IN THE SUPREME COURT OF BELIZE A.D. 2019

Claim No 840 of 2019

BETWEEN

(PRIMROSE GABOUREL	**CLAIMANT**
(	
(AND	
(	
(THE ATTORNEY GENERAL OF BELIZE	**1st DEFENDANT**
(	
(THE MINISTER OF NATURAL	**2nd DEFENDANT**
(RESOURCES AND THE ENVIRONMENT	

Before The Hon Westmin R.A. James
Dated: 7th July 2021
Appearances: Mr Mikhail Arguelles for the Claimant
Mrs Samantha Matute-Tucker for the Defendant

RULING ON ASSESSMENT

1. This is an assessment of compensation due to the Claimants for breaches of their constitutional rights to property without fair compensation under section 17 of the Constitution.

2. By Judgment on Admission dated 28th February 2020 by the Honourable Justice Michelle Arana as she then was, ordered that:

> 1. The Defendants are ordered to pay full and fair compensation to the Claimant of the compulsory acquisition of land being Parcel 4670 Block 16 in the Caribbean Shores Registration Section, inclusive of interest and or losses suffered from being unable to utilize the property to develop commercial residences and costs related thereto.

2. That the Claimant is paid fair and full compensation for the losses suffered from not being able to utilize the property to develop commercial residences and from lost landfill being rock and clay.

4. Costs of the application to be paid by the Defendants to the Claimant

full and fair compensation to the Claimant of the compulsory acquisition of land being Parcel 4670 Block 16 in the Caribbean Shores Registration Section

3. It is accepted by both parties that the Land Acquisition (Public Purposes) Act Chap 184 is applicable in assessing the fair compensation to the Claimant for the compulsory acquisition of land.

date of assessment

4. The first issue to be determined is when should the value of the land for compensation be determined.

5. Section 19 of the ***Land Acquisition (Public Purposes) Act***, Chapter 184 of the Laws of Belize states:

> "*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 realised at the date of the second publication in the Gazette of the declaration under section 3 of this Act***.

6. The date of the second publication in the Gazette of the declaration was 3rd February 2007. The Claimant's own valuator indicated that the property was compulsory acquired in February 2007. (see para 18 of the Affidavit.) The Claimant's argue that it would be unconscionable to use 2007 and not 2019 when the land was registered in the name of the government. The Act speaks to

acquisition not registration. Registration and acquisition are two different things as someone could have acquired interest in property but that interest not registered. Further, the unconscionability of the date is remedied by awards of interest and is not a reason to use the later date for acquisition.

7. The Claimant also argues that she was never given any notices of declarations or posted anywhere on the property and so therefore the portion of section 19 which states 2nd publication is not applicable. I disagree with this submission; the section says publication of the notice not service of the notice and so section 3(2) is not applicable in determining the date of assessment. I do not accept the authorities cited by the Claimant and agree that they are distinguishable and the interpretation as outlined above accords with the statute.

8. I therefore agree with the submissions of the Defendants that the appropriate date for the Assessment will be in 2007. While the evidence provided by the Claimant and the Defendant in relation to valuation of the property are dated 2019 and 2020 respectively, they evaluated properties during the required time. I therefore can only go on the evidence provided which are the valuation of these two that I would accept.

Value of land

9. I agree with both parties that the market value of land considering its highest and best use, it is necessary to determine what is the appropriate sum. I agree that the assessment of compensation is a matter for valuers and not for lawyers. It is thus a question of fact but expert fact needing to be provided by the testimony of expert witnesses, who in this context must be valuers.

10. Both parties have provided valuation reports of the property in order to assist the Court in determining the market value. There is a great disparity between the valuations prepared by each valuer, the Claimant stating that the property is valued at $8,503,500.00 while the Defendants have said that the property is valued at 1,050,000.00 Therefore, the Court is faced with the challenging of determining

which valuation is more appropriate and reliable in the circumstances. This exercise is to ascertain fair compensation not a windfall.

11. Having regard to all the evidence I would accept the valuation provided by the Defendant as the most appropriate of the valuation. I choose the Defendant's valuation for the following reasons:

    1. The Claimant's valuation relief heavily on one parcel 4633 which was an outlier in price to the other properties. The average price per square yard for 4633 was over 10 times the average square yard price of the others highlighted by the Claimant. The average square yards of the property produced by the Defendant which was $155 per square yards was more in line with the majority of the properties in that area.

    2. The Claimant's valuation took irrelevant things into consideration and went beyond his ambit as a valuator. The Claimant's valuator at paragraph 17 through 23 went into the realm of submissions rather than a valuation. The Claimant's valuator was making submissions and conclusions which was not his to make. The valuator for example and bolded that there was no justification for the Claimant to be denied the opportunity to develop the property. The Claimant's valuator spoke to and considered that the Claimant lost opportunity twice for which there has been no determination by the Court. Further in paragraphs 33 and 34 made statements for the Court to determine not the Claimant's valuator.

    3. The most appropriate method in these circumstances is the Comparable Method not the Residual method as comparable sales were available and no exceptional reason provided as to why it should not. The Claimant's valuator at paragraph 31 indicated that the valuation is based on the price of the property with the highest unit price near to the subject parcel. This is despite that this price could be an outlier and inflated price rather than a true comparable to the subject property.

4. Parcel 4633 was not a true comparable property with the subject property. The property was transferred after the relevant date determined for assessment. There was no proper evidence that Parcel 4633 was undeveloped at the time or evidence why this property is so much higher than all the other properties around.

5. The Claimant's other evidence contained in the business plan only valued the land at 4 million less than half the amount that the valuator indicated. Therefore, a valuation of over $8,000,000.00 seems very inflated and excessive.

12. While I agree there are some inconsistencies with the evidence of the valuator for the Defendant, the evidence has not been rendered unreliable. I therefore accept the valuation of the Defendant's Mr Castillo who assessed the value of the property at $1,050.000.00.

<u>Compensation for the losses suffered from not being able to utilize the property to develop commercial residences and from lost landfill being rock and clay.</u>

Not being able to utilize property to develop commercial residences

13. It was ordered that the Claimant should be awarded compensation for the losses suffered from not being able to utilize the property to the develop commercial residences. It is of course the Claimant's burden to prove losses under this head.

14. The Claimant in her affidavit stated that she had plans for the property and wished to develop commercial residences. She indicated that in year 10 of the development would yield approximately $12,855,700.00 which she claims was lost as a result of not being able to use the property.

15. The Claimant's evidence of this loss came by way of the evidence of Francisco Lopez. Mr Lopez who was declared as an expert by Order of the Court dated 9th February 2021 unfortunately failed to comply with the requirements of an expert set out in the Civil Proceedings Rules, particularly Part 32.12; 32.13(2).

16. I agree with the Defendant's submissions that the evidence provided by Mr Lopez was wholly inadequate to satisfy a claim for loss in this regard for over 12 million dollars. Mr. Lopez, is someone who prepares business plans, loan proposals, feasibility studies, market surveys and debt consolidating proposals. Mr Lopez was not a contractor, a valuer, an architect or engineer, an auditor, nor described himself as an accountant in his Affidavit.

17. Furthermore, Mr. Lopez failed to supply any supporting documents to justify the figures in his proposal pursuant to CPR Part 32.13 and 32.13(4). For example, the valuation of the property listing it as $4,000,000 was not produced, the plans for the property upon which he based his opinion on was not produced. There was no approval by a bank for funding of this proposal only a statement by the witness that it was being positively considered by the Manager. The Company which was to be responsible for this project was not even in existence.

18. There were also no planning approvals given to the Claimants for this development. Mr. Lopez indicated that the planning approvals were sought by Dion Zabaneh, son of the Claimant, but that there were no approvals produced for going ahead with the project. There was no production of plans, not even the application for approval, or evidence from Dion Zabaneh, to assist the Court.

19. What was quite disturbing to the Court was the evidence of Mr Lopez in relation to the letter to the bank. Mr Lopez attached a letter dated 29th March 2006 addressed to Mr Ricardo Escalente Manager, of Heritage Bank 106 Princess Margaret Drive. The letter is signed by Mr Lopez. Mr. Lopez accepted that Alliance Bank and not Heritage Bank was the institution to which the letter was sent; and in fact, Heritage Bank was not in existence at the time. It is only until after numerous questions on this point that Mr. Lopez accepted that the letter exhibited is not the actual letter sent to the bank but rather just a print off. This alone makes the evidence of Mr Lopez quite unreliable to the Court having printed off a copy of a letter to someone long after and signing it and producing it to the Court as a copy of the original is very disturbing and so the Court has lost confidence that the witness could give unbiased and truthful evidence.

20. The business proposal and the development based on this evidence is not probable enough for this Court to hold that this development was a probability to justify the award of over 12 million dollars under this head to the Claimant.

21. There is however an order that the Claimant be compensated for not being able to utilize property to develop commercial residences. There was thus a determination in the order that the Claimant was going to develop the property for commercial residences and should be compensated for this. This Court who is doing the Assessment cannot go behind that determination. In those circumstances in absence of cogent and credible evidence of the amount of this damage it would be for the court to assess the damages nominal that would be applicable.

22. In light of the evidence, and having regard to the size of the lot, the location, the ocean frontage of the property and the use of the property surrounding it this Court ascertains that $150,000.00 is fair and reasonable in the circumstances to compensate the Claimant for their inability to develop the property.

Lost landfill being rock and clay

23. This Court will not go behind the judgement the Claimant produced a receipt for the landfill in the sum of $300,000.00. There wasn't any challenge to this and so the Claimant will be awarded this sum.

Interest

24. The Claimant would have been out of the said sums for the period of time and is entitled to interest on the value of the land and the sums not compensated from the date of compulsory acquisition. I see no reason why this Court should depart from the 6% and so would award the interest in the sum of 6% from the date of compulsory acquisition in February 2007 to date of judgment of the Court dated 28th February 2020. Thereafter the Claimant is entitled to usual statutory 6% interest from date of judgment to payment.

Costs

25. Costs will follow the event and the Claimant being successful in their claim is entitled to the costs of the assessment and costs of the Claim at the stage in which it ended. In relation to the substantive claim, there is no evidence provided by the Defendant as to why prescribed costs should not be granted. In the circumstances it is most appropriate to award prescribed costs.

/s/ Westmin James
Westmin R.A. James
Justice of the Supreme Court (Ag)