



property was US\$350,000.00 and in the Agreement Mr. Leslie acknowledged having received US\$15,000.00 towards that purchase price. The Agreement provided for payment of the purchase price by installments. After the execution of the Agreement, further payments were made to account of the purchase price. The Claimant contends that the aggregate amount of US\$149,936.56, or at least \$BZ249,936.56 was paid to Edlin Leslie towards the purchase price of the caye, while the Defendant has put the Claimant to strict proof of any and all sums alleged to have been paid to Edlin Leslie. FON was let into possession of the Caye under the Agreement and to date the Claimant has access and use of the caye. Edlin Leslie died on February 15<sup>th</sup>, 2007. By Deed of Assignment dated May 2008 FON assigned all its assets to Southern Environmental Association (SEA). The Claimant wrote two letters to the eldest son of Mr. Leslie asking that the executor of the estate discuss the option of seeking proportional share of the caye based on payments made to date. The Claimant received no response from the son, so on March 5<sup>th</sup>, 2012 a claim was filed seeking *inter alia* specific performance of the contract and in the alternative, damages. The Claimant later amended its claim to seek damages for breach of contract and return of the amount paid to Edlin Leslie. The Defendant Raquel Battle is the daughter of Mr. Leslie and the Administrator of his estate; she has resisted the claim on several grounds including that the claim is statute barred.

2) **Issues**

- i) Is the claim barred by section 4 of the Limitation Act?
- ii) Whether the Agreement was entered into in contravention of section 14 of the Land Utilization Act and is therefore illegal and void *ab initio*.
- iii) If the Agreement was not void *ab initio* was there a breach of contract by the Defendant?
- iv) Are the monies paid by the Claimant monies had and received by the late Defendant for which no consideration was received, or in respect of which the consideration has failed?
- v) Should the Claimant be allowed to benefit from its own default?
- vi) What is the quantum of monies proven by the Claimant proven by the Claimant to Mr. Edlin Leslie?
- vii) Should the monies paid by the Claimant to be returned, and, if so how much?
- viii) If so, should interest be awarded in respect of monies paid, and what should be the interest rate?

3) **Issue One:** *Is the claim barred by section 4 of the Limitation Act?*

**Defendant's Submissions on Issue One**

The Defendant has argued that this Claim is statute barred. Ms. Duncan on behalf of the Defendant advances the argument that the Claimant's claim was brought after the expiration of six years from the date on which the cause of action would have accrued so that the claim is barred by section 4 of the Limitation Act, Chapter 170 of

the Laws of Belize RE 2011. The effect of this is that the Defendant has an absolute defence to the claim and the Claimant is no longer entitled to the benefit of the remedies sought. Ms. Duncan cites Section 4 of the Limitation Act as follows:

*“The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued*

*(a) Actions founded on simple contract or tort*

*(b) ...”*

Section 4 is a statutorily imposed time limit on actions or claims based on contract or tort. The time limit is a restriction on the Claimant which prevents the bringing of a claim based on contract as is the case in these proceedings, after the lapse of the period of six years from whence the cause of action first accrued. The Claim was filed on March 5<sup>th</sup>, 2012. The cause of action arose as soon as the breach of contract grounding the claim occurred. Ms. Duncan argues that the claim is for damages for breach of contract and paragraph 14 of the Statement of Claim sets out the nature of the breach relied on:

*“The Defendant and the family of the late Edlin Leslie refused to entertain the request and have clearly evinced an intention not to comply with the terms of the Agreement which stipulates that in the event of default on any remainder of the purchase price the parties (including particularly the Vendor) cooperation to apply for subdivision of a Buttonwood Caye into Parcels A & B to enable Parcel A to be transferred to the Claimant.”*

Ms. Duncan submits that the particular breach complained of by the Claimant is that Mr. Leslie failed to cause the subdivision of the Property into two parcels. The circumstances that would have triggered this obligation on the part of Mr. Leslie are contained in clause 19 of the Agreement:

*“(1) In the event that the Purchaser defaults in the payment of the balance of the Purchase Price or any portion thereof and the default continues for a period of 30 days after the due date, then the Vendor may by written notice served on the Purchaser require that the Purchaser pay the sum due within fifteen days (15) days of the service of the notice and in the event that the Purchaser fails to pay the monies due within the 15 days then the following provisions shall become operative.*

*(i) The Vendor shall at the Purchaser’s expense cause the Property to be Subdivided into two (2) parcels, parcel A and B respectively...”*

Ms. Duncan then argues that the Claimant’s first default in payment based on evidence presented to the Court occurred on February 6<sup>th</sup>, 2004 when the Claimant failed to pay the sum of US\$75,000. She argues that under clause 19 the default of non-payment would have had to continue for a period of 30 days and it did since the next payment after 11<sup>th</sup> March, 2016 was on the 28<sup>th</sup> June, 2004 more than 90 days later. By the 23<sup>rd</sup> March, 2004 the Claimant still had not remedied the default in payment and at this point the obligation of the deceased to begin the subdivision process would have arisen. Ms. Duncan therefore submits that the time, as it relates to the cause of action of the

Claimant, began to run from the 23<sup>rd</sup> March, 2004. Six years from that date puts the expiration of time within which a cause of action should have been brought at 23<sup>rd</sup> March 2010. This claim was not filed until 2012. The statutory time limitation is a mandatory one and an absolute bar. Learned Counsel relies on ***Reeves v Butcher*** [1891-94] All ER 943 where Lindley LJ stated that *“The right to bring an action may arise on various events, but it has always been held that the statute runs from the earliest time at which an action could be brought”*.

#### **Claimant’s Submissions on Issue One**

4. Ms. Grinage on behalf of the Claimant submits that the claim is not statute-barred. Learned counsel says that a vital issue for determination is when the right of action accrued to the Claimant. She relies on ***Halsbury’s Laws of England*** 4<sup>th</sup> Ed. Vol. 28 at Para. 820 which states that a cause of action normally accrues when there is in existence a person who can sue and another who can be sued. In an action for breach of contract the cause of action is the relevant breach ***Halsbury’s Laws of England*** 4<sup>th</sup> Ed. Vol. 28 at Para. 864. Ms. Grinage points to the evidence of Mrs. Nicole Auil Gomez that there was no person to receive the purchase monies and give a discharge for such monies after the Defendant’s death:

*“6. That in 2010 the Claimant wrote to one Reginald Leslie to inquire about the status of the agreement for sale and who would then have the responsibility for finalizing the sale of the Caye to it; That no resolution was arrived at. A copy of the letters are exhibited hereto and marked ‘NG4’ and ‘NG5’ respectively.*

7. *The Claimant went so far as to apply to the Court for an Administrator to be appointed in the estate of Edlin Leslie. A notice was published in the Amandala Newspaper to this effect and dated 11<sup>th</sup> June, 2012. A copy of the notice is exhibited hereto and marked 'NG6'.*

8. *That the Defendant responded to the said notice and applied for and obtained a Grant of Administration of the estate in or about the year 2013. I exhibit hereto a copy of the Grant marked 'NG7'.*

Learned Counsel for the Claimant submits that during the period following the death of the Defendant, no steps were taken by the family of the Defendant to complete the agreement and that by their conduct the Defendant and family repudiated and breached the Agreement. There was clearly no intention to carry out the Agreement; consequently, the Claimant's cause of action accrued. It is trite law that where a cause of action accrues after or on the death of a person, and there is no personal representative, if the claim is for personalty time does not begin to run until the Grant is obtained; the Claimant submits that an action commenced on 5<sup>th</sup> day of March, 2012 is well within the limitation period.

Ms. Grinage further submits that by virtue of the doctrine of "*waiver estoppel*" the Defendant is not entitled to say that the agreement was terminated prior to the Defendant's death because of late or short payments by the Claimant. She relies on ***Patricia Sturman v. Deborah Dean and Rae Kilby*** Claim No. 440 of 2007, where Legall J. stated:

*“15. Accepting that the claimant breached the contract by not making the full individual installments as agreed and by late payments, when the defendant accepted payments from the claimant after the said breach, the defendant may be considered as having waived her right to treat the land sale agreement as terminated. The late payments which were sometimes less than the installments agreed to, ought not to be considered, in the circumstances of this case, as such a breach, that went to the core or root of the agreement as to bring the contract to an end, especially in a situation where the defendant continued after the alleged breach, to receive payments under the contract. The defendant may have, by her conduct, led by the claimant, who was in default in paying the installments, to believe that she will not exercise the right to terminate the contract.*

*16. Where a party leads the other to suppose that the strict rights arising under a contract will not be enforced, or will be left in suspense, or held in abeyance, the person who otherwise could have enforced those rights will not be allowed to enforce them where it would be inequitable to do so, having regard to the dealings which have thus taken place between the parties. This doctrine is often referred to as ‘waiver by estoppel’: see **Hughes v. Metropolitan RY** 1877 2 AC 439 at 448. The basis of the doctrine may be the need for the convenience of consistency in commercial conduct. One should not be allowed to approbate and reprobate, blow hot and cold especially in commercial transactions: see **Panclaud Frieres SA v. Establishments General Grain Company** 1970 1 Lloyd’s Report 53 at p. 59 per Winn LJ.”*



Ms. Grinage submits that there was clear evidence presented at trial that the Claimant continued to make payment on account of the purchase price up until at least May 2006 and that the Defendant continued to accept these payments. In his testimony and under cross-examination Nigel Martinez who testified on behalf of the Defendant admitted that he started to work with the Claimant in 2006, and that payments were made and *“actually in reference to the Buttonwood Caye purchase”*. The Claimant therefore submits that the parties remained in a contractual relationship and time did not start to run.

**Decision on Issue One: Limitation Question**

5. Having considered submissions for both parties on this issue, I am of the view that the Claimant is quite correct. I say this because the evidence in this case clearly shows that the late Edlin Leslie continued accepting payments from S. E. A. right up to May 2006 therefore the doctrine of waiver estoppel applies. Edlin Leslie died on February 15<sup>th</sup>, 2007; the breach occurred after his death when his family refused to complete the contract as shown by letters written by S. E. A. to his son Reginald Leslie on February 16<sup>th</sup>, 2010 and July 26<sup>th</sup>, 2010 inquiring about the appointment of a personal representative. I also agree with the submission that time did not begin to run until after a personal representative was appointed who could manage the estate of the deceased, i.e., a person who could sue and be sued on behalf of the estate of Edlin Leslie. The Claim was filed on March 5<sup>th</sup>, 2012 against the intended administrator and Ms. Raquel Battle was appointed as Administrator of her father Edlin Leslie’s estate and issued with Grant of Administration on January 30<sup>th</sup>, 2013; the claim was then amended to reflect

the name of the Defendant as Administrator. I find that the claim was therefore brought well within the limitation period of six years for breach of contract under the statute of limitations.

**Issue No. Two: Was the Agreement illegal and void *ab initio* as contrary to the Land Utilization Act?**

**Defendant's Submissions on Issue No. Two**

6. Ms. Duncan for the Defendant argues that the contract was illegal as there was no subdivision approval from the Minister of Natural Resources as required under section 14 of the Land Utilization Act Chapter 188 of the Laws of Belize RE 2011:

Section 14: *"The applicant shall not sell, lease, give or in any other manner alienate any part of the land which is to be subdivided until he has received the final approval of the Minister hereto."*

Learned Counsel submits that the Land Utilization Act governs the processes by which all land across Belize can be properly subdivided into small portions. Any *"purported subdivision in contravention of the provisions of this Act shall be void and of no effect"*. As a matter of law and statutory application the position is clear in Belize that any agreement for sale which requires that land in Belize is to be subdivided, such subdivision approval must be obtained prior to entering into the agreement, otherwise the agreement is void *ab initio*. Ms. Duncan cites two cases in support of this contention: ***Norman Angulo McLiberty v. Michael Arnold and Corozal Free Zone Development Ltd.*** Action 290 of 1998, where Denys Barrow SC successfully argued that

*“it is impossible to sell a parcel of land until subdivision approval has been obtained”* and **Lionel Heredia v. Beatrice Gallego** Action No. 300 of 2001 where Awich J. (as he then was) categorically expressed the view that an agreement for sale of land which was entered into before the necessary subdivision approval was obtained was defeated on account of the provisions of the Land Utilization Act. The court in the Heredia case found that as there was no evidence that subdivision approval had been obtained before entering into a written agreement to sell a parcel of land, the agreement was held to be void as the agreement contravened section 14 of the Land Utilization Act. The Court explained that *“the respondent had not got the land parcel subdivided, so the one half of Lot 65 Caye Caulker, the subject of the sale, was not defined on the ground and there was no title to it”*.

In the instant case, Ms. Duncan points out that no steps were taken to subdivide the property before the parties entered the agreement. She relies on the testimony of Raquel Battle under cross-examination that it was only a portion of Button wood Caye that was to be sold to SEA, and not the whole caye. The agreement was therefore bad from its inception because it seeks to sell a parcel of land which does not yet exist, and which may not even come into existence because the portion of land can only come into existence after the necessary subdivision processes have been completed. It is submitted that the Agreement in this claim runs afoul of the object of the Land Utilization Act and runs afoul of the mischief trying to be prevented, that is, the sale of land without first obtaining subdivision approval.

## Claimant's Submissions on Issue No. 2

7. Ms. Grinage for the Claimant argues that the agreement was not illegal since the mere indication of an intent to give or transfer title to a property which is subject to the requirement for subdivision approval, is not itself unlawful or unenforceable. She submits that the Land Utilization Act itself reflects this position in section 16:

*“Where after the coming into force of this Act, a testator, being the owner of any land, purports to grant a divided portion of such land to any person by any will or codicil, such grant shall, until approval to such subdivision has been granted by the Minister or where the Minister has refused his approval to such subdivision, take effect as if it were a grant of an undivided share of the said land.”*

Ms. Grinage contends that the agreement sets out the Defendant's *“inchoate right”* meaning *“a right that is not fully developed, matured or vested”*. The agreement sets out an intended right which can mature into an enforceable right once subdivision approval is granted. She further submits that even where it can be established that the sale agreement was in breach of the Land Utilization Act, a Claimant may have a claim for the return of the purchase price and damages. She cites Awich J (as he then was) as support for this contention:

*“The sale agreement was in breach of s.33(2) and 14 of the Act. The sale cannot found a claim to any portion of the land. It cannot create any legal or equitable interest over the land...The reason is that s.33(2) and 14 of the Land Utilization Act defeat completely the agreement of sale on which the claims are based. The*

*applicant may have claim for the return of the purchase price and damages that is a matter for later consideration, nothing conclusive can be said about it.”*

Since the claim was amended, the Claimant is no longer claiming specific performance of the contract or seeking a portion of the property. The Claim is now one for money had and received and case law shows that such claim may be well-founded, even where the contract is defeated by the failure to conform with the provisions of the Land Utilization Act.

**Decision on Issue No. Two: Illegality of Contract under Chapter 188**

8. I agree with the Defendant on this issue. Ms. Duncan has argued, the contract was void *ab initio* for failure to comply with the requirements of the Land Utilization Act which Chapter 188. The mischief which the Act was designed to prevent is the very incident which occurred in this case where the parties purported to subdivide property (owned by the Defendant) to be bought by the Claimant without first seeking the permission of the Land Subdivision and Utilization Authority. Section 7 of the Act not only states that such a course of action is illegal, it goes on to spell out the penalty for subdividing land without obtaining the requisite statutory approval:

*7 (1) “Any purported subdivision in contravention of the provisions of this Act shall be void and of no effect.*

*(2) Any person who contravenes the provisions of this Act commits an offence and shall be liable on summary conviction to a fine not exceeding one thousand dollars.”*

At the time of Mr. Leslie's death and to date, there has been no subdivision approval sought or obtained as required by the LUA. In my view, the contract was void *ab initio*. Clearly the intent and purpose of the act is to prevent persons from subdividing property without first seeking government approval which is based *inter alia* on ensuring that any subdivision meets certain standards in relation to, e.g., layout of streets, proper drainage, dimensions of lots, ecological concerns, etc. To this end the members of the Land Subdivision and Utilization Authority under section 9 of the LUA is comprised of certain experts such as the Commissioner of Lands, the Chief Engineer and the Chief Agricultural Officer. This is to ensure that in every subdivision these experts have input into the development and bring to bear on that subdivision considerations that may arise from their respective fields of expertise.

**Issue No. Four: Is the Claimant entitled to return of monies paid to deceased as money "had and received"?**

9. **Defendant's Submissions on Issue No. Four**

Ms. Duncan on behalf of the Defendant argues that the Claimant is not entitled to the return of monies because the agreement was illegal and there was no failure of consideration as the Claimant was let into possession of the property. She argues that even if the Court finds that monies can be repaid to the Claimant, then the evidence does not show that the sum of US \$149,936.56 claimed has been paid to Edlin Leslie. The Claimant is put to strict proof of any and all sums paid. This is important because it was the deceased Edlin Leslie who received money from the Claimant and not the Defendant Raquel Battle. In challenging documents presented to the court by the

Claimant in Exhibit “NG2” as proof of monies paid, Ms. Duncan says that Nicole Auil Gomez has no first-hand knowledge of what monies were paid to Mr. Leslie as she only started working with the Claimant in January 2013. Ms. Gomez admits that the documents comprising “NG2” were the results of a search of boxes in a storeroom of the Claimant. Ms. Duncan has helpfully compiled the evidence contained in “NG2” in the following table.

**Table A**

<b>Item Number</b>	<b>Description of Documentary Evidence</b>	<b>Total</b>
1	FON payment voucher dated 25 <sup>th</sup> September, 2003	BZ\$2,000.00
2	FON payment voucher dated 14 <sup>th</sup> November, 2003	BZ\$10,000.00
3	FON payment voucher dated 11 <sup>th</sup> March, 2004	BZ\$120,000.00
4	Atlantic Bank Limited cheque #3094275 dated 11 <sup>th</sup> March, 2004	BZ\$120,000.00
5	Atlantic Bank Limited cheque #3681723 dated 28 <sup>th</sup> June, 2004	BZ\$30,000.00
6	A receipt	BZ\$30,000.00
7	FON cheque disbursement voucher dated 16 <sup>th</sup> March, 2005	BZ\$3,000.00
8	FON cheque disbursement voucher dated 6 <sup>th</sup> April, 2005	BZ\$5,000.00
9	FON cheque disbursement voucher dated 2 <sup>nd</sup> May, 2005	BZ\$42,000.00
10	FON cheque disbursement voucher dated 30 <sup>th</sup> August, 2005	BZ\$10,000.00
11	FON cheque disbursement voucher dated 15 <sup>th</sup> February, 2006	BZ\$3,000.00
12	FON cheque disbursement voucher dated 15 <sup>th</sup> March, 2006	BZ\$2,368.67
13	FON cheque disbursement voucher dated 24 <sup>th</sup> April, 2006	BZ\$2,747.74
14	FON cheque disbursement voucher dated 9 <sup>th</sup> May, 2006	BZ\$1,820.15

After challenging various documents presented as proof, Ms. Duncan concedes that the Claimant *may* have presented documentation showing a total of BZ\$220,000.00 paid to Edlin Leslie. Notwithstanding this concession, the Defendant stands firm in its position that none of the money being claimed by the Claimant can be re-paid because the cause of action by the Claimant hinges on an illegal Agreement and the courts will not countenance an illegality.

**Claimant's Submissions on Issue No. Four**

10. Ms. Grinage on behalf of the Claimant submits that the evidence in Exhibit "NG2" before the Court supports an aggregate payment of BZ\$249,936.56 paid to the Defendant by the Claimant. She contends that in the absence of the relief of specific performance, the Claimant is entitled to relief in damages for the Defendant's breach, or return of all monies paid on account of the purchase price.

**Decision on Issue No. Four**

11. Having examined the evidence, I find that the Claimant has proven that it paid Mr. Leslie BZ\$220,000.00 for the purchase of the Buttonwood Bay Caye. I agree with Ms. Duncan's submissions regarding the challenge to specific items of evidence such as Exhibit "V" a cheque signed by one Alvarine Burgess with no document proving that Mr. Leslie received the funds for the amount of \$3,000.00. I also disallow the items marked X, XI and XII for the reasons cited by Ms. Duncan in that these three cheque disbursement vouchers paid to Atlantic Bank Ltd towards a loan for Mr. Leslie make no reference to the sale of Buttonwood Bay Caye. While the contract itself is unenforceable due to non-



compliance with the provisions of the Land Utilization Act, I find that the Claimant is entitled to the return of this sum as monies had and received by the deceased the late Edlin Leslie. According to *Halsbury's Laws of England* Volume 88 (2012) "*Money paid can be recovered even though there has been partial or even complete performance of the void contract*". I also find that allowing Edlin Leslie to keep the money paid to him would constitute unjust enrichment. I therefore order the Defendant as representative of the estate of Edlin Leslie to pay to the Claimant the sum of BZ\$220,000.00. I make no order as to interest, and I order that each party is to bear own costs.

***Dated this Tuesday, 26<sup>th</sup> day of September, 2017***

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**Michelle Arana  
Supreme Court Judge**