

IN THE SUPREME COURT OF BELIZE, A.D. 2015

CLAIM NO. 671 of 2012

MANUEL PADRON

CLAIMANT/RESPONDENT

AND

**THE MINISTER OF NATURAL
RESOURCES**

DEFENDANTS/APPLICANTS

**COMMISSIONER OF LANDS AND SURVEYS
THE NATIONAL ESTATE OFFICER**

BEFORE THE HONOURABLE MADAM JUSTICE SONYA YOUNG

Hearings

2015

4th February

19th February

Mr. Said Musa, SC for the Claimant.

Mr. Nigel Hawke Deputy Solicitor and Ms. Marcia Mohabir for the Defendants.

Keywords: Land - Sale/Exchange – Written Memorandum - Oral Contract – Part Performance - Parole Evidence – Open Contract – Implied Terms – Authority to Contract Re-National Lands.

JUDGMENT

1. The Claimant says that on or around 23rd June, 2010, he entered into an oral agreement with the first and second Defendants. The essence of that

agreement seems to be that in exchange for 18 acres of land at the entrance to San Felipe Village, (which was to be used for village expansion) the Claimant would receive 100 acres of national agricultural land. The Claimant further says that based on this agreement he transferred the said 18 acres to the Government of Belize.

2. He even assisted the San Felipe Village Council in distributing land to villagers for house lots (as certified by a letter from the Chairman of the San Felipe Village Council). He was later told by the area representative that the second Defendant had agreed to grant him 100 acres of land in the Sierra de Agua area. He decided to put 50 acres in his name and the remaining 50 of those acres in his son's name.
3. They both subsequently applied for and were granted permission by the second Defendant and his office, to survey 50 acres each of national land in the Sierra De Agua Central Registration Section. The Survey was conducted sometime around August 6th, 2011. The Claimant thereafter went into possession of the two fifty acre parcels and expended commendable sums of money to clear and improve same. He remains in occupation to the present. Counsel for the Defendant, during the hearing of an application for an injunction, having given an undertaking to the court that nothing would be done to deprive the Claimant of possession pending the outcome of this claim.
4. Sometime around 14th August, 2012 the Claimant became aware that another person had been granted permission to survey the same two 50 acre parcels of land. Through a letter from his Attorney, he raised the matter of the

transfer agreement with the Minister of Lands and Agriculture. On 22nd August, 2012 he received a response that the matter would be investigated and he would be informed appropriately. He continued to occupy and clear the land. Thereafter, on two occasions during a two week period, he was arrested and detained for several hours for allegedly trespassing on national land. He was never charged. He claims that the agreement has been breached and he is being unlawfully deprived of his right and interest in the said 100 acres.

5. He seeks the following reliefs:

- “(1) Specific Performance of an Agreement for an exchange of land namely 100 acres in the Sierra De Agua Central Registration Section parcel No. 48 Block 13 Orange Walk District.*
- (2) An injunction to restrain the Defendants by themselves, their servants, agents or otherwise howsoever from leasing, transferring title or in any other way depriving the Claimant of his right and interest in the said 100 acre parcel of land.*
- (3) Damages and interest thereon.*
- (4) Costs.”*

6. The Claimant stated that the third Defendant was joined in the claim because in some way she too was attempting to dispossess him of 100 acres. No evidence whatsoever was presented against this Defendant so there will be no discussion in relation thereto.

7. The Defendants relied on one affidavit from the Commissioner of Lands who denied any knowledge of the claimed agreement. He did inform that on

carrying out a search of the records within the Ministry of Natural Resources he found no 18 acre portion of land to which the Claimant was the registered owner. Save and except for 30 acres in the San Felipe Village all other lands registered in the Claimant's name were leased from the Government of Belize.

Initial:

8. It appears that, at its best, the agreement may amount to an open contract. By law certain rights and duties are ascribed to the parties to such a contract. First and most importantly, the vendor is under a duty to show title. He is obligated to convey the interest he has agreed to sell free and clear from encumbrances. Moreover, a man can transfer no greater estate than that which he owns - *nemo dat quad non habet*. So, if his title falls short of what is required, then the purchaser is not bound to complete. The Claimant in the instant case is called upon to prove that the fee simple he has agreed and is obligated to pass has devolved upon him. And certainly possession is insufficient proof of this. As Lord Erskin said in *Hiern v Mill (1806) 13 Ves 114 at 122*: “No person in his senses would take an offer of a purchase from a man, merely because he stood upon the ground.”
9. Although the Claimant asserts that he transferred the 18 acres to the Government of Belize the evidence he provided indicates that he could not possibly have done so. Either he is using the term ‘transfer’ extremely loosely and most incorrectly, or he is under some misapprehension since he has shown no title (by deed or certificate) to 18 acres of land in San Felipe Village which is now being used for village extension. Title, if it exists, appears by his own admission, to be vested in his deceased mother. He

claims she held same on a resulting trust from him. The presumption of such a trust is not imposed by law it is equitable only and is rebuttable. Neither through his pleadings nor his affidavits has the Claimant disclosed that he ever sought to secure legal title. However, under cross-examination, for the first time, he expressed that he had made an application. The exact nature of this application remains a mystery. Any interest at all he may have in 18 acres falls short of the requirements for the transfer of a fee simple under Section 3 of the Law of Property Act Cap. 190 (hereinafter –the LPA).

10. In my view, since the Claimant cannot make good title and has made no real effort since 2010 to achieve same, whatever he purported to have done with or through the San Felipe Village Council was clearly not a transfer of land. This breach of the stipulation as to title does not avoid the agreement it simply makes it unenforceable *Bell v Lever Brothers Ltd. 1932 AC 101*. The Claimant will therefore not be entitled to any of the remedies he has requested. But for fear of having put the cart before the horse let us consider whether there was an agreement in the first place.

Contracts for the Sale of Land:

11. The LPA at Section 55(1) requires that all contracts for the sale of land must be in writing or endorsed by some written memorandum or note signed by the party to be charged or some other person lawfully authorized by him. Failing that, an oral contract may be both valid and enforceable if there is a sufficient act of part performance.

Was there a Sufficient Written Memorandum:

12. The memorandum may take any form, but in order to be effective it must contain a description of the parties and the property, the purchase price and the terms of the contract. – see *Re Lindrea (1913) 109 LT623, Stabrock Trading Estate Ltd. v Eggleton (1983) 1 AC 444 and Commonwealth Caribbean Contract Law pg. 30*. Finally, The memorandum **must** also be signed by the party to be charged or a person lawfully authorized by him. (emphasis mine)

13. The Claimant exhibits a letter dated June 23rd 2010 which is signed by the Honourable Marco Pech as Minister of State in the Ministry of Natural Resources and the Environment and Area Representative for Orange Walk South. I reproduce it here, precisely and in full, so that its style and content could be properly appreciated. It is addressed to Manuel Padron and copied to Mr. Adalid Wicab, San Felipe Chairman:

This letter serves to inform you that an agreement was made between you and the ministry of natural resources for an exchange of land. You were to give the village of San Felipe 18 acres of your land located in the entrance of the village for community expansion. The commissioner of lands agreed an exchange for 100 acres from the Sierra de Agua reg. Sec. The village council and head surveyor will be in the area very shortly to commence surveying the area into house lots.

Thanks for your understanding.

Yours in Service.

Sgd: Hon. Marco Pech

14. It appears that some of the salient ingredients are present and clearly defined. What causes pause however is the use of the Ministry of Natural Resources as a party to the agreement as well as the Honourable Marco Pech being the signatory to the letter. The law is clear, there must be certainty of the parties as the court would then be driven to use parole evidence on an

issue which the legislation requires to be in writing. The letter seems to make every attempt to obscure who specifically in the Ministry of Natural Resources entered into this agreement with the Claimant. The authority to deal with national land is statutory and exclusive. A discussion of this issue is also relevant to the signatory. The Honourable Marco Pech is not a party to these proceedings. He must therefore be an authorized agent to fulfil the requirements of the statute.

Authority to sell or deal with National Land:

15. The National Lands Act states at Section 3 that:

“3. The Minister may, from time to time by Order published in the Gazette, delegate in writing to the Commissioner or any other senior officer of the Ministry responsible for Lands, his authority to carry out any of the functions connected with this Act.”

16. Section 2 defines Minister as the Minister for the time being responsible for lands. That Minister is indeed the Minister of Natural Resources.

17. Sections 5 and 6 go on to state:

“5. (1) National lands shall not, save as is excepted by section 6, be dealt with or disposed of, except in the manner hereinafter provided.

(2) The Minister shall appoint an Advisory Committee to advise him generally on all matters relating to land administration.

(3) The Minister may appoint local committees to assist him in the consideration of applications for all tenants of national lands and other matters relating to land distribution.”

“6. (1) *Nothing contained in this Act shall prevent the Minister from excepting from sale in the ordinary manner and reserving to the Government of Belize the right of disposing of in a manner as for the public interests may seem best, such lands as may be required as reserves, public roads or other internal communications, or commons, or as the sites of public buildings, or as places for the interment of the dead, or places for the education, recreation and amusement of the inhabitants of any town or village, or as the sites of public quays, wharves or landing places on the sea coast or shores of streams, or for the construction of tram or railways or railway stations, or canals, or for the purpose of sinking shafts and digging for minerals, or for any purposes of public defence, safety, utility, convenience or enjoyment, or for otherwise facilitating the improvement and settlement of Belize, or for special purposes.*

(2) *The Minister shall also have power to alter, vary or add to the ordinary terms and stipulations upon which any grant, lease or licence is made, should it be considered expedient to do so in any special instance.*

(3) ...

(4) ...”

18. Then at Section 13:

“13. (1) *National lands may be sold at such prices and on such terms and conditions as to improvements and otherwise as the Minister may prescribe on the advice of the Advisory Committee.*

(2) *An application to purchase national lands shall be made in the form of the Second Schedule.”*

19. It means therefore, that apart from the Minister, only the Commissioner of Lands or a Senior officer, through delegation of the Minister’s duties, may carry out any functions under the Act, which include contracting for the exchange of national land. That delegation must be in writing and accordingly be made public through publication in the gazette. It is not a secret or private matter. A party attempting to conduct business of this

nature need only look to the Act to ascertain who specifically has the requisite authority. He may also look to the gazette to see who, if anyone, has the delegated authority. Since statutory authority cannot be inferred or construed as usual or ostensible, the Claimant must prove that the signatory was the actual authorized agent of the parties to be charged. He has failed to do so. I dare to go further. He has not even proven that the second Defendant was himself authorized to enter into this type of agreement. The Claimants belief or the second Defendant's assumption of that authority is immaterial.

20. Counsel for the Defendants presented the case of ***Howell v Falmouth Boat Construction Co. Ltd [1951] AC 837***: “*The illegality of an act is the same whether or not the actor has been misled by an assumption of authority on the part of a government officer however high or low in the hierarchy ... The question is whether the character of an act done in the face of statutory prohibition is affected by the fact that it has been induced by a misleading assumption of authority. In my opinion the answer is clearly no. Such an answer may make more difficult the task of the citizen who is anxious to walk in the narrow way, but that does not justify a different answer being given.*”
21. Furthermore: “*What is done in contravention of the provisions of an Act of Parliament cannot be made the subject matter of action.*” ***Langton v Hughes 1 M. & S 593 at 596***. The court cannot enforce such an act.
22. In ***AG for Ceylon v AD Silva [1953] AC 461*** the sale of government property by an officer having no authority was held not to be binding on the government. ***Weston Fish Products Ltd. v Penwith DC (1981) 2 All ER 2004*** also demonstrated that unauthorized promises do not create estoppels.

To hold that a citizen acting on an unauthorized promise without enquiry into the limits of such authority, can bind a public authority is to create a power which does not exist.

23. I therefore find the memorandum to be insufficient to satisfy the requirements of Section 55(1) of the LPA. I also find that the Claimant has failed to prove that the second Defendant was authorized to contract for the exchange of national lands. Such contract if it exists is unenforceable.

Oral Contract

24. So having fallen short in proving a written memorandum we turn our attention to the Claimant's assertion that he made an oral contract with both the first and second Defendant. As was said before, for a contract of this nature to be valid and enforceable the Claimant must prove that he has performed a sufficient act of part performance. Parole evidence could then be allowed to prove the precise terms of the contract.
25. Lord Reid's dictum in *Steadman v Steadman (1976) AC 536 at 540* explains the reasoning behind this doctrine:

“if one party to an agreement stands by and lets the other party incur expense or prejudice his position on the faith of the agreement being valid he will not then be allowed to turn round and assert that the agreement is unenforceable. Using fraud in its older and less precise sense, that would be fraudulent on his part and it has become proverbial that courts of equity will not permit the statute to be made an instrument of fraud.”

Part Performance:

26. The acts of part performance to be relied upon has to be clear and unequivocal. The most common of which is the vendor giving up possession, or the purchaser's taking possession – *Phillips v Bisnott (1965) 8 WIR 299*.
27. The Claimant says he gave up possession of the 18 acres to the Government; however the evidence presented discloses that at most he assisted the San Felipe Village Council to distribute land to the San Felipe Villagers. Although he does show that his mother owns land in the San Felipe district and he asserts that it was part of this land (which she held on trust for him) that he assisted to distribute, he has not proven same.
28. He could have called an expert and presented a surveyor's report which would perhaps inform that the land which is now in the possession of San Felipe Villagers, as part of the village extension program, forms part of any land owned, by the Claimant or even his mother. He chose not to. Instead he presents a survey plan dated 29th August, 2009 which he states shows his land being subdivided. That plan does not indicate to whom the land belongs. However, it states on its face that the survey was done at the request of the Government of Belize. It then refers to a contract No. 10 of 2009 dated 15th July, 2009.
29. One certainly cannot overlook the fact that this survey which seems to subdivide land for the San Felipe Extension was done long before the Claimant says he was approached and or made any agreement concerning land for the Village extension. It does not support his contention in any

way. In my view that is a lacuna which is fatal to his case. If we go on to consider the letter from the Honourable Marco Pech which is dated the 23rd June, 2010 it clearly states that the surveys are to be done shortly thereafter. How then could a survey plan from 2009 evidence this particular agreement.

30. He also provided no evidence to show that the Government took possession of the property. He agrees he passed the property over to the San Felipe Village Council but his contract was not with the Village Council. In *Gieselle v Saffron [1987] 42 WIR 339 at 352* The Court of Appeal of Trinidad and Tobago agreed that the applicable test for the sufficiency of part performance was “the traditional equity jurisprudence ... that the act of part performance must be referable to some contract concerning land. I do not feel this has been satisfactorily made out.

31. The Claimant also presented evidence that he and his son applied for and received permission to survey 50 acres each of farm land in the Sierra de Agua area. He claims that this shows part performance by the first and second Defendants as well. What is mind boggling is why he finds it necessary to apply for and survey, at his own expense, the very payment he has contracted to receive. If there really was such a contract wouldn't that land be surveyed etc. at the request and expense of the Government and simply transferred to him. He does not explain why he had to apply for and survey the land himself and I dare not speculate. What is of even greater concern is that the two permits to survey which he exhibited, speak to leases only. It does not at all make good and reasonable business sense to contract for the sale of a fee simple in exchange for a lease or two.

32. He also points to the fact that he went into occupation of the 100 acres. That is of no significance, since the permission to survey does not constitute a right of title or give him a right to possession occupation and/or development. The National Lands Act Cap 191 criminalizes this particular behaviour:

“34. (1) Every person who, on pretext of having made an application to purchase or lease any national lands, or upon any pretext whatever, enters upon or occupies or attempts to appropriate or otherwise turn to account any national lands or any produce or product thereof, without the permission of the Minister authorising such entry or occupation, is guilty of an offence and is liable to a fine not exceeding five hundred dollars.”

33. Having not found a sufficient act of part performance the court cannot considered any other evidence provided in support of an oral contract and judicial enquiry must end here. The Claimant has therefore failed to prove his claim.

34. For the foregoing reasons the claim is dismissed with costs to the Defendant to be taxed if not agreed.

SONYA YOUNG
JUDGE OF THE SUPREME COURT