

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

**CLAIM NO. 373 OF 2013**

**BETWEEN:**

**DEBORAH SPAIN**

**Claimant**

**AND**

**THE COMMISSIONER OF LANDS & SURVEYS  
THE ATTORNEY GENERAL**

**Defendants**

**In Chambers.**

BEFORE: Hon. Chief Justice Kenneth Benjamin.

January 14 & 21, 2014.

Appearances: Mr. Dean Lindo, SC for the Claimant.  
Ms. Trienia Young, Senior Crown Counsel, for the Defendants.

**JUDGMENT**

[1] These proceedings are for the assessment of damages in respect of the Fixed Date Claim brought by the Claimant seeking declarations and damages with interest. The Claim concerns property described as Block 7, Parcel 5444 in the San Pedro Registration Section, Belize District (“the property”).

[2] On October 21, 2013, the Court entered by consent a declaration that the purported cancellation by the first Defendant of the Claimant’s purported leasehold

interest is null, void and of no effect. It was further ordered that damages be assessed by the Court and directions were given for the hearing.

[3] In the year 2006, the Claimant made an application in writing in the prescribed form for permission to lease a parcel of land in San Pedro Town from the Government of Belize. On April 20, 2006, she was granted permission to survey and did cause a survey of land measuring 261.731 square metres here referred to as the “property”. Her application for a lease was duly approved on December 28, 2007 for a term of seven (7) years. Subsequently, she applied to purchase the property and on January 18, 2008 her application to purchase was approved at a purchase price of \$2,500.00 payable by instalments over three (3) years. The Claimant signed accepting the offer to purchase. The sum of \$1,000.00 was paid towards the purchase price on January 18, 2008, and she also began to pay property taxes to the San Pedro Town Council.

[4] By a letter dated December 17, 2008, the Commissioner of Lands and Surveys informed the Claimant that her lease of the property was cancelled with effect from December 3, 2008 for non-compliance with Conditions 9 and 12 of the lease for non-development and non-payment of rent pursuant to the National Lands Act, Cap. 191 of the Laws of Belize, Revised Edition, 2000.

[5] The aforementioned declaration in favour of the Claimant having been made by the consent of the parties, the Court ordered that each party file witness statements and an expert report. It is not disputed that the Claimant can no longer be granted title to the property as it has since been transferred to another person who has erected a building thereon. The Claimant’s remedy therefore lies in the award of damages and interest in the court’s discretion.

[6] The Claimant submitted a witness statement and an affidavit together with a report from her expert valuator, Mr. David Aguilar. The Defendant filed an affidavit and a report by the Acting Chief Valuer at the Valuation Department of the Ministry of National Resources, Mr. Antonio Cawich.

[7] The property is comprised of 313.03 square yards or 261.731 square metres. The building on the land post-dates the events leading up to the basis for the Claim, hence the Court is only concerned with ascertaining the value of the land. Mr. Aguilar ascribed a value of \$75,000.00 at \$240.00 per square yard. In the opinion of Mr. Cawich, the parcel of land was valued at \$200.00 per square yard yielding a market value of \$62,606.00 and a rental value at 8.5% of \$5,321.51 per annum. Their respective affidavits and reports detailed the methodology employed to arrive at the valuations.

[8] As previously iterated, the Claimant had been granted a lease for seven years. Subsequent to that, her application to purchase the property was approved at a purchase price of \$2,500.00 of which the sum of \$1,000.00 was paid as an instalment. No title was conveyed to the Claimant. By virtue of the Claimant being a lessee, it was submitted on behalf of the Defendants that compensation ought to be calculated on the basis of the leasehold interest. It was contended that the measure of damages where the lessee's land is cancelled without just cause by the lessor, is the value of the unexpired term. Learned Crown Counsel relied on the case of **Williams v Burrell (1845) 1 C.B. 402** as authority for the measure of damages in a case of an interrupted term of a lease.

[9] In response, learned Senior Counsel highlighted the fact that the Claimant was the purchaser of the property in that she had obtained approval to purchase the land pursuant to the National Lands Act and she had made a substantial payment towards the agreed purchase price. On this basis, it was said that the Claimant is to be treated as a purchaser of the property and the measure of damages ought to be the market value of the property at the contractual time for completion less the contract price.

[10] The plain fact is that, although the Claimant was substantively the holder of a lease for the property at the time when the lease was wrongfully cancelled on December 3, 2008, she was also the purchaser of the property pursuant to a valid and subsisting contract entered into on January 18, 2008 when she signed the approval

form. A fortiori, the said contract was partially performed by the payment of \$1,000.00 on January 18, 2008. The balance of the purchase price was payable within three years. The Claimant therefore is in the position of a purchaser of the property who has lost the bargain by being denied the right to complete the contract. This state of affairs is indistinguishable from the refusal of a seller to complete the contract with a buyer for the sale of land. The remedy of specific performance being no longer available, the remedy for the breach of contract is that of damages.

[11] The failure to complete the contract for the sale of the property attracts the normal measure of damages which is the market value of the property at the contractual time for completion less the contract price (McGregor on Damages, 18<sup>th</sup> Edition, para. 22-005).

[12] Both sides presented evidence as to the value of the property in the form of valuation reports by experts. From the outset, the observation can be made that there is a difference between the market value attributed to the property by each expert. The property is comprised of 313.03 square yards or 261.73 square metres and is located in a residential area. It is a corner lot with frontage on three streets north of San Pedro.

[13] The valuation report of Mr. Antonio Cawich, Acting Chief Valuer, rendered on behalf of the Defendants examined comparable lots for the area and exhibited a listing of sales occurring from 2008 to the present in the immediate vicinity. It was concluded that the sales ranged between \$108.00 and \$230.00 per square yard. On this basis, an average value of \$200.00 per square yard was employed to calculate a market value of \$62,606.00 in 2008.

[14] The Claimant relied on a report by Mr. David Aguilar. That report ascribed a value of \$75,000.00 for the bare land based on \$240.00 per square yard. Like Mr. Cawich, Mr. Aguilar employed the direct comparison method that compared sales of similar lots in the area. However, unlike Mr. Cawich, these comparables were not

disclosed in the report which served to deprive the Court of the opportunity to verify the basis for the value arrived at.

[15] Having regard to Appendix 3 of the report of Mr. Cawich, there is support for the finding of a value of \$200.00 per square yard. I therefore accept the value of the land as at 2008 to be \$62,606.00. However, it is to be noted that the measure of damages refers to the market value as at the time of completion of the contract. The contract of sale was yet to be completed at the time of the determination of the lease. By the contract, the Claimant had been allowed three years to pay the purchase price by instalments, that is to say, up to January 18, 2011.

[16] It is observed that the report of Mr. Cawich relied on comparable sales for the period 2008 up to the present which encompasses January 2011 when the contract was expected to be completed. It is therefore fair to say that same value of \$200.00 per square yard can be maintained in 2011.

[17] The Claimant is entitled to interest and indeed has claimed interest on the damages sought as she is required to do under Rule 8.6(3)(a) of the Supreme Court (Civil Procedure) Rules, 2005 ("the Rules"). The entitlement to interest is governed by section 166 of the Supreme Court of Judicature Act, Cap. 91 which mirrors section 5 of the now repealed Law Reform (Miscellaneous Provisions) Act, 1934 (UK). This provision confers on the Supreme Court a discretionary power to award interest at such rate as it sees fit on the whole or part of an award before judgement for any period between when the cause of action arose and the date of judgment. In the present case, the Claimant is entitled to interest from the date of completion to the date of judgment. Thereafter, interest accrues on the judgment at the statutory rate of 6% per annum.

[18] In determining the rate of interest, I am content in the absence of any other evidence to accept the rate of interest adopted by both experts of 8.5% which represented the Average Time Deposit Rate for 2008.

[19] Accordingly, after making a deduction of \$2,500.00 for the purchase price, the Claimant is entitled to judgment in the sum of \$60,106.00 with interest thereon at the rate of 8.5% from January 18, 2001 to the date of judgment and thereafter at the rate of 6% until fully paid.

[20] Judgment is entered for the Claimant in the sum of \$75,433.03. Costs shall be the Claimant's in the sum of \$9,051.96 as prescribed by Appendices B and C of Part 64 of the Rules.

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**KENNETH A. BENJAMIN**  
Chief Justice