

IN THE SUPREME COURT OF BELIZE, A. D. 2013

CLAIM NO. 54 OF 2007

(REUBEN CARR	CLAIMANT
(
BETWEEN (AND	
(
(THE ATTORNEY GENERAL	FIRST DEFENDANT
(EMILIO B. ZABANEH	SECOND DEFENDANT
(MICHELLE ZABANEH	THIRD DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mr. Philip Zuniga, S. C., for the Claimant

**Ms. Iliana Swift, Crown Counsel in the Attorney General's Ministry, for
the First Defendant**

Mrs. Melissa Balderamos Mahler for the Second and Third Defendants

D E C I S I O N

1. This is an assessment of damages concerning a parcel of land which is the subject of two consent orders granted by this Honorable Court. The first order made by Muria J. on December 19th, 2007 ordered that by consent of the Claimant Reuben Carr and the First Defendant

the Attorney General, that damages should be assessed for trespass to the Claimant's property. The second order was made by me by consent of the Second and Third Defendants Emilio and Michelle Zabaneh and the First Defendant the Attorney General on June 12th, 2012. That order stated that damages should be assessed and interest thereon be paid to the Second and Third Defendants by the First Defendant as compensation for the loss of their property.

The Facts

2. This matter arose when the Ministry of Natural Resources, without any authority and without notice to the Claimant, wrongfully took a parcel of land which belonged to the Claimant and gave it to the Second and Third Defendants. The Claimant held title as fee simple owner of Block 621 comprising 12 acres 1 rood 28 poles of land situate in the Canada Hill Road approximately ½ miles south of the junction with Stann Creek Valley Road. In his witness statement dated February 9th, 2012 the Claimant Reuben Carr exhibits his title to the property as Minister's Fiat Grant No. 324 of 1984 Exhibit "RC-1". He also attaches a Plan showing the boundaries of the property as "Exhibit RC-2". Mr. Carr has paid all taxes due on his land.

3. On May 31st, 2004, the Ministry of Natural Resources without the knowledge or consent of Reuben Carr gave the said Block 621 to Emilio Zabaneh (also known as Basilio Zabaneh) and Michelle Zabaneh. The Zabanehs purchased leasehold interest in the said Block 621 from one Joseph Carr in August 2003 for the sum of \$20,000.00. Joseph Carr had previously held a leasehold interest in Block 621 by virtue of Lease No. SC 126/2003, and on September 9th, 2003 Joseph Carr sought and obtained approval from the Ministry of Lands to transfer his leasehold interest to Basilio Zabaneh. This Approval to Transfer Lease form is attached to the Affidavit of Emilio Basilio Zabaneh dated April 28th, 2013 as Exhibit "EZ-1". On the same date, Basilio Zabaneh also obtained from the Ministry of Natural Resources Approval to have the lease transferred to him (Exhibit "EZ-2"). Basilio Zabaneh then applied for and obtained approval from the Ministry to purchase the land and that was granted to him on October 1st, 2003 (Exhibit "EZ-3"). On November 5th, 2003, the purchase price of \$1,564.59 and stamp duty of \$78.23 was paid by Emilio Zabaneh to the Ministry for the purchase of the property known as Block 621 consisting of 12.425 acres of land situate along Canada Hill Road, Stann Creek District.

Emilio and Michelle Zabaneh then entered into possession of the property in 2003.

4. On May 15th, 2004, Minister's Fiat Grant No. 277 of 2004 was granted by the Ministry to Michelle and Emilio Zabaneh jointly (as shown by copy of Fiat and Plan in Exhibit "EZ-5"). Mr. Zabaneh and his wife proceeded to pay taxes on the land as shown by receipts Exhibit "EZ 6" and to develop the land and construct a dwelling house on it as shown by photographs Exhibit "EZ-7". The Zabanehs were unaware of the existence of Reuben Carr's title to the property. They made various developments to the property during the years that they occupied it and it is for the cost of those developments they now seek compensation from the Ministry of Natural Resources as their title has been declared void by the court and they have had to move from the property. They have attached a valuation report from Calvin Neal to assist the court in assessing damages on their behalf. On the 5th June, 2012, the Attorney General accepted liability and this court made an order by consent of the parties that judgment be entered in favor of the Second and Third Defendants Emilio and Michelle Zabaneh on their Ancillary Claim. It was further agreed and ordered that the First Defendant the Attorney General shall pay to

the Second and Third Defendants damages and interest thereon, as well as costs as agreed or assessed.

5. While all this development on his property was taking place, Reuben Carr still held title to Block 621 by virtue of his Minister's Fiat Grant No. 324 of 1984. During the years 2003 to 2006 that the Zabanehs occupied and developed the property, Reuben Carr was unaware of what was happening as he was living in the United States and duly paying the taxes on his land as shown by government receipt attached to his affidavit dated September 27th, 2007(Exhibit "RC-3"). However, as soon as he found out about the presence of the Zabanehs on his property Reuben Carr instructed his attorney Mr. Philip Zuniga, S. C., to write the Defendants and the Ministry to inform them of the position and to ask that the Defendants vacate his property immediately (Exhibit "RC-5" and Exhibit "RC-6"). These letters are both dated April 3rd, 2006 written by Mr. Zuniga, S. C., to the Defendants Emilio and Michelle Zabaneh, and to the Minister of Natural Resources Johnny Briceno, respectively. Having received no response to either letter, Mr. Zuniga commenced this claim for a declaration that Minister's Fiat Grant No. 277 of 2004 issued to Emilio and Michelle Zabaneh be declared void, an order for

possession, damages for trespass. In the alternative, the Claimant sought mesne profits. He also claimed interest and costs. On November 17th, 2007 the Attorney General agreed to accept liability and by consent of the parties, Muria J. made an order that the Minister's Fiat Grant No. 277 of 2004 dated the 31st day of May, 2004, purporting to grant Block 621 comprising of 12.291 acres of land in the Canada Hill Area, Stann Creek District, to Emilio Zabaneh is void (Exhibit RC-7). It was also adjudged and ordered that the First Defendant the Attorney General would pay Reuben Carr damages for trespass to be assessed and interest thereon to be assessed along with costs to be agreed or taxed. Despite being served on November 11th, 2010 with the order of Muria J, the Defendants refused to move until November 9th, 2011 when they finally vacated the property. Reuben Carr has provided the court with a valuation by George Moody, Property Appraiser to assist in the assessment of damages in this matter.

Assessment of Damages for Reuben Carr

6. In his written submissions filed on behalf of Reuben Carr on May 24th, 2013, Mr. Zuniga, S. C., is seeking damages for trespass to his

client's property for the period May 31st, 2004(the date on which the Ministry issued Minister's Fiat Grant No. 277 of 2004 to Michelle and Basilio Zabaneh) until 9th November, 2011 (the date when the attorney for the Defendants sent an e-mail stating that the Defendants had vacated the land). In support of this claim, Learned Counsel Mr. Zuniga, S. C., cited **McGregor on Damages** 17th Edition page 1152 as follows:

Para. 34-039 *“Where the defendant wrongfully deprives the claimant of his land, the claimant will generally wish to recover not the value of the land but the land itself. The principal action is therefore an action for recovery of the land, historically better known as the action for ejectment. Damages will thus generally be limited to loss arising from the period of wrongful occupation by the defendant.”*

7. Mr. Zuniga also submits that *“the normal measure of damages is the market rental value of the property occupied or used for the period of wrongful occupation or user”* para. 34-041 **McGregor on Damages** 17th Edition page 1152. Learned Counsel also cites the Privy

Council case of **Inveriguie Investment v. Hackett** [1995] 1WLR713

PC where the court held that:

“A person was entitled to recover damages from a trespasser who wrongfully used his property irrespective of whether or not he could show that he would not have let the property to anyone else and whether or not he could have used the property himself. Although the Plaintiff might not have suffered any actual loss by being deprived of the use of his property, he was entitled to recover a reasonable rent for the wrongful use of his property by the trespasser, and similarly, although the trespasser might not have derived any actual benefit from the use of the property, he was obliged to pay a reasonable rent for it.”

8. I have read the appraisal of George Moody, Property Appraiser, which has been attached to the affidavit of the Claimant dated December 15th, 2011 (Exhibit “RC-12”). In his report, Mr. Moody stated that he inspected the property on November 22nd, 2011 to determine the present Rental Value. He further stated that in assessing the current rental value, he considered rentals paid for

comparable space and services. He said that he also took into account the current environmental, economic, social and government trends as well as conditions peculiar to the property and its location. Mr. Moody said that the highest and best use of the land because of its location is for agricultural purposes. He estimated that the present rental value of the land would be \$4,200.00 per month. Mr. Zuniga is asking the court, based on this figure, that the sum of \$375,000.00 be awarded to Reuben Carr as damages for trespass from May 31st, 2004 (date Grant 277 of 2004 was issued to the Zabanahs) to November 9th, 2011 (the date the Zabanahs vacated the property). I agree and I therefore award the Claimant the sum of \$375,000.00 as damages for trespass to his property.

9. I also award Reuben Carr interest at the rate of 6% per annum pursuant to Section 166 of the Supreme Court of Judicature Act from the date of the claim until the date of judgment.
10. Prescribed costs are also awarded to Reuben Carr in accordance with Part 64 of the Civil Procedure Rules Appendix B.

Assessment of Damages for Emilio Zabaneh and Michelle Zabaneh

11. I now turn to the assessment of damages on behalf of Emilio and Michelle Zabaneh. Emilio Zabaneh filed an affidavit on damages dated April 29th, 2013 to which he has attached a report from Certified Valuer Calvin Neal. Emilio Zabaneh deposed in paragraphs 15 to 20 of his affidavit of the developments that he and his wife made to the property since they took possession in 2003. He said that they constructed a farm house that was used as their private dwelling and he attached photographs of the house (Exhibit EZ-7). In paragraph 29 he states that when they vacated the property he and his wife removed the movable concrete plycem house that they had constructed but left the pump house and caretakers house on the land. Emilio Zabaneh also said they constructed a security/caretaker's house, a thatched roof palapa, pump house and a store room as shown in Exhibits EZ-8 and EZ-9). The Zabanehs also planted various trees such as lime, guava, mango, mahogany, orange, grapefruit, breadfruit, soursop and cashew on the entire 12 acre parcel as shown in Exhibit EZ-10. Emilio Zabaneh said at paragraph 18 that when they entered into possession and occupation

of the land in 2003, there was no water or electricity. They installed a water system and pump on the land and placed a water reservoir on it. They also paid to have electricity lines and an electricity system run to the parcel. They also fully cleared the entire parcel and pushed through a road as shown in Exhibit EZ-11. They landscaped the property, placed drainage on it and regularly bush hogged the land on a bi-monthly basis. He also stated that he and his wife borrowed significant sums of money to invest in the development of this property. He said at the time they took possession they had no knowledge of the Claimant's title, and they relied on the title issued to them by the Ministry of Natural Resources.

12. I have looked at the report of Calvin Neal attached to Emilio Zabaneh's affidavit as Exhibit "EZ-12" dated January 6th, 2011 in which he states that his Summary Appraisal report is intended to comply with the requirements in SR 2-2 of the Uniform Standards of Professional Practice (USPAP) and the provisions set forth by the International Real Estate Institute (IRE). Mr. Neal said that he inspected the property and his findings are based on this inspection on January 6th, 2011 and valid for two years in the first instance. He stated that the market value was established assuming that the

subject property is held freehold without encumbrance and taking no account of business conducted thereon. The assets included in his valuation are real estate comprising land, buildings, normal building service, land improvements, water, electricity and infrastructure as follows:

Plycem residential house of 1020 sq feet	\$150,000.00
Road improvements	\$65,000.00
Water system	\$50,000.00
Electricity system	\$35,000.00
Land development	\$300,000.00
Upkeep for 10 years	<u>\$60,000.00</u>
Total	<u>\$660,000.00</u>

13. I accept the findings of Mr. Neal and I find his report to be quite helpful. However, I will not award the Second and Third Defendants the \$150,000.00 they seek in relation to the house since by their own admission they dismantled the house and took it with them when they vacated the property. I find all the other items proven and I therefore award the Second and Third Defendants the sum of \$510,000.00 as compensation.

14. I also award 6% interest on this sum from the date of the Ancillary Claim until date of judgment.
15. I award prescribed costs to the Second and Third Defendants in accordance with Appendix B of Part 64 of the Civil Procedure Rules.
16. I need to state that I also read the affidavit of Mr. Glenroy Ferguson dated 24th April, 2012 and filed 26th April, 2012 on behalf of the First Defendant the Attorney General. Mr. Ferguson states that he is Acting Senior Valuer at the Valuation Department, Ministry of Natural Resources, and has been so employed for approximately 11 years. He said that acting on a directive from the Minister of Natural Resources he visited the property known as Block 621 situate in the Canada Hill Area, Stann Creek District and he conducted an inspection on January 21st, 2011. He made the following findings which he submitted in a report "Exhibit GF-4":
 - a) Block 621 is approximately 12 acres 1 rod and 28 poles that is 12.2921 acres in size;
 - b) Electricity, water and telephone services are available in the area;

- c) The area is an agricultural area and may remain so for a long time. Block 621 is situated along the Canada Hill Area and is easily accessible;
- d) The entire property is cleared with a few bearing and non-bearing fruit trees on it. I am aware that this property had a bungalow building constructed of plycem, a thatched shed, a pump house and a guard house. However, upon my inspection, the only structures on it were a pump house and a guard house.
- e) Based on my observations, the highest and best use of the property is for agricultural and residential purposes; and
- f) The improvements visible on the property are that it was mechanically cleared and has two small structures, a pump house and a security booth.

17. Mr. Ferguson stated that the Direct Comparison Approach, which compares how land of similar nature and location are sold on the market, was the best method to value the property and that is what he used. His assessment is that based on Block 621's location, size

and accessibility and type of development, he valued it as \$6,500.00 per acre or \$80,000. He also found that if the property was in an undeveloped state the rental value would be \$80.00 per month or \$960.00 per annum.

18. I find that the reports of Mr. George Moody and Mr. Calvin Neal were more detailed and of greater assistance to the court in assessing the value of this property. I found the valuation conducted by Mr. Ferguson to be extremely brief and I found the valuation to be excessively low and lacking in necessary detail, for example, he failed to put a value on the fruit trees found on the property or the costs incurred by the Second and Third Defendants in putting improvements such as water, electricity and telephone on the land.

I therefore cannot rely on Mr. Ferguson's report in assessing the value of this property for the assessment of damages in this matter.

Dated this 13th day of December, 2013

**Michelle Arana
Supreme Court Judge**