

IN THE COURT OF APPEAL OF BELIZE AD 2020
CIVIL APPEAL NO 1 OF 2019

G. A. ROE & SONS

Appellant

AND

(1) **COMMISSIONER OF STAMPS**
(2) **ATTORNEY GENERAL OF BELIZE**

Respondents

BEFORE

The Hon Sir Manuel Sosa
The Hon Madam Justice Minnet Hafiz Bertram
The Hon Mr Justice Lennox Campbell

President
Justice of Appeal
Justice of Appeal

A Marshalleck SC for the appellant.
S Matute Tucker for the respondents.

30 October 2019 and 3 November 2020

SIR MANUEL SOSA P

[1] I am of the firm opinion that this appeal should be dismissed. I have read, in draft, the judgment of my learned Sister, Hafiz Bertram JA, and I entirely concur in the reasons for judgment given, and the orders proposed, therein.

SIR MANUEL SOSA P

HAFIZ BERTRAM JA

Introduction

[2] G. A. Roe, the appellant, is a company (“the company”) registered under the laws of Belize and is engaged, inter alia, in the development of real estate in Belize. The first respondent, the Commissioner of Stamps (“the Commissioner”) is appointed under and by virtue of the Stamp Duties Act, Chapter 64 (“the Act”) as Commissioner of Stamps. The second respondent, Attorney General of Belize was sued as the legal representative of the Government of Belize (GOB).

[3] The Company bought land (“the land”) from The Belize Bank Limited, which exercised its power of sale over the property conferred by a Deed of Mortgage. On 31 January 2017, the Company presented to the Property Titles Unit of the Ministry of Natural Resources, for registration, the deed of conveyance (“the deed”) by the Belize Bank in favour of the Company. The stamp duties assessed by the Land Titles Unit was \$6,500.00 on the basis of the consideration of \$150,000.00 stated in the deed. The sum assessed was paid and collected by the Land Titles Unit.

[4] The assessment was later reviewed by the Commissioner who informed the company that the freehold property was assessed at \$335,000.00 as the assessed market value and that stamp duty is payable on that amount and not on \$150,000.00 which is stated as consideration in the deed.

[5] In an amended fixed date claim form the Company sought declarations which included that the consideration in the deed represented the price negotiated for the land in a *bona fide* arm’s length dealings and the best evidence of the real value of the land or the basis of which stamp duty on the conveyance might properly be assessed. The Company also sought an injunction restraining the Commissioner and the Attorney General from unlawfully assessing or interfering with the stamp duty chargeable.

[6] The trial judge, Griffith J, refused the declarations and injunction sought by the Company. On 30 October 2019, this Court heard an appeal of the decision of the trial judge and reserved its decision.

The Background

[7] The opinion of the Commissioner may be sought pursuant to section 28(1) of the Act with reference to any executed instrument as to whether the instrument is chargeable with any stamp duty and what amount of duty the instrument is chargeable.

[8] By the provisions of section 28(2) of the Act, the Commissioner may for the purposes of rendering the opinion require to be furnished with an abstract or copy of the instrument and also with such evidence as she may think necessary in order to show to her satisfaction whether all the facts and circumstances affecting the instrument with regard to the duty or the amount of duty chargeable thereon are fully and truly set forth therein.

[9] On or about the 31 January 2017, the Company presented to the Land Titles Unit, the deed of conveyance by the Belize Bank in favour of the Company, for registration of the land as described in the Claim Form. It is stated in the deed that the sale and conveyance was being affected by the Belize Bank Limited in exercise of its power of sale over the property conferred by the Deed of Mortgage dated 7 October 2017. The consideration for the sale of the property is \$150,000.00 as stated in the deed. The Land Titles Unit assigned Instrument No. LTU- 201700172, to the deed on its presentation.

[10] On or about 26 October 2017, the Company received a written notice from the Commissioner of Stamps in which it was stated that upon “*reviewing the assessment on LTU: 201700172, the Commissioner of Stamps approves the assessment of the freehold property*” as \$335,000.00 being the market value of the property and that stamp duty is payable on that amount.

[11] On 9 March 2018, the Company issued a fixed date claim form which was later amended for declarations and injunction. The claim was supported by the affidavit of Christopher Roe, the Director of the Company.

[12] The Respondents had applied to strike out the claim as an abuse of process on the basis that (i) the Company was obliged to exhaust its right of appeal against the Commissioner's assessment under section 29 of the Act; or alternatively (ii) the Company ought to have filed a claim for judicial review as it was seeking to challenge the assessment of duty done by the Commissioner.

[13] The trial judge acknowledged that the Company was entitled as of right in its public law claim to seek only declaratory relief. (See *The Association of Concerned Belizeans et al v The Attorney General et al, Belize Civil Appeal No. 18 of 2007*).

[14] The relief sought by the Company was however more appropriate for judicial review. The trial judge did not strike out the claim but acceded to the application made by counsel for the Company to amend its claim to seek declarations which could stand on their own.

[15] The claim was later amended and proceeded to hearing by way of affidavit evidence and cross examination of deponents.

The Pleadings

[16] The Company in the amended claim sought the following declarations:

- “(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 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 31st 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 31st January, 2017.”

The decision of the trial judge

[17] By an Order dated 18 January 2019, Griffith J ordered the following:

1. The declarations sought by the Company that the price on the conveyance of the transfer is the best evidence of the market value of the property conveyed, were refused;
2. The declarations sought that the Commissioner of Stamps in respect of a conveyance or transfer of property required to be assessed pursuant

to section 28 of the Stamp Duties Act, Chapter 64, is 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, were refused;

3. The application for injunction restraining the Commissioner of Stamps from seeking to impose stamp duty on the sum of \$335,000.00 being the value assessed on the property purchased by the Company, was refused.
4. In accordance with CPR 2005, Rule 56.13(6) there was no order as to costs.

Findings of the trial judge

[18] Section 73 of the Act and the Stamp Duty regulations provides for the procedure for tax assessment in respect of conveyances and transfers and other instruments to be assessed with fixed or *ad valorem* duty. There was no dispute about the procedure by either side as acknowledged by the trial judge in her judgment.

[19] The trial judge accepted the definition of 'fair market value' as put forward by both counsel in the court below, that is, "*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...*" See paragraphs 8 and 9 of the judgment of the trial judge where it is fully expounded.

[20] At paragraph 14 of the judgment, the judge found that the sale of the land to the Company by the Bank was between a willing buyer and a seller, operating at arms' length with each other and being knowledgeable of the conditions of the land.

[21] The judge also accepted the evidence of the Commissioner 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 staff, which resulted in the increased value of the property.

[22] The judge found that the Commissioner was entitled to embark upon the valuation sought and that there was sufficient reason for her to do so. The basis for this finding was that the Commissioner was entitled to seek such valuation by the plain reading of the terms of section 72 itself. She further stated that a determination of the higher of two values presupposes the existence of two valuations. (See para 29).

The appeal

[23] The Company appealed against the entire decision of Griffith J contained in the perfected order of the court dated 18 January 2019. The grounds of appeal are:

1. The trial judge erred in law and misdirected herself in failing to find that the price paid and stated as the consideration in a deed of conveyance of land is the best evidence of the market value of the land conveyed where the price paid and stated in the deed is the winning bid accepted at a duly held public auction sale of the property, by a mortgagee in exercise of its power of sale over the property, as was the case at bar.
2. The trial judge erred in law and misdirected herself in failing to find that the Commissioner is under a legal duty to accept the stated consideration in such a deed as the best evidence of the market value of the land conveyed and is only entitled to find an alternative valuation of the property as better evidence of market value in exceptional circumstances where there is some evidence impugning the propriety of the public auction sale, when offering an opinion as to the stamp duties payable on such a deed pursuant to powers conferred by the provision of the Stamp Duties Act.

3. The trial judge erred in law and misdirected herself in refusing the injunction sought in the claim on the basis that the Company was not entitled to the declarations sought in the claim.

[24] The relief sought is for the appeal to be allowed and the declarations of orders sought in the claim be granted.

The Stamp Duty Act – relevant provisions

[25] The trial judge considered and interpreted several sections in the Act in order to determine whether the Commissioner was entitled to look beyond the stated consideration in the deed. These sections will be quoted in full below.

[26] Section 28 provides for assessment of duty by the Commissioner as follows:

- “28 (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.”

[27] Section 72 provides for stamp duty on transfer of land. Section 72(1) provides:

“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.”

[28] Section 73 provides for all instruments to be submitted for the opinion of the Commissioner. It states:

“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.”

[29] Section 71 provides for voluntary disposition to be dutiable as a sale. It states:

- (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 organization 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.”

Issue for determination

[30] Whether the trial judge failed to find that the Commissioner was under a legal duty to accept the consideration in the deed of conveyance, being the winning bid at a public auction sale, as the best evidence of the market value of the land conveyed, and that the Commissioner was only entitled to find an alternative valuation as better evidence of market value in exceptional circumstances where there is some evidence impugning the propriety of the public auction sale.

Discussion

[31] The Commissioner is empowered pursuant to section 28 of the Act to assess duty payable on any executed instrument. The Commissioner may be asked to express her opinion on the instrument as to whether it is chargeable with any duty and the amount of such duty. In rendering such opinion, she may require an abstract or copy of the instrument and such evidence in order to satisfy herself as to whether all the facts and

circumstances affecting the instrument, in particular with regard to the amount of duty chargeable are fully and truly set forth on same.

[32] The Commissioner could either give an opinion that an instrument is chargeable or not chargeable with duty. If the Commissioner is of the opinion that the instrument is chargeable with duty, she has to assess the duty in which in her opinion, it is chargeable. For instance, in her assessment she could either accept the consideration stated in a deed of conveyance as the market value of the land or obtain a valuation of the land based on the circumstances of the case.

[33] In the instant matter, the stamp duty concerns the sale of land by the Belize Bank through public auction and exercising its power of sale as a mortgagee. A deed of conveyance transferred title to the Company. Section 73 of the Act provides that a conveyance or a transfer under section 71 or 72 of this Act shall be submitted to the Commissioner by the person liable to pay duty for her opinion as provided under section 28 of the Act. The conveyance with a stated consideration of 150,000 was submitted to the Commissioner. The Commissioner obtained a valuation of the property which was valued at \$ 335,000. The argument in the court below and in this Court is that the Commissioner should seek to value the land only where there are exceptional circumstances and not in an arm's length transaction where there is a sale by public auction.

[34] In the court below, Griffith J stated that the sole issue for determination in the claim was the interpretation and application of section 72(1) of the Act. Section 72 (1) provides that 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.

[35] The trial judge found that the Commissioner was entitled to seek a valuation by the plain reading of the terms of section 72 of the Act. There is no doubt that pursuant to section 72, duty is payable under two circumstances, that is, on the value of land or on the amount of consideration, whichever is greater. The valuation of the land itself by the

Commissioner was not challenged and was not an issue in the claim. As such, the issue in the instant appeal is whether the Commissioner was under a legal duty to accept the consideration in the deed of conveyance as the best evidence of the market value of the land conveyed.

[36] Learned senior counsel, Mr. Marshalleck, for the Company, submitted that “value” means the fair market value of the land which is by definition the price at which the land can be expected to be bought and sold in the open market. There is no definition of the word “value” in the Act. Counsel relied on the Supreme Court of Canada case of *Musqueam Indian Band v Glass* [2002] SCR 633, where Gonthier, Major, Binnie and Lebel JJ said: “*In real estate law, “value” generally means the fair market value of land, which is based on what a seller and a buyer would pay for it on the open market.*”

[37] The question is what is “fair market value.” The definition of market value was fully explored by the judge in her judgment. One of the authorities relied upon by the respondents in the court below was *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 ...”

As stated by the trial judge at paragraph 9 of the judgment, both sides agreed with that definition.

[38] Mr. Marshalleck relied on *Council of Shire of Redland v Edgarrange Pty Ltd* (1998) 19 QLCR 116, (in the court below and in the instant appeal) where the Land Appeal Court of Brisbane explained the best evidence of market value as:

“... for the sale to be accepted as the best evidence of market value, its analysis would need to show that the transaction met the often quoted

Spencer test (Spencer v The Commonwealth of Australia (1907) 5 CLR 418...

To arrive at the value of land at that date, we have, as I conceive, to suppose it sold then, not by means of a forced sale, but by voluntary bargaining between the plaintiff and a purchaser, willing to trade, but neither of them so anxious to do so that he would overlook any ordinary business consideration. We must further suppose both to be perfectly acquainted with the land, and cognizant of all circumstances which might affect its value, either advantageously or prejudicially, including its situation, character, quality, proximity to conveniences or inconveniences, its surrounding features, the then present demand for land, and the likelihood, as then appearing to persons best capable of forming an opinion, of a rise or fall for what reason so ever in the amount which one would otherwise be willing to fix as the value of the property.”

[39] There was no issue in relation to the definition of market value. However, the respondents argued in the court below that the sale by the Bank was a forced sale. This argument was rejected by the trial judge. The arguments were that the facts of the instant case did not satisfy the “Spencer test”, as the sale of the property was a forced sale. As shown above in the *Spencer test*, for the sale to be accepted as the best evidence of market value, it cannot be a forced sale (absence of compulsion to buy or sell). Mr. Marshalleck on the other hand, argued that the Bank did not act under any compulsion and was a willing seller. He argued that a forced sale is a sale under compulsion of a court order. Further, a sale under mortgage may be under order of the court and when it is so then it is considered a forced sale. But, where the chargee sells otherwise than under a court order, the sale is not a forced sale. The evidence of Mr. Roe for the Company was that the Bank postponed the sale of the property for years before accepting the bid of the Company at a public auction sale. The trial judge agreed with the Company that it was not a forced sale. At paragraph 14 of her judgment she stated that she was in agreement with Mr. Marshalleck that “the fact of the sale having been conducted pursuant to a mortgagee’s power of sale does not render it a forced sale.”

At paragraph 14 of the judgment, the judge found that the sale of the property to the Company by the Bank was between a willing buyer and a seller, operating at arms' length with each other and being knowledgeable of the conditions of the land. There was no cross-appeal on this point that it was not a forced sale. As such, it is not an issue for exploration by this Court. But, having so found that this was an arm's length sale, the question that should be explored by this court is whether the Commissioner should have accepted the stated consideration in the conveyance or seek to value the property.

Whether the Commissioner was entitled to seek a valuation of the property

[40] The trial judge at paragraph 7 of her judgment stated that the issue for determination was the interpretation and application of section 72(1) of the Act, in terms of determining the value of the land for the purposes of assessment of stamp duty. In the court below, the argument for the Company was that the consideration in the deed is the best indicator of market value. Further, the Commissioner can only decline to accept this consideration on some transparent and objective basis. On the other hand, the arguments for the respondents were that pursuant to section 72(1) of the Act, the Commissioner was obliged in all cases to conduct a valuation of the land in question in order to ascertain which is the higher amount.

[41] The judge considered the evidence of the Commissioner that she had knowledge of the area and locality in which the land is situated and therefore obtained a valuation from a qualified member of her staff. This resulted in the increased value of the land. The question that she determined thereafter was whether the Commissioner was entitled to embark upon the valuation and whether there was sufficient reason for her to have objectively done so. The judge approached this issue in three different ways: (a) Interpretation and application of section 72 of the Act; (b) Legislation of Belize distinguished from Hong Kong and Trinidad and Tobago and (c) Acceptance of objective evidence by the trial judge.

Interpretation of section 72

[42] The judge found that “*the Commissioner was entitled to seek a valuation by the 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 the first place.*” In my opinion, the trial judge correctly interpreted section 72 of the Act which is plain and unambiguous. Section 72 (1) provides that “*there shall be paid a duty on the value of the land or of the amount of the consideration, whichever in the greater, in respect of a transfer of land ...” Duty has to be paid on the greater amount, that is, the value of the land or the consideration stated in the deed. As such, the Commissioner was **entitled** to seek an official valuation on the value of the land.*

[43] However, for the avoidance of any doubt, I am of the view, that this entitlement of the Commissioner does not mean that this must be done in each and every case in the application of section 72, as argued by Mrs. Matute-Tucker for the respondents. The Act has to be read as a whole and the Commissioner’s power of assessment of duty has to be done by reading the Act as such and in particular section 28 of Act. Section 72 is not a stand alone provision whereby the Commissioner seeks a valuation of the land to determine which is greater in order to assess duty.

Alternative reasoning by the judge - Belize legislation distinguished

[44] In arguments before this Court, Mr. Marshalleck contended that the function of the Commissioner when assessing stamp duty payable on a deed of conveyance on a sale of land is to examine the contents of the deed to determine whether the consideration stated therein represents the best evidence of the fair market value of the land. He submitted that this is done by analyzing the sale in the conveyance to satisfy herself that it is a commercial transaction willingly negotiated at arm’s length by knowledgeable parties. He further argued that it is only where the sale does not meet the *Spencer test* that the Commissioner is entitled to seek other evidence such as professional opinions to discover fair market value. Senior counsel relied on Privy Council

decision in *Lap Shun Textiles Industrial Company Limited v The Collector of Stamp Revenue*, Privy Council Appeal No. 32 of 1975.

[45] Mr. Marshalleck further argued that the stated consideration was the highest bid accepted at a public auction sale in the exercise of a statutory power of sale under a mortgage. He contended that the high bid is a fair market value of the land and as such the Commissioner was wrong to dispute its probative value.

[46] In her alternative reasoning, the trial judge considered the issue of acceptance of the stated consideration in a deed of conveyance unless prompted by some objective evidence to the contrary. She interpreted the legislation of Hong Kong discussed in *Lap Shun* (relied upon by Mr. Marshalleck). On this question, she also interpreted the legislation of Trinidad and Tobago as discussed in *Re: Bartholomew & Persaud, Trinidad and Tobago High Court, No. 2834 of 1975* (relied upon by the respondents). She found that the two legislations:

“.... 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.**” (emphasis mine) – See para 29.

[47] The trial judge, in my view, correctly interpreted the legislations and distinguished Belize legislation and this is not in contention. Mr. Marshalleck acknowledged in his submissions before this Court that the statutory provisions in *Lap Shun* differs significantly from that which applies in Belize. In Belize, as made clear by the judge in her judgment, “the legislation does nothing more than advert to the preferment of the higher value as between stated consideration and market value.”

Further alternative - Acceptance of objective trigger of circumstances

[48] A further alternative reasoning considered by the trial judge was that even if she accepted the position of senior counsel, Mr. Marshalleck, that there must be an objective trigger of circumstances in order for the Commissioner to look behind the stated consideration, she found favour with the words of Maharaj J, in *Re Bartholomew and Persaud* (quoted at 28 of her judgment) about knowledge of the Commissioner of land values. In *Bartholomew & 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:-

“...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.”

[49] In the instant matter, the judge addressed the knowledge of the Commissioner at paragraph 29 of the judgment. She said that the Commissioner’s evidence showed that she had knowledge of the area and locality in which the assessed land is situated and so obtained a valuation from a qualified member of her staff. As such, the judge stated the argument of objective trigger of circumstances failed in any event because of the knowledge of the Commissioner of the value of the land in the particular location. In my opinion, the trial judge correctly stated at paragraph 30 of her judgment 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...”

[50] In arguments before this Court, Mr. Marshalleck argued that the guidance offered by Lord Wilberforce for their Lordships in *Lap Shun* is invaluable. He referred the Court to page 3 of the judgment which in fact shows observations of their Lordships of the Hong Kong legislation after finding that the statutory language must prevail.

[51] In *Lap Shun* their Lordships construed section 27 and in particular *section 27(4) of the Stamp Ordinance of Hong Kong* in dealing with a question as to whether “*when a sale has been made between parties at arms’ length, in good faith, for an agreed consideration, it is open to the Collector (of Stamps) to charge the conveyance as one operating as a voluntary disposition inter vivos, with duty based upon what he considers to be true value of the property.*” Their Lordships found that section 27(4) is clear and lacking in ambiguity. Further, it is clear that even where there are dispositions in good faith a conveyance **shall not be deemed** to be of valuable consideration “*where the Collector is of the opinion that by reasons of inadequacy of the sum paid as consideration or other circumstances the conveyance or transfer confers a substantial benefit on the person to whom the property is transferred.*” In that case, the consideration was inadequate and the Collector had material upon which an opinion was formed that the conveyance conferred a substantial benefit on the transferee.

Observations by Lord Wilberforce in Lap Shun

[52] Lord Wilberforce made three observations in order that the implications of their Lordships’ decision may be understood. The first observation was relied upon by Mr. Marshalleck and as such the Court will consider only that one. Lord Wilberforce said:

“First, it does not follow, that if the Collector succeeds in the present case, every conveyance or transfer on sale will require an official valuation of the property or an adjudication of the stamp duty. Any stamp duty authority has to start from the

*point that valuation of much, if not most, property is a matter of judgment and is only possible within fairly broad limits, and that sound, if not the best, evidence of value is to be found in bona fide arms' length dealings. It is for this reason, that when s 27(4) authorizes the substitution for the agreed consideration of the "real" value, it requires that a **substantial benefit for the transferee be found to exist**. In the great majority of cases the normal procedure of presentation for stamping and routine stamping according to the stated consideration will continue to be followed: such cases as present will continue to be **exceptional**. Thus their Lordships on this account do not envisage any dislocation of the normal process of stamping."*

[53] In the Belize legislation there is no such requirement that a substantial benefit for the transferee be found to exist by the Commissioner. In accordance with section 72 of the Act, the deed shall be submitted to the Commissioner by the person liable to pay the duty for her opinion in terms of section 28 of the Act. Pursuant to section 28, the Commissioner may require a copy of the deed and such evidence as may be necessary in order to show to her satisfaction whether all the facts and circumstances affecting the instrument with regard to duty are truly set out in the document. In the instant case, the Commissioner had knowledge of the area and therefore, requested a valuation of the property from a qualified member of her staff.

[54] Further, the finding of Griffith J that the sale was a *bona fide* arm's length dealing did not automatically mean that the stated consideration in the deed was the true market value of the property. The Commissioner was entitled to obtain such evidence as necessary in her assessment of the duty payable, (section 28) in particular, an official valuation of the land. Thereafter, there is an application of section 72 of the Act, whereby duty is payable on the greater amount. In my view, the power of the Commissioner to request information under section 28(2) cannot be interpreted to mean that she is precluded, absent exceptional circumstances, from looking beyond the value of the transaction as stated in the instrument presented for assessment even where there is an arms' length sale done by public auction.

Tax's Payers right of appeal

[55] A taxpayer has a right of appeal pursuant to section 29 of the Act. In the instant matter the Company did not appeal the Commissioner's valuation of the land which resulted in an increase in taxes and is the reason for the institution of the claim. The trial judge addressed this issue of an appeal at paragraph 31 of her judgment where she stated that in an earlier ruling on the respondents' application to strike out the claim, the Company had expressed the view that its right of appeal under section 29 had not been triggered because the Commissioner made a finding on the value of the land and had not assessed any tax. The judge stated that this argument by the Company was rejected given her view that "*the higher valuation of the land gave rise to an increased liability to tax based on that higher value.*" Griffith J concluded that the Company's right of appeal has expired in relation to any challenge to the Commissioner's valuation of the property which is higher than the consideration in the conveyance. There was no appeal of this ruling by the Company.

Disposition

[56] I would propose the following based on the reasons given above:

- 1) The appeal be dismissed and the order of the trial judge confirmed;

- 2) Each party bears its own costs. The costs order is provisional, to be made final after seven days. In the event either party should apply for a contrary order within the period of seven days from the delivery of this judgment, the matter of costs shall be determined on written submissions to be filed by the parties in ten days from the date of the application.

HAFIZ BERTRAM JA

DISSENTING

CAMPBELL JA

[57] The Appellant, the Claimant below, was incorporated pursuant to *The Company Act* and is engaged, in the development of real estate in Belize.

[58] The First Respondent is a servant or agent of the Government of Belize and is appointed under and by virtue of the provisions of the *Stamp Duties Act* as a Commissioner of Stamps (Commissioner).

[59] The Second Respondent is sued as legal representative of the Government of Belize pursuant to section 42 of the Belize Constitution.

[60] I have had the opportunity of reading the draft judgment of my sister Madam Justice Hafiz Bertram, and find myself in the unhappy position of not being in agreement with the majority decision expressed therein. This appeal is brought by the Appellant against the refusal of its claim heard by Griffith J. The Appellant filed a Notice of Appeal based on the following grounds:

- (i) The learned trial judge erred in law and misdirected herself in failing to find that the price paid and stated as the consideration in a deed of conveyance of land is the best evidence of the market value of the land conveyed where the price paid and stated in the deed is the winning bid accepted at a duly held public auction sale of the property by the mortgagee in exercise of its power of sale over the property, as was the case at bar;
- (ii) The learned trial judge erred in law and misdirected herself in failing to find that the Commissioner of Stamps is under a legal duty to accept the stated consideration in such a deed of conveyance as the best evidence of the market value of the land conveyed and is only entitled to find an alternative valuation of the property as better

evidence of market value in exceptional circumstances where there is some evidence impugning the propriety of the public auction sale, when offering an opinion as to the stamp duties payable on such a deed pursuant to powers conferred by the provisions of the Stamp Duties Act.

- (iii) The learned trial judge erred in law and misdirected herself in refusing the injunction sought in the claim on the basis that the Company was not entitled to the declarations in the Claim.

Background

[61] The facts in this matter are not in issue. On the 31st January 2017, the Appellant presented a deed of conveyance to the Land Titles Unit, in respect of lands it held. Based on the stated consideration in the deed of conveyance of \$150,000, the land was assessed for stamp duties of \$6,500.00.

[62] The deed provided that the sale and conveyance was being done by Belize Bank in execution of a power of sale over the land conferred by a Deed of Mortgage dated 7th October 2017. The Commissioner notified the Appellant that, on a review of the assessment, the stamp duties applicable were assessed on a valuation of \$335,000.00. The stated consideration represented the successful bid of the appellant at a public auction held at the instance of the Bank of Belize in exercise of the powers of sale as mortgagee.

[63] The Appellant contended that the stated consideration is the value of the land fetched at a duly advertised sale of the land at which the public was invited to participate. The Appellant therefore believes that the assessment of the market value of the property by the First Respondent at a value other than \$150,000.00 was unreasonable, irrational, disproportionate and ultra vires the provisions of the *Stamp Duties Act* generally and section 28 in particular. The Appellant asked the Commissioner that the assessment be

vacated. The Commissioner, by email, advised that she did not share the Claimant's view as to the market value of the property.

[64] The Appellant filed a Fixed Date Claim Form dated 26th January 2018, claiming declarations that the consideration on which stamp duties were assessed, paid and collected is the true price on the property fetched at a public auction sale and sought an injunction restraining the Defendants from interfering with the stamp duties chargeable and/or payable and/or paid on registration of the above-mentioned deed of conveyance dated 31st January 2017.

[65] On the 9th March 2018, Ms Noreen Fairweather, Commissioner, filed an affidavit on behalf of the Defendants in Answer and in which she stated at paragraph 6, inter alia; “*Section 72 of the Stamp Duty Act* provides that duty shall be payable on the value of the land, or on the amount of the consideration, whichever is greater, in respect to a transfer of land, whether by sale, exchange or gift. Consequently, as a matter of practice monies are collected on the consideration by the Ministry since that amount reflects the bare minimum of the assessed value.”

And at paragraph 8;

A Valuation Assessment Report on the Deed of Conveyance was prepared by the valuer and submitted to me for review and approval or otherwise. The subject property was a subdivision comprising some 34 lots (Lot1 & 28) was not included in the sale. The valuer used comparable market sales methodology of other properties in the area and assessed the subject property accordingly.

Amended Fixed Date Claim Form

[66] On the 13th June 2018, an Amended Fixed Date Claim Form was filed, seeking inter alia;

- (1) 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 the amount of the consideration, whichever is greater, at the rate specified in the section.

- (2) 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 fides 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.
- (3) A declaration that the First Defendant is entitled pursuant to *s28 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 that the stated consideration is not a price fixed in pursuance of bona fides arm’s length dealing between the Purchaser/Transferee and the Vendor/Transferor.
- (4) A Declaration that the stated consideration in the Deed of Conveyance dated 31st January 2017, represents the price negotiated for the land in bona fides arm’s length dealings between the Claimant and the Belize Bank Ltd 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.
- (5) An injunction to restrain 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 31st January 2017.

[67] The Stamp Commissioner directly refuted the Appellant's assertions as to the best evidence of market value. In the Third Affidavit of Noreen Fairweather, filed on the 20th September 2018, the Commissioner deponed at paragraph 6;

“The price fetched at the public auction for the lands does not represent the best evidence of the market value since price is different from value. Price paid at an auction or under any other circumstances is merely the cost to buy the property while market value represents what the property is really worth. Those are valuation standards which are supported by our laws.”

and at para 8, inter alia;

The assessed value done by the experts will be the most accurate and often times differ greatly from the price the property is sold for. The price paid for a property while also taken into account along with the other factors is near meaningless if not based on some form of valuation. The value of the property simply cannot be decided on the sellers asking price or indeed the price fetched on the market as it represents very little of the true worth of the property.

Claimant's written submissions at trial

[68] The Claimant had in its submission dated 8th October 2018 said at para 12 inter alia;

“12) In performing that function the Commissioner acts, not merely as a taxing functionary but in a quasi-judicial capacity and must have regard to the rights of the taxpayer as well as the Crown as provided in the Act. The Commissioner's function is to oversee the proper implementation of the provisions of the Act having due regard to the rights of the affected parties.

Paragraph 21 and 24) The Claimant submitted that the reference in section 72 to “value of the land” means the fair market value of the land which is by definition the price at which the land can be expected to be bought and sold in the open market. A recently concluded sale of that land would be the most relevant information for analysis.

(32) It was submitted that the Commissioner should examine the sale identified in the conveyance itself to satisfy herself that it is a commercial transaction willingly negotiated at arm's length by knowledgeable parties. It is only when the sale does not meet the Spencer test or is not such an arm's length commercial transaction, that the Commissioner becomes entitled to look to other evidence such as professional opinions in order to determine a fair market value. Otherwise the Commissioner should be obliged to act in accordance with the best evidence of value, namely, the stated consideration in the deed. Only in exceptional circumstances where the stated consideration arrived at from bona fides commercial transaction at arm's length is called into question."

The Respondents Submissions at trial

[69] On behalf of the Respondents in an answer to the Claimants dated 26th October 2018, submitted at paragraph 2;

"(2) It was conceded that "the Commissioner is a quasi-judicial statutory authority and is obliged, by the nature of her function, to act reasonably proportionately when rendering her assessment as to the duty payable on any particular instrument."

at paragraph 4;

"(4) It was also conceded that the Commissioner in giving her opinion on the amount of stamp duties payable must determine whether "the consideration stated in the deed is different from the value of the land being transferred. The Respondents were strongly of the view that a deed cannot determine the value of the land."

[70] Issue was taken by the Respondents with the *bona fides* of the public auction for sale of the property undertaken by the Bank of Belize as mortgagee. It was submitted that the sale by the bank, in execution of the mortgagee's power of sale, was a "forced sale". Reliance was placed on *Council of Shire of Redland v Edgarrange Pty Ltd (1998)*. The

Defendant relied on *St Kitts-Nevis National Bank v Registrar of Titles SKBHCV v 0167 of 2005*.

[71] The Respondents supported their submissions with *Re Bartholomew and Persad (1979) High Court of Trinidad and Tobago*. In that case, the Court found that section 55(a) of the Ordinance expressly provides for the substitution of the value of the land instead of the stated consideration in the conveyance. Section 55(4) defines the constituents of the voluntary disposition *inter vivos* as not made in good faith, and for valuable consideration, except where marriage is the consideration. It was submitted for the Applicants that the section was restricted to cases of gifts of such benefits and had no application to cases where the conveyance was the culmination of arm's length bargaining between the transferor and transferee.

[72] Mahargh J found that the stated consideration was inadequate, and treated the transaction as a "voluntary disposition *inter vivos*". The Court specifically found that it was not a *bona fide* transaction at arm's length with both parties being knowledgeable. The court found that the Applicant on the unchallenged evidence must have derived a substantial benefit amounting to \$19000.00 or 43% of the value of the property.

[73] It was submitted on behalf of the Respondents that the instant case does not satisfy the Spencer test, for the reasons that, it was a forced sale. The Claimant was not acquainted with the land and cognizant of circumstances of the land which affected its value.

[74] It was further submitted on behalf of the Respondent, that the value of land referred to in section 72 is the value determined by an expert valuation assessment after using well recognized and practiced methodologies, in this case, the Comparative Sales Approach para 5. The Defendant maintains that the "value of land" expressed in s72 refers to the market value of land in fact and says that it is for the Commissioner to discover this value as a matter of fact by examination and reliance on credible evidence including the examination of the instrument itself and reference to expert

valuation/assessment, using well recognized and practiced methodologies when appropriate.

[75] On the 31st October 2018, the Claimant replied to the additional submissions of the Defendants, contending that those submissions were inconsistent with the authorities, stating inter alia;

"It also flies in the face of authorities which hold that the price fetched on a duly held public auction sale by a chargee is the market value of the land."

[76] The Claimant relied on the Privy Council decision in *Lap Shun Textiles Industrial Company Limited v The Collector of Stamp Revenue PC Appeal 32/1975*, per Lord Wilberforce, at page 4.

"The best evidence of value is the stated consideration in the deed In the first instance, is therefore to investigate the sale disclosed by the instrument ... to see whether criteria met It is only if the criteria are not met that secondary evidence by way of an expert opinion might properly be adverted to. Otherwise the stated consideration must be accepted as the value of the land as a matter of reasonableness, proportionality and impartiality as the best evidence of that value."

[77] It was further submitted on behalf of the Claimant that, in respect to the allegation of the forced sale, there was no compulsion on Belize Bank to sell the property. The bank was a willing seller. *Cuckmere Brick Co. Ltd and Anor v Mutual Finance Ltd 1971 2 All ER 633* makes clear that a chargee is entitled to decide when to sell. The bank postponed sale of the property for years before accepting the bid of the Claimant. The Claimant says that a forced sale is a sale under compulsion of a court order. Mr Marshalleck sought support from a decision in the United States, *Terraza 8 LLC v Franklyn County Board of Revision et al and Lap Shun Textiles Industrial Company Limited v The Collector of Stamp Revenue PC Appeal 32/1975*.

[78] Mr Marshalleck SC submitted that an expert opinion as to value is but only one form of evidence which may be available to the Commissioners and given the inherent limitations on the probative value of such expert opinions (impliedly recognized by the Privy Council in the *Lap Shun Textile* case when Lord Wilberforce stated that valuation of

much, if not most, property is a matter of judgment and is only possible within fairly broad limits) it is indeed often not the best evidence of value available. It is indeed well recognized at law that an adjudicator is not bound to accept the truth of expert evidence where there is other material before him which conflicts with it and outweighs it. The best evidence of value is the stated consideration in the deed where the established criteria for the sale are met It is only if the criteria are not met that the secondary evidence by way of an expert opinion might properly be adverted to.

[79] Mr Marshalleck further submitted at trial, that despite the differences in the respective legislation, *Lap Shun* provides invaluable guidance on whether, where the criteria are met, it is open to the Commissioner to charge the conveyance as one operating as a voluntary *inter vivos* disposition. In which case, applying duty based on what he considers to be the true value of the property. Counsel underlined Lord Wilberforce's opinion on the limitations of valuation as probative evidence. According to Mr Marshalleck, in order to allow a substitution of that best evidence of the stated consideration, there must be exceptional evidence of a substantial benefit of the transferee. Those exceptional circumstances arise where the circumstances of the sale cast doubt on the efficacy of the sale.

The Court's conclusion

[80] Griffith J identified the sole issue for the Court's determination in the claim as, "*The interpretation and application of section 72(1) of the Act, in terms of the determination of the value of land conveyed for the purpose of assessment of stamp duty.*" The learned trial judge dismissed the claim. However, the learned trial judge accepted that the stated consideration was reached at arm's length and the buyer and seller acted in good faith. This was a rejection of the submission on behalf of the Commissioner that Belize Bank's only interest was to recover their money. The Court also accepted the submission of senior counsel that the fact of the sale having been conducted pursuant to a mortgagee's power of sale did not render it a "forced sale", as contended by the Respondents.

[81] After examining s55a and s27, of the Hong Kong and Trinidad and Tobago Act respectively, Griffith J found that there must be an objective trigger for the Commissioner

to subject the stated consideration to scrutiny. The Court was of the view that those taxpayers have by the scheme of that legislation, been afforded a benefit of the presumption of the adequacy of the consideration paid in a conveyance on sale. The Court found “*This is not the case in Belize, where section 72 clearly states that it is the higher of the stated consideration or the value of the land.*”

[82] The learned judge was unable to envisage such a presumption in the Belize legislation, where it appears that the Commissioner can look beyond the stated consideration, unless she chooses to accept it as indicative of the true market value. The learned trial judge was of the view that even if there was an objective trigger, the Commissioner was most qualified as Marahaj J had noted in *Bartholomew and Persaud* to make the necessary determination.

Analysis

[83] The Appellant formulated the issue for this Court’s determination as “*whether an opinion of value can be properly used and relied on to displace the price of property fetched in a sale of property recently negotiated at arm’s length between knowledgeable parties as evidence of the property’s true value.*” (See the Reply Submissions of the Appellant.)

[84] The learned trial judge’s construction of section 72 was, “*that it seems 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 the market value of the property.*”

Statutory interpretation

[85] There has been in recent years a gradual movement from the strict literalist approach of construing revenue legislation to a purposive approach by the courts. The learned author of *Maxwell on the Interpretation of Statutes Twelfth Edition* by P. ST. J

Langan, (1969) writing on Statutes imposing burdens, opined that such statutes are subject to the rule of strict construction, at page 256 he says;

“It is a well settled rule of law that all charges against the subject must be imposed by clear and unambiguous language because in some degree they operate as penalties; the subject is not to be taxed unless the language of the statute clearly imposes the obligation and the language must not be strained in order to tax a transaction which, had the legislator thought of it, would have been covered by appropriate words. In a taxing Act, said Rowlatt J, ‘on the reception of the context and purpose he has to merely look at what is clearly said.’ There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.”

[86] This rigid adherence to a construction approach was eventually eased to include the context and purpose of the legislation. This is demonstrated in 1981 in *W.T. Ramsay Ltd. v I RC* {1981} 5TC 174, per Lord Wilberforce.

“A subject is only to be taxed on clear words, not upon intendments or the ‘equity’ of an Act. Any taxing Act of Parliament is to be construed in accordance with this principle. What are ‘clear words’ is to be ascertained on normal principles. These do not confine the courts to literal interpretation. There may, indeed should, be considered the context and scheme of the relevant Act as a whole, and its purpose may, indeed should be regarded. See IRC V Wesleyan and General Assurance Society [1948] TC 11.”

[87] In *Inland Revenue Commissioners v McGuckian* [1997] 3 All ER 17, the House of Lords underlined the earlier rejection by the House of pure literalism in the interpretation of tax statutes. Tax statutes had managed to resist the modern contextual approach. Lord Steyn at page 824 said:

*"During the last 30 years there has been a shift away from literalist to purposive methods of construction. Where there is no obvious meaning of a statutory provision the modern emphasis is on a contextual approach designed to identify the purpose of a statute and to give effect to it. But under the influence of the narrow Duke of Westminster doctrine, tax law remained remarkably resistant to the new non-formalist methods of interpretation. It was said that the taxpayer was entitled to stand on a literal construction of the words used regardless of the purpose of the statute (see *Pryce v Monmouthshire Canal and RIY cos* (1879) 4 App Cas 197 at 202-203, *Cape Brandy Syndicate v IRC* [1921] 2 KB 64 at 71 and *IRC v Plummer* [1979] 3 All ER 725, [1980] AC 896). Tax law was by and large left behind as some island of literal interpretation."*

[88] The House of Lords in *Barclays Mercantile Business Finance Ltd v H M Inspector of Taxes* [2005] 1 All ER 97 affirmed the principle of construction adumbrated in the *McGuckian* case, that "the modern approach to statutory construction is to have regard to the purpose of the particular provision."

Statutory Framework

[89] Section 28 (1) provides;

"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 is it chargeable."*

[90] The Commissioner is empowered to give her opinion on the statutory enquiries raised by **any** person in relation to any executed instrument. Any person in s28(1) appears to be a person who is able to satisfy the "sufficiency" test. The learned author of **Judicial Review Handbook** by Michael Fordham 1994, using the useful analogy of "the duty of care" in tort, states at page 237;

“That concept clearly involves a standing component (whether the plaintiff enjoys sufficient “proximity” so as to be a person to whom a duty of care is owed), the standing question in the Review context could be cast thus; was the applicant a person to whom the respondent body owed a duty to act legally/rationally/fairly?”

[91] In determining the nature of the transaction which is effected, the court will look to the substance of the instrument, not merely to its form. It is important to note that under s28 (1), it is the executed instrument on which the charge is levied and not the transaction.

[92] In *Oughtred v IRC [1960] A.C 206*, it was held by a majority in the House of Lords that the transfer was liable to *ad valorem* as a conveyance on sale. Per Lord Jenkins at p241;

“The parties to a transaction of sale and purchase may no doubt choose to let the matter rest in contract. But if the subject matter of the sale is such that full title to it can only be transferred by an instrument, then any instrument they execute by way of transfer of the property sold ranks for stamp duty purposes as a conveyance on sale notwithstanding the constructive trust in favour of the purchaser which arose on the conclusion of the contract” and see *Henty v Constable (Brewers) Ltd v I.R.C [1961] 1 WLR 1504 (C.A)*; *Fitch Lovell Ltd v I.R.C [1962] 1WLR 1325*.

[93] Section 28 (2) provides:-

“(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.”

[94] Section 28 (2) empowers the Commissioners to require the abstract or copy of that instrument in order to be satisfied that **all** relevant facts and circumstances have been tendered. If the Commissioners are of the opinion that a duty is chargeable on the instrument, they may assess the duty and stamp the instrument accordingly. (emphasis added)

[95] Writing on the contents of the abstract, the learned authors of *Conveyancing Law and Practice*, D B Barnsley page 264 at para 3 says:

“The abstract must contain all the documents and events material to the vendor’s title, commencing with the root of title and ending with the transaction or event by virtue of which the vendor claims title. Pre-roots documents must be included where necessary. Relevant documents and events are abstracted in chronological order, unless the property is or has been held under different titles, in which case each title is kept separate until there is unity of ownership. Each deed forming a link in the chain is abstracted in chief i.e. as a separate document”

And at pg 265;

“These documents forming part of the title need to be abstracted or copied – conveyances, mortgages, subsisting leases, surrendered leases (but not expired ones), assents, releases, grants of probate, letters of administration, vesting instruments.”

[96] In the assessment of duty chargeable on the instrument by the Commissioners, it is expressly provided for pursuant to s28 (2), that in addition to the abstract or copy of the

instrument, the Commissioners may require to be provided 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 the duty or the amount of duty chargeable thereon are fully and truly set out within.***”

[97] Section 28 (2) provides for The Stamp Commissioners to garner all the relevant evidence in respect of the duty chargeable on the instrument. I have not been pointed to any lack of clarity or ambiguity in the subsection. It seems to me to be easily discernible, what Lord Steyn calls the “*obvious meaning of a statutory provision*” [para 26, supra]. Section 28(2) is plainly and clearly meant to ensure that the Commissioners are empowered to satisfy themselves that **all** the facts and circumstances relevant to the duty chargeable on the instrument is made available to them.

[98] Section 28 (2) applies whether the duty payable, is being assessed on the value of the land or on the amount of the consideration in the instrument, pursuant to s.72 (1). All the evidence relevant to that assessment may be required to be provided by the taxpayer to the Commissioners. In both cases, the duty is levied on the instrument. The liability of an instrument to stamp duty depends on the circumstances which exist at the time the instrument is executed.

[99] The issues raised by the Commissioner concerned her view that the price fetched at a public auction for lands does not represent the best evidence of the market value of land since price is different from value. She also doubted the efficacy of the public auction undertaken by the mortgagee bank for the transfer of the property. In her affidavit of March 2018, the Stamp Commissioner stated at paragraph 25, “*The lending institution primary interest is mitigating their loss and as a result the price sought or procured by the sale of a property at an auction presents very little about the true value of the property.*” These submissions were all rejected by the trial court.

[100] Mr Marshalleck contended before this Court that the basis for the Stamp Commissioner’s valuation was fundamentally misconceived and directed the court’s

attention to para 6 – 10, of Noreen Fairweather’s Third Affidavit filed on the 20th September 2018;

“The price fetched at the public auction for the lands does not represent the best evidence of market value of the lots since price is different from value. Price paid at an auction or under any other circumstance is merely the cost to buy the property, while market value represents what the property is really worth. Those are valuation standards which are supported by our laws.”

Learned Senior Counsel contended that the Stamp Commissioner had rejected the accepted definition of market value.

[101] Mr Marshalleck forcefully contended that the submission flew in the face of the authorities. I have not been shown any authority which is consistent with the assertions in Ms Noreen Fairweather’s third affidavit. On the other hand, there are high judicial authority that goes against those assertions. *Cuckmere Brick Co. Ltd et Anor v Mutual Finance Ltd* .1971 2 All ER 633, *Lap Shun Textiles Industrial Company Limited v The Collector of Stamp Revenue PC Appeal 32/1975*.

[102] Despite the assertions in the third affidavit of Ms Fairweather, Griffiths J found that both sides accepted the closely related definition of market value as propounded in the “*Spencer Test*”. I agree with the learned judge’s rejection of the Respondent’s submissions “that the conveyance did not take place between a willing buyer and seller on account of the sale being one exercised under the mortgagee’s power of sale to realise its security. See *Cuckmere Brick Co. Ltd. and Anor v Mutual Finance Ltd [1971] 2 All ER 633*.”

[103] Section 71 expressly provided for voluntary dispositions *inter vivos*, to be treated as if it were a conveyance for sale for the purpose of making them dutiable on the value of the property. In respect of these voluntary dispositions, the option provided by s72 (1) for the payment on the higher of the value of the land or the amount of the consideration, is not available.

[104] Section 72 (1) provides;

“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 is the greater, in respect of a transfer of land, whether by sale, exchange or gift.

[105] The learned authors of *Revenue Law, Seventh Edition* by Barry Pinson illustrate how duty is assessed on a voluntary disposition, pursuant to the *United Kingdom Finance Act s.74 (1)* which provides that duty on voluntary disposition shall be charged on “the value of the property transferred” (similar to Belize’s *Stamp Duties Act, s.71*, which provides for duty to be paid on “the value of the property conveyed”). It was common ground that there was no definition of “value” found in the *Stamp Duties Act*. The illustration of the learned authors is therefore helpful in the assessment of “value of land” required to be made pursuant to s 72. The learned author notes at page 569;

*“It is thus necessary **to assume a hypothetical sale** of the gifted property in the open market, account being taken in valuing the property, of any interest reserved in the donor or settlor after the disposition and of any*

*interest which the donor had in the property before the disposition. See **Stanyforth v I.R.C [1930] AC 339 (HL)***” (emphasis mine).

[106] It is instructive that the method of assessment employed is a hypothetical sale in the open market. This means that both the assessment of the value of the land or of the amount of the consideration required under section 72(1) should proceed on the basis of an open market value. Albeit in the case of the “value of the land, it is a hypothetical sale on the open market. The subsection preserves the respect the common law has always accorded negotiations and contracts agreed in good faith by a willing buyer and willing seller.

[107] Mrs Tucker submitted that the stated consideration did not necessarily represent the value of the property. What it does represent is the value of the transaction and it is necessary for the Commissioner to carry out an exercise to determine the actual value of the property. (See also paragraph 18 above.) The procedure proposed by Mrs Tucker would make necessary resort to the Commissioner’s valuation in almost every case. Mrs Tucker proposal appears inconsistent with what Lord Wilberforce envisaged as the requirement for an official valuation only in exceptional cases. As explained by Lord Wilberforce in *Lap Shun Textile Industrial Company Ltd Privy Council Appeal No. 32 1975* 1 (Lord Wilberforce, Viscount Dilhorne, Lord Fraser of Tullybelton) 2nd March 1976, at page 4;

“In the great majority of cases, the normal procedure for presentation for stamping and routine stamping according to the stated

consideration will continue to be followed: such cases as the present will continue to be exceptional.”

[108] The failure of the First Respondent to point to any reason, exceptional or otherwise, for what Lord Wilberforce calls “*an official valuation or an adjudication of the stamp duty*”, is clear indication that this case belongs to the category His Lordship terms “the great majority of cases”, which follow the normal procedure of presentation and routine stamping according to the stated consideration.

[109] In the instant case there is no contention that the particulars of the instrument provide evidence of a transfer of land from Belize Bank to the Appellant, by way of a sale, which satisfies s.72 of the Act. I accept that the sale was conducted at a public auction at arm’s length by a willing buyer and a willing seller. I cannot accept the submission of learned counsel for the Respondents, that the sale by way of a public auction constituted a “forced sale”. (See *Cuckmere Brick Co. Ltd. and Anor v Mutual Finance Ltd. [1971] 2 All ER 633* at paragraph.

[110] The Commissioner, despite her concerns about the efficacy of the public auction, appeared not to have required from the Appellant, pursuant to s.28 (2), whether the bank had secured a valuation of the property either at the time the bank was considering the property as security for the loan or for exercise of its powers of sale as mortgagee. There was no question raised that the “due diligence of the bank” was in order. A mortgagee, in exercising powers of sale, may require expert to inform on reserve prices.

[111] In *The Practice of Banking 1, 2nd Edition*, J. Kelly notes the following on valuation of the property at the time it is being considered as a security, at page 337:

“It is essential that all property offered as security should be inspected and valued either by a bank official or by a professional real estate agent and surveyor, who visits personally and not willing to rely on what the deed say and what the customer claims is the value. In the case of domestic property,

the current vacant possession valuation can usually be fairly ascertained by the banker.”

And at page 318;

“However, if the bank has possession, or takes possession, it will then usually instruct professional and well qualified estate agents to act for it to find a purchaser and a sale may proceed either by way of private treaty or public auction. The bank will rely upon its professional advisers as to the price which it asks and accepts and its only duty to the mortgagors is to ensure that the open market price is obtained.”

[112] Senior Counsel for the Claimant relied on the authority of *Cuckmere Brick Co. Ltd. and Anor v Mutual Finance Ltd. [1971] 2 All ER 633* as they did below, to support his submission that a mortgagee is under a legal duty when exercising its power of sale, to secure market value of the land being sold. The Court was informed that the Respondents had “moved away” from their argument below that the sale by public auction was a “forced sale”. That movement away from those submissions came after she had taken actions based on them. Mr Marshalleck argued that the Respondent’s submission that “the lending institution’s primary interest is mitigating their lost was misconceived. Mr Marshalleck further submitted that the Respondent’s submissions although rejected by the court, have informed the approach adopted by the Commissioner to her assessment of the subject property. The Respondent’s submissions on what constitute a “forced sale”, the effect of a sale in a public auction, the comparative probative value of the stated consideration and a valuation of the land were the “trigger”/the reason that spurred the Commissioner decisions in obtaining a valuation.

[113] Griffith J considered the decision of their Lordship’s Board in the Privy Council decision of *Lap Shun Textiles Industrial Company Limited Privy Council Appeal 32/75*. The main issue identified was, as in the present case,- “Whether when a sale has been made between parties at arm’s length, in good faith, for an agreed consideration, it was

open to the Commissioner to charge the conveyance as one operating as a voluntary disposition *inter vivos*, with duty based upon what it considers to be the true value of the property.” (pg 2 of judgment)

[114] In examining the relevant statutory enactment, their Lordships in *Lap Shun Textiles Ltd* looked at what the Act was intended to achieve. They found that the language of the relevant statutory provision was clear and lacking in ambiguity. Their Lordships found that when the section refers to inadequacy of consideration, and to a conveyance conferring, in the opinion of the collector, a benefit, ***it is clearly stating factual elements whose existence or non-existence, appears on the face of the transaction.*** (Emphasis mine) The Commissioner is not at large “to discover this value” as a matter of fact by examination and reliance on evidence wherever found [para 18], but should be based on factual elements sourced from “the face of the transaction.”

[115] Griffith J had considered the Trinidad and Tobago case of *Bartholomew and Persaud* and the relevant legislation is the same as the Hong Kong case of *Lap Shun Textiles Industrial Company Limited*. That legislation differs significantly from the Belize legislation. Any *inter vivos* gift was subject to duty chargeable on the value of land in Trinidad and Hong Kong, and not on the stated consideration as obtains in Belize. The taxpayer sought mandamus to have the Commissioners of Inland Revenue exercise their functions and stamp a certain deed of conveyance with duty calculated on the stated consideration. The Board’s refusal was based on their opinion that having regard to its locality, the property was grossly undervalued, because of the inadequacy of the stated consideration the conveyance was chargeable with *ad valorem* duty as a voluntary disposition.

[116] Maragh J considered Ordinance 55(a) and the construction that could be placed on subsection 4 of the Ordinance, as to whether there was a duty on the Board to collect in the first instance on the stated consideration and at a later date to take the necessary steps to collect on the true value of the property. It was submitted for the Applicants that the subsection only caught conveyances where substantial benefits are intentionally

conferred on a grantee, and not on conveyances which were the culmination of arm's length dealing in good faith. The Court concluded that the question was purely one of construction.

[117] Griffith J found that the material difference between *Bartholomew and Persaud* and the instant case is that in the former case (Trinidad and Tobago and Hong Kong), *bona fides* conveyances or transfers for valuable consideration are by implication subject to a duty chargeable on the stated consideration in the instrument. It is only where there is a voluntary disposition – whether actual or deemed based on the opinion of the Board/Commissioner – that duty is charged on the value of the property.

[118] Whereas in Belize, *bona fide* conveyance 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. The exceptions are charitable organizations or trusts with charitable purposes (where the property is valued \$25,000.00 or less). The Court was of the view that the requirement in the Trinidad and Honk Kong legislation of the finding of inadequacy conferring a substantial benefit to the grantee, made the legislation qualitatively different.

[119] Before this court, Mrs Tucker contended that, pursuant to s.72 (1) both values must be accounted for. Counsel relied on Respondent's written submissions of the 18th October 2019, at paragraph 21, where it was stated that "in order to determine the value of land" as referred to in section 72, an expert valuation assessment after using well recognized and practiced methodologies is required to be done. In the instant matter, the Comparable Sales approach was used.

[120] According to Mr Marshalleck, once all the particulars of the transactions are confirmed – price, manner of sale, details of the land are correct, there was no reason for the Commissioner to look behind the stated consideration as being an accurate reflection of market value of the property. Counsel relied on *Parinv (Hatfield) Ltd v Island Revenue Commissioners [1998] STC 305*.

[121] The learned trial judge rejected that submission, and said;

“The Court does not accept the authority of Parvinz as establishing a limitation of the Commissioner’s power of enquiry to confirming the particulars and circumstances of presentation of an instrument for stamping.”

[122] Griffith J made a distinction between the instant case and *Lap Shun*, on which the claimant relied, finding that in *Lap Shun*, there must be an objective trigger to cause the Commissioner to undertake an enquiry in order to determine the adequacy or lack thereof. Griffith J opined that in the scheme of the Hong Kong legislation, those taxpayers have been afforded the benefit of a presumption of adequacy of the consideration paid in a conveyance on sale. The necessary implication from s.72 is that the Commissioner is entitled to look beyond the stated consideration.

[123] In *Parinv (Hatfield) Ltd v Inland Revenue Commissioners [1998] Simons Tax Cases 305*, Court of Appeal (Roch, Millett LJ and Sir John Balcombe) delivered 4th December 1997. The Appellant completed two documents in the process of purchasing an equitable interest in property in the United Kingdom. A declaration of Trust was executed by the transferor, which recited that a specified sum has been paid to the transferor by the Appellant and the transferor also executed a transfer of the property to the Appellant. The statutory provisions under s.55A and s.12 (b) of the *Stamp Duty Act UK* (which is similar to s.17 and s.28 (2) of *Belize Stamp Duty Act*), require the taxpayer to set out the facts and circumstances affecting the liability of the transfer to duty, and to provide such other evidence as the Commissioner considers necessary. In compliance with these provisions, the appellant delivered to the Revenue for its adjudication, an unstamped declaration of trust, the transfer and a copy of the contract of sale.

[124] The Revenue was of the view that the unstamped declaration of trust was inadmissible in civil proceedings pursuant to s.14 (4) of the *Stamp Duty Act 1891*. In the result, the transfer vested the property in the Appellant. *Ad valorem* duty on the transfer on sale was assessed on the amount paid as consideration by the Appellant. The Appellant asked the Revenue that a case be stated; that the court was not required to ignore the declaration of trust which was chargeable under the 1891 Act as a transfer for

sale, but was not stampable until thirty days after it had come to the UK. Further, the court should recognise such overseas unstamped document during that period. Lindsay J dismissed the appeal.

[125] The Appellant appealed to the Court of Appeal contending that the unstamped contract and the declaration of trust were inadmissible, and the copies of those documents were secondary evidence of unstamped documents and also inadmissible. Therefore, there was no admissible evidence of transfer or the consideration.

[126] The Court of Appeal held inter alia, the Revenue were entitled to rely on the consideration stated in the copies of the contract and the declaration of trust as relevant information supplied by the Appellant in accordance with its statutory duties without thereby accepting or relying on those copy documents as secondary evidence of the contents of unstamped documents. (**See pg 306, held.**)

[127] importantly, the facts relied on by the Court of Appeal, with one exception, was gleaned from the recitals to the transfer. The sole exception was taken from the case stated, that was the amount or value of the consideration for the sale referred to in the recitals. The amount was obtained by way of correspondence with the taxpayers solicitors.

[128] The unqualified use by the assessor of the information required of the taxpayer in compliance with UK equivalent to s.28 (2) of the *Belize Stamp Duties Act* is illustrated by Millet LJ, where he says, at page 311;

“The Revenue was therefore able to ascertain from the recitals to the transfer itself that it was a transfer on sale. The recital contained all the information that was necessary to establish that the transfer was an instrument by which the agreement for sale referred to in the recitals was implemented. The only further information that was required to enable the Revenue to assess the amount of ad valorem duty was the amount or value of the consideration for sale. They could ascertain that from the copies of the contract and declaration of trust which were supplied to them.”

[129] Where information was not supplied by the taxpayer, the Revenue was entitled to request them, and if that information was not received in an admissible form such as copies of unstamped documents, this did not prevent the Revenue from acting on them. In *Parinv (Hatfield) Ltd* Millett LJ rejected the Appellant's submissions that neither the court nor the Revenue could look at the document to ascertain the consideration, as that would be relying on secondary evidence, said;

"The Revenue was not bound to exclude from their consideration, evidence which would be inadmissible in a court of law. They were entitled to form their opinion on the basis of whatever information was supplied to them and leave it to the taxpayer to challenge their conclusion by adducing admissible evidence."

[130] To my mind, the language of s.28 (2) is clear and lacks ambiguity. Section 28 (2) imposes obligations on both the Stamp Commissioners and the taxpayer. Firstly, the Commissioners have an obligation to require to be furnished with all the facts and circumstances which are necessary to satisfy the Commissioners whether all the relevant information to make an assessment is fully and truly set forth. *Parinv (Hatfield) Ltd*, Millett LJ says at page 309, "*Once the Commissioners are satisfied that they are possessed of the information necessary to enable them to assess the duty, they have a statutory duty under s.12 (12.4) to assess the duty with which it is in their opinion chargeable.*"

[131] Secondly, there is an obligation placed on any person who requires the Commissioners' opinion, pursuant to s.28 (1), to satisfy the Commissioners' request for such facts and circumstances. Millett LJ identifies the taxpayer as the person with the statutory responsibility to supply the tax authorities with the information to satisfy them.

[132] The requirement for all the information to be supplied by the taxpayer in accordance with its statutory duties, among other things, ensures that the taxpayer will have notice of all the information that is being considered by the Stamp Commissioner in execution of statutory quasi-judicial function that could result in a decision adverse to the taxpayer.

[133] In *Parinv (Hatfield) Ltd (supra)*, Millet LJ, in speaking of the capacity of the Revenue to garner evidence within the statutory framework substantially similar to s28 (2) of the Belize Stamp Duties Act at page 314 states;

“The Revenue were entitled to be informed of all the circumstances which it was material for them to know in order to assess the transfer to duty. They were entitled to be told why one commercial entity had transferred property to another apparently unconnected commercial entity without consideration. To say that it did so because it was obliged to do so by the declaration of trust would not be a sufficient answer. It would only invite the further question: why did the one commercial entity execute a declaration of trust in favor of the other without consideration? And the answer is because it had promised to do so on payment of over \$37m].” (Emphasis in judgment)

[134] Millet LJ describes the provision of information to the Commissioner as an entitlement. Therefore the subsection creates a duty to provide that information. I understand Mr Marshalleck’s submission to be that duty falls on the taxpayer. In *Parinv (Hatfields) Ltd*, despite the failure of the taxpayer to supply admissible evidence to the Revenue, neither party intimated any right in the Revenue to go out with the criteria expressed in the equivalent of s.28 (2) for evidence to ascertain the consideration or the true value.

[135] Clearly, in the instant case, it was open to the Commissioner, as demonstrated by Millet LJ, to inquire of the taxpayer if a valuation was done by the mortgagee, Belize Bank. The concerns the Commissioner raised in respect of the exercise of the mortgagee’s power of sale were general concerns and not in any measure called into question the efficacy of the bank’s management of the process. The demand and the supply of lots in the subdivision must be a relevant consideration for the Commissioner. Mr Adrian Roe, director of the Claimant, in an affidavit in Reply to an Affidavit in Answer to Claim dated 11th September 2018, contends that it is indeed self-evident that the subdivision has failed and has been effectively abandoned for years. That the land was “put up for sale by the Bank as mortgagee for a number of years without success until the

Claimant's offer was finally accepted at auction. The Commissioner's Reply did not challenge Mr Roe's assertions.

[136] Mr Marshalleck had submitted that the Commissioner had not only skip the evidence of her own expert but she substituted her personal knowledge for the expert's report. I accept Mr Marshalleck that an assessment arrived at by such a process is unlawful.

[137] In *inter vivos* gift of property by conveyance or transfer, the stated consideration may well be nominal, and take forms other than the payment of money or expressed as being "for love and affection". Those transactions, not having been executed in an open market between a willing buyer and seller, cannot be considered by the Commissioner reflective of the true market value. In those transactions, the stated consideration is not the best evidence of value.

[138] *Lap Shun Textiles Industrial Company Ltd v The Collector of Stamp Revenue*, concerned the amount of stamp duty to be charged on a conveyance of sale by a bank to the Appellant for stated consideration of \$16,465.68. Several months later it was assessed on a value at \$76,800.00, the view having been taken that the stated consideration was inadequate. Their Lordships, in dispelling concerns that the judgment would result in every transfer or conveyance on sale requiring an official evaluation or adjudication of the stamp duty, said at page 3;

"Any stamp authority has to start from the point that valuation of much, if not most property is a matter of judgment and is only possible within fairly broad limits, and that sound, if not the best evidence of value is to be found in bona fides, arm's length dealings. It is for this reason that s.27 (4) authorises the substitution for the agreed consideration of the real 'value'; it requires that a substantial benefit for the transferee should be found to exist. In the great majority of cases the normal procedure for presentation for stamping and routine stamping according to the stated consideration will continued to be followed: such cases as

the present will continue to be exceptional. Thus their Lordships on this account do not envisage any dislocation of the normal process of stamping.”

[139] The Privy Council, in March 1976, the Apex Court was of the view “*that sound, if not the best evidence of value is to be found in bona fides, arm’s length dealings*”. This was contrasted with valuations, which in their Lordship’s Board opinions, was “*a matter of judgment and is only possible within fairly broad limits*”. The dimensions of the “*fairly broad limits*” were aptly illustrated in the procedure that was used by the Commissioner in making an assessment of the subject property in this matter. A Valuation Assessment Report which was prepared by a valuer well acquainted with the land was summarily varied by the Commissioner. According to the Commissioner the ‘Forced Sale’ circumstances of the transfer resulted in a reduction of 25% being applied to the assessed market value, lowering the assessment of the property from \$446,650.00 to \$335,000.00.(See affidavit of Noreen Fairweather filed 9th March, 2018). Griffith J found that the sale of the property at a public auction did not constitute a “forced sale”, there was no need for the reduction required by the Commissioner’s own methodology.

[140] Because of this recognized disparity in the cogency of evidence between the methods, their Lordship’s Board opined that “such a substitution should not be made in the absence of a substantial benefit to the transferee.” With respect, that is an irresistible conclusion. It would be unreasonable for a statutory authority, in the absence of express statutory approval, to substitute the less sound valuation of an expert for that of a consideration arrived at in the open market between a willing buyer and willing seller, without there being a valid reason for such a substitution.

[141] It would be less than reasonable for a statutory authority clothed with quasi-judicial powers, acting in exercise of its statutory functions to substitute the less sound evidence of valuation, instead of the best evidence available, in ascertaining market value. There is no reason advanced why a valuation should be substituted for the amount of the stated consideration on the deed of conveyance. This case falls into the category of cases referred to by Lord Wilberforce as “*the great majority of cases in which, routine stamping, according to the stated consideration, will continued to be followed.*”

[142] I would allow the appeal and grant the declarations sought with costs.

CAMPBELL JA