IN THE SUPREME COURT OF BELIZE, A.D. 2019

CLAIM NO: 733 of 2016

BETWEEN

THE ATTORNEY GENERAL OF BELIZE **CLAIMANT**

AND

ANDRE VEGA **DEFENDANT**

Keywords: Land; Government Land; Crown Land; Contract for the purchase of Land; Minister of Natural Resources; Minister's Fiat Grant No. 76 of 1988; Minister's Fiat Grant No. 182; Minister's Fiat Grants: Duplicate Minister's Fiat Grant; Title to Land; Duplicate Title to Crown Land; Land Searches; Sale of Land; Nemo Dat Quod Non Habet; Compensation; Commissioner of Lands;

Agreement; Agreement for Sale of Land; Release and Waiver Agreement; Mistake; Error; Ministerial Authority; Compensation by Government due to Mistake; Legal Prohibition; Due Diligence; Bad Faith;

Public Policy; Agreement made contrary to Law; Agreement Subject to Legal Prohibition; Lack of Ministerial or Official Authority;

Restitution; Unjust Enrichment; Enrichment at Claimant's Expense; Enrichment Unjust; Failure of Consideration.

Before the Honourable: Mr. Justice Courtney A. Abel

Hearing Dates: 05th June 2019
19th July 2019.

Appearances:

Mrs. Samantha Matute-Tucker for the Claimant.

Mr. Estevan Perera for the Defendant.

WRITTEN JUDGMENT
Orally delivered on the 19th day of July 2019

Introduction

[1] This is a Claim brought by the Government of Belize ("GOB") against the Andre Vega ("AV") for the sum of $400,000.00 (four hundred thousand) Belize dollars by way of reimbursement of funds payed out By GOB to AV under a void agreement. .

[2] The claim relates to a purported contract dated the 3rd day of September, 2015 (for sale and purchase of land and release and discharge) between GOB and AV which the latter purchased from one Hilmar Alamilla (HA). Under this contract GOB paid to AV four hundred thousand dollars ($400,000.00) for an alleged duplication of Minister's Grant (erroneously called a 'Duplication of Title') in respect of the sale of this land to HA.

[3] GOB is now arguing that it paid the sum of $400,000.00 by mistake and that AV is not entitled to this sum because AV wrongly, and by mistake, received this sum as compensation from GOB because this sum was not due to him as he did not purchase any land from GOB. That as a result AV was not entitled to compensation from GOB as AV received it in bad faith, AV having not carried out any or and proper due diligence in relation to a filed purchase of the property from HA. That a due diligence by AV ought to have revealed that that neither GOB nor HA had any proper title to the property. Alternatively that contrary to public policy, as a consequence of the principle ('nemo dat quod non habet') no one (including GOB) can give that which it did not own (the land in question), or no one can transfer a better title than he himself has, that GOB could not have transferred to HA the property in question and in turn HA could not have transferred the property to AV, and therefore AV was not entitled to any compensation from GOB.

[4] GOB is therefore arguing that AV has been unjustly enriched and GOB is entitled to have the contract voided and declared contrary to public policy and as such ought to have the $400,000.00 returned.

[5] AV is denying the claim and is arguing that the purported contract as between he and GOB was valid and binding as between them.

[6] The central question for determination by this court is whether AV acted in good or bad faith in relation to the transaction of purchasing the land from HA?

Background

[7] AV is a businessman and also the son of the former Minister of Natural Resources (the substantive Minister at the time of the subject transactions).

[8] HA is a businessman from Orange Walk who knows AV and his family.

[9] By Minister's Fiat Grant No. 76 of 1988 the GOB sold 2.28 acres of land situate near the mouth of the Belize River ("the Lands") to one Mr. Carlton Russell.

[10] By Deed of Conveyance dated 8th June, 1988 the Lands was then sold and transferred to one Mr. Miguel Valencia for legal and valuable consideration of $50,000.00 (fifty thousand) dollars.

[11] The Minister of Natural Resources then executed Minister's Fiat Grant No. 182 of 2013 dated 7th May 2013[1] containing approximately 1.124 acres of Land along the Belize River, Belize District, (the Subject Land) in favour of HA, for the sum of $2,500.00 (Two Thousand Five Hundred dollars).

[12] The Subject Lands (1.124 acres), which HA apparently purchased from GOB, formed a part of the Lands (which was then owned by Miguel Valencia). There was therefore a duplication (or overlap) of Grant created by the action of the Ministry of natural Resources. This duplication, has, in the view of the court, wrongly been called a duplication of Title, as no 'title' could be passed by Minister's Fiat Grant No. 182 of 2013.

[13] There is no evidence of what, if any, due diligence HA conducted in relation to the Subject Land, including of public documents, by way of searching the Deeds Books and the land tax rolls. Nor is there any evidence that HA knew

[1] See Exhibit AV 1, Letter dated 27th July 2015 from Commissioner of Lands and Surveys attached to Witness Statement of AV.

of or failed to take account of the existence of any survey in relation to the Subject Land, the discovery of which would have revealed the fact that the property was not that of GOB.

[14] There is no evidence of whether HA took account of the existence of any survey in relation to the Subject Land, the discovery of which might have revealed the undoubted fact that the property was not that of GOB.

[15] Neither GOB nor AV tendered into evidence any executed Minister's Fiat Grant No. 182 of 2013. Therefore it cannot be said that GOB, whether through the Ministry of Natural Resources or otherwise, issued a plan in relation to this Grant. It is uncontested, however, that a Grant was so issued by the Minister of Natural Resources, being Minister's Fiat Grant No. 182 of 2013. This clearly suggests that this Grant was sanctioned by the then Minister of Natural Resources and possibly thereby GOB.

[16] AV at some unknown point became interested in purchasing the Subject Lands from HA.

[17] Prior to 30th December 2013 (date unknown) AV then decided to and apparently did conduct a search to verify if there existed a good root of title for the Subject Land and to verify if it was free and clear.

[18] Following the search AV then proceeded "to purchase" the Subject Land from HA on the strength and security, so he testified, that the title was issued by GOB through the Ministry of Natural Resources.

[19] AV then, apparently, so he testified, "purchased" the property on the 30th of December 2013 from HA. In the joint Defence of AV and HA it was averred by them that AV bought the property from HA for the sum of $15,000.00 BZE Dollars and it alleged that AV is therefore a bona fide purchaser for value without notice.

[20] There is no evidence before the court that prior to the purchase AV knew of Minister's Fiat Grant No. 76 of 1988.

[21] The witness for GOB, Wilber Vallejos, the Commissioner of Lands (from July 2010 to the date of trial), failed to produce evidence in support of the pleaded, and particularized case supported by reference to documents

annexed to the Statement of Claim which GOB filed. The Commissioner of Lands could therefore have exhibited to his witness statement the self-same records from the Ministry of Natural Resources revealing that at various times (5 occasions), HA purchased some 5 parcels of land from the GOB, and, within a relatively short period of time, HA then transferred such properties (including the Subject Land) to various members of the Vega family. Therefore this allegation, by default or otherwise, falls away and cannot be maintained by GOB in support of its case of collusion.

[22] Thus there is no evidence before the court, as pleaded and particularized by GOB in its Statement of Claim, that AV and HA had an existing relationship whereby HA would purchase land and thereafter (usually within six (6) months of purchase), would sell the same to individual members of the AV's family, including AV, as alleged by GOB in their Statement of Claim. The last of such alleged transactions relates to and concerns the Subject Land. As a consequence the Commissioner accepted that he was not alleging impropriety or corruption against AV.

[23] There is also therefore no direct evidence tendered by GOB of the alleged collusion between AV and HA to obtain, at a reduced purchase price, title for land which had belonged to the GOB. There may, however, be circumstantial evidence tending to show that the dealings between AV and HA was other than an arms' length transaction.

[24] In any event on or around the 22nd October, 2014 Mr. Phillip Zuniga Senior Counsel, wrote to GOB on behalf of his client, Miguel Valencia, the true owner of the Lands, requesting that Minister's Fiat Grant No. 182 of 2013, granted to HA, be voided as the Subject land belonged to his client.

[25] By a letter dated the 27th of July, 2015 from GOB (witness for GOB, Wilbert Vallejos, Commissioner of Lands and Surveys of the Ministry of Natural Resources) wrote to AV in which the Commissioner restated the history of how the "dispute" about the "duplication of tenure" arose including by the issuing of Ministers Fiat Grant No. 182 dated 7th May, 2013, the subsequent purchase, and then he stated as follows:

"It is the Department's understanding that you are willing to surrender your claim over the subject land provided that you are compensated fairly for the interest you have over the land.
This letter services to inform you that the Government of Belize is willing to accept the return of the freehold interest over the land and is offering the payment of $400,000.00 as full and final compensation for the freehold interest held by you.
Kindly confirm to us if your wishes are indeed to return the land to the Government of Belize and whether or not you are prepared to accept what is being offered as full and final compensation"

[26] On the 29th of July, 2015 by a letter written by AV to Wilber Vallejos, Commissioner of Lands[2], AV informed Mr. Wilbert Vallejos, the Commissioner of Lands that he had accepted their offer. The letter states:

"With reference to your letter sent on July 27th, 2015 Reference No. LS7507/295/15 with regards to 1.057 acres of land near mile 5, Phillip Goldson Highway as seen on Entry No. 14608; I accept your offer of $400,000.00 as full and final compensation for said property".

[27] By an Agreement made on the 3rd September 2015 (prepared in the office of the Ministry of Natural Resources) purportedly between one Dominique Michelle Gomez for/on Behalf of AV, as Vendor, and GOB, as purchaser, AV purported to sell the Subject Land, the subject of Minister's Fiat Grant No. 182 of 2013, described as *"..the fee simple absolute in possession free of encumbrances", for $400, 000.00.*

[2] Also copied and sent to the CEO, Ms. Sharon Ramclam.

[28] A payment plan was provided for in the Agreement made on the 3rd September 2015 which also provided:

> *"That upon full payment of the total sum payable hereunder to the Vendor by the Purchaser each party shall stand released from any and all rights of actions, liability, claims, demands, damages, judgments, and actions whatsoever relating to the subject matter of this dispute and acknowledge that this agreement shall constitute evidence of the extinguishment of any such claim and as a bar to any such right of action, liability, claim, demands, damages and judgments;"*

[29] It is conceded by Counsel for GOB that this Agreement was authorised by or on behalf of AV even though it was not signed by AV.

[30] The Agreement also purported to deal with the "Root of Title" "Representations and Warranties" "Possession of Property", "Transfer of Title" "Delays and Other Provisions" "Disputes" "notices" and "interpretation"

[31] There was no evidence presented by GOB that any sum was paid by GOB to AV as compensation. There was, however, an admission by AV in his Defence, in furtherance of the terms of this agreement, that AV returned to the GOB the original deed of conveyance and in turn received payment of $400,000.00 BZE from the Government of Belize/Ministry of Natural Resources.

[32] AV also testified that in furtherance of the terms of the agreement, he returned to GOB the original deed of conveyance and he "*executed the release agreement in exchange for the payment of $400,000.00 BZE as damages from the Government of Belize/Ministry of Natural Resources*". There was no other evidence presented to the court that AV received the sum of $400,000.00 nor was there any other evidence presented to the court that AV ever received from GOB the sum of $400,000.00.

[33] AV took no steps to register any interest in the Subject Land.

The Court Proceedings

[34] On the 23rd December 2016 the GOB filed a Claim Form against AV and HA. Claiming the following reliefs:

a. A declaration that the agreement entered into by the Defendant and the Government of Belize on the 3rd September, 2015 is contrary to public policy, illegal and void;

b. An order for the recovery of the sum of $400,000.00 (four hundred thousand) Belize dollars which the Defendant improperly received as compensation from the Government of Belize as a consequence of a deliberate breach by the Minister of Natural Resources of his fiduciary duty to the state and people of Belize;

c. An order for the accounting of all funds inclusive of $400,000.00 (four hundred thousand) Belize dollars which the Defendant improperly received as compensation from the Government of Belize;

d. An order for disgorgement of the sum of 400,000.00 (four hundred thousand) Belize dollars which the Defendant improperly received as compensation from the Government of Belize;

e. An order for damages against the Defendant, for unjust enrichment as a consequence of the breach of trust and the fact that the contract was contrary is contrary to public policy;

f. A Declaration that there was a violation of the Fiduciary duty imposed on the Minister of Natural Resources;

g. Alternatively, that the agreement to pay the sum 400,000.00 (four hundred thousand) Belize dollars as compensation by the Minister of Natural Resources was illegal, unlawful and contrary to public policy as being a violation of the Revenue Laws of the State;

h. Interest on the damages awarded;

i. Costs

j. Such further and other relief as this Honourable Court deems just.

[35] The Claim was supported by a statement of Claim also filed on the 23rd December 2016 in which the Claimant alleged that there was some kind of a scheme or collusions involving the then Minister of Natural Resources, his son AV and HA to purchase lands at a reduced price from GOB and then, in bad faith, recklessly and with wanton disregard for whether or not the land was the property of GOB, shortly thereafter transferred such lands to various members of the Vega family, contrary to public policy and with an intent to deny GOB revenues. This allegation of a scheme or collusions involving the then Minister of Natural Resources, his son AV and HA to purchase lands at a reduced price from GOB was subsequently withdrawn by Counsel for GOB.

[36] On the 16th March 2017 AV and HA filed a joint Defence and Counterclaim. In these documents the allegations of a scheme or collusion was denied and they otherwise fully set out the facts and circumstances of the case on which they relied.

[37] In the Counterclaim filed by the Defendants 16th March 2017 the Defendants sought the following reliefs :

1. A Declaration that both Mr. Vallejos, the Commissioner of Lands and Ms. Sharon Ramclam are agents of the Ministry of Natural Resources & Agriculture and at all material times acted for an on behalf of the said Ministry.
2. A Declaration that the Compensation Agreement formed by the various memorandums showing the offer by the Government of Belize / Ministry of Natural Resources and the acceptance by the First Defendant is binding on the parties.
3. A Declaration that the Compensation Agreement is binding on the parties and that the parties have both completed their obligations therein. That the Ministry of Natural Resources have paid the compensation as promised in exchange for the release and the First Defendant has released the Government of Belize / Ministry

of Natural Resources from any claims as to damages as requested.

4. A Declaration that the document signed on the 3rd of September, 2015 was simply to be a Release Agreement.
5. In the Alternative, if the Compensation Agreement is found to be of no effect, then the First Defendant claims the sum of $400,000.00 BZE as damages for the loss suffered by him due to the duplication of title by the Ministry of Natural Resources & Agriculture.
6. Interest thereon pursuant to section 166 of the Supreme Court of Judicature Act, and
7. Costs
8. Any further reliefs which the Court deems fit.

[38] On the 16th March 2017 the Defendant filed an application to strike out the claim as against the 2nd Defendant. The grounds of the application were:

1. That the Statement of Case discloses no reasonable grounds for bringing a Claim against HA.
2. All of the reliefs in the Claim Form are against AV and not HA.

[39] The Application was supported by the Affidavit of HA who deposed to the following:

1. That GOB's Claim Form and Statement of Claim does not raise any cause of action against HA.
2. That none of the reliefs claimed in the Claim were against HA.
3. That in the Statement of Case, the GOB focused on the Compensation Agreement, the Release Agreement and the eventual settlement payment between GOB and AV which did not concern HA.

[40] On the 25th April 2017 the Respondent was permitted to file and serve an Affidavit in reply on or before 4th May 2017. The application adjourned to 8th May 2017 at 1.00 pm.

[41] On the 8th day of May 2017 in Chambers by consent, or certainly without the objection of GOB, HA was removed as a party to the proceedings, and GOB was ordered to pay $750.00.

[42] On the 30th May 2017 the Order of the 8th May was filed but failed to note that the Order was by consent.

[43] No Defence to the Counterclaim has been filed by GOB.

[44] The court is unable to explain what thereafter happened to the file until sometime in early 2019 when a CMC was fixed for 18th February 2019.

[45] The CMC was heard on the 18th February 2019 when directions were given for disclosure and Witness Statements, and costs previously ordered to be paid by 28th February 2019. CMC adjourned to 25th March 2019.

[46] On the 25th March 2019 time was extended to 29th March for WSs. CMC adjourned to 1st April 2019.

[47] On the 1st April 2019 time was extended for filing of WSs. CMC adjourned to 8th April 2019.

[48] On the 8th April 2019 pre-trial directions were made including for PTMs. Pretrial Review adjourned to 6th May 2019 and provisional trial date fixed fo 5th June 2019.

[49] On the 6th May 2019 trial was fixed for the 5th June 2019.

[50] The trial was held on 6th June 2019 on which occasion Wilbert Vallejos, testified for GOB and AV on his own behalf. Oral Submissions were fixed for 19th July 2019.

Issues

[51] Whether AV acted in good or bad faith in relation to the transaction of purchasing the land from HA?

[52] Whether the subject agreement between AV and GOB is contrary to public policy, is legally enforceable, or is otherwise an affront to the public conscience of the people of Belize as a form of unjust enrichment by AV?

[53] Whether GOB is entitled to the reliefs which it seeks?

Whether AV acted in good or bad faith in relation to the transaction of purchasing the land from HA?

The Law

[54] The principle of '*nemo dat quod non habet'* also known as *'nemo dat rule'*, means no one can give that which he has not; or no one can transfer a better title than he himself has[3].

[55] The agreement dated 3rd September 2015 between AV and GOB purports to be a sale by AV of his interest in the Subject Land ("fee simple absolute in possession free from encumbrances") to GOB for the sum of $400,000.00 which, by reason of the *'nemo dat rule'*, may give rise to difficulties. Such difficulties would arise as the Subject Land was no longer owned by GOB and could not therefore be transferred by them.

[56] This Court has determined that as a matter of law, based on the *'nemo dat rule',* contrary to the submissions of Counsel for AV, that the Minister's Fiat Grant No. 182 could not create nor pass a valid title whether or not it contained all of the necessary signatures by the Minister of Natural Resources - at best all that it creates is a duplicate Grant.

The Facts

[57] As already noted at some unknown date prior to 30th December 2013 AV decided to and apparently did conduct a search in order to verify if there existed a good root of title for the Subject Land and to verify if it was free and clear.

[58] AV testified that he carried out the search as part of his due diligence and investigations, with a view to purchasing the Subject Land**.**

[59] The search result was, so AV testified, carried out by the Registrar on the Registrar's system (its data base) by personnel of the office of the Registrar of Natural Resources.

[3] Claim No 671 of 2012 Manuel Padron v the Minister of Natural Resources; The commissioner of Lands and Surveys & the National Estate Officer. Per Judgment of Sonya Young see paragraph 8.

[60] Under cross-examination AV testified that a report was not generated for the search.

[61] The Subject Land is apparently now subject to the registered land system but at the time of "purchase" the Subject Land, and the transaction between GOB and HA was unregistered. There was therefore subsequently a register. AV asked for a copy of the Register of the land. AV did not produce a copy of the Register to the Court. AV testified that on the search conducted by the Registrar of Natural Resources there is a notation on the Register that the property was owned by HA. The search apparently confirmed that Minister's Fiat Grant No. 182 of 2013 indeed existed and that there were no liens registered against the title. This has not been verified to the court by any documentation.

[62] To the Court AV testified that he also carried out a further search, as a result of which he got a physical document. AV then testified that he requested the records of the Subject Land and that records showed that it belonged to HA. AV testified that he then scheduled a meeting with Ministry of Natural Resources and was provided with a printout showing that HA was the sole owner of the Subject Land. In answer to the Court AV then testified that he was unable to find the printout of the search.

[63] Following the search AV testified that he then proceeded "to purchase" the Subject Land from HA on the strength and security that the title was issued by GOB through the Ministry of Natural Resources. The "purchase" from HA took place on the 30th December 2013.

Submissions of Counsel

[64] Counsel for the Claimant submits that AV was not a 'bona fide purchaser for value without notice'. Indeed when pressed she submitted that AV was not a purchaser at all as GOB could not sell what it did not own on the basis of the 'Nemo Dat' principle.

[65] Counsel for the Claimant also submits that in any event AV did not conduct a proper due diligence before his 'purchase'. That considerable doubt is cast over his evidence of a search and the 'Report' which he claimed to

have obtained and was never produced to the court. That despite all of that he accepted the $400,000.00 which was paid to which he was not entitled. That Public Policy now demands that it be returned due to his not conducting proper due diligence. That he therefore did not act in good faith.

[66] As counsel for AV has submitted that this is a very important case because it involves a Settlement Agreement which as a matter of Public Policy, is entered into between parties where GOB has issued duplication of titles and which persons, including investors in Belize, ought ot have confidence in such agreements entered into by GOB. That if doubt is cast on such agreements this would in effect cast a dark shadow over titles based on Minister's Fiat Grants and any Settlement Agreements resulting from duplication of titles arising from them.

Determinations

[67] In the view of this court this case is also important not least because it is a claim that has been brought by GOB against AV, who is not an outside investor but is also, as I have found, actually, or notoriously, the son of the Government Minister whose Ministry was intimately involved in this transaction. Therefore, this Court considers that this transaction has to be scrutinize extremely carefully to ensure that it's above board and of upmost propriety.

[68] This court also considers that this case also involves, as already indicated, the question of a so called Settlement Agreement which was entered into by Government Officials, again of the same ministry, the Ministry of National Resources. It is within this context that the question of good or bad faith arises and has to be carefully examined in relation to the transaction of the purchasing of the Subject Land.

[69] Let me just preface what I am going to say by saying what I've already mentioned during oral arguments, that I found the way in which the evidence in a case of this kind was presented, was not in the way and of the kind, in which, this court would expect evidence ought to have been or would normally be presented.

[70] I know for instance the Counsel who ultimately argued the case for GOB was not the person who originally pleaded the case and so, she certainly, may be absolve of any responsibility for the pleading. But there was some significant and unexplained departure from that pleaded for GOB. In board terms I have already noted the absence of any attempt to prove the alleged scheme or collusion between AV and HA in the evidence of GOB's sole witness; there having been already annexed to the Statement of Claim documents in support of such allegations.

[71] The presentation of the case, as I have already noted in the background facts, can be taken as findings of fact by this Court but there was a lot of evidence which was not presented to this Court including Minister's Fiat Grant No 182 of 2013, which I consider is a serious, and could have been a fatal, omission.

[72] Another concern this court has was, and I've expressed this, that documents which I would normally receive, be tendered into evidence in respect of land matters would certainly include all searches in respect of both the Lands and the Subject Land as well as all those documents relating to unregistered lands about root of title; and in respect of registered land, copies of the register. None of that was ever presented to this Court, it puts the Court in something of a difficulty both in relation to the Claim and the Defence.

[73] Having said all of that at the end of the day, Counsel for the Claimant first and foremost rested her case on the question whether AV did conduct a proper due diligence before he purchased the Subject Land.

[74] It would be readily observed that AV's testimony in relation to the due diligence was somewhat conflicting and lacking in cogency. Indeed I am satisfied that AV was discredited and I have concluded, having seen and heard him in the witness box, that he was not a credible witness. It was during cross-examination that he testified for the first time that he had obtained a physical document from his search. This document was not produced to the court and he testified that he could not find it.

[75] This court must express some surprise that if due diligence was conducted at the offices of the Ministry of National Resources, which was the Ministry from which that Minister's Fiat Grant No. 76 of 1988 emanated, it did not reveal that a Grant had already been made in relation to the Subject Land and would therefore be revealed by a search. This court does not know how this is possible especially as it seems that AV had what seems to be somewhat unusual access to computerized search within the Ministry of Natural Resources of which his father, no doubt, was the Minister.

[76] Frankly this court does not don't believe AV when he states that he conducted a proper search or carried out any due diligence. The evidence was conflicting and this court considers that AV was discredited in relation to the question of his good faith.

[77] But in any event, it seems to be the case that it is common ground between the parties that there had to be a mistake about the Grant in respect of the second Grant; and that being the case it seems to this Court (based on the *"nemo dat quod non habet"* principle) that the second Grant could not have passed title to the Subject Land.

[78] There is therefore a huge question mark in this Court's mind about the nature of the so-called due diligence which was carried out by AV before he purported to purchase the property from HA.

[79] This Court has already mentioned the context within which this case arises and in this context this Court is unable to say that AV acted in good faith in relation to the transaction of purchasing the land from HA.

Whether the subject agreement between AV and GOB is contrary to public policy, is legally enforceable, or is otherwise an affront to the public conscience of the people of Belize as a form of unjust enrichment by AV?

The Law

[80] The Agreement (dated 3rd September 2015) apart from purporting to be an agreement for sale and purchase also purports to be a release and waiver

agreement to take effect upon the full payment of the total sum of $400,000.00.

[81] The Government official upon signing the Agreement (for sale and purchase of land and/or a release and waiver), and upon paying to AV the sum of $400,000.00 under the Agreement (dated 3rd September 2015), if made contrary to law (i.e. is entered into by mistake or in error of or contrary to law), and thereby entered into without Ministerial or other authority, may be unenforceable and void and otherwise contrary to public policy[4].

[82] Where the underlying purpose of the legal provision, the Agreement, is to maintain control and safeguards of public monies for the benefit of the Belizean people, the entering into such an Agreement may be contrary to law or subject to a legal prohibition, and thus may be void and contrary to public policy[5].

[83] However in all the circumstances of the case any refusal by the court to enforce the terms of the Agreement, as being contrary to public policy, must be a proportionate response[6].

[84] It has been said and must be borne in mind, in relation to public policy, that:

> *"..it is an unruly horse. Once you get astride it, ...you never know where it will carry you." It is known to be "fluid, open-textured, encompassing potentially a wide variety of acts. It is conditioned by time and place. Religion and morality, as well as the fundamental economic, social political, legal or foreign affairs of the State in which enforcement is sought, may legitimately ground public policy concerns. Whether those concerns are of a substantive or procedural*

[4] Belize International Services Limited V AG, Civil Appeal No 36 of 2016, delivered on the 15th March 2019. Per Judgment of Campbell JA paragraph 34, 35, 36, 82, - 87.
[5] Ibid Paragraph 87
[6] Ibid Paragraph 87.

nature, if they are fundamental to the polity of the enforcing State, they may successfully be invoked[7]"

[85] To succeed in a claim for unjust enrichment three things needed to be demonstrated:

a. *that the defendant has been enriched;*
b. *that this enrichment was gained at the claimant's expense; and*
c. *that the defendant's enrichment at the claimant's expense is unjust[8].*

[86] The first three presuppositions are matters required to be proved by the claimant and the third is a matter of legal inference derived from the evidence[9].

[87] The Claimant must show that there is no juristic reason within the established categories that would deny its recovery (i.e. no binding, valid and enforceable contract, disposition of law, donative intent, and other valid common law, equitable or statutory obligation). Upon proving this the onus shifts to the defendant who must rebut the prima facie case by showing that there is some other valid reason to deny recovery[10].

[88] If these criteria are satisfied, the question arises whether there is any defence to the claim[11]. This principle has been recognised in the following situation:

"Enrichment will be unjust where there is a failure of basis or, in more traditional language a failure of consideration. There is no objection to using the term "consideration" provided that there is understood to have its broader, restitutionary meaning and is not

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[7] CCJ Appeal No CV 7 of 2012 BCB Holdings Limited & the Belize Bank Limited v The Attorney General of Belize [2013] CCJ 5 (AJ) Per Judgmetn of Mr. Justice Saunders Paragraph 21
[8] ***Banque Financière de la Cité v Parc (Battersea) Ltd [1999] 1 AC 221*** per ***Lord Steyne*** , Paragrah 7
[9] Civil Appeal No 13 of 2005 Caribbean Development (Antigua) Ltd v Electronic Technology International (Antigua) Ltd. Per Gordon JA, Paragraph 10.
[10] Ibid Paragraph 17. Per Binnie J in the Canadian Case of Pacific National Investments Ltd v Corporation of the City of Victoria (2004) 3 S.. C.R. 575
[11] Ibid

limited to failure to perform under a specific contract. The underlying idea of failure of basis is that a benefit had been conferred on the joint understanding that the recipient's right to retain it is conditional. If the condition is not fulfilled, the recipient must return the benefit.[12]"

[89] The principles which determine whether such a failure of consideration has occurred can be stated to include the following:

(a) The condition might consist in the recipient doing or giving something in return for the benefit (a promissory condition) or the existence of a state of affairs or the occurrence of an event for which the recipient has not undertaken any responsibility (a non-promissory condition).

(b) The basis must be jointly understood as such by both parties

(c) Failure of basis must not be confused with receipt of benefit.

(d) The Cause of action is generally restricted to the direct provider of the benefit only[13].

Facts

[90] In considering this issue, the Court will obviously rely on its previous findings of fact in relation to the previous issue: including that there was a mistake or error.

[91] In addition, of relevance to the present issue is the fact that because GOB had sold the Lands to Carlton Russell, and as a consequence of the principle that no one (including GOB) can give that which it did not own (the Land), or no one can transfer a better title than he himself has ('nemo dat quod non habet'), this court has concluded that GOB could not therefore transfer the Subject Land to HA.

[12] BVIHCVAP2012/0020 Featherwood Trading Limited v Fraunteld management Limited Per Mitchell JA paragraph 8

[13] Ibid Paragraph 9- 15

[92] As a result of the last mentioned finding of this court it follows that this Court has also concluded that HA could not therefore have transferred the Subject Land (or any interest in it or title to it) to AV.

[93] In relation to the letter dated the 27th of July, 2015 this Court has concluded that the statement that AV had a claim against GOB or that AV had a freehold or any interest in the land in question was clearly erroneous.

[94] This Court also concludes that it was also erroneous for the Commissioner of Lands in the letter dated the 27th of July, 2015, to state that AV was entitled to compensation from GOB; or that AV had the Subject land which it could return to GOB and for which AV could be compensated.

[95] In addition, in purported furtherance of the terms of the Agreement made on the 3rd September 2015, AV testified that he returned his original deed of conveyance and executed the release agreement in exchange for the payment of $400,000.00 BZE as damages from the Government of Belize/Ministry of Natural Resources. No other evidence, was however, presented to the court of the existence of any original deed of conveyance whether executed or otherwise.

Submissions

[96] Counsel for the Claimant submits that the sale of the Subject Land was otherwise contrary to public policy as AV was not a bona fide purchaser for value without notice; or indeed was not a purchaser at all.

[97] Counsel for the Claimant also submits that AV was therefore not entitled to compensation from GOB; and that if anyone was entitled to compensation that it would have been HA.

[98] Counsel for the Claimant also submits that there is no reason to deny the recovery for monies paid under the Agreement as AV has not provided any evidence in rebuttal to show this court any contrary reason that he is entitled to the retain the $400,000.00.

[99] Counsel for AV submits that there is no pleading of mistake or error or that there is an error in the Settlement Agreement. This Counsel submits that

the issue is whether or not the signed agreement is a sale agreement wherein AV is selling the Subject Property to GOB for $400,000.00.

[100] Counsel for AV also submits that GOB can enter into settlement agreements with parties when a situation of duplicate title is created by an error within the Ministry of Natural Resources. This allows the Ministry of Natural Resources and the Government of Belize to save cost and valuable court time.

[101] Counsel for AV further submits that the Agreement made on the 3rd September 2015, insofar as it is a release and waiver agreement, is valid and subsisting; and as its terms have been complied with, AV is now prevented from suing the Ministry of Natural Resources since they have executed this agreement in exchange for the payment of $400,000.00 BZE Dollars.

[102] Counsel for AV in addition submits that the entering into the release/ compensation agreement is not contrary to public policy and that it should be honoured.

Determinations

[103] This Court has concluded as a matter of fact and law that the Agreement made on the 3rd September 2015 seem to have been fundamentally flawed as it was based on errors which the Commissioner mentioned in the letters (it is not based on a valid claim in respect of the Subject Land).

[104] This court has also concluded that in relation to the letters which the Commissioner wrote and also replicated in the Agreement made on the 3rd September 2015, the same error or mistake, including that there was a (nonexistent) duplication of title, is repeated.

[105] This Court is not satisfied, and does not accept that there was a duplication of title. As already determined as a matter of law what may have occurred was a duplication of Minister's Fiat Grant, which at best, this Court considers, may have resulted in there having purported to be granted to AV an ineffectual title; or a title which was otherwise a nullity.

[106] This Court accepts that as a general proposition of law that GOB can enter into settlement agreements with parties when a situation of duplicate title is created by an error within the Ministry of Natural Resources; and that this may be perfectly legal as it allows the Ministry of Natural Resources and GOB to save cost and valuable court time.

[107] It seems to this Court from its previous findings or determinations that it is more likely than not, however, that AV is somehow significantly implicated in or otherwise contributed to or compounded that mistake, by his unsatisfactory or non-existence search. In other words, AV is not wholly innocent, but in fact is likely complicit in the mistake which is at the centre of the present claim and about which complaint and reference has been made by GOB and AV (a duplication of Grant); and which resulted in title not passing.

[108] This Court has therefore determined as a matter of fact or inference that AV more likely than not, or ought to have, found out about the earlier pre-existing Minister's Fiat Grant in relation to the Lands if he had done a proper search in relation to the Subject Land.

[109] The other error that is relevant to the present issue relates to the question whether AV had a claim against GOB. This Court has come to the conclusion that if AV had a claim against anyone, that he may have a claim against HA. It was from HA that AV purported to buy the property. It was HA who was required to pass a good title to him. It was HA who did not pass a good title and who may have been in breach of contract with AV – not GOB.

[110] This Court as a matter of law and fact could not therefore find there was any privity of contract between AV and GOB; or indeed could not find that there was any privity of estate between them, as GOB no longer had any interest in the property. GOB had divested its interest in the Subject Land to a third party and that is what has led this Court to wonder whether this whole case is not all about smoke and mirrors.

[111] This Court cannot see how GOB was entitled to compensate AV in respect of this transaction.

[112] This Court accepts that GOB did not expressly plead mistake or error or that there is an error in the Settlement Agreement, but, however, this Court has concluded that GOB did base its claim on the 'nemo dat principle' which by implication asserts that there was an error or mistake. Such error or mistake is that GOB could not pass what it did not have, and that therefore the agreement (based on an error) could not be a sale agreement wherein AV was selling the Subject Property (which he did not own) to GOB for $400,000.00.

[113] This Court also accepts that GOB can enter into settlement agreements with parties when a situation of duplicate title is created by an error within the Ministry of Natural Resources. That this would, in such cases, allow the Ministry of Natural Resources and GOB to save cost and valuable court time. However this Court has concluded that the Agreement made on the 3rd September 2015, insofar as it is a release and waiver agreement, is not valid and subsisting as it is based on an error or mistake, and is therefore void. That even though its terms have been complied with, AV is not now entitled to retain the $400,000.00.

[114] This Court has therefore concluded that the agreement, by reason of being void and a nullity, that it is against public policy for GOB to be paying compensation to AV.

[115] This Court has concluded that such compensation is not due to AV by GOB. This Court has arrived at this conclusion given the overall context in which this whole case arises and which this Court has already indicated requires this Court to carefully scrutinize this case.

[116] This Court has come to the conclusion that AV's defence does not pass muster for having any kind of cogency and nor does it amount to a legitimate defence as mounted by AV as to why the $400,000.00 should not be returned.

[117] This Court has in addition come to the conclusion that as a result, AV has been unduly enriched by receiving the $400,000.00 from the GOB and that this enrichment was gained at GOB's expense. Also that such enrichment was unjust. It was unjust in the view of this Court because there was a total failure of consideration by AV in relation to the contract on which AV based his defence: that he had some kind of property which he was handing back to GOB or that AV had anything to which he had any entitlement or right or interest in the property the subject of the Grant which had by way of duplication been made to HA. Based on the "*nemo dat"* principle he had nothing, again, it smacks off smoke and mirrors to use the colloquialism.

[118] If AV has a valid claim this Court has concluded that such a claim may be3 against HA. Up to now, this Court cannot fathom why either or both of the parties would have wanted HA to be removed from these proceedings. His presence in these proceeding, if the present defence is to have a viability, may have been beneficial, in the view of this Court, and might have grounded the basis of an Ancillary Claim by AV against HA; or he could otherwise have been a witness in these proceedings. This Court would have been very interested to hear what HA would have had to say. But this Court is unable to find that the defence raised against this public policy issue has any proper basis.

[119] So, there's a mistake or error here which looms large over this issue relating to the state of affairs of this transaction for which AV has not undertaken any responsibility in the nature of passing any consideration which objectively can be taken to be jointly understood by AV and GOB; specifically that nothing passed from AV to GOB.

[120] GOB, as the direct provider of the benefit, the $400,000.00, has therefore a valid cause of action, and, in all the circumstances of the case, with nothing in return from AV, is entitled to have this sum returned. GOB having proven that AV has been enriched by receipt of the $400,000.00 and also proved that AV has gained this sum at GOB's expense, it may be inferred from all

the facts and circumstances of the case that it would be unjust to allow AV to retain that benefit.

[121] This court has also concluded that there is not juristic reason, such as a binding, valid or enforceable agreement, to deny GOB its claim for unjust enrichment; and AV has not, in the view of this court, rebut the prima facie case made out by GOB, by showing some valid reason to deny recovery.

Whether GOB is entitled to the reliefs which it seeks?

Determinations/Conclusions

[122] It follows from all that this court has said that it is unable to sanction the transactions which forms the basis of AV's defence (which is the so call duplicate title or what I have called the duplicate Grant) passing anything. This Court is unable to sanction that the duplicate title passes anything.

[123] This court has concluded that the Commissioner of Lands and all those people in the Ministry of Natural Resources were laboring under a mistake or error of law and fact. This Court has concluded that AV is not entitled to the $400,000.00 and ought to return it.

[124] The Court will grant a declaration that the later grant was issued in error and that the agreement entered into by AV and GOB on September 2015 is unenforceable as it was based on a mistake, as I've said, of fact and law and is therefore contrary to public policy and void.

[125] The Court will grant an order for the recovery of the sum of BZ$400,000.00 which AV received in error or by mistake as compensation from GOB to AV. This court will also grant an order for the disgorgement of their $400,000.00 which AV by mistake or in error received as compensation from GOB.

[126] Alternatively, this court will order that the agreement to pay the $400,000.00 as compensation by GOB was paid by mistake and in error and contrary to public policy.

Costs

[127] Having heard Counsel for the parties and their joint position that the duplicate Minister Fiat Grant may be at the root of the present dispute and

as a result it is appropriate for there to be no order as to costs, this court will make such an order.

Disposition

[128] Judgment will therefore be entered for GOB and the following declarations and orders will be granted:

1. A declaration that the agreement entered into by AV and the GOB on the September, 2015 was made by mistake or in error and is therefore contrary to public policy and void;
2. An order for the recovery of the sum of $400,000.00 (four hundred thousand) Belize dollars which AV received in error or by mistake as compensation from GOB to AV;
3. An order for disgorgement of the sum of $400,000.00 (four hundred thousand) Belize dollars which the AV by mistake or in error received as compensation from GOB;
4. Alternatively, that the agreement to pay the sum $400,000.00 (four hundred thousand) Belize dollars as compensation by GOB was paid by mistake or in error and contrary to public policy;
5. No Order as to Costs

The Hon. Mr. Justice Courtney A. Abel

31st July 2019