

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

ACTION NO. 221 of 2017

	(LISMOUR L. FLOWERS	CLAIMANT
	(	
BETWEEN	(AND	
	(	
	(COMMISSIONER OF LANDS	FIRST DEFENDANT
	(REGISTRAR GENERAL	SECOND DEFENDANT
	(MINISTER OF NATURAL RESOURCES	THIRD DEFENDANT
	(ATTORNEY GENERAL OF BELIZE	FOURTH DEFENDANT
	(ROSALIE MENZIES	INTERESTED PARTY

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*BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA*

Mr. Rodwell Williams, S.C., of Barrow and Williams Law Firm

Mr. Nigel Hawke, Solicitor General, along with Leonia Duncan, Crown Counsel,  
on behalf of the Defendants

Mr. Philip Zuniga, S.C., on behalf of the Interested Party

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J U D G M E N T

Facts

1. On or about the 17<sup>th</sup> day of August, 2016, a Deed of Conveyance dated 26<sup>th</sup> July, 2016 and made between the Claimant of the one Part and Je'lal

Properties Ltd. (“JPL”) of the other part (“the Deed of Conveyance”) was presented to the Department of Lands for recordation. To date, the Deed of Conveyance remains with the Defendants and has not been recorded. The Claimant therefore brought these proceedings to compel the Registrar General to produce and record the said Deed of Conveyance.

2. The subject properties are Lots Nos. 214, 215 and 216 situate in the Mullins River Village (“the Properties”), titles of which were granted under Minister’s Fiat Grant Nos. 536 of 2008 and 747 of 2008 to the Claimant by the Government of Belize (GOB). GOB in turn in 1997 had acquired by public acquisition 85 acres of land within which the Properties fall for purposes of a resettlement scheme (“the Acquisition”).
3. The Defendants claim that the titles to the Properties were issued to the Claimant in error, that the Claimant agreed in writing to sell back the Properties to the GOB in consideration of the sum of \$90,000.00 and a grant of land in the Mullins River Village. The sum of \$90,000.00 was paid to the Claimant pursuant to the said agreement, but no grant of land was issued to the Claimant.

4. The Interested Party for her part claims that she and her family held titles to land which form part of the Properties prior to the public acquisition, and that titles to Lots Nos. 214 and 215 were issued to her by GOB in or around May 2010 to compensate her for her lost land.

The Defendants contend that it was intended that after the Acquisition and resurvey of Mullins River Village, the lands which were privately owned immediately prior to Acquisition would be conveyed back to the owners. The Claimant disputes this contention, and says that by the time JPL was made aware of the dispute, JPL had already entered into a contract with the Claimant to purchase the Properties.

### **The Issue**

5. The sole issue in this case (as stated in the Agreed Statement of Facts and Issues dated July 14<sup>th</sup>, 2017 and signed by all parties to this Claim) is whether the Deed of Conveyance in favor of JPL should be recorded by the Registrar General.
6. The parties have helpfully agreed to a Chronology of Events in the Agreed Statement of Facts and Issues establishing a timeline of facts in order to assist the court in the resolution of this issue. Evidence of parties was

provided in the form of affidavits and attached exhibits; there was no cross-examination of any of the affiants by any of the parties. As the issue to be determined is a question of law, all parties have also agreed that this issue be resolved by the court on the basis of written legal submissions.

### **Chronology of Events**

12th July, 1997	1 <sup>st</sup> Publication under the Land Acquisition (Public Purposes) Act - Public Acquisition of the land within which the Properties fall
23 <sup>rd</sup> August, 1997	2 <sup>nd</sup> Publication under the Land Acquisition (Public Purposes) Act- Public Acquisition of the land under which the Properties fall
7 <sup>th</sup> October, 2004	Approval of Permission No. SC 402/2001 authorizing Lismour Flowers to survey three lots.
9 <sup>th</sup> July, 2008	By way of Minister's Fiat (Grant) No. 537 of 2008 Lot No. 215 was granted to Lismour Flowers

3<sup>rd</sup> November, 2008 By way of Minister's Fiat (Grant) No. 536 of 2008  
Lot No. 214 was granted to Lismour Flowers

10<sup>th</sup> December, 2008 By way of Minister's Fiat (Grant) No. 747 of 2008  
Lot No. 216 was granted to Lismour Flowers

28<sup>th</sup> April, 2009 Lismour Flowers mortgaged the Properties to The  
Belize Bank Ltd.

8<sup>th</sup> June, 2009 Commissioner of Lands wrote to Lismour Flowers  
alleging error in the grant of Lot 215 and  
demanding that Mr. Flowers ceases any further  
development of Lot 215.

17<sup>th</sup> May, 2012 Lismour Flowers agreed in writing to sell the  
Properties to Je'lal Properties Ltd.

24<sup>th</sup> September, 2012 Chief Executive Officer via Legal Counsel in the  
Ministry of Natural Resources and Agriculture  
wrote to the Belize Bank Ltd. and copied Lismour  
Flowers and Rosalie Menzies alleging the  
Properties belonged to Ms. Rosalie Menzies and

that they were given in error. The letter also indicated that the Ministry was considering discharging the mortgage in favor of Belize Bank in an effort to return the Properties to Rosalie Menzies.

[Unknown Date] 2013 Mr. Lismour Flowers attended Lands Department and agreed to convey the Properties to the Government of Belize for \$90,000.00 and a grant of a parcel of land in the general vicinity of the Properties.

[Unknown Date] 2013 Executed written agreement between Lismour Flowers and the Government of Belize embodying the terms of the agreement

[Unknown Date] The Government of Belize eventually paid over \$90,000 which allowed Mr. Flowers to discharge the mortgage.

30<sup>th</sup> June, 2014 Deed of cancellation of mortgage between Mr. Flowers and The Belize Bank Limited.

16<sup>th</sup> November, 2015 Barrow and Williams LLP, Attorneys-at-Law for  
Mr. Flowers wrote the Government of Belize to  
inform of the decision to rescind the Agreement

6<sup>th</sup> May, 2016 The Government of Belize grants to Rosalie  
Menzies Lot No. 214 by Minister's Fiat (Grant) No.  
44 of 2016.

16<sup>th</sup> May, 2016 The Government of Belize grants to Rosalie  
Menzies Lot No. 215 by Minister's Fiat (Grant) No.  
45 of 2016.

26<sup>th</sup> July, 2016 Deed of Conveyance between Lismour Flowers  
and Je'Lal Properties Ltd. transferring the  
Properties.

17<sup>th</sup> August, 2016 Deed of Conveyance presented in Land Registry  
for Recordation - all fees and duties were paid.

October 17<sup>th</sup>, 2016 Barrow and Williams LLP wrote to the Minister of  
Natural Resources demanding that the Deed of  
Conveyance be recorded.

12<sup>th</sup> January, 2017      Claimant filed Application to bring judicial review proceedings.

8<sup>th</sup> March, 2017          Application heard and dismissed.

8<sup>th</sup> March, 2017          Notice of Intention to Bring Action served on the Defendants

10<sup>th</sup> April, 2017          Claim 221 of 2016 filed in the Supreme Court

**Legal Submissions on behalf of the Claimant**

7. Mr. Williams, S.C., contends on behalf of Mr. Lismour Flowers that, by Section 3 of the Land Acquisition (Public Purposes) Act, the Minister of Lands may by a declaration acquire land for a public purpose. The declaration must be published in two separate issues of the Government Gazette with an interval of at least six weeks between each publication. The declaration shall be prima facie evidence that that land is required for a public purpose. Upon the second publication, the land shall vest absolutely in the State. Mr. Williams, S.C., submits that the practical effect of the second publication of the declaration is that ownership of all those lands which fall within the acquired area pass to GOB. Thus all previous titles are extinguished.



8. Lismour Flowers gave evidence in his affidavit that in 1997, an area of the Mullins River Village was compulsorily acquired by GOB for a re-settlement scheme by a declaration to that effect duly published in the Gazette in the prescribed manner. Neither the Defendants nor the Interested Party dispute that the Lots fell within acquired area. Mr. Flowers purchased the Lots from GOB and paid adequate consideration therefor. In accordance with Section 17 of the National Lands Act, in 2008 GOB issued Minister's Fiat Grants Nos. 356 of 2008 and 747 of 2008 to Mr. Flowers. GOB thereby vested legal title to the Lots in Mr. Flowers. Mr. Williams, S.C., contends that at that point in time, neither GOB nor Rosalie Menzies had any legal or equitable interest in the Lots. The purported grant of Lots Nos. 214 and 215 from GOB to Rosalie Menzies on or around May 2016 are therefore nullities as GOB did not have ownership of those lands at that time. Mr. Flowers being the lawful owner of the Lots was free to develop the Lots and to Mortgage them in favour of a third party as he subsequently did. The Interested Party could have sought compensation from GOB pursuant to the Land Acquisition (Public Purposes) Act if her property in the Old Mullins River Village fell within the acquired lands.

9. Mr. Williams, S.C., further argues that GOB misrepresented to Lismour Flowers that the titles were issued to him in error. That representation turned out to be false, as there were no errors in law or in fact which resulted in the issuance of grants to Mr. Flowers. As a result of that misrepresentation and undue influence exerted over Lismour Flowers by GOB, Mr. Flowers without legal representation, was induced into signing the GOB Agreement, wherein he agreed to sell back the Lots to GOB for the consideration of \$90,000 plus a grant of land of equivalent value situate in the vicinity of the Lots. Mr. Williams, S.C., contends that GOB paid the \$90,000 but in breach of the Agreement, GOB failed to issue any grant of land to Mr. Flowers, thus the consideration was not fully performed. Learned Counsel submits that consideration forms an essential aspect of any Agreement for Sale. It therefore follows that a breach of a contractual term relating to consideration is considered a breach of a condition or fundamental term of the contract since consideration goes to the core of the contract. He cites ***Chitty on Contracts*** as follows:

*“It was there noted that, in modern law, a term of a contract may be held to be a condition if it has been so categorized by*

*statute or by judicial decision, or if the parties have so agreed in their contract, whether expressly or by necessary implication. Any failure of performance which constitutes a breach of condition entitles the innocent party to treat himself as discharged from further liability under the contract.”*

Mr. Williams, S.C., also relies on ***Halsbury’s Laws of England*** which states as follows:

*“Repudiation may be an express renunciation of contractual obligations. However, it is more commonly implied from failure to render due performance or, in cases of anticipatory repudiation, by the party in default putting himself in such a position that he will apparently be unable to perform when the time comes. A party seeking to rely on repudiation implied from conduct must show that the party in default has so conducted himself as to lead a reasonable man to believe that he will not perform or will be unable to perform at the stipulated time.*

...

*Despite the principle that a breach giving rise to a right to rescind does not of itself terminate the contract, if such a breach is committed when the time for performance has arrived the innocent party will in many cases for practical purposes have to accept the breach and treat the contract as discharged because he is under a duty to mitigate his damage.”*

10. In the case at bar, Mr. Williams, S.C., contends that the \$90,000 paid to Lismour Flowers by GOB falls well below the market value of the Lots. Mr. Flowers agreed to that nominal figure because the substance of the consideration was the grant of another parcel of land in the general area of and of equal value to the Lots. It was therefore of paramount importance that to Mr. Flowers that he received another grant of land in Mullins River Village in exchange for the Lots. However, GOB in breach of its Agreement with Mr. Flowers, refused and failed to issue another grant of land to him. In a letter to GOB, Mr. Flowers gave the Government 30 days within which to respond to his notice of rescission of the GOB Agreement, failure of which Flowers would treat GOB’s silence as their acceptance of his rescission of the Agreement. GOB did not respond. In failing to grant Mr. Flowers another parcel of land, Mr. Williams, S.C.,

argues that that amounted to a repudiation of the contract by GOB, which then entitled Mr. Flowers to treat himself as discharged , or to rescind the contract. Mr. Flowers was therefore free to complete sale of the Lots to JPL pursuant to the JPL Agreement.

11. Mr. Williams, S.C., contends that the Deed of Conveyance between Lismour Flowers and JPL is in full compliance with the provisions of the General Registry Act Part VI and Rules and the Law of Property Act Section 40. He argues that when the conveyance was presented for recordation, the Registrar ought to have registered same, the requisite stamp duty and recording fees having been duly paid. Learned Counsel then sets out the provisions of the General Registry Act Sections 79 and 81(1) and (2).

*“79(1) The Registrar shall examine every document brought to be recorded and satisfy himself –*

*(a) that it has been properly executed; and*

*(b) that such execution is duly proved in accordance with this Part.*

*(2) The Registrar may apply to the Chief Justice in chambers for his opinion in writing whenever he may entertain any serious*

*doubt as to whether a document should or should not be recorded, and the opinion of the Chief Justice shall be regarded as final and conclusive.”*

*“81(1) Any person who desires to record a deed under this Part shall present the original deed and a true copy thereof to the Registrar.*

*(2) The Registrar shall –*

*(a) immediately upon any deed being presented to him for recording, make an entry of the presentation of it in a book to be by him constantly kept in his office, and to be entitled ‘File Book of Deeds, etc.’;*

*(b) sign and give a receipt to the person presenting the deed;*

*(c) give a receipt for the money paid for recording;*

*(d) immediately underwrite or indorse upon such deed and the copy thereof the day and hour when it was presented to him for recording as aforesaid;*

*(e) if he is satisfied that the copy presented is a true copy of the original, and that the deed otherwise complies with the provisions of this Act or any other Act, file and keep the copy as a record; and*

*(f) after recording the copy, return the deed to the person presenting it.”*

Mr. Williams, S.C., submits that the role of the Registrar when presented with a deed for recordation is limited to merely examining the deed for purposes of ascertaining that it is properly executed and that such execution is duly proved. The duties of the Registrar in that regard are purely clerical or mechanical in nature. Once the requirements for recordation have been met, no discretion is left to the Registrar. Section 81(1) imposes a duty on the Registrar to record the Deed. He further submits that the Registrar ought to have registered the Deed pursuant to section 81(2) of the General Registry Act which in clear, mandatory language directs the Registrar to so do. He argues that the Registrar refuses to register the Deed of Conveyance because GOB is commercially vested in the Lots which are the subject matter of this Claim. GOB

wrongfully issued title to Lots 214 and 215 to Rosalie Menzies in 2016 when GOB did not own those lots. Mr. Flowers has held title to the Lots since 2008 and he was and still is the absolute owner of the Lots. The Registrar ought not to concern himself with the substance of a deed which is presented to him for recordation. To do so intimates that the Registrar is usurping the powers of the courts in determining legal issues.

*“74(1) The production of any deed for proof and recording may be enforced by a summons issued to any person who is in possession of or has control over any deed, and upon the hearing of such summons the Chief Justice may make such order for the delivery up of such deed to the Registrar for the purpose of recording it as he may think expedient, and the costs of and incidental to such summons shall likewise be in his discretion.*

*(2) Any order made pursuant to subsection (1) of this section, may be enforced in like manner as orders of the Supreme Court are enforceable under the Supreme Court Rules, or any other such rules.*



*3) A person taking out a summons under this section shall satisfy the Chief Justice that he is materially interested in the production and recording of such deed.”*

The Registrar should therefore be ordered by this court to record the Deed of Conveyance between the Claimant and JPL.

**Legal Submissions on behalf of the Defendants**

12. Mr. Hawke, Solicitor General, on behalf of the Government of Belize submits that the relief sought by the Claimant ought to be refused as the declaration sought would serve no useful purpose. The Order directing the Registrar to produce and record the said Deed of Conveyance is tantamount to seeking an order of mandamus for which leave was not obtained. The Claimant is not before the court with clean hands so his claim ought not to be entertained. The Learned Solicitor General further submits that even if the court is minded to grant the declaration sought by the Claimant, it will serve no useful purpose as a declaratory order is not a coercive order as it merely declares a person’s right. He cites the Jamaican Court of Appeal in ***Norman Bowman v Shahine Robinson et al*** Civil Appeal No 114 of 2010 as follows:

*“A declaratory judgment is a formal statement by a court pronouncing upon the existence or non-existence of a legal state of affairs. It is to be contrasted with an executory, in other words, coercive judgment which can be enforced by the courts. In the case of an executory judgment, the courts determine the respective rights of the parties and then order the defendant to act in a certain way, for example, by an order to pay damages or to refrain from interfering with the plaintiff’s rights; if the order is disregarded, it can be enforced by official action, usually by levying execution against the defendant’s property or by imprisoning him for contempt of court. A declaratory judgment, on the other hand, pronounces upon a legal relationship but does not contain any order which can be enforced against the defendant. Thus the court may, for example, declare that the plaintiff is the owner of certain property, that he is a British subject, that a contract to which he is a party has or has not been determined, or that a notice served upon him by a public body is invalid and of no effect. In other words, the declaration simply pronounces on what is the legal position.*

13. The Learned Solicitor General concedes that Mr. Flowers is entitled to seek a declaration as in ***Belize Bank Ltd. v ACB*** Civil Appeal No. 18 of 2007

where the Court of Appeal of Belize found that Part 56 conferred a free standing entitlement on litigants to move the court for a declaration, whether it be in respect of public or private law right. However, Mr. Hawke submits that the Claimant is before the court with unclean hands in that he had entered a binding written agreement with the Government of Belize to sell the Properties in question to GOB in consideration of the sum of \$90,000 which was paid to him in full. In spite of this he subsequently entered into a contract with Je'Lal Properties Ltd. for the sale of the same properties that he was to pass over to GOB. This is an act of bad faith and the court therefore ought not to grant Lismour Flowers the equitable relief that he now seeks.

14. Mr. Hawke further argues that while the Claimant by seeking an Order directing the Registrar General to produce and record the Deed of Conveyance is seeking an order for mandamus, the Claimant has neglected to obtain leave of the court. He submits that this is an abuse of the process of the court as the language of Rule 56.3 is mandatory. Learned Solicitor General submits that the court has an inherent jurisdiction to guard against the abuse of its jurisdiction and process and

cites ***Abdool Salim Yasseen and Thomas v. The Attorney General of Guyana*** 65 WIR 173 where Bernard CJ stated:-

*“Let me state at the outset that there is no doubt that a judge sitting in the High Court has unlimited jurisdiction and an inherent jurisdiction in relation to matters which come before that court for determination. The statutes and legal authorities support this contention. More specifically, the inherent jurisdiction extends to striking out, staying or dismissing an action.”*

If the court finds that the order sought by the Claimant amounts to an order of mandamus, and no leave has been obtained, then Mr. Hawke argues that the court would have no jurisdiction to entertain this case. He relies on ***Ivan O’Neal and SVG Green Party v. The Supervisor of Elections of St. Vincent & the Grenadines***, Claim No. 349 of 2009 where the Claimants in that case sought a number of Declarations and Orders. However, the Court found that the Orders sought amounted to administrative orders and leave ought to have been obtained; as such the Court had no jurisdiction to entertain the application since there was nothing before the Court.

### **Legal Submissions on behalf of the Interested Party**

15. Mr. Philip Zuniga, S.C., on behalf of Ms. Rosalie Menzies associates himself with the arguments filed on behalf of the Defendants where those submissions do not prejudice Ms. Menzies' title to Lot No. 214 and Lot No. 215. As admitted in paragraph 9 of the Claimant's affidavit, Mr. Flowers did sign an agreement to sell back 3 Lots (Lot 214, 215 and 216) to the Government of Belize. Lismour Flowers also admits that pursuant to the agreement between him and the Government of Belize, the Defendants paid off the Belize Bank mortgage by providing him with \$90,000.

However, he says that the Defendants refused to honor the said agreement to give him *"a free grant of land in Mullins River Village"*. Leaned Counsel refers to paragraph 2(3) of the unsigned copy of the Agreement mentioned in paragraph 30 of Mr. Flowers' Affidavit Exhibit "LF 9" which reads as follows:

*"(3) The grant of a parcel of land to the Purchaser in the general vicinity of Mullins River, in the general proximity of the properties being sold herein, the size and location to be determined by the Purchaser considering the sketches submitted*

*by the Vendor, and based on the value and availability of the land.”*

16. Mr. Zuniga, S.C., further argues that while the Government of Belize did quickly perform the contract by paying the sum of \$90,000 mentioned in Clause 2(1) and (2) of the Agreement, there is more to be done by both parties to fulfill paragraph 2(3), namely:

(1) Identify a piece of land *“in the general proximity of Mullins River, in the general vicinity of the properties being sold”*;

(2) Determination of the size and location by The Purchaser (Government of Belize);

(3) Consideration of the sketches to be submitted by the Vendor (the Claimant);

(4) All must be *“based on the value and availability of land”*.

Mr. Zuniga, S.C., argues that this was clearly a severable agreement which has been partly but substantially performed by the Government of Belize by the payment of the full purchase price which has been satisfied by the registration of a Deed of Cancellation of Mortgage. The Claimant in paragraph 32 and 33 of his affidavit acknowledges payment of the

\$90,000 and also produces a copy of the Deed of Cancellation of Mortgage. Mr. Zuniga SC submits that once the Claimant Lismour Flowers accepted the \$90,000 it was no longer open to him to rescind the contract unilaterally. He can only claim specific performance of the contract or damages. He further submits that the titles held by the Interested Party under two Ministers Fiat Grants are good subsisting titles. The Interested Party therefore urges the court to refuse the relief sought by the Claimant.

### **Decision**

17. I must first express my gratitude to all counsel for these submissions which have greatly assisted me in determining the issue in this matter. I have considered the evidence of each party as submitted in their respective affidavits. I have also considered the legal submissions presented by each party in this matter. The sole issue is whether or not the Deed of Conveyance between Lismour Flowers and Je'Lal Properties should be registered by the Registrar. I fully agree with the submissions made by Mr. Zuniga, S.C., for the Interested Party. The Government of Belize has paid in full the contract price of \$90,000 which has been accepted by Mr. Flowers. He has registered a Deed of Cancellation of

Mortgage. This is clearly substantial performance of the contract between GOB and Lismour Flowers. However, it is only part performance of the agreement as the Government is yet to locate a piece of land from which Mr. Flowers will choose property to replace the lots he has ceded over to GOB under this contract. I must state that I find no evidence of any undue influence as pleaded by the Claimant as there is nothing to suggest that at the time Mr. Flowers agreed to sell the Properties back to GOB, his will was overborn. I find that he contracted with GOB of his own free will, and that contract is binding on him. I also find that, as Mr. Zuniga, S.C., rightly submits, once Lismour Flowers accepted payment from GOB, it was no longer open to him to rescind the contract unilaterally. The titles of Ms. Rosalie Menzies to lots given to her by GOB under Ministers Fiats are valid. Mr. Flowers is entitled to either specific performance of the contract, or to damages for breach of contract if GOB does not completely fulfill the terms of the contract. It does not appear that time was of the essence in performing this contract, and the contract clearly stated that the availability of the type of land desired by the Claimant was a crucial factor which affects how soon that part of the contract would be fulfilled by GOB. I therefore refuse the relief sought by



the Claimant. Costs are awarded to the Defendants and the Interested Party to be paid by the Claimant to be agreed or assessed.

*Dated this Tuesday, 18<sup>th</sup> day of December, 2018*

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**Michelle Arana**  
**Supreme Court Judge**