.

32. **Section 13 of the By-laws:**

A proper reading of this section reveals that the construction of predominantly wooden buildings in Belmopan is expressly prohibited. It is only allowed if the building meets the required fireproofing standard as set by Reconddev. It is clear that the BBA does not include any such prohibition.

Further, pursuant to the By-laws such a development in Belmopan is a special building. It has been so specialized not only by Section 13 but also Section 24 which deals with the yearly inspection of wooden public buildings as opposed to the 4 year inspection of any other public building.

33. **Coexistence:**

In a practical sense, before the CBA or the LBA could issue its building permit or approve plans it must ensure that the provisions of The By-laws have been complied with - this includes Section 13. If Recondem, for whatever reason, withholds its approval (applicable law), the LBA will have reason to reject the plan until and unless it meets the necessary requirement. The applicant will nonetheless have recourse. He may apply to the Tribunal under the BBA. There is no inconsistency at all. In my view compliance with one Act does not render compliance with the other impossible nor does it necessarily involve violation of the other. They could be supplementary in their operation not detrimental. It would only mean that the concerned applicant needs to conform with both requirements as laid out under each Act.

34. **DECISION:**

I am unable to say that Recondem could possibly maintain the right to the general approval of plans or the issuing of building permits. It is unpalatable that the By-laws of a practically unrelated Act could propose to do so against a specific Act of parliament. That power belongs to the CBA and by delegation the LBA. But as far as I see it Recondem could perform a parallel function to the LBA for the approval of the fire proofing requirement for primarily wooden construction in Belmopan and I so hold.

35. Having considered both the BBA and the By-laws, this court finds that the following repugnant Sections of the By-laws have been impliedly repealed and replaced by the BBA – 6(1), 6(2), 7, 15, 19, 24, 25, 26, 27, 28 and 29 in their entirety and Section 18(1) pro tanto to the extent of the following sentence: “Notice must also be given of the date when the pouring of the concrete will take place to allow inspection of the foundation.”

The remainder of the By-laws seem to be supplementary in their operation and remain good law.

36. It is declared that:

1. Sections 6(1), 6(2), 7, 15, 19, 24, 25, 26, 27, 28 and 29 in their entirety and Section 18(1) pro tanto to the extent of the following sentence:

“Notice must also be given of the date when the pouring of the concrete will take place to allow inspection of the foundation,” of

The Belmopan (Zoning and Control over Building Construction) By-laws are repugnant to the Belize Building Act and have accordingly been impliedly repealed.

2. By virtue of Section 13 of the Belmopan (Zoning and Control over Building Construction) By-laws no development using wood as its primary material is allowed to be constructed in Belmopan without the expressed fireproofing approval of Reconddev.

3. Costs in the cause.

4. Matter adjourned to 7th October, 2014 for trial.

SONYA YOUNG
JUDGE OF THE SUPREME COURT