

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

CLAIM NO. 380 OF 2013

(COMPTON FAIRWEATHER CLAIMANT
BETWEEN (AND
(THE BELIZE DEFENCE FORCE DEFENDANTS
(THE ATTORNEY GENERAL

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mr. Dean Lindo, S. C., for the Claimant

Ms. Iliana Swift, Crown Counsel of the Attorney General's Ministry, for the Defendants

J U D G M E N T

1. This is an application for assessment of damages for trespass to the Claimant's property by the Defendants. The Claimant is Mr. Compton Fairweather, Electronic Engineer and the Defendants are the Belize Defence Force and the Attorney General of Belize. On December 9th, 2013, the Defendants admitted liability to the Claim and an order was made that

damages were to be assessed by this Court, that evidence was to be by way of affidavits, and that each party was at liberty to file valuation reports to assist the Court in determining the quantum of damages to be awarded. Although the Defendants have conceded liability and a consent order has been made, it is still necessary to set out the facts as a background to the assessment of the quantum of damages.

The Facts

2. On September 17th, 1973, Mr. Fairweather purchased from Gladys Waters, 2 acres of land situate at Mile 10 on the Philip Goldson Highway (formerly known as the Northern Highway). He became the registered proprietor of this property by virtue of a Transfer Certificate of Title recorded at Volume 8 Folio 247 of 1973 in the General Registry (Exhibit CF 1). Mr. Fairweather states in paragraph 6 of his affidavit dated November 6th, 2013 that he had plans to develop his property in 1986. However, upon inspecting his property he learnt that there was a chain link fence erected on a portion of his property by servants or agents of the Belize Defence Force. He claims that he then contacted the Honourable Henry Young, a former Member of the House of Representatives, to seek his assistance in resolving the

matter. On September 14th, 1988 he obtained a copy of a letter sent from the Commissioner of Lands and Surveys Mr. Aguilar to Honourable Henry Young conceding that their investigation revealed that a portion of Mr. Fairweather's land had been fenced in by the Belize Defence Force (Exhibit CF 2). A sketch was attached to this letter showing that most of his property had been encroached upon by the Defendants. Hon. Young then wrote to the then Prime Minister of Belize, Hon. Manuel Esquivel on October 6th, 1988 informing him of the trespass to his property (Exhibit CF 3). Nothing further transpired until Mr. Fairweather contacted the Brigadier General of the Belize Defence Force in 2006. On February 26th, 2007 the Commander of the Belize Defence Force wrote to the Chief Executive Officer in the Ministry of Natural Resources asking that the Claimant be compensated for the Defendants' trespass to his property (Exhibit CF 4). On July 26th, 2011 Mr. Fairweather wrote to the Prime Minister Hon. Dean Barrow seeking his assistance in resolving the matter. The Prime Minister then wrote a note to the Deputy Prime Minister and Minister of Lands asking him to compensate Mr. Fairweather with another piece of land (Exhibit CF 5).

On September 11th, 2011 Ms. Ingrid Gillett, Deputy Commissioner of Lands, wrote Mr. Fairweather stating that she had identified a piece of land to be offered to him in exchange for the Northern Highway property (Exhibit CF 6). Nothing further materialized until February 27th, 2013 when Mr. Fairweather's attorney, Mr. Dean Lindo, S. C., wrote the Commissioner of Lands (copied to the Brigadier General and the Solicitor General) informing of his notice of intention to sue the Government of Belize (Exhibit CF 7). On July 15th, 2013 Claim No. 380 of 2013 Compton Fairweather v. The Belize Defence Force and The Attorney General was filed. This fixed date claim form was amended on November 6th, 2011 whereby the Claimant sought the following relief:

- i) A declaration that the Claimant is entitled to compensation by virtue of Section 17 of the Belize Constitution for the First Defendant's unlawful trespass to some 1.56 acres of land belonging to the Claimant, being a substantial portion of the Claimant's 2 acre parcel of land, situate near Mile 10 on the Phillip Goldson Highway, Ladyville Village, Belize District, Belize.
- ii) Damage in the form of *mesne profits* for the First Defendant's unlawful trespass to some 1.56 acres of land belonging to the Claimant, such trespass commencing in the year 1986, being a substantial portion of the Claimant's 2 acre parcel of land, situate near Mile 10 on the Phillip Goldson Highway, Ladyville Village, Belize District, Belize.

- iii) A permanent injunction restraining the First Defendant, its servants and/or agents from further committing their unlawful trespass to the Claimant's land forthwith; or,
- iv) Alternatively, an Order directing the Defendants to pay compensation to the Claimant for the purchase of the Claimant's Land at the current market value of the land.

The Claimant's Submissions on Assessment of Damages

3. In his written submissions, Mr. Dean Lindo, S. C., argues on behalf of the Claimant that the quantum of damages ought to be in the form of *mesne profits*, that is, the market rental value of the property multiplied by the number of years for which it has been unlawfully occupied. Learned counsel cites paragraph 34-044 of **McGregor on Damages** 18th Ed in support of this submission as follows:

*"The normal measure of damages is the market rental value of the property occupied or used for the period of wrongful occupation or user. There is little authority, but this measure is consonant with general principles and with the name of the action for wrongful occupation as one for mesne profits, and as a measure has been confirmed by the Judicial Committee of the Privy Council in the unusual case of **Inverigue Investments v. Hackett** where the claim was not of the normal modest proportions, but ran into millions of dollars. And where in **Horsford v Bird** a mandatory injunction to remove a boundary wall and fence encroaching upon the claimant's land had been refused, the Judicial Committee of the Privy Council held that the claimant had, in addition to his claim*

for damages representing the value of expropriated land, “ a clear claim to damages in the form of mesne profits for the use of his land by the defendant, the mesne profits being up until the time that judgment in the case gave him the value of the land in lieu of an injunction. If the rental value varies due to market fluctuations during the period of wrongful occupation, these fluctuations should be taken into account. If the defendant makes improvements on the land, the rental value should be assessed upon the unimproved value.”

Mr. Lindo is also relying on the recent decision of Benjamin CJ in Claim No. 373 of 2013 ***Deborah Spain v The Commissioner of Lands and Surveys and The Attorney General of Belize***. In determining the quantum of damages to be assessed where the Government of Belize had breached a contract for sale of land to Ms. Spain, His Lordship the Chief Justice held that *“the failure to complete the contract for the sale of the property attracts the normal measure of damages which is the market value of the property at the contractual time for completion less the contract price (McGregor on Damages 18th Ed, para. 22-005).”*

Mr. Lindo, S. C., is contending that based on the assessment conducted by the Claimant’s expert witness David Aguilar, the Claimant is entitled to \$334, 411.85 in damages as follows:

\$3,500.00 (annual market rental value) x 27 years (number of years of trespass) =	\$94,500.00
\$3,500.00 (annual market rental value) x 6% (statutory interest rate) x 27 years =	\$5,670.00
Current Market Value of 2 acre property	= <u>\$234,241.85</u>
Total	= <u>\$334,411.85</u>

The Defendant's Submissions On the Assessment of Damages

4. In her submissions on behalf of the Defendants, Ms. Iliana Swift, Crown Counsel in the Attorney General's Ministry, submits that since the Government is not in a position to return the property, damages should be assessed as if the property had been compulsorily acquired. She then cites the ***Land Acquisition Act Chapter 184 of the Laws of Belize***, Section 19:

"Subject to this Act, the following rules shall apply to the assessment and award of compensation by a Board for the compulsory acquisition of land –

(a) The value of the land shall, subject as hereinafter provided, be taken to be the amount which the land, in its condition at the time of acquisition, if sold in the open market by a willing seller, might have been expected to have realized at the date of the second publication in the Gazette of the declaration under section 3."

She cited the cases of ***San Jose Farmer's Cooperative Society Ltd v. Attorney General*** at Supreme Court of Belize Action No. 255 of 1990 and Belize Court of Appeal decision at (1991) 43 WIR 63. These cases addressed

the issue of whether the purported acquisition of land by the Government of Belize under the Land Acquisition (Public Purposes) Act was void and contravened Section 17 of the Constitution (no property to be compulsorily acquired except under a law which provided for reasonable compensation within a reasonable time and secured a right of access to the courts for certain specified matters connected with the acquisition). I believe Ms. Swift relied on this case as authority for her submission that Brown CJ in the Supreme Court found that section 19 of the Land Acquisition Act provided for the assessment of compensation to be based on the market value of the property two years prior to the date of acquisition and that this finding was not questioned on appeal.

Ms. Swift therefore argues that the Claimant is entitled to compensation for what he was deprived of in 1986 with interest for that period. She further argues that to award the Claimant the current market value would be wholly unjust. She submits that the appropriate measure of damages is the market value of the property at the time that the Belize Defence Force entered into occupation (1986). Learned Counsel also contends that the valuation of the property by Mr. Antonio Cawich at \$150,000.00 to

\$170,000.00 BZ should be the quantum awarded to the Claimant by this court.

Decision

5. I must say at the outset, with the greatest respect to the arguments of Learned Counsel for the Defendants, this is clearly not a case of compulsory land acquisition. This is a case of trespass. At no time did the Government of Belize ever take any steps under the Land Acquisitions Act Chapter 184 to legally acquire the private property of Mr. Compton Fairweather in keeping with the legislative scheme contemplated by and provided for in that statute. Even if those provisions were relevant in the case at bar, (and I have stated that they are not), the issue of delay in this particular case of some 27 years is inexcusable as the compensation under Section 6(1) of that Act requires that the authorized officer **as soon as** any declaration is made under Section 3 of the Act to enter into negotiations **without delay** for the purchase of the land on reasonable terms and conditions. I also note in passing that in the San Jose Farmers case, President Henry of the Court of Appeal of Belize found that, Section 32 of the Land Acquisition Act which empowers the Minister unilaterally to order that compensation is to be paid over a period of ten years, offended against the provision of the

Constitution of Belize which requires that reasonable compensation should be given **within a reasonable time**. For these reasons I find that the arguments of the Defendant must fail.

As Mr. Antonio Cawich's Valuation of the property was clearly based on the instructions given to him by the Defence to value the property as at 1986, I find that I cannot rely on his valuation for reasons stated above.

I find that the property should be assessed based on the current market value. I accept as correct the submissions made on the law by Mr. Lindo, S.C. I have perused the valuation report submitted by the expert witness Mr. David Aguilar. I note his academic credentials and experience. I also note that in determining the market value Mr. Aguilar used the Direct Comparison Method or Sales Comparison Approach which is determined by direct units of comparison where value can be converted to price per square foot, acres, rooms, units, or income multipliers and overall rates. The theory is that a prudent investor would pay no more for a given facility/property than what the typical market purchaser would pay for a comparable facility, all things being equal. The comparison method of valuation is used mainly for residential property. The method applies to

capital values. He also considered the present Open Day Value of the land occupied by the Government of Belize in its existing condition, as well as the fair rent due to the landowner for use of his property between the years 1986 to the present date. Mr. Aguilar stated that the highest and best use for property in this location is for its subdivision into lots for sale for residential use and/or commercial/industrial use.

I therefore award the sum of \$328,741.85 to Mr. Compton Fairweather to be paid by the Defendants as damages.

6. Costs awarded to the Claimant to be agreed or assessed.

Dated this 9th day of June, 2014

Michelle Arana
Supreme Court Judge