

**IN THE SUPREME COURT OF BELIZE A.D. 2018  
(CIVIL)**

**CLAIM NO. 78 of 2018**

**BETWEEN**

**G.A. ROE & SONS LIMITED**

**CLAIMANT/Respondent**

**AND**

**COMMISSIONER OF STAMPS  
ATTORNEY-GENERAL OF BELIZE**

**1<sup>st</sup> DEFENDANT  
2<sup>nd</sup> DEFENDANT/Applicants**

**Before:** The Honourable Madame Justice Griffith  
**Date of hearing:** 11<sup>th</sup> October, 2018; Written Submissions [10/10/18 & 1/11/18 – Claimant];  
[5/10/18 & 26/10/18 – Defendants]; [18/12/18 Oral Decision]  
**Appearances:** Mr. Andrew Marshelleck S.C., Barrow & Co LLP for the Claimant; Ms. Leonia  
Duncan, Senior Crown Counsel for the Defendants.

**DECISION**

***Assessment of Stamp Duty on Transfer or Conveyance – Sections 72 and 28 of the Stamp Duties Act, Cap. 64 – Procedure for Assessment of Tax on Transfer or Conveyance – Remedy of Taxpayer to Challenge Commissioner’s Assessment.***

1. This case concerns a challenge to the actions of the 1<sup>st</sup> Defendant, the Commissioner of Stamps, (‘the Commissioner’) whereby the value of land purchased by the Claimant in a public auction was increased from the price paid of \$150,000 to the sum of \$335,000, consequent upon a valuation conducted by (or on behalf of the Commissioner). As a result, the amount of stamp duty payable on the transfer fell to be increased from the sum of \$6,500 initially based on the stated consideration of \$150,000 to a higher amount based on the Commissioner’s valuation of \$335,000. The Claimant objected to the increase in value of the land, and eventually filed this claim in which it seeks a number of declarations impugning the Commissioner’s right to revalue the land; as well as an injunction restraining the Commissioner from seeking to collect tax on the increased value of the land. The Commissioner asserts that she was mandated by sections 72 and 28 of the Stamp Duties Act, Cap. 64, (‘the Act’) to conduct a separate assessment of the value of the land conveyed and to impose the tax on the stated consideration or assessed value, whichever greater.

**Issues:-**

2. The Court has had the benefit of full argument by respective Counsel for the parties, both on the issues as initially defined, as well as on questions posed by the Court upon conclusion of the matter. Additionally, in the final submissions of the parties, reference was made to section 73 of the Act, as well as the Stamp Duties Regulations, neither of which had been referred to during the course of the proceedings. These belated references did not materially alter either party's legal position and in any event the Court is satisfied that both sides were afforded adequate opportunity to address the effects of these references, to whatever extent, on their respective cases. The material issues which require the Court's determination are therefore set out as follows:-
  - (i) What is the procedure to be followed by the Commissioner in relation to the assessment of duty on a conveyance or transfer?
  - (ii) Was the Commissioner in this case, entitled to look behind the stated consideration of the transfer, and if so entitled, was the increased valuation justified in the circumstances?
  - (iii) If no to either or both questions in issue (ii), is the Claimant entitled to the declarations and injunction sought in its claim?

**Background**

3. These proceedings were subject to an earlier ruling which addressed the procedure adopted by the Claimant to challenge the Commissioner's valuation of the land conveyed. The facts of the claim are briefly recited as follows. The Claimant in January, 2017, presented for registration, a conveyance of the land in question which was purchased by public auction for the sum of \$150,000. At the point of registration, stamp duty was assessed on the consideration paid in the amount of \$6,500.00 and such sum was duly paid by the Claimant. In October, 2017, the Commissioner of Stamps advised the Claimant that the value of the land had been assessed at \$335,000 and that tax was to be paid on the increased value of the land. The Claimant objected to the increase in value of the land and after several exchanges of correspondence, the instant claim was filed.

The Claim seeks declarations as to the unlawfulness of the Commissioner's valuation as well as an injunction restraining the collection of any further tax based upon the increased value of the land.

4. Earlier in the proceedings, the Defendants applied to strike out the claim as an abuse of process on the basis that (i) the Claimant was obliged to exhaust its right of appeal against the Commissioner's assessment under section 29 of the Act; or alternatively (ii) that the Claimant ought to have filed a claim for judicial review as it was seeking to challenge the Commissioner's assessment of duty. The Court acknowledged, as was accepted by both Counsel for the parties, that the Claimant was entitled as of right in its public law claim to seek only declaratory relief.<sup>1</sup> Albeit so entitled however, it was found that within the circumstances of this claim, the terms of the declarations sought by the Claimant, effectively extended beyond the ambit of relief properly available by way of declaration only. As a result, the Court's ruling on the application to strike out, was that the true nature of relief sought rendered the claim one which ought to have been for judicial review<sup>2</sup>. Instead of striking out the claim, the Court acceded to Counsel for the Claimant's application to amend the claim to seek declarations which could properly stand on their own, without reference to relief more appropriately sought by way of judicial review. The Claim was amended accordingly and proceeded to hearing by way of affidavit evidence and cross examination of deponents. Both Counsel submitted written arguments, supplemented orally and thereafter submitted further written arguments in response to several questions posed by the Court upon the conclusion of the hearing.

### **The Court's Consideration**

#### *The Amended Claim and Statutory Framework*

5. The amended claim sought the following declarations (extracted in full):-
  - (i) *"A declaration that in accordance with the provisions of section 72 of the Stamp Duties Act there shall be paid stamp duty on the "real value" of land or*

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<sup>1</sup> **The Association of Concerned Belizeans et al v The Attorney-General et al**, Belize Civil Appeal No. 18 of 2007

<sup>2</sup> Claim No. 78.2018 G.A. *Roe & Sons Co. Ltd. v The Commissioner of Stamps et anor.*

*the amount of the consideration, whichever is greater, at the rates specified in the section.*

- (ii) A declaration that sound if not the best evidence of the “real value” of land is to be found in the price negotiated for the sale and purchase of that land in bona fide arm’s length dealings between a vendor/transferor and purchaser/transferee of the land and set forth as the consideration for the transfer in the instrument of transfer of title of the land.*
- (iii) A declaration that the First Defendant is entitled pursuant to section 28 of the Stamp Duties Act to reject a stated consideration and have recourse to an expert opinion as to value of land to discover the “real value” of land in order to assess stamp duties only in exceptional cases where it is evident from the terms of the instrument of transfer itself that the stated consideration is not a price fixed in pursuance of bona fide arm’s length dealing between the purchaser/transferee and the vendor/transferor.*
- (iv) A declaration that the stated consideration in deed of conveyance dated 31<sup>st</sup> January, 2017 represents the price negotiated for the land in bona fide arm’s length dealings between the Claimant and the Belize Bank Limited and is the best evidence of the real value of the land or the basis of which stamp duty on the conveyance might properly be assessed.*
- (v) An injunction restraining the Defendants from unlawfully assessing or otherwise interfering with the stamp duties chargeable and/or payable and/or paid on registration of the above mentioned deed of conveyance dated 31<sup>st</sup> January, 2017.*

The relevant statutory framework which arises for consideration in this case comprises mainly of sections 14(1), 28, 29, 71, 72 and 73 of the Stamp Duties Act, Cap. 64. As they arise in the course of discussion, the sections will be extracted accordingly.

### *Submissions of Counsel*

6. It was initially the case that the argument on behalf of the Claimant was premised on the absence of a clear procedure on the operation of section 28 of the Act insofar as it pertained to the circumstances or manner in which the opinion of the Commissioner was requested on - *whether and if so in what amount* - stamp duty is payable in relation to any transaction under the Act.

In fact, the rationale for the Claim was alleged partly to be for the Court to pronounce upon such procedure, there being no regulations guiding the operational administration of the Act. As stated earlier herein, there was belated reference to section 73 of the Act and the Stamp Duties Regulations, the combined effect of which prescribes a clear procedure for assessment of tax in respect of conveyances and transfers and other instruments to be assessed with fixed or ad valorem duty. This procedure will be specified in the Court's discussion and analysis of the issues but it suffices to say at this point, that Senior Counsel for the Claimant accepted the procedure so prescribed, but in any event maintained his position in relation to the Commissioner's disentitlement to look beyond the stated consideration in the deed, that being the best evidence of market value.

7. With the procedure for submission of a conveyance or transfer to the Commissioner for an opinion on the amount of tax payable no longer in issue, the sole issue for determination in the Claim became the interpretation and application of section 72(1) of the Act, in terms of the determination of the value of land conveyed, for purposes of assessment of stamp duty. Section 72(1) is extracted as follows:-

*72.—(1) Subject to subsection (2) of this section, there shall be paid a duty at the following rates on the value of the land or of the amount of the consideration, whichever in the greater, in respect of a transfer of land, whether by sale, exchange or gift.*

Counsel for the Defendants submitted that the plain reading of section 72(1) leads to the inescapable conclusion that the Commissioner is in all cases obliged to conduct a valuation of the land in question, in order to properly ascertain which is the higher amount, and so form the basis upon which the tax is to be calculated. On the other hand, Senior Counsel for the Claimant contends that whilst there may be instances in which the stated consideration is different from the market value, such a situation is not automatically to be presumed, for in situations where all things are equal, the stated consideration is itself the best indicator of market value. Further, that for this starting point to be dislodged, there must be some transparent and objective basis upon which the Commissioner declines to accept the stated consideration as the land's market value.

8. Having stated the issue in such terms, Senior Counsel’s argument as understood by the Court, is that the determination of what would make ‘all things equal’ is to be considered with reference to the definition of what amounts to ‘market value’. That definition in the court’s view has been accepted more or less to the same effect by both sides. Namely, as *‘the price paid on the open market by a willing buyer to a willing seller, in an arms’ length transaction, both parties having knowledge of the land and market conditions...’* Authorities referred to on behalf of the Claimant include (Canadian Authorities - **Musquem Indian Band v Glass**<sup>3</sup> and **Council of Shire of Redland v Edgarange Pty Ltd**<sup>4</sup> (with reference made therein to ‘the Spencer test’, taken from **Spencer v The Commonwealth of Australia**<sup>5</sup>). Counsel for the Defendants’ authorities on the definition of ‘market value’ included the RICS Valuation (Royal Institute of Chartered Surveyors) – Global Standards 2017, in which ‘market value’ is defined as *“The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm’s length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion...”*.
9. This definition is also accepted by both sides as being broken down into the following elements (the following of which are those most material to this case):-
- i) a sale between a willing buyer and willing seller – this presupposes the absence of compulsion to buy or sell in relation to either - the sale must not be forced;
  - ii) the sale must be at arm’s length, meaning it must be bona fides – the sale is between unrelated parties, each acting independently;
  - iii) after proper marketing – the land must have been exposed to the market to allow sufficient time for it to be brought to the attention of an adequate number of market participants;
  - iv) parties acting knowledgeably and prudently – meaning each party is reasonably informed of the locality and conditions of the land, as well as its uses and potential uses.

In respect of the satisfaction of these elements by the Claimant’s purchase of the land in question by public auction, it is at this juncture that respective Counsel part ways.

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<sup>3</sup> [2002] SCR 633

<sup>4</sup> (1998) 19 QLCR 116

<sup>5</sup> [1907] 5 CLR 418

Senior Counsel for the Claimant contends that with respect to the case at bar, all of the elements of the definition of ‘fair market value’ or ‘market value’ or ‘real value’ of the land are satisfied from the face of the transfer and circumstances of sale. As a result, as illustrated by several decisions including (for guidance only) United States decision **Terraza 8 LLC v Franklin County Board of Revision et al**<sup>6</sup> what ought to be accepted is the position of ‘the best evidence rule’ in property valuation – to the effect that the best evidence of the value of real property is a recent sale of the property in an arm’s length transaction. Further reference in this regard was made to the Privy Council decision of **Lap Shun Textiles Industrial Company Limited v The Collector of Stamp Revenue**<sup>7</sup> per Lord Wilberforce, to the effect that the starting position of a stamp authority is that valuation of property is a matter of judgment within broad limits. Further, that ‘*sound if not best evidence of value is to be found in bona fide arm’s length dealings*’<sup>8</sup>.

10. Additionally, Senior Counsel on behalf of the Claimant refuted the Defendants’ claim that the conveyance did not take place between a willing buyer and willing seller on account of the sale being one exercised under a mortgagee’s power of sale. In that regard, Counsel for the Defendants submitted that the sale was a forced one - the Bank, as seller being under compulsion to sell in order to realise its security. Senior Counsel for the Claimant referred to the case of **Cuckmere Brick Co. Ltd et anor v Mutual Finance Ltd**.<sup>9</sup> as illustration of the principle that a mortgagee is under a legal duty when exercising its power of sale, to secure the fair market value of the land being sold. Further that the duty to secure the fair market value is discharged by selling the land at a properly advertised public auction sale held in reasonable conditions.<sup>10</sup> This was taken to mean that the discharge of a mortgagee’s duty under a power of sale in and of itself secures a fair market value of the property sold.

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<sup>6</sup> 150 Ohio St. 3d 527, 2017

<sup>7</sup> Privy Council Appeal No. 32 of 1975

<sup>8</sup> Ibid @ pg. 4

<sup>9</sup> [1971] 2 All ER 633

<sup>10</sup> Bank of Montreal v Allender Investments Ltd. 1983 Canlii 2918 (para 41, Tab 12 Submissions of Counsel for the Claimant).

In the final analysis, Senior Counsel for the Claimant contended that the best or primary evidence of market value, was a recent sale of the land itself in an arm's length transaction, whilst an expert valuation as provided by the Commissioner was secondary, being merely one of the ways in which market value could be determined. As a result, the overall submission was that only in exceptional cases, should any value other than a recent arm's length sale, be considered as the market value of land.

11. By way of further submission in support of the overall argument regarding how market value is to be determined, reference was made to the approach of the UK Court of Appeal in applying certain sections the UK's Stamp Duties Act, 1891. These sections were identified as identical to certain relevant Belizean provisions which are applicable in the instant case.<sup>11</sup> This reference was the case of **Parinv (Hatfield) Ltd v Inland Revenue Commissioners**,<sup>12</sup> in which the interpretation of the equivalent of Belize's section 28(2) is said to demonstrate that the Commissioner must act on objective evidence upon investigation of the circumstances of the transaction, starting with the deed itself as presented for assessment of duty. Further, if the deed raises no basis to question the circumstances of the sale, then the stated consideration is to be taken as the primary and indeed best evidence of the market value of the property. This position was supported by reference to the Defendants' authority of **Re: Bartholomew & Persaud**<sup>13</sup> in which the learned judge, albeit obiter, responded to a question posed by Counsel, in relation to what kind of evidence would entitle the Commissioners under that law in Trinidad and Tobago, to substitute their own value for the consideration stated in the deed presented for assessment.
12. The learned judge's (Maharaj J) response was that there must be some objective evidence which casts doubt on the adequacy of the compensation paid, in order for the Commissioners to embark upon a process of obtaining a separate valuation of the land.

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<sup>11</sup> Ss 19(1); 28(2) and 30(5) of Cap. 64

<sup>12</sup> [1998] STC 305 (Simon's Tax Cases)

<sup>13</sup> Trinidad & Tobago High Court, No. 2834 of 1975



With respect to the instant case therefore, Senior Counsel for the Claimant contends that according to the above authorities, the Claimant's purchase of the land by public auction having satisfied the requirements of the definition of 'fair market value' - there was no objective reason for the Commissioner to have embarked upon a separate valuation of the land. The arguments on behalf of the Commissioner in the round are that the construction of section 72(1) is clear and unambiguous and requires the Commissioner in respect of each transfer presented for assessment of duty, to conduct a valuation of property conveyed. That separate valuation is required to ascertain the higher value between the market value of the land and the stated consideration on the sale. In discharging this duty, the Commissioner acts pursuant to section 28 of the Act which empowers information to be obtained as to the value of the transaction in question. In the instant case, the Commissioner's power to assess value was properly discharged having regard to her affidavit evidence which deposed to the fact that a valuation exercise was conducted by a duly qualified land valuation officer attached to the Department of Lands.

13. Counsel for the Defendants primarily relied upon **Re: Bartholomew & Persaud**<sup>14</sup> which based upon the Trinidad legislation, illustrated the manner in which the Board of Commissioners therein were held entitled to reject the consideration stated in a conveyance and substitute an increased value of the property, as determined after a valuation. With respect to the Commissioner's justification for embarking upon a valuation exercise in this case, Counsel for the Defendants also submitted that besides the sale by auction being a forced sale (the mortgagee was not a willing seller), the Claimant, by his own admission, was not familiar with the conditions of the land. In the circumstances, the Claimant's purchase of the land by auction could not be considered as falling within the definition of a sale reflecting the fair market value of the property.

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<sup>14</sup> Supra per Maharaj J.

## Discussion and Analysis

14. In the first instance, before adverting to the issues as outlined in paragraph 2 above, the Court considers the competing arguments pertaining to the apprehension of the word 'value' arising under section 72 of the Act. The Commissioner under this section is obliged to accept the higher between the value of the land and the stated consideration in the conveyance or transfer. The closely related definitions of 'fair market value' and the contextualisation of the elements comprising this definition as referred by both counsel for the parties<sup>15</sup> are accepted by the Court. With respect to the perspective of the sale as advocated by both counsel however – i.e. Counsel for the Defendant alleging that the sale was a forced sale, the Court is in agreement with Senior Counsel for the Claimant that the fact of the sale having been conducted pursuant to a mortgagee's power of sale does not render it a forced sale. In this regard, it is accepted, that a price obtained in such a sale, is not excluded from satisfying the elements enumerated above, as requisites for a sale to be reflective of the 'fair market value' of land. This determination by the Court that the sale in question was indeed between a willing buyer and seller, operating at arms' length with each other and being knowledgeable of the conditions of the land – does not determine the dispute as it relates to the construction of the Commissioner's obligations under section 72. The question of whether the Commissioner can properly look behind the stated consideration as being the best evidence of market value, which is the second issue identified in paragraph 2 above, must nonetheless be determined by the Court.
15. Before considering this question however, reference is made to the indication in paragraph 6 above that the first of the two issues in the case, had been settled by the belated references to section 73 of the Act, in conjunction with the Stamp Duties Regulations. It is helpful to briefly indicate the position arising from the operation of these provisions. Section 73 is extracted as follows:-

*“73. Any instrument purporting to be a conveyance or a transfer under section 71 or 72 of this Act shall be submitted to the Commissioners by the person liable to pay the duty for their opinion in terms of section 28 of this Act, and the Commissioners shall express their opinion accordingly.”*

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<sup>15</sup> Para 9 supra.

And section 28 provides:-

- (1) Subject to such regulations as may be prescribed, the Commissioners may be required by any person to express their opinion with reference to any executed instrument upon the following questions,*

    - (a) whether it is chargeable with any duty;*
    - (b) with what amount of duty it is chargeable.*
  - (2) The Commissioners may require to be furnished with an abstract or copy of the instrument and also with such evidence as they may think necessary in order to show to their satisfaction whether all the facts and circumstances affecting the instrument with regard to duty or the amount of duty chargeable thereon are fully and truly set forth therein.*
  - (3) If the Commissioners are of opinion that the instrument is not chargeable with any duty, it may be stamped with a particular stamp denoting that it is not chargeable with any duty.*
  - (4) If the Commissioners are of opinion that the instrument is chargeable with duty, they shall assess the duty with which it is, in their opinion, chargeable, and when the instrument is stamped in accordance with the assessment it may be stamped with a particular stamp denoting that it is duly stamped.*
16. One of the questions posed by the Court to Counsel upon conclusion of the proceedings, concerned the manner in which section 28 was intended to operate – particularly, in respect of how (procedurally) the attention of the Commissioner was to have been triggered in order to embark upon assessment; also whether the questions in sub-section 1 were mutually exclusive. Section 73 settles this position without ambiguity, insofar as it is clearly stated that any instrument purporting to be a conveyance or transfer under section 71 or 72 shall be submitted to the Commissioner for an opinion under section 28. As clear as this section 73 appears, it is also considered necessary to make a brief observation about the language of this section, insofar as it uses the phrase ‘purports to be a conveyance under section 71 or 72’. This observation is relevant to consideration of the main issue in this case, which is whether the Commissioner was entitled to look behind the stated consideration in the transfer which was presented to her. Section 72 has already been set out and section 71 provides as follows:-

- (1) *Stamp duty shall be payable on the value of the property conveyed by any conveyance or transfer operating as a voluntary disposition inter vivos as if it were a conveyance on sale.*
- (2) *Notwithstanding subsection (1) of this section, a conveyance or transfer or an agreement for conveyance or transfer operating as a voluntary disposition of property shall not be chargeable with any duty if such conveyance is in favour of any charitable organisation or of the trustees of a trust established for charitable purposes only or where the total value of all the properties so conveyed by the transferor in the twelve months ending on the date of the conveyance concerned is not more than twenty-five thousand dollars.*
- (3) *Where any instrument is chargeable with duty both as a conveyance or transfer under this section and as a settlement under section 63 of this Act the instrument shall be charged with duty as a conveyance or transfer under this section and not as a settlement.*
- (4) *Any declaration of trust or other instrument of whatever kind, used to pass legal title or equitable interest to land or to give a person some interest in land shall be chargeable with ad valorem stamp duty.*

17. Section 71 prescribes an overall scheme for imposition of *ad valorem* duty in relation to the following conveyances or transfers (or agreements for conveyances or transfers):-

- (i) Any transfer or conveyance *inter vivos* (gift) is chargeable with ad valorem duty as if it were a conveyance on sale. In this regard it is clear at this stage that transfers or conveyances on sale are chargeable with ad valorem duty, but there is one exception provided in this section:-
- (ii) The exception provided is that any conveyance or transfer (or agreement therefor), operating as a voluntary disposition, (i.e. without valuable consideration), made in favour of (a) a charitable organization or trustee of a trust with charitable purposes, **and** (b) the value of the property conveyed as at 12 months prior to the date of the conveyance or transfer, does not exceed \$25,000 - is not chargeable with ad valorem duty;
- (iii) Where an instrument can be categorized **both** as a conveyance or transfer under section 71, as well as a settlement under section 63<sup>16</sup>, the instrument is to be treated as a conveyance under section 71 and as such subject to ad valorem duty;

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<sup>16</sup> Section 63 speaks to duty payable on orders of court (transferring interests), or instruments other than conveyances or transfers for bona fide pecuniary consideration

(iv) Declarations of trust by which legal or equitable title to land or some interest in land is passed to another; as well as a catchall reference to 'instrument of whatever kind' by which legal or equitable title to land or some interest in land is passed to another – these are also charged with ad valorem duty.

18. Save for the exception of a voluntary disposition to a charitable organization or to a trustee of a trust with charitable purposes, (both in respect of property valued at less than \$25,000), and excepting any other specific mode of disposition of land or interest in land provided elsewhere in the Act (for example under section 63), all transfers or conveyances caught under the umbrella of section 71 – are then chargeable with ad valorem duty at the rate specified in section 72(1). Section 72(2) further exempts transfers by testamentary disposition or on intestacy entirely from stamp duty. Of what purpose is examining this regime? It is or should be evident from the provisions of section 71, that some categorization of the true nature of an instrument conveying or transferring title in or an interest in property has to be made in order for stamp duty to be charged. For example, the fact that an interest is being transferred as a gift; or that a grantee is indeed a charitable organization; or perhaps that a trust does have charitable purposes - are all circumstances which must be investigated by the Commissioner in order for the instrument to be appropriately classified and thereafter assessed for stamp duty. It is in this regard that the Court apprehends the use of the words '*Any instrument purporting to be a conveyance or a transfer under section 71 or 72...*' as used in section 73 of the Act.
19. Additionally, it also is in this regard, that the Court understands the context of the Commissioner's powers under sections 28(1)(a)&(b) (as applicable to transfers or conveyances). That is, that of instruments falling under 'conveyance or transfer', the Commissioner has to determine into which class of transfer (as provided under section 71), the instrument presented falls. This in the Court's view, accounts for the question in section 28(1)(a) – '*whether any duty is payable in respect of the instrument*'. The latter question of '*and, if so, what amount?*' reflects in the Court's view, either a determination of what kind of duty is to be applied (fixed or ad valorem), and if ad valorem, the value of the transaction for purposes of determining the amount of duty chargeable.

In some cases such as the present, the classification of the instrument is plain on its face – such as a conveyance or transfer for valuable consideration, or a gift by way of voluntary disposition to a non-excepted donee. In such a case, the only question is that of the value of the land so as to determine the amount of duty payable; but in others, the Commissioner would be required to make a determination of what the nature or category of instrument is, so as to determine the basis for assessment as well as the amount of tax payable. This is the Court’s understanding of the operation of section 28, as clearly aided in respect of transfers or conveyances, by sections 71, 72 and 73.

20. In order to complete its overview of the administrative scheme of the Act as it pertains to conveyances and transfers, the Court also refers to the Stamp Duties Regulations, in particular, Regulation 5 which provides as follows:-

*5(1) Instruments on which an assessment of duty is required under section 28 of the Stamp Duties Act must be sent either to the General Registry, Belize City, or to the Sub-Accountant’s Office in the Out Districts, accompanied in either case by a written request for an assessment signed by one of the parties to the instrument or his agent and giving an address to which communications will be sent.*

Regulations 5(2) & (3) continue on to speak to the procedure for return of the instrument after the assessment is made. For further completeness, the remaining Regulations speak to the procedure for stamping of duty by way of impresses or adhesive stamps in relation to those instruments which fall outside of those requiring an assessment under section 28. These instruments are referred to in Regulation 3 (with slight differences in the sections stated, believed to arise from amendments over the years) and section 4 (as it relates to the time allowed for affixing impresses or stamps). The remainder of the Regulations speaks to the administrative processes involved in receiving, returning and stamping those instruments outside of section 28, including the conduct of business at branch (District) offices. With the procedure now clear in relation to the requirement for a transfer falling under section 71 or 72 to be submitted for assessment under section 28, the pertinent question relates to the limits of the exercise of the Commissioner’s powers under section 28, in determining value of land under a conveyance or transfer, vis-à-vis

the stated consideration in the instrument. For this answer, recourse is made to the various authorities helpfully submitted by respective counsel for the parties.

*The Authorities*

21. **Re: Bartholomew & Persaud**<sup>17</sup> and **Lap Shun Textiles Industrial Company Limited**<sup>18</sup> are considered together, as the legislation in both of these cases was the same. The facts will not assist the Court as the legislation in both these cases differs significantly from the Belize legislation. The legislation in both these cases provided a scheme to the effect that:<sup>19</sup>

- (i) any inter vivos gift of property by conveyance or transfer was subject to duty chargeable on the value of the land and not the stated consideration;
- (ii) from this presumption was excepted conveyances in good faith for valuable consideration – in which case, such conveyances or transfers would be assessed on the stated consideration. This is not the case in Belize;
- (iii) within the category of conveyances or transfers in good faith for valuable consideration is itself excepted such instruments where the Board (of Commissioners) is of the opinion that by reason of the inadequacy of the consideration paid or other circumstances, the conveyance or transfer confers a substantial benefit on the person to whom conveyed or transferred. This is also not the case in Belize.

In relation to this legislation as illustrated by these two cases, the mechanism of general prescription followed by exceptions is similar to the Belize Act, but the material difference is that in the former case, bona fide conveyances or transfers for valuable consideration are by implication subject to duty chargeable on the stated consideration in the instrument.

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<sup>17</sup> Supra n 7

<sup>18</sup> Surpa n 13

<sup>19</sup> Section 55A(1) and 55A(4) of the Stamp Duty Ordinance, T&T; Sections 27(1), (2) & (4) of the Stamp Ordinance Cap. 117 of Hong Kong

It is only where there is a voluntary disposition – whether actual, or deemed based upon the opinion of the Board/Commissioners - that duty is charged on the value of the property.

22. The position in Belize is not equivalent in relation either to the categories or basis of assessment for conveyance or transfers. Namely, in Belize, bona fide conveyances and transfers, inter vivos gifts and all others falling under the umbrella of sections 71 or 72 are assessed duty on the higher amount between the stated consideration and the value of the property, save the exception in relation to charitable organisations or trusts with charitable purposes (where the property is valued \$25,000 or less). In relation to the basis of assessment, it is considered that the Trinidad & Tobago and Hong Kong legislations impose a different standard than that in Belize's section 72. Namely, that in Belize the express provision of the statute is 'the higher amount' between the stated consideration and value of the property conveyed; whilst the legislation in Trinidad & Tobago and Hong Kong, requires a finding of inadequacy of the stated consideration – which goes beyond merely an amount that is lower – but requires the amount to be so low that it confers a substantial benefit to the person to whom the land is conveyed or transferred. This in the Court's view, is qualitatively an entirely different standard than the difference in the dollar amount between value and stated consideration as legislated in Belize. In the Court's view, these two standards in the respective legislative schemes, illustrate the differences in approach of respective Counsel to the application of section 72(1) in assessing stamp duty on a conveyance or transfer.
23. Crown Counsel on behalf of the Defendants says that because it is the higher of the two values (price paid and market value) in order to make such a determination, both values must be accounted for. Learned Senior Counsel's position is that the Commissioner's entitlement to inquire into a value outside of the stated consideration must be confined to exceptional circumstances – triggered by some factor arising from the instrument itself or circumstance of its presentation for assessment. Further, that this position is supported by the existence in property valuation of 'the best evidence' rule in relation to the price on recent sale being the best evidence of market value.



Also, the approach of the Court in **Re: Bartholomew and Persaud** is commended wherein it was stated (albeit obiter), that the Board's valuation and substitution of value, under the legislation considered in Trinidad and Tobago could only be carried out based upon some objective evidence justifying such a course. In addition to these two reasons in support of his position that the Commissioner is only entitled to revert to a separate valuation or if having done so, substitute same for the stated consideration only in exceptional circumstances, Senior Counsel commended unto the Court the authority of **Parinv (Hatfield) Ltd. v Inland Revenue Commissioners**<sup>20</sup> which considered the UK equivalents to sections 19(1) and 28(2) of the Act.

24. The circumstances of this case were briefly that there were concurrent transactions and instruments comprising the sale of land situate in the United Kingdom. The transactions included a transfer of bare legal estate for a specified sum, a contract for sale and a declaration of trust settling the beneficial interest in the property. Aside from the transfer of the bare legal estate, the other instruments were executed outside the United Kingdom and were not to be stamped for stamp duty. The transfer of the bare legal estate was presented for stamping and in fulfilment of the duty to set out all circumstances affecting the liability to tax<sup>21</sup>, the unstamped contract for sale and declaration of trust were presented along with the transfer. Instead of being stamped as a transfer of the bare legal estate, the Commissioners regarded the transfer as one of the entire legal estate by virtue of the fact that the supporting documents being unstamped, could not be admitted for their consideration. The taxpayer caused a case to be stated to the High Court which upheld the Commissioner's assessment and dismissed the taxpayer's appeal. As pointed out by Senior Counsel on behalf of the Claimant, the law referred to in this case comprised identical provisions to Belize's section 19(1) – which requires the parties to set out all the circumstances affecting liability; and section 28(2), which authorizes the Commissioner to seek from the taxpayer, such evidence to confirm the matters set out in the deed.

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<sup>20</sup> Supra n 12

<sup>21</sup> Cap. 184 s. 19(1)

25. Senior Counsel on behalf of the Claimant contends that the combined effect of these sections is to illustrate that the Commissioner's remit should be confined in the first instance to confirming the particulars evident from the contents of the instrument presented and the circumstances of its presentation. This means in this case, that once all particulars of the transaction presented in the instrument for stamping are confirmed – such as that the price stated was that paid, that the manner of sale was by auction, the details of the land conveyed are correct – then there was no reason other than an exceptional case, for the Commissioner to look behind the stated consideration as being an accurate reflection of market value of the property. Aside from acknowledging the similarity of the legislative provisions (indeed, Belize's Act would be based on the 1891 or some other version of the UK Stamp Act) – the Court is unable to accept the contention that the context of the Commissioner's power to request information in section 28(2) - is restricted to obtaining information necessary to verify the details of the transaction as evidenced by the instrument presented for stamping. Put another way, the Court does not accept the contention that the Commissioner's power to request information under section 28(2) is to be interpreted that the Commissioner is precluded absent exceptional circumstances from looking beyond the value of the transaction as stated in the instrument presented.
26. To the contrary, the Court views section 28(2) with reference to the scheme of the entire Act and finds that there are other sections in the Act which shed light on the extent of the Commissioner's powers therein provided. For example, section 26 of the Act provides that where (as was the case in *Parvinz*), there is more than one instrument comprising a transaction that is chargeable with ad valorem duty, the parties themselves may select which instrument is to be treated as the principal instrument for stamping and assessing the duty chargeable. In such case, the reason for the Commissioner's power to request information regarding the transaction is clearly to ensure that the taxpayer's true liability to tax is not concealed by a failure to disclose any transaction which would have attracted a higher assessment.

Additionally, the Court regards the Commissioner's powers in section 28(2) in terms of the previously discussed<sup>22</sup> determination or verification required of the nature of conveyance or transfer as classified under section 71 of the Act. Given the several contexts of application of section 28(2) as illustrated, the Court does not accept the authority of *Parvinz* as establishing a limitation of the Commissioner's powers of inquiry to confirming the particulars and circumstances of presentation of an instrument for stamping. Section 28(2) is in the Court's view more concerned with assisting the Commissioner in answering the first question in section 28(1), which is 'whether the instrument is chargeable with duty' as it arises in several different ways under the Act.

27. In continuing its analysis of the issue of the Commissioner's entitlement to seek an alternative valuation only in exceptional circumstances, the Court reverts to its breakdown of Trinidad & Tobago's section 55A (and Hong Kong's section 27), of their respective Acts on stamp duty<sup>23</sup>. In relation to these sections, the Court is prepared to accept, that there must be an objective trigger for the Commissioner to subject the stated consideration of a transaction to scrutiny in order to determine its adequacy or lack thereof. The Court accepts this position, because in the Court's view, those taxpayers have by the scheme of that legislation, been afforded a benefit of a presumption of adequacy of the consideration paid in a conveyance on sale. This is firstly not the case in Belize, given the clear terms of section 72 that it is the higher of the stated consideration or the value of the land. In this regard, this Court cannot envisage, that in a taxing statute a presumption is to be afforded to a taxpayer that could only be displaced in exceptional circumstances, in the absence of anything other than express language or necessary implication. This is not what has been legislated in Belize. To the contrary, it seems that the necessary implication arising from section 72, is that the Commissioner is entitled to look beyond the stated consideration, unless she chooses to accept it as indicative of the market value of the property conveyed.

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<sup>22</sup> Supra paras 14 - 18

<sup>23</sup> Supra paras 20

28. Further, it is noted that in **Re Bartholomew and Persaud**, Maharaj J. in his obiter response to the question of whether or not the Board could in effect look behind the stated consideration to determine adequacy, opined that there must be objective evidence causing them to apply the section in the first place. Maharaj J. acknowledged that whilst such objective evidence could come from the information of third parties<sup>24</sup>:-

*“...it seems to me that in the great majority of cases it is the experience of the members of the Board itself, and its staff, of real property values in the country which would lead to the applications of the subsection by the Board. By the very nature of the Board’s functions, it is to be expected that its members and staff would acquire in a very short time the type of experience in real property matters in the country which would enable them to invoke the subsection in appropriate cases.”*

These words have been extracted, for they illustrate the situation applicable to legislation which the Court considers to have placed a higher burden on the Commissioners, to be able to look beyond the stated consideration of a conveyance or transfer. More particularly, the Court also finds instructive that objective knowledge as to adequacy of value of the stated consideration has been reposed in the Commissioners themselves, and in their staff, based upon their own knowledge and experience of land values, obtained within the ordinary course of discharging their functions.

29. This view does not assist the Claimant, for it is the very position that the Commissioner has by her evidence, put before the Court – namely, that being possessed with knowledge of the area and locality in which the assessed land is situated, she obtained a valuation from a qualified member of her staff, which resulted in the increased land value. Flowing from this position, the question before this Court is really whether or not the Commissioner was entitled to embark upon the valuation as she did, or whether there was no or not sufficient reason for her to have objectively done so. The Court firstly answers this question in the affirmative – on the basis that the Commissioner was entitled to seek such a valuation, by plain reading of the terms of section 72 itself, i.e. that a determination of the higher of two values presupposes the existence of two valuations in

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<sup>24</sup> Maharaj supra

the first place. In the alternative, the Court is aided by its interpretation of the legislation of Trinidad and Tobago and of Hong Kong as discussed in *Re: Bartholomew & Persaud* and *Lap Shun Textiles...* as having placed a more entrenched position of acceptance at face value of the stated consideration upon a bona fides conveyance or transfer for valuable consideration, so that unless prompted by some objective evidence to the contrary, the adequacy of the stated consideration is to be presumed. This is not the case in Belize, where the legislation does nothing more than advert to the preferment of the higher value as between stated consideration and market value.

30. As a further alternative to either of the two views stated above, even if Counsel for the Claimant's position is accepted that there must be an objective trigger of circumstances in order for the Commissioner to look behind the stated consideration, the Court finds favour with the words of Maharaj J in *Re Bartholomew and Persaud*<sup>25</sup>. This was the view that it is within the purview of the Commissioner, based upon her or her staff's practical knowledge of land values in Belize to refuse to accept the stated consideration and seek evidence of an alternative value, in order to apply section 72. It has already been found by the Court that there was evidence from the Commissioner supporting her obtaining the alternative valuation which resulted in a higher value of the land being attributed to the property conveyed. The question which then arises is as to what recourse is available to the taxpayer who as in this case, considers that the Commissioner's valuation does not reflect the market value or more specifically, that the stated consideration of the sale is in fact the market value of the property. The Court finds that the answer lies squarely within section 29 of the Act which is of course the taxpayer's right of appeal against the Commissioner's assessment. There has not been such an appeal by the taxpayer.
31. It is to be recalled from the Court's earlier ruling on the Defendants' application to strike out the claim, that the Claimant expressed the view that its right to appeal under section 29 had not been triggered because the Commissioner had in fact not assessed any tax but rather made a finding as to the value of the land.

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<sup>25</sup> Extracted at para 28 supra

This submission was rejected by the Court in the earlier proceedings and remains as such, given the Court's view that the higher valuation of the land gave rise to an increased liability to tax based on that higher value. As a result, in relation to any question of a challenge to the Commissioner's valuation of the land higher than the stated consideration of the conveyance, the Claimant's position is of a tax payer with a right of appeal that has expired. In relation to the relief sought by the Claimant, that relief rested upon the position that the Commissioner was obliged to accept the stated consideration in the conveyance unless triggered by some exceptional circumstance to look behind such stated consideration. For the reasons stated above<sup>26</sup> this position has not been accepted by the Court, thus none of the declarations sought by the Claimant can be granted and the prayer for the injunction to prevent the Commissioner from seeking to collect the stamp duty based upon the increased value of the land must be refused.

32. For completeness it is acknowledged that the only outstanding issue regarding the Commissioner's valuation which could have been contemplated in the Claim, would have been the correctness or not of that valuation (in terms of application of accepted principles of valuation), or its want of reasonableness. The terms of the declarations sought by the Claimant do not seek any such findings by the Court, but had such findings been sought by means of a claim for declarations only, the Court would revert to the authority of **Attorney-General of Antigua v Isaac**<sup>27</sup> as was discussed in its ruling on the application to strike out, and declined to consider any questions of correctness or reasonableness of the valuation, absent a claim for judicial review. The reason for this position as per the Court's earlier ruling is that the intended or logical consequence of impugning the correctness or reasonableness of the Commissioner's valuation, would be to afford the Claimant the benefit of a reversal of that decision without it having been quashed pursuant to an action properly commenced by way of judicial review.

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<sup>26</sup> *Supra*, paras 21 *et seq*

<sup>27</sup> [2018] UKPC 11

## **Disposition**

33. Based on the foregoing, the following orders are made in disposition of the Claim:-

- (i) The declarations sought by the Claimant to the effect that the price paid on conveyance of the transfer is the best evidence of the market value of the property conveyed, in relation to the case at bar, are refused;
- (ii) The declarations sought to the effect that the 1<sup>st</sup> Defendant, the Commissioner of Stamps, is in respect of a conveyance or transfer of property required to be assessed pursuant to section 28 of the Stamp Duties Act, Cap. 64 of the Laws of Belize, obliged to accept the stated price of the consideration as the best evidence of market value and is only in exceptional circumstances permitted to make an alternative valuation of the property conveyed, is refused;
- (iii) The application for injunction restraining the 1<sup>st</sup> Defendant or otherwise from seeking to impose stamp duty on the sum of \$335,000 being the value assessed of the property purchased by the Claimant, is refused;
- (iv) In accordance with CPR 2005 Rule 56.13(6) there is no order as to costs.

**Dated this 18<sup>th</sup> day of January, 2019.**

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**Shona O. Griffith**  
**Judge, Supreme Court of Belize**