

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

**CLAIM NO. 393 OF 2017**

**BETWEEN:**

<b>(BELMOPAN LAND DEVELOPMENT</b>	<b>CLAIMANT</b>
<b>(CORPORATION LTD.</b>	
<b>(</b>	
<b>(AND</b>	
<b>(</b>	
<b>(THE ATTORNEY GENERAL OF BELIZE</b>	<b>DEFENDANT</b>

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***BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA***

**Ms. Naima Barrow for the Claimant**

**Mr. Nigel Hawke, Solicitor General, along with Crown Counsel Briana Williams and Agassi Finnegan for the Defendant**

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**J U D G M E N T**

1. On November 10<sup>th</sup>, 2017, the Claimant obtained a court order entitling it to damages to be assessed for the violation of its rights under Section 17 of the Belize Constitution which mandates protection of its citizens from deprivation of property except by or under law. The Defendant did not dispute and in fact conceded in (an affidavit from Crown Counsel Agassi

Finnegan dated September 22<sup>nd</sup>, 2017) that the Claimant is owed fair and full compensation for the compulsorily acquired land and the remaining land that was distributed. Judgment was therefore entered by this court against the Defendant pursuant to Rule 14.4 of the Supreme Court Civil Procedure Rules based on the Defendant's admission of the Claimant's case. The only question for the Court to decide was therefore the quantum of such damages to be assessed.

2. The court has received the Valuations of Calvin Neal and Mario Cruz as qualified experts to assist it in determining the value to be placed on this property in order to provide full and fair compensation to the Claimant for the compulsory acquisition of its land. The Court will examine each of these reports in turn in light of the parameters of the instructions given to each expert and the questions challenging their findings by counsel.

### **The Report of Calvin Neal**

3. Mr. Calvin Neal says in his report that he is a Certified Environmental Inspector with over thirty (30) years experience in valuing land in Belize. He holds among his wealth of educational accomplishments, a Certificate from the International Real Estate Institute since October 1<sup>st</sup>, 2005 which certifies

him as a Registered Property Manager, Senior Certified Valuer and a Certified International Consultant. His resume shows that he became a Lands Inspector for the Government of Belize in 1972 and held different positions such as Inspector Lands Bailiff and Land Revenue Administrator in the Ministry of Natural Resources during his tenure as a public officer. He states that he is well acquainted with the conditions obtaining in the real estate market for the sale of land. He carried out an inspection and appraisal of 1394 acres of land that was registered in the name of the Claimant. This land was part of a larger parcel of land comprising 2,243 acres belonging to the Claimant. There are two Transfer Certificates of Title CN1 and CN2 respectively which contain 2,647 acres of land owned by the Claimant. The land which is the subject matter of this assessment is situate between University of Belize in Belmopan and miles 43 and 45 on the George Price Highway. Mr. Neal appraised the land and considered relevant comparable parcels of land to ascertain the market value of the land as at 31<sup>st</sup> December, 2013.

4. The property is located 1.8 miles from the city centre, and borders East of the city limits of Belmopan. The Claimant's property has frontage on the

George Price Highway. Mr. Neal says that the highest and best use of the Claimant's land is for the expansion of the city of Belmopan.

Mr. Neal states that he applied the market approach method to the indicated value, supported by the market analysis for the period 2010-2013, the history of earlier transactions, and the factor of supply and demand. According to his valuation process, the open market value of the Claimant's Property was established assuming that it is held freehold, without encumbrance and offered with the benefit of vacant possession taking no account of the business conducted thereon. Open market value is an opinion on the best price at which the sale of an interest in property would have been completed unconditionally for cash consideration on the date of valuation assuming:

- (i) A willing seller and buyer;
- (ii) That, prior to the date of valuation, there had been a reasonable period (having regard to the nature of the subject property and the state of the market) for the proper marketing of the interest for the agreement of the price and terms and for the completion of the sale;

- (iii) That the state of the market, level of values and other circumstances were, on any earlier assumed date exchange of contracts , the same as on the date of valuation;
- (iv) That no account is taken of any additional bid by a prospective buyer with a special interest; and
- (v) That both parties to the transaction have acted knowledgeably, prudently and without prejudice or compulsion.

5. Mr. Neal used comparable sales for the years 2002 to 2013. These include a sale of 100.412 acres between RECONDEV and the University of Belize in 2002. The price per acre was \$5,000 so the 100 acres were sold for \$500,000. This property was undeveloped at the time of sale. He says that since this property is adjacent to that of the Claimant in this matter, in his view this is an exceptionally applicable and appropriate comparable, although the price per acre could perhaps be adjusted upwards to account for the fact that this was a transaction between two quasi-government institutions and not a commercial transaction.

Mr. Neal then considered more recent sales of similar properties. Where such properties were developed, he assessed the cost of development as it

relates to the overall value of developed property, to adjust for the increase in value. The average price range of property with infrastructure in 2011 was \$25,000 to \$70,000 per acre. He confirmed these prices by reference to records of actual transfers in the Valuation Comparables Report from the Lands Department in Belmopan. For example, Mr. Neal looked at CN 5 from the Valuation Comparables Report at the Lands Department which showed 8 land transfers of one (1) acre each as of May 2012; these parcels were assessed by the Lands Department as \$25,000 each and were located one (1) mile north west of the Claimant's property. These were gifts from a family holding to various members of that family.

In 2012, Daniel and Sonia Lopez transferred 5.17 acres to Bowen and Bowen Ltd. for \$350,000. The value of the property transferred was therefore \$67,698.26 per acre. This property is located one (1) mile west of the Claimant's property. This information is also taken from the Valuation Comparables Report from the Lands Department.

6. Mr. Neal says that the value of infrastructure accounts for 30% of the value of the property, while sub-division costs account for 12.5%. He therefore concludes that the value per acre of undeveloped land such as the Claimant's

land in 2012, using the lower part of \$25,000 range would be \$14,375.00 per acre.

Another recent comparable sale that Mr. Neal used to assist him in determining the value of this property was a sale by Yvonne Shagoury to Paul Charlton of 9.196 acres of developed land for \$310,000.00 in June 2014. The value of the land was therefore \$33,710.31 per acre.

7. The final comparable sale used by Mr. Neal was where the Belmopan City Council sold 10.075 acres of developed land in Belmopan to National Institute of Culture and History for \$975,272.59. The value of the land was \$97,272.31 per acre; it is located one and four fifth miles west of the Claimant's property. Having adopted this approach (comparing the subject parcel to similar parcels that have been sold) Mr. Neal assessed the value of the Claimant's land at \$11, 549.00 per acre as the true value of the property.

**Cross-examination of Mr. Neal by Crown Counsel for the Attorney General's Ministry**

8. Ms. Briana Williams challenged Mr. Neal on several aspects of his report. She asked him about the distance of the University of Belize from the Claimant's land. He said it is about an eighth of a mile away using the Eastern boundary of the campus. He was also asked whether the Claimant's land is located

outside the city limits of Belmopan. He said yes it was and that the land has some frontage on the George Price Highway between Belmopan City and Cotton Tree Village. Ms. Williams put this statement from Mr. Neal's report to him that *"Open market value is an opinion on the best price at which the sale of an interest in property would have been completed unconditionally for cash consideration on the date of valuation assuming"* various factors listed. He was asked whether the valuation report wouldn't be the opinion. In response, he said that it depends on how you look at the broader aspect of the appraisal. The purpose of the valuation would be the first item you would look at. When asked why he used comparables from 2010 to 2013 when the first part of the acquisition occurred in 2003, Mr. Neal said that in doing appraisals, the acceptable comparables are within a 2 and 3 year range. He further explained that the other relevant factors referred to in paragraph 11 *"Taking into account all relevant factors including relevant market conditions"* is based on the purpose of the appraisal supported by the highest and best use, the purpose of the acquisition. He also stated that the purpose of the valuation is to ascertain the market value as at the date of acquisition was 2013. The highest and best use of the land is city expansion in his opinion.



9. Ms. Williams told Mr. Neal that the purpose of this land acquisition was for agriculture; he said no it was for city expansion, and it was based on that factor that the appraisal was done. He said he went on the land to examine it and saw that on the acres that had been acquired, there were patches of what appeared to be slash and burn and a couple of squatters shacks. The adjoining land bought by the University of Belize is not developed land. He agreed that Caribbean Investment Land (C.I.L.) acquisition was close to the Claimant's land and was \$2,500 per acre; but that land was not in the immediate vicinity of the Claimant's land. Ms. Williams told him that acquisition should have been taken into consideration as a comparable for the Claimant's valuation. Mr. Neal disagreed and said that it should not have been used based on his methodology. He went on to describe what he did in valuing the Claimant's property. When asked about the appreciation rate, he said that he went to the Land Title Unit at the Lands Registry and researched. He looked at sales in the general area in this case from 2002 to 2013 and got a percentage of up or down which is known as the appreciation rate. This rate was based on documentation taken from the Lands Department; in 2013 the appreciation rate that the Ministry of Natural Resources was using was 9%. Ms. Williams challenged Mr. Neal on this saying

that the table that he relied on was not used at Lands Department but was for insurance purposes. He said that the only place one gets sales comparables from is from Lands Department. Appreciation rate is not only for insurance purposes as it is a broad based exercise concerning appreciation of real estate. He does not fully agree about using the table for insurance purposes because undeveloped lands are not insured. This is the first Government of Belize acquisition that he has dealt with. The land value formula cited by Ms. Williams is based on sale comparables of the same documents used for research at the Lands Department. He explained that even though the Claimant's land is undeveloped land, he used developed property in his valuation because the purpose of the acquisition is city expansion of the city of Belmopan. So even though the land is not within city limits and it is not developed, as the appraiser one looks at the subject property acquired which will be joined with the city in the future. The best way a valuer can assess a fair market value is to look at what the values are in the city to which this very land will become part of based on the very purpose of the acquisition. He went on to discuss the comparables used including University of Belize land and NICH land that were close to the Claimant's property. It was put to him that these were not fair comparables

because these properties were within city limits. He replied that the comparables show the value of lands within city limits but the final application is reconciled. He did not apply value for value, or dollar for dollar. He said that none of the values of the properties were applied in their entirety; they were reconciled to suit the parameter or boundary of the subject property. He stated that Cotton Tree lands were \$4,500 per acre and CIL lands were \$2,500 per acre. He did not use these comparables because there was no indication of city expansion in their acquisition. He said that the Government of Belize stated that the purpose for which they were acquiring the Claimant's property was for expansion of the city of Belmopan. One could never look at agriculture land and land for city expansion at the same value. The 1394 acres were rounded off to 1400 acres as one parcel of the parent parcel. Acreage closer to the highway wouldn't necessarily be worth more than acreage further in; it all depends on the valuation method used by the appraiser. Land in Maya Mopan were considered in his appraisal where a lot of 6,700 square meters was sold in Maya Mopan for \$20,000. Based on that, he reconciled upward to suit the subject property.

10. At the conclusion of Mr. Neal's testimony, the learned Solicitor General suggested and the Court agreed that a second valuator be called to assist the

court in light of Mr. Neal's admission that this was his first experience assessing land acquired by the Government of Belize. In that light, Mr. Mario Cruz was appointed as an expert to provide the requisite valuation.

**11. Evidence of Second Valuator Mario Cruz**

Mr. Cruz prepared an affidavit dated July 2<sup>nd</sup> 2018 where he valued the Claimant's land at \$4,282.00 per acre based on the highest and best use of the land as agricultural land. In his report, he said that he is a Senior Certified Valuer from the International Real Estate Institute (IREI), a Certified International Consultant (CIC), a Certified Review Appraiser (CRA) and a member of the National Association of Review Appraisers and Mortgage Underwriters (NARAMU). He has over 18 years' experience valuing Real Property and chattels. He says that he was appointed as an expert in this case to conduct a valuation of 1394 acres of the Claimant's land situate between University of Belize in Belmopan and mile 43 to 45, George Price Highway as contained in a Transfer Certificate of Title registered at Folio 48 Volume 29 (for 404 acres) and a Transfer Certificate of Title registered in Folio 97 Volume 29 (for 2,243 acres).

He inspected the subject property on June 28<sup>th</sup>, 2018 and his Appraisal Report is dated June 30<sup>th</sup>, 2018. The purpose of the appraisal is to estimate

the Present Market Value of the subject property “*as is*” at the date of the inspection and to develop an opinion on its liquid value. Present Market Value is defined as the most potential in cash or terms equivalent to cash or other precisely revealed terms, for which the appraised property will exchange/sell in a competent market under all conditions requisite to fair sale, with the buyer and seller each acting prudently, knowledgeably, for self-interest and assuming that either is under undue duress, value of property “*as is*” at inspection date. Liquid Value is the lowest practical price to be considered in cash, or terms equivalent to cash or other precisely revealed terms, for which the appraised property will exchange/sell in a circumscribed market, with seller being compelled to sell within prescribed time and imposed conditions. Buyer typically motivated by such conditions. Highest and best use of the land is the most reasonable/probable or profitable legal use of vacant land or improved property which is physically possible, appropriately supported by immediate neighborhood, and financially feasible, causing the result of the highest value to property to be attained.

12. Mr. Cruz then defines in his report different types of methods and procedures by which the value of a property is ascertained; these include the sales comparison approach, cost approach, income approach, investment

approach and residual approach. He defines Land Acquisition as the power of government to acquire private rights in land without the willing consent of its owner or occupant in order to benefit society. He then makes a note that historical records show that land acquisition attracts compensation greater than the market value of the property in question as the buyer is compelled to buy; the exact opposite happens as liquidation process where the seller is compelled to sell.

Mr. Cruz describes the subject property as a lot that is irregular in shape, containing 2,647.71 acres with 565 feet road frontage. The subject property is the largest plot of land in the neighborhood and it is located within a low-income agriculture neighbourhood where cash crops are predominant in the area. Mostly vacant lots are in this neighborhood and since the property has minimal road frontage when compared with its size, Mr. Cruz notes that this negatively impacts its market appeal. The range of property values in the area are \$5,000 for a few one acre empty lots to approximately \$100,000 for a few large plots averaging 50 acres each.

13. Mr. Cruz states that the highest and best use of the property is agriculture because the property is ideally located for cash crop cultivation; however

subdivision would be necessary. The topography is flat high land with few areas that might collect water during severe rainy seasons though the neighbourhood has never experienced flooding that would cause detriment to its highest and best use. Sandy loam and clay loam are the best classification of the soil reinforcing its highest and best use. He also states that due to the property's proximity to the City of Belmopan, as the property borders the city on the entire East side, it would also be suitable for city expansion.

14. Mr. Cruz says that the best method to value this property is the residual approach. He defined residual approach as the estimate of the value of land or building that is subject to be developed. This returns a value of the site/land or building after development has been completed minus the cost of purchase, plus developing, maintaining, or reselling the land or building typically in smaller portions (e.g. smaller plots of land, condos, and strata titles). Some considerations that must be included (but are certainly not limited to) cost of construction, building/development period, investment yield, rent, fees, property taxes, finance costs, and any other additional costs. Mr. Cruz stated that using this approach the value of the property was \$4,282 per acre x 2,747.71 acres for a total value of \$11,337,000.00. The

compensation value as at the date of the report would be \$4,282 per acre x 1,394 acres for a total value of \$5,969,000.

**Written Questions posed by Ms. Barrow to Mr. Cruz on his Valuation**

15. Ms. Barrow asked Mr. Cruz the following questions on his report:

1. Did you value the aggregate of 2,647.71 acres of land together?

Answer: Yes

2. Is it the fact that you arrived at the value of the 202 acres of land acquired in 2003 by deducting its value from the value of the aggregate of 2,647.71 acres?

Answer: No, I did not consider past sales.

3. Is it the fact that you did not seek to arrive at the value of the 202 acres of land by assessing its value as a separate and separately acquired parcel of land?

Answer: Yes, I did not consider past sales.

4. In the "Remarks" section of your report (page 8), you note that you found no suitable recent sales of identical/similar property for the sales comparison approach to value. Given that:

i) 202 acres of the Claimant's land was acquired in 2003;



- ii) In the year before RECONDEV acquired 100 acres of land *“literally adjacent to the claimant’s property”* for \$5,000 per acre (see paragraph 13-9 of Calvin Neal’s affidavit).

Answer: No, RECONDEV scenarios should not be considered for Sale Comparison Approach as it differs in many aspects with subject property; size/area which has an impact on target market; shape/topography which has an impact on usefulness; location/accessibility impacts appeal due to the access to the property and access to utilities in reference to use; use especially its highest and best use; and time with special attention on economic era (e.g. during recession prices may fall).

- (iii) Sales Comparison Approach must use *“recent sales records”* that to my professional understanding and normal best practice as a Senior Valuer are sales that have been done within the past 5 (five) years from effective date of subject valuation.

- (iv) Land obtained by RECONDEV from the University of Belize (UB) in the case stated above is valued under different

parameters that are not applicable to the subject property.

Major factor is LOCATION - UB property is within City Limits in contrast to location of property in question which is outside of city bounds, within as agriculture use/layout on the outskirts of an agriculture based village.

- (v) The time factor cannot be undermined as real estate values are tangible to the economy and the economy is not a straight line. Time has also proven to be able to change the Highest and Best Use of a Property (e.g. subdivision to accommodate social needs, in agriculture land may become unfertile, and give birth to residential communities, etc.).

5. On the basis of that comparison would you accept that given that 100 acres of land acquired in 2003, adjacent to the Claimant's 202 acres, had a market value of \$5,000 an acre over 15years ago (in 2002) that the current value of the claimant's property must be more than the value of \$4,282.00 an acre (which is \$718 less)?

Answer: No, I strongly disagree as time factor and location are donating price factors that must be carefully studied prior to

concluding a value appreciating, devalued or remain the same over time to any particular case.

6. Given that you say (in the last sentence of the first paragraph on page 8 your report) that a larger parcel attracts a lower price, would the value of 202 acres of land acquired in 2003 be different if you had valued it separately?

Answer: Maybe, as certain parameters would be treated different. The 202 acres if valued separately would need to meet and satisfy its own assumptions and hypothesis governing its appraised value. e.g. (i) the entire 2,647.71 acres satisfy the command of proper access as it has frontage to the George Price Highway plus dirt road access where it meets Belmopan eastern boundary versus the 202 acres that may not even have a road access; (ii) use of land may be impacted by topography - 50 acres of low/swamp land within 2,647 acres may be overlooked but 50 acres of 202 acres would surely impact its value. Therefore, it can be concluded that while size matters, because it impacts its Highest and Best Use, it is not by any law dictating that its value is proportionate to size.

6.1 If yes, what would that value be?

Answer: A separate property valuation would be needed to ascertain the market value of 202 acres.

7. Is it correct that you arrive at the value of the 1,192 acres of land acquired in 2014 by deducting its value from the aggregate of 2,647.71 acres?

Answer: Yes.

7.1 Given that you say (in the first paragraph on page 8 of your report) that a larger parcel attracts a lower price, would the value of the 1,192 acres of land acquired in 2014 be different if you had valued it separately?

Answer: No, as most, if not all, parameters would be the same. The 1,192 acres if valued separately would meet and satisfy the same assumptions and hypothesis governing 2,647.71 acres, making value per acre the same.

Also, that last statement cannot be used by itself as is it refers to previous statement that parcels of less than 10 acres attract high values. Therefore, the last sentence simply refers to larger parcels

greater than 10 acres. Such statement does not imply that as acreage increases or decreases its value moves in direct relevance to its size.

7.2 If yes, what would the value be?

Answer: Not Applicable

8. Was the value of the property acquired in 2003 (202acres) different in 2013 than it is now?

Answer: I don't know as I did not conduct any research of such sale or that individual property or its past sales. Ascertaining such value would summon its own independent exercise.

But Land by rule of thumb appreciates in value with time; however, no property is immune to changes or/and to record a loss in value as a consequence of negative economic or/and social impact.

9. What was the value in 2003 of the parcel of 202 acres?

Answer: I don't know. This required a special valuation exercise.

9.1 What would be the value of the 202 acres of land acquired in 2003 if you took its value as at 2003 and added interest at the rate a Valuer would use from the date of its acquisition in 2003 to 1<sup>st</sup> January 2014?

Answer: Land value may be computed over short periods (back or future) using interest rates (referred to as interest capitalization method by valuers) but it is not best practice, especially for great gaps of time. Too many assumptions and hypothesis governing property value change with time-therefore this approach to value may be misleading and as such I do not recommend. A re-appraisal of value is the best approach.

9.2 Was the value of the property acquired as at 1<sup>st</sup> January, 2014 (1,192 acres) different as at that date from the value as at 28<sup>th</sup> June, 2018? What would be the current value of the 1,192 acres of land acquired on 1<sup>st</sup> January, 2014 if you took its value as at that date and added interest at the rate of 6% per annum (as ordered by the Court) from that date to today's date?

Answer: Maybe the value would be the same. Because of the time lapse being only four (4) years the value of land can be computed using the interest capitalizing method. However, it must be noted that this method assumes that all property characteristics, found on 28<sup>th</sup> June, 2018 remain the same over such period of time, e.g., road access,

neighborhood built up, highest and best use, economic factors affecting real estate market, and that market appetite for such properties have remained steady/in par with the 6%. Lapse of time alone does not constitute an increase or decrease in property value as land value is more relevant to demand and supply.

10. Can you identify and produce a copy or summary of the historical records that you say at item "x" on page 4 of your report, show that compensation for land that has been compulsorily acquired attracts compensation greater than the values used for other properties.

Answer: Such is public knowledge but the Lands Department is reluctant to provide certified copies and as such I cannot use in court, but I use such knowledge to guide interested parties as I believe such information to be true and accurate.

The best comparison would be the acquisition of lands now managed by Harmonyville Community, a community between Cotton Tree Village and St. Matthews Village.

In a normal market buyer and seller act in free will-one to sell, the other to buy.

In a liquidation process, the seller is compelled to sell. Seller sells at a discounted value to ensure a sale within prescribed conditions.

In an acquisition process the buyer is compelled to buy. This is what frequently makes a seller overprice a property in question regardless of property value.

11. In the section of your report entitled Highest and Best Use (page 6 of the report) you state that the property would also be suitable for city expansion.

11.1 Is it true that city expansion was not factored into the "*Method used to develop Value*" (page 7 of the report) for the Claimant's property?

11.2 Can you state what would be the value of the property if you factor in city expansion in the method used to develop value?

Answer: No as per item under conclusion and reconciliation section of my affidavit.



### Legal Submissions on Behalf of the Claimant

16. Ms. Naima Barrow on behalf of the Claimant submits that Mr. Calvin Neal's testimony was unshaken by cross-examination. She argues that Mr. Cruz gave a false valuation of the Claimant's property because, while stating that the highest and best use of the land is for residential sub-division, instead of giving a value based on that use, Cruz gives a value for the land as if its highest and best use was for agricultural purposes. Ms. Barrow says that if Mr. Cruz did not know how to value the land based on its highest and best use then he should have simply said that he was unable to value the land. Learned Counsel cites the Court of Appeal decision of Civil Appeal Nos. 4 and 17 of 2002 *Holiday Lands Ltd v Attorney General of Belize*, where the Court held that the Board of Assessment was wrong to arrive at a valuation of compulsorily acquired land on Ambergris Caye by adopting a mean between the higher value given by the Claimant's expert and the lower value given by the Government's experts. In remitting the case to a new board, the court gave useful indicators of the approach that a tribunal should adopt to arrive at a valuation stated in the Land Acquisition (Public Purposes) Act. In essence, a judge may consider sales of properties that were not in the immediate vicinity of the acquired property. Mr. Cruz confirmed that the

land could be used for city expansion, and this confirms the premise upon which Calvin Neal's report was based, that is, that the highest and best use of the land is city expansion. Mr. Neal states a clear, transparent and document supported basis for arriving at a value of the subject land. He arrived at his valuation by relying on the consideration on the transfer of an adjoining parcel of land between two institutional and quasi-government entities, the University of Belize and the Belmopan City Council (the RECONDEV Transfer) at a time when the property was as undeveloped as the Claimant's was at time of acquisition. He said that the RECONDEV Transfer price was lower than would be expected between two commercial entities.

#### **Legal Submissions on Behalf of The Attorney General**

17. Ms. Briana Williams submitted that Government acknowledged that the land was acquired and attempted to settle without having to come to court, but the quantum of settlement had to be fair and reasonable for both sides. The Attorney General is in complete agreement and support of Mr. Cruz's valuation as that would be the best value. This valuation is still higher than what the Government wanted to pay but it is still reasonable and fair. Learned Counsel argues that Mr. Neal's valuation did not reasonably consider the location of the land acquired. The position of the Government

is that the comparison to the sale of RECONDEV lands is unfair because those RECONDEV lands were within Belmopan city limits. The use of the land for city expansion, as Mr. Cruz states in his affidavit, requires an in depth study analysis and many experts. It cannot just be a Land Valuer saying the city will be expanded. It is unfair to value the land based on what amounts to the potential of the land. The Defendant supports the valuation of Mr. Cruz because he considers the present condition of the land which is for agriculture. Although the Claimant is saying that the Government wanted the land for city expansion, Ms. Williams argues that that would require other experts to look at the land and make that determination.

### **Decision**

18. I am grateful for the submissions that have assisted this court in coming to a decision in this matter. I note from the evidence in the affidavit of Ms. Finnegan that there is a Gazette notice dated 28 June, 2003 where the Government of Belize states that the purpose of acquisition of 202 acres of the Claimant's land is agriculture. Having reviewed the reports of both experts along with the legal submissions on behalf of both parties, I am of the respectful view that the report of Mr. Calvin Neal was more relevant, detailed and therefore of greater assistance to this court. As Ms. Barrow has

rightly pointed out, Mr. Neal's application of the RECONDEV transfer and the University of Belize transfer was quite relevant because both transfers involved the consideration of properties in proximity to the Claimant's land and in a similar state of development, i.e., undeveloped land at the time of the transfer. Compensation for acquisition of the land of a private citizen must indeed be reasonable and fair. As Mr. Cruz noted in his report, historical records show that land acquisition attracts compensation greater than the market value of the property in question as the buyer is compelled to buy; the exact opposite happens in the liquidation process where the seller is compelled to sell. I also consider the fact that this 1,394 acres of land by the Government of Belize from the Claimant has been acquired since the year 2003, for a total of 15 years passing without any compensation being paid. In anticipation of the award of damages exceeding \$500,000 Government has recently paid the sum of \$500,000 to the Claimant as compensation which sum must therefore be deducted from the final sum awarded. The damages awarded are the sum of \$16,099,306.00 (1,394 acres @11,549.00 per acre) together with interest to date of \$4,655,123.14 (6% per annum from January 1<sup>st</sup>, 2014 to 25<sup>th</sup> October, 2018) and continuing

at the daily rate of \$2,646.46. Prescribed costs (on the sum of \$20,754,429.14) \$191,886.07 to be paid to the Claimant by the Defendant.

*Dated this Tuesday, 4<sup>th</sup> day of December, 2018.*

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