IN THE COURT OF APPEAL OF BELIZE AD 2020

CIVIL APPEAL NO 39 OF 2018

ATTORNEY GENERAL OF BELIZE Appellant

v

BELMOPAN LAND DEVELOPMENT

CORPORATION LIMITED Respondent

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BEFORE

The Hon Sir Manuel Sosa	President
The Hon Mr Justice Samuel Awich	Justice of Appeal
The Hon Madam Justice Minnet Hafiz Bertram	Justice of Appeal

Dr B Juratowitch QC and B Williams for the appellant.
N Barrow for the respondent.

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22 October 2019 and 26 November 2020

SIR MANUEL SOSA P

[1] I have read, in draft, the judgment of my learned Sister, Hafiz Bertram JA and concur in the reasons for judgment given, and the orders proposed, therein.

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SIR MANUEL SOSA P

AWICH JA

[2] I totally agree to the order proposed by the learned Hafiz-Bertram JA that, the appeal be allowed and the order made by the learned Arana J. (now Chief Justice) on 4 December 2018, assessing damages (compensation) for the respondent's parcels of land at $16,099, 306.00 less $250,000.00, plus interest as calculated , be set aside. Some of the parcels of land were compulsorily acquired and others were "arbitrarily distributed", to the public. The Attorney General admitted liability on behalf of the Government.

[3] I agree to the main reason for allowing the appeal, namely that Arana J. erred in accepting hearsay as evidence of the primary facts on which the expert opinion of Mr. Calvin Neal was based, and so this Court rejects the expert opinion given by Mr. Neal. In addition, it is the law that, the value of a compulsorily acquired land, for the purposes of the constitutional "reasonable compensation" is, "the amount which the land, in its condition at the time of acquisition, if sold in the open market by a willing seller, might have been expected to have realised at the date of the second publication in the gazette…"- see *s.19 (a) of the Land Acquisition (Public Purposes) Act, Cap 184 Laws of Belize.* Arana J. did not explain whether the sum of $16,099,305.00 plus the additional sums of $4,665,123.14, $191,886.07, and $2,646.46 was such an amount.

[4] Notwithstanding that I agree that, the appeal be allowed, I am unable to agree to the part of the order proposed by Hafiz-Bertram JA. that, "the case be remitted to the court below for a new assessment before a judge other than the trial judge", meaning Arana J. who tried the case now on appeal. It is not clear from the order, whether the trial judge has been directed to make the reassessment on the evidence already led in the first trial, excluding the hearsay and expert opinion of Mr. Neal, or on new evidence to be led.

[5] If the trial judge in the court below is not to receive new evidence for the reassessment, then this Court, the Court of Appeal, is now in as good a position to make the assessment, as the court below will be. The powers of the Court of Appeal enumerated in *ss.19 and 20 of the Court of Appeal Act, Cap. 90, Laws of Belize*, are wide

enough to enable this Court to determine what would be a reasonable compensation in this appeal on the merit. *Sections 19(1) (a) and (b), and 20 (f)* stand out. They are the following:

> *19.- (1) On the hearing of an appeal under this Part, the Court shall have power to-*
>
> *(a) confirm, vary, amend or set aside the order or make any such order as the Supreme Court or the Judge thereof from whose order the appeal is brought might have made, or to make any order which ought to have been made, and to make such further or other order as the case may require.*
>
> *(b) draw inferences of fact;*
>
> *…*
>
> *(2) The powers of the Court under this section may be exercised notwithstanding that no notice of appeal or respondent's notice has been given in respect of any particular part of the decision of the Supreme Court or the judge thereof,… or that any ground for allowing the appeal or for affirming or varying the decision of that court is not specified in such notice;* ***and the Court may make any order on such terms as the court thinks just to ensure the determination on the merits of the real question in controversy between the parties****.*
>
> *20. On the hearing of an appeal from any order of the Supreme Court or of a judge thereof in any civil cause or matter, the Court may, if it thinks fit-*
>
> *…*
>
> ***(f) appoint any person with special expert***

***knowledge to act as an assessor in an advisory capacity in any case where it appears to the Court that such knowledge is required for the proper determination of the case*.**

[6] It is my view that, there are in the evidence in the record, comparable sales of other parcels of land, although the parcels of land may not have perfect similarities with the land in this appeal. The first comparable sale was for $2,500.00 per acre of a parcel of land, "that was literally adjoining" the land in this appeal, although that land was, "within the city limit," and the transfer (the sale) was between, "two government institutions". The evidence that the land was within the limits of Belmopan City was not hearsay.

[7] The second comparable sale was of parcels of land at Cotton Tree, to the west of the land in this appeal, used for "small scale agriculture" as was the land in this appeal. The sale there was for $4,500.00 per acre. Perfect comparable parcels of land and their sale prices will not always be available.

[8] If the judge in the court below is to accept new evidence, it will be a trial **de novo**. It will be an unfair opportunity ordered by this Court in favour of the respondent to repair its evidence in order to obtain high compensation. It was the duty of the respondent to prove the damages (compensation) for its land in the first trial, not in a repeat trial when it will have repaired its evidence. Moreover, Arana J. did not err in the law of procedure, so that a retrial could be ordered.

[9] Finally, this case has been in the courts since the year 2017; keeping it in court any longer is undesirable.

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AWICH JA

HAFIZ-BERTRAM JA

Introduction

[10] This appeal concerned the award given by the court below after assessment for damages for land. The Belmopan Land Development Corporation Limited **(**"the Company") issued a fixed date claim form on 3 July 2017, against the Attorney General, sued in his capacity as representative of the Government of Belize ("GOB") for damages for the violation of their rights under section 17 of the Belize Constitution by the unlawful taking of 1394 acres of their lands situated between the University of Belize in Belmopan and Miles 43 to 45 of the George Price Highway.

[11] On 4 December 2018, Arana J (as she was then), now the Acting Chief Justice, (for present purposes "Arana J") ordered GOB to pay the Company damages in the sum of $16,099,306.00, less $250,000.00 already paid by way of an interim payment on account of damages. The judge further ordered GOB to pay interest as at 25 October 2018, in the sum of $4,655,123.14 and continuing thereafter at the daily rate of $2,646.46 unit payment.

[12] GOB appealed the whole decision of the trial judge on 21 December 2018. The issues raised are that the judge erred in law in preferring the evidence of the valuation expert appointed by the Company to that of the court appointed expert, and in awarding the sum of $20,754,429.14 as damages and interest. The appeal was heard by this Court on the 22 October 2019 and the decision was reserved.

Brief Background

[13] For a number of years going back to 2013, GOB distributed parcels of land to third parties which formed part of a block of 2,647 acres belonging to the Company situated on the Western Highway. GOB accepted that the total acreage it has acquired is 1394 acres. Firstly, it acquired 202 acres (first parcel) and later 1192 acres (second parcel) of land belong to the Company.

[14] GOB did not publish any notice of acquisition or take any steps to acquire the second parcel in accordance with the *Land Acquisition (Public Purposes) Act, Chapter 184* ("the Act), as it did with the first parcel.

[15] The Company is willing to transfer title to GOB in return for fair compensation. In its claim, the Company averred that GOB has refused to agree to pay fair compensation and as such it had been wrongfully deprived of its property and claimed damages for the unlawful acquisition of its land.

[16] In response to the fixed date claim, A. Finnegan swore to an affidavit on behalf of GOB. She deposed that the Ministry of Natural Resources ("the Ministry") initially acquired 202 acres of the Company's land situate at Highlands Estate near mile 45 along the Western Highway, Cayo District, for public purposes. See Notice published in the Gazette on the 28 June 2003.

[17] Ms. Finnegan further deposed that the remaining 1192 acres of the Company's land described as a piece of land situate at Highlands Estate near mile 45 along the Western Highway was mistakenly distributed by GOB.

[18] She further stated that there is no dispute that the Company is owed full and fair compensation for both the compulsory acquired land and the remaining land that was distributed. Also that there had been ongoing negotiations between the Company and GOB but there was no agreement because of the disputed valuation of the land.

[19] The Company thereafter filed an application ("the application") dated 10 November 2017, for an order pursuant to Rule 14.4 of the *Supreme Court (Civil Procedure) Rules 2005*, ("the Rules") that judgment be entered against GOB based on its admission of the claim of the Company.

[20] By an Order dated 10 November 2017, Arana J upon reading the application and the affidavit in support of the application ordered that pursuant to Rule 14.4 of the Rules, the Company be permitted to enter judgment against GOB in the following terms:

> "The defendant (GOB) pays the claimant (the Company) for the violation of the claimant's rights, under section 17 of the Belize Constitution, to protection from deprivation of its property except by or under law, by the unlawful taking of 1394 acres of the claimant's land situate between University of Belize in Belmopan and miles 43 to 45, George Price Highway.
>
> The damages of the claimant be assessed and paid by the defendant together with interest thereon at the rate of 6% per annum from the 1 January 2014 until the amount is fully paid.
>
> The defendant pays the claimant the prescribed costs of this claim, the value of which will be the amount of the damages assessed as owing to the claimant."

[21] Upon an application being made for the hearing of assessment of damages, Arana J ordered that pursuant to Rule 16.3 of the Rules, the Company is to provide proof of damages by affidavit evidence.

[22] An affidavit sworn on 3 January 2018, from Calvin Neal, Certified Environmental Inspector and Senior Certified Valuer, was filed on behalf of Company. Mr. Neal valued the property at $11,549.00 per acre as the true value as at 31 December 2013.

[23] The hearing for the assessment of damages commenced on 19 March 2018, before Arana J. It was at that hearing that the trial judge decided she needed further assistance to make a determination on the matter. The matter was then adjourned for further hearing.

[24] By an Order dated 8 June 2018, Arana J stated that the court decided that it would benefit from the appointment of an expert to conduct a valuation and the parties having submitted the names of six persons qualified to conduct the valuation, the judge

ordered that Mario Cruz, Senior Valuer and Certified Review Appraiser, be appointed as an expert to conduct a valuation of the 1394 acres of the lands of the Company situated between University of Belize in Belmopan and miles 43 to 45 on the Western Highway.

[25] The report dated 28 June 2018, was prepared and filed by Mr. Cruz as requested by Arana J.

[26] The hearing for the assessment of damages continued before Arana J on 26 October 2018, and the decision was reserved.

Judgment of Arana J

[27] Arana J handed down judgment on 4 December 2018. By an Order dated 4 December 2018, the trial judge made the following order:

> "1. The Defendant pay the Claimant damages in the sum of $16,099,306.00, less the $250,000.00 already paid by way of an interim payment on account of damages.
>
> 2. The Defendant pay the Claimant interest, as at 25 October 2018, in the sum of $4,655,123.14 and continuing thereafter at the daily rate of $2,646.46 until payment.
>
> 3. The Defendant pay to the Claimant the prescribed costs of this claim in the sum of $191,886.07."

The Appeal

[28] On 21 December 2018, GOB issued a notice of appeal against the whole decision of Arana J dated 4 December 2018 and sought an order that the decision be set aside and that the orders sought in the claim be reversed. The grounds of appeal were:

(i) The trial judge erred in law by preferring the evidence of the valuation expert, Mr. Neal, appointed by the Company, instead of the court appointed expert, Mr. Cruz;

(ii) The trial judge erred in law in awarding the sum of $20,754,429.14 as damages and interest.

Whether the judge erred in law by accepting the evidence of valuation expert appointed by the Company

[29] The learned judge found that the report of Mr. Neal was "*more relevant detailed and therefore of greater assistance to this court."* The judge accepted Mr. Neal's application of the RECONDEV and the University of Belize transfer as relevant because the transfer involved the consideration of properties in proximity to the land of the Company and was undeveloped. The value per acre for the University of Belize and RECONDEV sale was $5,000.00 per acre.

[30] The trial judge acknowledged that compensation for acquisition of land of a private citizen must be reasonable and fair. She also partially relied on the report of Mr. Cruz in which he stated that historical records show that land acquisition attracts compensation greater than the market value of the property as a buyer is compelled to buy and in a liquidation process the seller is compelled to sell. She further considered that GOB has acquired 1,394 acres of land from the Company since 2003 and stated that 15 years passed without any compensation being paid.

[31] For the above reasons, (and the deduction that GOB had already paid to the Company as compensation for the land), the judge awarded $16,099,306.00, as compensation, being 1,394 acres at $11,549.00 per acre.

Inadmissible hearsay evidence – city expansion

[32] Learned counsel for GOB, Dr. Juratowitch contended that the evidence of Mr. Neal is based on the premise that GOB acquired the land of the Company for the purpose of expanding the city of Belmopan when there was no factual evidence of such intention. As such, as a matter of law the evidence should not have been accepted.

[33] Mr. Neal in giving his evidence accepted that his determination was based on the purpose of the appraisal, that is, for expansion of the city of Belmopan. This purpose was supported by the highest and best use of the land. At paragraph 7 of his affidavit, he deposed that the highest and best use of the land is for the expansion of the city of Belmopan. In cross-examination, Mr. Neal explained why he stated that the land was for city expansion. He said that his "*understanding was on the instructions the purpose was for city expansion. And it's based on that factor that the appraisal was done..".*

[34] Mr. Neal also testified about the relevant factors he considered in doing the appraisal and this included market conditions and other factors. He said that the determination was based "*first on the purpose of the appraisal supported by the highest and best use, the purpose of the acquisition*."

[35] It is clear therefore, as to why Mr. Neal made no mention that the land which sits between Belmopan and Cotton Tree, could have been used for agricultural purposes also, although he testified that when he visited the land, "*there were patches of what appeared to be slash and burn and a couple rudimentary shacks, like squatters*."

[36] In cross-examination, Mr. Neal explained how he knew that the land was to be used for city expansion. At page 23 of the transcript he said:

> "….*This information was discussed as a matter of fact at the Lands Department with the Minister. I didn't want to really get into that … -* "

Mr. Neal further testified that it was GOB acquisition "*is what gave this information to the general public for the expansion of the city of Belmopan."*

[37] It had not been proven that the purpose of the acquisition was for city expansion. Mr. Neal based the valuation of the property on hearsay evidence and the question is whether it is admissible. It was submitted for GOB that according to the trial judge, Mr. Neal's premise relied on a governmental "statement" that the "purpose" of the compulsory acquisitions were "for city expansion" (para 9 of the judgment). However, counsel argued

that there was no evidence in support of such assertion by way of the Gazette notice. On the contrary, there was evidence which shows that the first acquisition of 202 acres was stated to be for agricultural purposes. Indeed, the Gazette Notice published on 28 June 2003, shows that the 202 acres were required for a public purpose, being "*AGRICULTURAL PURPOSES*."

[38] It was further submitted for GOB that an expert opinion based on a key factual premise is only admissible if the factual premise is itself proven by admissible evidence. Counsel relied on **Blue Sky Belize Ltd. v Belize Aquaculture Ltd.,** Civil Appeal No. 8 of 2012. In that case, the Court discussed the admissibility of expert evidence and the rule against hearsay evidence. The Court in that case relied on English **Exporters (London) Ltd. v Eldonwall Ltd**. [1975] Ch 415, for guidance. The issue in that case was the true status of the evidence of expert valuers, who provided opinions on the value of premises for the purpose of fixing the reserved rent under the provisions of landlord and tenant litigation.

[39] The opinion by the court in **English Exporters** is that that an expert valuer may express his opinion in evidence on values even though substantial contributions to the formation of the opinions have been made by hearsay evidence. However, the expert cannot give hearsay evidence as to the facts of transactions which is outside of his personal knowledge. Megarry J in that case discussed the distinction between opinion evidence and factual evidence given by experts as thus:

> "….. two of the heads under which the valuers' evidence may be ranged are opinion evidence and factual evidence. As an expert witness, the valuer is entitled to express his opinion about matters within his field of competence….. No question of giving hearsay evidence arises in such cases, the witness states his opinion from his general experience.
>
> On the other hand, quite apart from merely expressing his opinion the expert often is able to give factual evidence as well. If he has firsthand knowledge of a transaction, he can speak of that. ….. But basically, the expert's factual evidence on matters of fact is in the same position as the factual evidence of any other witness. Further, factual evidence that he cannot give himself is sometimes

> adduced in some other way, as by the testimony of some other witness who was himself concerned in the transaction in question, or by proving some document which carried the transaction through, or recorded it; and to the transaction thus established, like the transactions which the expert himself has proved, the expert may apply his experience and opinions, as tending to support or qualify his views.

[40] In **English Exporters**, the inadmissible hearsay evidence concerned comparable transactions. Megarry J said that there is no special rule giving expert valuation witnesses the right to give hearsay evidence of facts. In the instant matter, the hearsay evidence is in relation to the purpose of the acquisition which resulted in the choice of comparable sale by Mr. Neal. In **Blue Sky Belize Ltd., the** Court after considering many authorities, said at paragraph 57:

> "…the authorities appear to support two complementary - propositions on the issue of the admissibility of expert opinion based on hearsay. The first is that, where the opinion of an expert is based on the existence or non-existence of some fact which is basic to the question on which he is asked to express his opinion, that fact must be proved independently by admissible evidence, either given by the expert himself if it is within his own knowledge, or by some other witness. But secondly, once the primary facts on which the expert's opinion is based have been proved by such evidence, the expert may draw on the general body of knowledge in the particular area of expertise comprised in the work of others…."

[41] Mr. Neal's evidence is that his determination was based "*first on the purpose of the appraisal supported by the highest and best use, the purpose of the acquisition*." The purpose of the acquisition being city expansion. In my opinion, the evidence that the purpose was for city expansion is hearsay evidence which is inadmissible. The Minister responsible for Lands or other Government official was not called to give evidence that the land was acquired for city expansion. There is evidence that the first parcel of 202 acres was acquired for agricultural purposes. Mr. Neal's foundation for his valuation of the first and second parcel (the entire parcel) is therefore, flawed. The learned trial judge did not consider the fact as shown by the Gazette notice that the first parcel was acquired

for agricultural purposes therefore, contradicting Mr. Neal's evidence that the entire parcel was acquired for city expansion.

[42] In the case of **Makita (Australia) Pty Ltd**. **v Sprowles** [2001] NSWCA 305, relied upon by the appellant, the court discussed the need for expert witness to reveal factual and intellectual basis of his opinion. It is stated by Heydon JA at paragraph 80, that, *"If an opinion relies on facts that must be proved or assumptions that must be verified, it is to the court that they must be proved and verified, not to the expert witness."* In the instant matter, the factual basis of Mr. Neal's evidence that the land was acquired for city expansion was not proved to the court. The learned trial judge therefore, erred in law in accepting Mr. Neal's evidence as to the purpose of the acquisition and the valuation of the property.

Highest and best use of the land

[43] Ms. Barrow submitted that the intended use of the property, being city expansion is irrelevant. It is the highest and best use of the property which is applicable. She further submitted that city expansion is the highest and best use as shown by the opinion of Mr. Neal since the land is near to Belmopan.

[44] Mr. Neal's evidence was that he applied the purpose of acquisition and highest and best use of the land. It is therefore not accurate as submitted by Ms. Barrow that the purpose of acquisition is irrelevant in the instant matter. The purpose of acquisition was a key factor for Mr. Neal in choosing the RECONDEV sale.

[45] Nevertheless, it is my view, that the highest and best use is mixed in the instant matter, that is, city expansion and agricultural purposes because of the size and location of the property. A portion of the Company's land was acquired and it is by no means a small portion. The borders of the property varies vastly. The description of the property shows that part of the land is near the Western highway, part near the city of Belmopan and part near Cotton Tree which is mainly an agricultural area. At paragraph 7 of Mr. Cruz's report he stated that the property is within agricultural layout, many portions

presently used as cash crop plantations. As such, the highest and best use is considered to be agriculture use and more specific, small scale farming. Mr. Neal chose the purpose as "city expansion" and Mr. Cruz chose "agricultural purposes". But, Mr. Cruz did not shy away from the possibility of a city expansion. At paragraph 14 he deposed that "*the land borders the east of the city of Belmopan and can also be used for city expansion. However, such venture requires an indebt study/analysis by many experts to determine the viability*." He stated that valuing this property using that assumption is beyond his knowledge.

[46] The location of the property with borders that are different (city and agricultural) are factors that should have been considered by the trial judge in determining highest and best use of the land acquired. In my view, the opinions of both experts, Mr. Neal and Mr. Cruz are deficient in addressing highest and best use in order to assist the judge with a fair market value of the land.

Whether land acquisition attracts compensation greater than market value

[47] Dr. Juratowitch submitted that the trial judge based her decision partly on Mr. Cruz's statement that "*historical records show that land acquisition attracts compensation greater than the market value of the property in question as the buyer is compelled to buy*". (Paragraph 18 of the judgment). He argued that as a matter of law, the court was required to assess what would constitute "full and fair compensation". Ms. Barrow accepted that the judge relied on the statement but argued that the judge did not adjust Neal's valuation but accepted it as a whole. Dr. Juratowitch in response argued that the judge used this impermissible factor as justification for accepting the evidence of the higher value of the land. In my view, the principle of "full and fair compensation", being fair market value, is applicable. This principle will be discussed below. The judge recognized as mentioned in paragraph 18, that "*Compensation for acquisition of the land of a private citizen must indeed be reasonable and fair*." It is unclear as to whether the judge thought the value given by Mr. Neal is above market value.

Consideration of delay by the judge

[48] GOB contended that the trial judge at paragraph 18 stated that 15 years had passed since the acquisition of 1394 acres without any compensation but, this was incorrect as the acquisition of 202 acres was done in 2003 and the other acquisition in 2014. Further, as a matter of law, delay should not have any relevance to the question of weighing expert evidence. Learned counsel, Ms. Barrow in reply submitted that while the judge did in fact state that 1,394 of the property had been acquired in 2003 when it was only 202 acres, the judge did not err in making the award as she accepted Mr. Neal's valuation done in 2013. The learned judge indeed made an error as the delay of 15 years applied only to the first parcel of land. The 1192 acres was taken in 2013. Further, the delay in the compensation as considered by the trial judge is irrelevant for the purposes of fair market value of the property acquired.

The principle to be applied in granting compensation

[49] In the instant matter, there was an admitted breach by GOB in respect of the second parcel of land. The evidence is that the second parcel of land was distributed by mistake. This second parcel was not taken in accordance with the Act and so there was no notice in the Gazette as was done for the first parcel. The Claim by the Company was therefore for damages for violation of the rights of the Company, under section 17 of the **Belize Constitution.** Ms. Barrow argued that the Act is not applicable when considering compensation in this matter because it was not done in accordance with the Act. Dr. Juratowitch on the other hand argued that a breach of section 17 of the Constitution should be determined in accordance with the same principles in the Act. (section 19).

[50] Section 17 of the Constitution provides for protection from deprivation of property. Section 17 (1) provides:

"*No property of any description shall be compulsorily taken possession of and no interest in or right over property of any description shall be compulsorily acquired except by or under a law that,*

(a) prescribes the principles on which and the manner in which reasonable compensation therefor is to be determined and given within a reasonable time; and …

…."

[51] Section 19 of the Act provides for rules for assessment of compensation. It states:

"*Subject to this Act, the following rules shall apply to the assessment and award of compensation by a Board for the compulsory acquisition of land,*

(a) the value of the land shall, subject as hereinafter provided, be taken to be the amount which the land, in its condition at the time of acquisition, if sold in the open market by a willing seller, might have been expected to have realized at the date of the second publication in the Gazette of the declaration under section 3 of this Act,

…….

(b) the special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which the land could be applied in pursuance of statutory powers not already granted, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government Department;

[52] There is no functioning Board at present so it is out of the question that a Board should decide on the compensation. What is clear is that there must be reasonable compensation in accordance with the Constitution. Further, the Act applies to the first parcel of the land acquired. As for the second and largest parcel, I am of the view that although the Act does not apply, the same principles in the Act should be applicable.

There is no dispute that the land at the time of the taking was undeveloped bush land with small patches of farming. In any event, even if I am wrong, the fair market value is applicable.

[53] The principle of equivalence as shown in Civil Appeal No. 8 of 2003, Minister **of Natural Resources and Attorney General v Holiday Lands Limited and Witte & Witte** (Belize) must be adhered to in granting compensation. The court in that case relied on **Horn v Sunderland Corporation [1941]** 1 All ER 480 at 485, where Wilfred Greene MR observed that:

> "the statutory compensation cannot and must not exceed the owner's total loss for, if it does …. it will transgress the principle of equivalence which is at the root of statutory compensation, which lays it down that the owner shall be paid neither less nor more than his loss."

[54] The question is whether Mr. Neal's comparable transaction, the "RECONDEV" transaction in 2002, at $5,000. per acre in addition to the applied appreciation rates, is fair market value which brought the value of the land to $11,549.00 per acre. Firstly, the RECONDEV land is within the city limits of Belmopan and the property acquired is not within city limits. Secondly, the appreciation **rate** applied by Mr. Neal (7% and 9% which was compounded for more than a decade and he arrived at BZ$11,549.00) has not been proven for land in the area (between Belmopan and Cotton tree) where the property was acquired.

[55] At paragraph 12 of Mr. Neal's affidavit, he stated that the valuation is low and conservative because he based it on the consideration on the transfer of "*a literally adjoining parcel of land but this price was as between two institutional and quasi-government entities. It was a transaction between the University of Belize and the Belmopan City Council in contrast to a transaction between two commercial entities, which would be expected to fetch a higher price."* He accepted in cross-examination that a part of Caribbean Investment Limited (CIL) acquisition is next to the land of the Company. But he had not taken it into account in his report or affidavit. Mr. Neal also

accepted that it was $2,500.00 per acre more or less for the CIL acquisition. However, he was not in agreement that it should have been used based on the methodology applied by him to the appraisal. (Page 14 of transcript).

[56] Mr. Neal further deposed that based on the annual value trend over the period 2002 to 2013, a property valued at $5,000 per acre in 2002 would be valued at $11,549 per acre in 2013, ignoring unusual developments. At paragraph 21, he set out in a table the appreciation rate from 7% in 2003 to 9% in 2013. In cross-examination, he said that he used an appreciation rate of 9% and that he sought guidance from documents at the Lands Department. In my view, the appreciation rate cannot be applied to the land acquired because it is located outside of the city of Belmopan and it is has been proven that 202 acres were acquired for agricultural purposes. Further, in my view, an application of compounding interest from 7% to 9% for more than 11 years, in order to arrive at a market value seems far-fetched. The trial judge at paragraph 8 of the judgment mentioned the evidence of Mr. Neal where he said that the acceptable comparables are within a 2 and 3 year range. This in my view is realistic and not the compounding interest added to a comparable.

[57] Mr. Neal also testified that the only place to get comparables is the Lands Department and accepted that he used developed property as comparables and he looked at values in the city limits. He said the following at page 19 of the transcript when told that the land is not within city limits:

> " If you look at why I start in the city limits and we go on, maybe we would have to fast forward ….. and you reconcile back to that subject property that is acquired which in future will be joined with the city of Belmopan and so the best way a valuer can assess a fair market value is to look at what the values are in the city to which this very land will become part of based on the very purpose of the acquisition." - (page 19 of transcript).

[58] This application used by Mr. Neal is flawed as there was no admissible evidence that the land acquired would have been used for the expansion of the city of Belmopan.

Although he looked at land values in Cotton Tree he did not apply same. In cross-examination, he said that the comparable used by him are within city limits. However, he did a reconciliation process to suit the boundary of the land. He explained that he looked at values in Cotton Tree which were $4,500.00 per acre and the CIL land value which was $2,500.00 per acre. Further, he did not use the CIL value because there was no indication of city expansion in that cardinal point. He also said that he included properties with infrastructure but reconcile with other properties to suit. Also, that the properties were just used as a guide.

[59] Dr. Juratowitch submitted that the trial judge gave no weight to the fact that Mr. Neal's comparable sales of land were located within the existing city limits of Belmopan and the land of the Company fell outside those limits. Ms. Barrow in response submitted that Mr. Neal explained in cross-examination the reason for the comparable used. In my opinion, the comparable used by Mr. Neal which is within the city limits along with the added compounded interest cannot satisfy the principle of equivalence or fair market value.

[60] Further, it is my view, that the trial judge could have been assisted by the evidence of Mr. Cruz at paragraph 15 of his affidavit which shows that "*Total property value, as cited on land document is $11,337,000.00 (Eleven Million Three Hundred Thirty-Seven Belize Dollars).*" That factor, in my view, could have been considered by the trial judge in looking at compensation for a portion of the property (1,394 acres of 2,647.71 acres) which was acquired by GOB.

Approach to valuation of the land acquired by the two experts

[61] Mr. Neal and Mr. Cruz approached the valuation of the property with different methodologies and arrived at different values. Mr. Neal applied comparable sales on the basis that the purpose and highest and best use of land is for the expansion of the city of Belmopan. Mr. Cruz applied the residual approach (developmental approach) on the basis that the highest and best use of the land is for agricultural purposes. But, he

also agreed that it could be used for city expansion though there will be difficulty in making an assessment on that basis.

[62] The location of the land is an important factor in determining the methodology that should be used for the valuation. Mr. Neal in his affidavit evidence deposed that the land is situated between "University of Belize in Belmopan and Miles 43 to 45 of the George Price Highway." At paragraphs 5 and 6, he deposed that the property is located 1.8 miles from the city centre and borders the east of the city limits of Belmopan. Also, that the property has frontage on the George Price Highway.

[63] The cross-examination of Mr. Neal shed some light as to the exact location of the land. He explained that the land is about an eight of a mile from the boundaries of University of Belize (Eastern Boundary) and not the structures of the University. He also explained that the frontage of the land by the Highway has a narrow delineation. That the length running south is longer that the highway frontage. He accepted that the land is between Belmopan and Cotton Tree.

[64] Mr. Cruz's evidence (paragraph 4 of his affidavit) is that the land is situated along the south side of George Price Highway near Mile 43, on Cotton Tree Agricultural Layout. Also that it is between Belmopan and Cotton Tree Village with 565 feet of access, frontage, to the George Price Highway. In his report to the court dated 28 June 2018, he stated that the property is located "*within a low-income agriculture neighborhood. Cash crop cultivation is predominant in the area*."

[65] The comparable sales approach, in my respectful opinion, is appropriate in this case. However, the comparable applied by Mr. Neal was not an appropriate one since it was within the city limits of Belmopan. Further, Mr. Neal applied compounded interest from 7% to 9% for 11 years to the sale price of the comparable without any evidence of appreciation in the area. As shown by the evidence of Mr. Cruz, property could appreciate, devalue or remain the same over time. Therefore, the approach used by Mr. Neal could not result in a fair value of the land.

[66] Mr. Cruz applied the developmental approach although there was no evidence that GOB planned or intended to prepare plans for subdivision and put infrastructure such as streets/ roads. At paragraph 11 of Mr. Cruz's affidavit, he deposed that the residual approach is best suited and applied to estimate the value of the land. He said that value of the land is:

> "after development has been completed, minus the cost of purchase, plus developing, maintaining, or reselling the land in smaller portions (5-10 acre plots). Considerations was inclusive of (but are certainly not limited to) cost of construction roads and culverts, development period, investment yield, rent, fees, property taxes, finance costs, and other additional costs".

[67] In the case of Mon **Treson & Mon Desert Ltd v Ministry of Housing and Lands and another [2008] 3 EGLR 13 (PC)**, an authority cited by Ms. Barrow, Lord Scott of Foscote and Lord Carswell at paragraph 7, stated that the residual method "should be adopted only where a proposed development scheme has such success of prospects that the comparison method cannot give such a realistic and reasonably assessable figure." There is no evidence for the assumptions made by Mr. Cruz in the instant matter in arriving at the figure for valuing the land. Paragraph 7 of **Mon Treson**, proposition (b), in my view is appropriate for the instant matter, that is, *"the best evidence is comparison with figures from other sales of comparable property."* In my opinion, the developmental approach (residual value) should be applied only in exceptional circumstances where comparables are not available. However, it is not for this Court to decide on appropriate comparables.

Conclusion

[68] The learned trial judge erred in law in accepting the evidence of Mr. Neal, the valuation expert appointed by the Company/Respondent. As a result, the judge erred in the award of damages. It follows that the decision of the judge should be set-aside and the matter be remitted to the court below for a new assessment.

Costs

[69] In my opinion, this is not an appropriate matter to award costs against the respondent. Though the appeal should be allowed for the reasons discussed, I am of the opinion that the report of Mr. Cruz is not acceptable for reasons already discussed. Further, the Company is still awaiting the balance of their compensation for the land taken by GOB. According to the submissions made by GOB without objection, $1,000.000 (paid in three installments) had been paid to the Company. GOB was willing to accept Mr. Cruz's figure, that is, $5,969,000.00, yet no further payments had been made to the Company. It is not too late for a compromise.

Disposition

[70] For the foregoing reasons, I propose the following order:

1. The appeal is allowed and the decision of the trial judge is set aside.
2. The matter is remitted to the court below for a new assessment before a judge other than the trial judge.
3. Each party bear 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 and exchanged by the parties in ten days from the date of the application.

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HAFIZ-BERTRAM JA