

**IN THE SUPREME COURT OF BELIZE A.D. 2017**

**Claim No. 393 of 2017**

**BETWEEN**

**BELMOPAN LAND DEVELOPMENT CORPORATION LTD. Claimant**

**And**

**THE ATTORNEY GENERAL Defendant**

**BEFORE THE HONOURABLE MADAM JUSTICE LISA SHOMAN**

**HEARING DATE: AUGUST 3, 2022**

**WRITTEN SUBMISSIONS**

**Claimant: July 27<sup>th</sup>, 2022**

**Defendant: July 27<sup>th</sup>, 2022**

**APPEARANCES:**

**Ms. Naima Barrow for the Claimant/Applicant**

**Ms. Samantha Matute Tucker for Defendant/Respondent**

**DECISION ON APPLICATION FOR DIRECTIONS FOR  
AN ASSESSMENT OF DAMAGES**

1. On August 3, 2022, the parties to this claim consented to the Court dealing with an application by the Claimant, on written submissions by both parties. The Claimant was seeking directions for further hearing of this claim, pursuant to an order of the Caribbean Court of Justice in CCJ Appeal No. BZCV2021/002 dated 31st January, 2022.
2. On January 31, 2022, the CCJ, by a majority decision in CCJ Appeal No. BZCV2021/002 vindicated the decision of the trial Judge, Arana J (as she then was), agreed to remit this claim to this Court for a further hearing.

3. The dispute concerned the value of 1,394 acres of land acquired, by the Government of Belize ('GOB') from a Belizean landowner, Belmopan Land Development Corporation ('BLDC'). BLDC allowed the GOB to assume ownership of all 1,394 acres in exchange for payment by GOB of the fair market value. When negotiations between the parties in respect of the agreement on the fair market value proved unsuccessful, BLDC filed a constitutional action claiming damages.
4. The trial judge accepted the opinion of BLDC's valuator that all the land should be valued as 'city expansion' land at \$11,549.00 BZD per acre or a total of \$16,099,306.00 BZD. A narrow majority of the CCJ decided that the manner in which BLDC's valuator arrived at his conclusions were flawed and the case should be remitted for further evidence to be taken, and the minority were of the view that the decision of the trial judge should be reinstated.
5. On April 13, 2022, the Claimant/Applicant filed an Application supported by the Affidavit of Jaraad Ysaguirre, Director of the Claimant Company seeking Directions from this Court for the further hearing of this Claim as mandated by the CCJ. The Respondent does not contest the Application - and the main point of contention between the Parties is the practical effect of the CCJ decision, and the manner in which this Court should exercise its mandate from the Apex Court. Both parties have provided helpful written submissions for which I am grateful.
6. The issues before this Court are as follows:
  - a. What is the extent of the CCJ Order in respect of a further hearing in this claim?
  - b. What directions should this Court order to conduct the further hearing?
7. The Application for Directions in respect of the further hearing of the matter before this Court is granted and the consequent directions are that the Experts shall prepare a written report as detailed in Paragraph 18 below. Questions may be put in writing to the Experts,

who shall reply in writing. No further expert will be appointed; the Court declines at this stage to appoint an assessor; and there is no Order for costs. The reasons for the decision appear below.

## **WHAT IS THE EXTENT OF THE CCJ ORDER?**

8. The Parties agree that directions are necessary in order that there be an appropriate process adopted to decide on the fair market value of the property subject of the claim.
9. Upon careful analysis of the CCJ decision, I subscribe to the submission made by Claimant's counsel<sup>1</sup> that the upshot of the apex Court was as follows:
  - (i) set aside in its entirety the decision of Arana CJ<sup>2</sup>,
  - (ii) order a new assessment of damages<sup>3</sup>,
  - (iii) order, necessarily, the receiving of new evidence<sup>4</sup> and,
  - (iv) order the hearing before a different trial judge<sup>5</sup>.
10. A considered perusal of the submissions for the Defendant show that Counsel does not gainsay this.
11. This Court is urged by the Claimant<sup>6</sup> that the "*way in which to proceed with the further hearing is best decided by identifying the core points of the CCJ decision*" and the core points are stated succinctly in her paragraph 13<sup>7</sup> as follows : "here are the core points:
  - (1) Neal used the purpose of the acquisition as the determinative consideration for arriving at market value. **[66]**

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<sup>1</sup> Claimant's Submissions in Support of Application for Directions, Paragraph 7

<sup>2</sup> CCJ Appeal No. BZCV2021/002, 31st January 2022. Paragraph 8

<sup>3</sup> Ibid, Paragraph 9

<sup>4</sup> Court of Appeal Civil Appeal No. 39 of 2018 at Paragraph 70]

<sup>5</sup> Ibid

<sup>6</sup> Claimant's Submissions in Support of Application for Directions, Paragraph 10

<sup>7</sup> Ibid, Paragraph 13

- (2) He ‘felt driven’ to value all the land premised on the purpose of city expansion. **Ibid.**
- (3) Even assuming that purpose applied to all the land, not every acre of the land will have a uniform value. **[67]**
- (4) Neal was wrong in making no allowance for land that would have to be used for drains, roads, highways, reserves and provisions for utilities. **[69]**
- (5) Neal’s valuation was, therefore, inflated. **[71]**
- (6) Further evidence should be taken. **[75]**
- (7) The trial judge is ‘urged’ to ‘*make such use of Part 32 (Experts and Assessors) as the judge considers reasonable so as to assist ... in arriving at a fair market value ...*’; **[79]**
- (8) ‘*In any event, the Judge shall consider all the evidence already presented. Mr. Neal and Mr. Cruz shall make themselves available for any further questions as the parties or the court may consider necessary. ... the Judge [must] receive and consider any and all evidence that the court may think to be relevant.*’ **[79]**
- (9) The case is remitted to a trial judge for further hearing. **[182 (i)]**<sup>8</sup>

12. The Defendant does not dispute this at all, and both parties agree that the exercise entrusted to this Court is for a further hearing and not for a re-hearing. Both parties also agree that this Court needs to be equipped with all evidence available in order to determine fair market value of the property. In fact, the Defendant’s written submissions<sup>9</sup> remind me of the following words of the CCJ at Paragraph 79:

***“We would therefore urge the trial judge to make such use of Part 32 of the Civil Procedure Rules (which deals with Experts and Assessors) as the judge considers reasonable so as to assist the judge in arriving at a fair market value of the expropriated land. In any event, the Judge shall consider all the evidence already presented. Mr Neal***

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<sup>8</sup> Numbers in bold indicate the corresponding paragraph number of the CCJ Decision

<sup>9</sup> Submissions On Directions For The Assessment of Damages On Behalf Of The Defendants Paragraph 4

*and Mr Cruz shall make themselves available for any further questions as the parties or the court may consider necessary. The aim must be to have the Judge receive and consider any and all evidence that the court may think to be relevant.”*

#### **WHAT DIRECTIONS SHOULD THIS COURT ORDER?**

13. I am urged by the Defendant<sup>10</sup> to utilize Part 32 of the Supreme Court Civil Procedure Rules and appoint an expert or assessor to assist in order to arrive at a fair market value. The Defendant argues that there are competing valuation utilized by Mr. Neal and by Mr. Cruz and that this Court could be assisted by the appointment of a further expert qua valuer, or even an assessor, to determine the most appropriate valuation method to be utilized in this claim.
14. The Claimant while conceding that “*any further evidence must include further testimony from Neal or Cruz, as the parties or the court may seek*”<sup>11</sup>, says that “the further hearing is to consider evidence (not witnesses) further to (not necessarily different from or in place of) the evidence already received”...<sup>12</sup>
15. The Claimant seeks to distinguish the impact of the CCJ order on this Court, by contrasting it with that order made by the Court of Appeal who “ordered that there must be a new assessment based on the finding that the judge erred in accepting the evidence of Mr. Neal. In contrast, the CCJ order does not require a new assessment or a rehearing: it requires a further hearing to receive further evidence.”<sup>13</sup>
16. In all the given circumstances of this claim, such further evidence which this Court is required to obtain is to elucidate by a further hearing, the necessary evidence in order to

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<sup>10</sup> Ibid, Paragraphs 5 and 8

<sup>11</sup> Claimant’s Submissions in Support of Application for Directions, Paragraph 15

<sup>12</sup> Ibid, Paragraph 14

<sup>13</sup> Ibid, Paragraph 16

arrive at a fair market value for the property. Adding a third valuer would only, in my view, at this stage open the possibility of another round of objections and counter-arguments as to the method used, and or the provision of yet another method of assessment and/ or a different valuation from the two which are already provided by Messrs Neal and Cruz. Such an appointment would not, in my considered estimation, assist this Court at this stage and I decline to exercise the discretion to appoint another valuer.

17. I do not rule out the possibility that once further directions are given and further evidence obtained, that the Court might thereafter need an assessor to weigh any technical evidence, provide a written report or assist at trial with the evidence of the expert witnesses called by the Parties, but I decline to exercise that discretion now.

## **ORDERS**

18. The following directions are made:

1. The experts Mr. Neal and Mr. Cruz shall each prepare a written report to be filed on or before November 15, 2022, in which the expert shall provide such evidence as needed to address the following matters in respect of his valuation:
  - (a) the weight given to the purpose of the acquisition;
  - (b) whether a uniform value was given to each acre of land or if an average was used or was any other method of valuation per acre used and why;
  - (c) whether the price per acre factored matters such as access and/or infrastructure, such as streets, roads, drains, sewage disposal, electricity and the like, and amenities such as parks/playgrounds
2. Parties may submit written questions to the Experts on or before November 30, 2022

3. The Experts shall reply to questions in writing on or before December 15, 2022
4. The Hearing of this Matter will be set for January 16, 2023
5. Costs are in the cause.

DATED OCTOBER 18, 2022.

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**LISA M. SHOMAN**  
**JUSTICE OF THE SUPREME COURT**