

IN THE SUPREME COURT OF BELIZE A.D. 2020

Claim No.: 317 of 2020

BETWEEN	(ANTHONY POLLARD	Claimant
	(
	(AND	
	(
	(COMMISSIONER OF LANDS	1st Defendant
	(THE ATTORNEY GENERAL OF BELIZE	2nd Defendant

BEFORE THE HONORABLE JUSTICE LISA M SHOMAN

Trial Date: July 8, 2021.

Appearances: Mr. Mark Williams for the Claimant
Ms. Kimberly Wallace and
Mr. Kileru Awich for the Defendants

Written Submissions:
July 19, 2021 for the Claimant
July 20, 2021 for the Defendants

JUDGEMENT

BACKGROUND

1. Anthony Pollard is a retired Lands Officer, who upon his retirement in 2016 had worked in the Valuations section of the Lands Department of the Government of Belize. His cousin, Laura Prince (hereinafter “Laura”) was the holder of a seven-year lease, commencing from January 14th, 2008 from the Government of Belize for 9.75 acres of land situate at the beautiful Turneffe Island Range, in the Belize District, one of only three natural atolls in Belizean waters.
2. On November 24th, 2009, Laura was granted written permission to survey 9 acres (or thereabouts) of National Land situate at Turneffe Islands Belize District by the Commissioner of Lands and a map was attached to the permit.

3. On 13th October, 2010, Laura was provided with a Land Purchase Approval for 9.75 acres at the Turneffe Island range over which she held Lease No. 198/2008. The terms stated that the purchase price could be paid immediately, or within 3 years, after which title would be issued. The stated purchase price was \$31,688.00 plus stamp duty of \$584.40, for a total purchase price of \$32, 272.40. The first installment of \$5,281.33 was due in three months of approval, and if not paid, the offer would be void.
4. On September 2011, Laura had a bit of luck. She was provided with a new Land Purchase Approval for 9.75 acres at the Turneffe Island range over which she held Lease No. 198/2008. The terms stated that the purchase price could be paid immediately, or within 3 years, after which title would be issued. The stated purchase price was reduced to \$25,350.00 plus stamp duty of \$850.00, for a total purchase price of \$26,152.50. The first installment of \$4,358.75 was due in three months of approval, and if not paid, the offer would be void.
5. On 24th November, 2011, Laura obtained permission to transfer her lease No. 198/2008 over the 9.75 acres at Turneffe Island Range to herself and Anthony Pollard jointly, upon payment of the transfer fee of \$300.00.
6. On June 6th, 2012, the fortunate Laura was provided with yet another Land Purchase Approval for 9.75 acres at the Turneffe Island range over which Lease No. 198/2008 was still in effect “until freehold title is issued”. The terms stated that the purchase price could be paid immediately, or within 3 years, after which title would be issued. The new stated purchase price was \$19,021.50 with no stamp duty payable. The first installment of \$3,168.75 was due in three months of approval, and if not paid, the offer would be void.
7. The Lease, No. 198/2008 over the 9.75 acres at Turneffe expired on January 14th, 2014. Neither Laura, nor Laura and the Claimant was granted another lease, nor a renewal of the lease, not any extension thereon thereafter.
8. The date of expiration of the offer dated June 6th, 2012 to purchase the 9.75 acres is June

5, 2015. No other Land Purchase Approval was made after the offer dated June 6th, 2012. The full purchase price was not paid on or before June 6th, 2015.

9. On July 19th, 2019, Laura Price passed away. The full purchase price for the 9.75 acres of Turneffe Island property was never paid by either Laura, or by Mr. Pollard. The Claimant claims that up to May 4th, 2019, he was making payments towards the purchase price of the property.
10. The Defendants claim to have since terminated the contract for sale of the 9.75 acres of Turneffe Island property and the property has since been sold to another party, Blue Jalacte Investments Limited.
11. The Claimant's Amended Claim sought the following:
 - '(1) A Declaration that the Claimant is the owner, and entitled to possession, of all that piece or parcel of land comprising 9.75 acres situate in the Turneffe Island Range, Belize District and more particularly shown and described on Plan/Entry No. E-12826 ('the said land');*
 - (2) A Declaration that the Defendants are in breach of a contract for the sale of the said land;*
 - (3) Damages for breach of contract for sale of the said land;*
 - (4) An account of all rents and profits derived by the Defendants from the said land;*
 - (5) Such further or other relief as may be just; and*
 - (6) Costs'*

ISSUES

12. The Parties filed separate Pre-Trial Memoranda in this claim. In essence, the issues that this Court is required to resolve are the following:
 - i. Whether the Claimant was a party to a contract with the Defendants for the sale of the land which is the subject of the instant Claim.
 - ii. Whether the Claimant was in breach of the contract for sale by failing to pay the full purchase price within the three-year period.
 - iii. Whether the Defendant was thereby entitled to treat the contract as having been terminated by the Claimant's alleged breach and or effluxion of time, and hence to sell the said land to Blue Jalacte Investments Ltd. or any other buyer.
 - iv. Whether the alleged breach of contract, if any, was waived by the Defendants, and they are therefore estopped by conduct from relying on same.

WAS THE CLAIMANT PARTY TO THE CONTRACT WITH THE DEFENDANT?

13. The Claimant's cousin Laura had a contract with the Government of Belize (GOB) for the sale to her of the 9.75 acre property at Turneffe. That is beyond dispute. But was the Claimant a party to that contract as well?
14. When Laura obtained the 2008 lease from GOB, the lease was in her sole name. The first Land Purchase Approval, (which cited the said lease) for the 9.75 acres at the Turneffe Island range over which she held Lease No. 198/2008, was made on 13th October, 2010,

and was addressed to Laura only. The terms stated that the purchase price for the property could be paid immediately, or within 3 years, after which title would be issued.

15. On September 2011, was provided with a new Land Purchase Approval for 9.75 acres at the Turneffe Island range and cited Lease No. 198/2008. The terms stated that the purchase price could be paid immediately, or within 3 years, after which title would be issued.
16. On 24th November, 2011, Laura obtained permission to transfer her lease No. 198/2008 over the 9.75 acres at Turneffe Island Range to herself and Anthony Pollard jointly, upon payment of the transfer fee of \$300.00. The evidence of Mr. Pollard, via his exhibit **A.P 7** entitled “Land Rent Statement” and dated March 4th, 2019 shows that the transfer fee was paid on April 20th, 2012. During cross examination of the Acting Commissioner of Lands, he did concede that the transfer of the lease from Laura Prince into the joint names of Laura Prince and the Claimant, also transferred this purported option to purchase previously granted to Laura Prince by the Defendants.
17. This is the necessary parole evidence needed to establish that after November 11th, 2011, the Claimant had an interest in the 9.75 acres at Turneffe Island Range property, which was granted in writing by the Government of Belize. He was therefore, a party to any contract for sale of that property which was made or acted upon by GOB after that date.
18. The fact that the Claimant failed to actually exhibit a copy of Lease No 198/2008 is not fatal to his case, and the submission made on behalf of the Defendants that is was, is disingenuous given that every single one of the three Land Purchase Approval, cited Lease No. 198/2008 for the 9.75 acres at the Turneffe Island range; and so did the 12th December 2019, Purchase price Expiration Notice (which according to the Acting Commissioner, was placed in the file of the Ministry of Lands) which noted that the “letter” No. BZR 198/2008 granted to “Laura Prince and Anthony Pollard (Jointly) has been expired”.

WAS THE CLAIMANT WAS IN BREACH OF THE CONTRACT FOR SALE BY FAILING TO PAY THE FULL PURCHASE PRICE WITHIN THE THREE YEAR PERIOD?

19. On June 6th, 2012, yet another Land Purchase Approval was granted, for 9.75 acres at the Turneffe Island range over which Lease No. 198/2008 was still in effect “until freehold title is issued”. The terms stated that the purchase price could be paid immediately, or within 3 years, after which title would be issued.
20. Although this third Land Purchase Approval was, like the two previous offers, addressed to Laura only, it is clear that this offer contemplated sale of the property, not just to Laura, but to the leaseholders of Lease No 198/2008.
21. It is equally clear, however, that Lease No. 198/2008 over the 9.75 acres at Turneffe expired on January 14th, 2014. Neither Laura, nor Laura and the Claimant, was granted another lease, nor was there any renewal of the lease and neither was any extension granted thereon by GOB.
22. There was yet, however, one last opportunity to purchase the 9.75 acre Turneffe property. The date of expiration of the last Land Purchase Approval offer (dated June 6th, 2012) to purchase the 9.75 acres is June 5, 2015. The evidence however discloses that the full purchase price, as stated in the June 6th, 2012 Land Purchase Approval was not paid on or before June 6th, 2015. This is not in dispute.
23. The terms of the Land Purchase Approval dated June 6th, 2012 for 9.75 acres at the Turneffe Island range over which Lease No. 198/2008 was still in effect “until freehold title is issued” stated that the purchase price could be paid immediately, or within 3 years, after which title would be issued. The new stated purchase price was \$19,021.50 with no stamp duty payable. The first installment of \$3,168.75 was due in three months of approval, and if not paid, the offer would be void.
24. The terms of the contract are simple and clear. The full purchase price was to be paid within

3 years. The first installment due, was to be paid within 3 months of approval, and if not paid, the approval would be void.

25. The Claimant has not proven that the first installment of the total purchase price, in the sum of \$3,168.75 was paid within in three months of approval, and he has not provided evidence to prove that the purchase price was paid immediately, or within 3 years, which was on or before June 5th, 2015. In fact, the Claimant conceded (via written submissions made on his behalf) that “neither Laura Prince nor the Claimant complied with the timelines given in these contracts for payment of the purchase price”.
26. The evidence of the Defendant’s witness, Talbert Brackett, Commissioner of Lands shows that on 12th December 2019, a Purchase Price Expiration Notice was placed in the file of the Ministry of Lands noting that the “letter” No. BZR 198/2008 granted to “Laura Prince and Anthony Pollard (Jointly) has been expired and that no money was paid and the account closed”.
27. The evidence of the Claimant is, however, that after the expiration of the lease held by Laura Prince on the 14th January, 2015, the Claimant continued making payments towards what he says was purchase of the said land and exhibits a Land Rent Statement and a Bundle of Receipts, as Exhibits **A.P.7** and **A. P. 8**, respectively. These exhibits show that nothing at all was paid towards the purchase price until June 6, 2016, when the sum of \$50.00 was paid towards the purchase price.
28. According to the Land Rent Statement exhibited to the Witness Statement as **A.P. 7**, a total of 21 payments were made towards the purchase price of 9.75 acres at Turneffe Islands by Anthony Emerson Pollard, in amounts between \$40.00 to \$50.00 for a total of \$1,535.00 by March 4th, 2019. This proves that money was in fact paid, but it was not even the first installment payment which was due by September 6th, 2012 of \$3,168.75, three months after the date of Approval of June 6th, 2012. The terms of the Land Purchase Approval clearly states that if this was not paid by then, the offer would be void.

29. Written submissions made on behalf of the Claimant argues that “Because of the language used in the contract it would appear that these timelines were permissive (use of the word “can”) and were not mandatory.”
30. What the Claimant refers to as “the contract” is in fact the Land Purchase Approval, of which GOB issued 3 to Laura, and includes the third (and last) one which also applied by extension to the Claimant. The language of each is, save for the purchase price and the amount of the first installation due is identical and say that the purchase price could be paid immediately, or within 3 years, after which title would be issued. The new stated purchase price was XX with XX stamp duty payable. **The first installment of XX was due in three months of approval, and if not paid, the offer would be void.**
31. The intent of the Land Purchase Approval form is clear – the purchaser must pay in full within 3 years, and must pay the first installment within three months. Failure to comply with either would result in the offer being void.
32. The Claimant’s own evidence at Exhibit **A.P. 7** shows that the first installment was not paid within the deadline. And in fact, the last such payment was on March 04, 2019, a few months before the death of Laura Prince.
33. The Claimant says that on the 15th of May, 2019, he discovered that the account was closed. He says he was never notified regarding the Purchase Price Expiration Notice dated 12 December 2019. What is clear, however, is that the first installment payment was not even paid by either the Claimant or Laura Prince by the time the Lands Department stopped accepting payments in respect of this property in May of 2019.
34. The Acting Lands Commissioner’s evidence is that at no time did the Defendants waive the express condition that the full purchase price for the Property was to be paid on or before the 6th of June 2015, nor the implied condition that time, for the payment of the full purchase price was of the essence.

35. The Lands Department did, however, as shown on the Claimant's Exhibit **A.P. 7** after June 6th, 2015, accept payments towards the purchase price of the 9.75 acre property at Turneffe made by the Claimant. In fact, from June 6th, 2016, some 21 payments were made towards the purchase price of 9.75 acres at Turneffe Islands by Anthony Emerson Pollard, in amounts of between \$40.00 to \$50.00, the last payment being March 4th, 2019; for a total of \$1,535.00.
36. I will not dignify the absurd contention made on behalf of the Defendants which suggests that the Claimant, "a former employee of the Valuation Section of the Lands Department has "somehow managed to produce in Court a Land Rent Statement" and that the Court should " look at the fact that the Claimant has his name on the Land Rent Statement with great scrutiny and the suspicion that it deserves.", save to point out that the Defendants never objected to the production of the same, and never put forward any basis on which this document should be treated as suggested. There is no evidentiary foundation laid to treat with Exhibit A.P. 7 as not being validly issued by the Lands Department in respect of the subject property.
37. I do accept, however, the contention made by the Defendants, that the failure to pay the full purchase price for the Property on or before the 6th June, 2015 was in fact a repudiatory breach which discharged the Defendants from any liability under the contract between Laura Prince, the Claimant and the Defendants.
38. The final Land Purchase Approval form¹ issued by the Lands Department and dated 6th November 2012, which set the same at \$19,012.50 expressly provides as follows:
- 'Your application to purchase was submitted to the Honourable Minister of Natural Resources on June 6 2012 when it was approved in accordance with section 13(1) of the National Lands Act, 1992 to be sold subject to the following conditions: -*
- (1)...*

¹ Exhibit A.P. 6 of the Witness Statement of Anthony Pollard and exhibit TB8 of the Witness Statement of Talbert Brackett

(2) *The purchase price can be paid immediately or within three (3) years after which title will be issued.*

(3) *The purchase price of the land is \$19,012.50.*

...

The first instalment of \$3,168.75 of the purchase price of land \$19,012.50 must be paid to the Lands and Surveys Office Belize City within three (3) months from the date of approval.

If it is not paid the approval is void... (Emphasis added)

39. The words are clear and they are plain. They expressly state the terms and conditions by which the Land Purchase Approval is given. There is no doubt that the Approval is the written contract with GOB and Laura Prince. This Court has already decided that included the Claimant as a party.

40. The Defendants have pleaded, in the Defence that time was of the essence when it came to the payment of the full purchase price. I agree with the submission that the meaning of the words used in the contract would convey to a reasonable person that time was of the essence and that the term must be implied in the manner as set out in the Belizean Privy Council case of *Attorney General of Belize and others v Belize Telecom Ltd and another*² per Lord Hoffman as follows:

*“16. Before discussing in greater detail the reasoning of the Court of Appeal, the Board will make some general observations about the process of implication. The court has no power to improve upon the instrument which it is called upon to construe, whether it be a contract, a statute or articles of association. It cannot introduce terms to make it fairer or more reasonable. It is concerned only to discover what the instrument means. However, that meaning is not necessarily or always what the authors or parties to the document would have intended. It is the meaning which the instrument would convey to a reasonable person having all the background knowledge which would reasonably be available to the audience to whom the instrument is addressed: see *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896, 912–913. *It is this objective meaning which is conventionally called the intention of the**

² [2009] 1 WLR 1988 at Paragraphs 16 to 18

parties, or the intention of Parliament, or the intention of whatever person or body was or is deemed to have been the author of the instrument.

17. The question of implication arises when the instrument does not expressly provide for what is to happen when some event occurs. The most usual inference in such a case is that nothing is to happen. If the parties had intended something to happen, the instrument would have said so. Otherwise, the express provisions of the instrument are to continue to operate undisturbed. If the event has caused loss to one or other of the parties, the loss lies where it falls.

18. In some cases, however, the reasonable addressee would understand the instrument to mean something else. He would consider that the only meaning consistent with the other provisions of the instrument, read against the relevant background, is that something is to happen. The event in question is to affect the rights of the parties. The instrument may not have expressly said so, but this is what it must mean. In such a case, it is said that the court implies a term as to what will happen if the event in question occurs. But the implication of the term is not an addition to the instrument. It only spells out what the instrument means.

(Emphasis added)

41. The Court therefore takes the invitation to spell out for the Claimant, what the instrument meant – that time was of the essence. It was of the essence in two ways. The entire purchase price has to be paid in full before the expiration of three years, and the first instalment of \$3,168.75 of the purchase price of land must be paid to the Lands and Surveys Office Belize City within three (3) months from the date of approval. It goes without saying that both these time stipulations are of the essence. That is what the instrument, read as a whole against the relevant background would be reasonably understood to mean.
42. Neither of these timelines was in fact adhered to by either the Claimant or by Laura Prince. I accept the guidance of the Privy Council, per Lord Hoffman in *Union Eagle Limited v*

Golden Achievement Limited³ made it clear that provisions regarding time of payment in contracts for the sale of land are strictly construed and given effect by the Court. The purchaser in that case was 10 minutes late in paying the deposit for the purchase of a property. The Privy Council in that case stated:

'It is true that until there has been acceptance of a repudiatory breach, the contract remains in existence and the party in breach may tender performance. Thus a party whose conduct has amounted to an anticipatory breach may, before it has been accepted as such, repent and perform the contract according to its terms. But he is not entitled unilaterally to tender performance according to some other terms. Once 5 p.m. had passed, performance of the contract by the purchaser was no longer possible. The vendor could be required to accept late performance only on the grounds of some form of waiver or estoppel.'

43. Their Lordships went on to examine more closely⁴ the matter contracts for the sale of land as follows: “*In the case of contracts for the sale of land, however, the position is rather more complicated. It appears that in the eighteenth century, there may have been a view that the vendor's right to rescind was also regarded as "essentially to secure the payment of money" and that relief should be given as in the case of a mortgage. Vernon v. Stephens (1722) P.Wms. 66 may have been such a case, although a different explanation is given by Chancellor Kent in Benedict v. Lynch (1815) 7 Am.Dec. 484, 488. But such an attitude did not survive Lord Eldon L.C.'s famous outburst in Hill v. Barclay (1811) 18 Ves. 56, 60:*

"The court has certainly affected to justify that right, which it has assumed, to set aside the legal contracts of men, dispensing with the actual specific performance, upon the notion, that it places them, as nearly as can be, in the same situation as if the contract had been with the utmost precision specifically performed: yet the result of experience is, that, where a man, having contracted to sell his estate, is placed in this situation, that he cannot know, whether he is to receive the price, when it ought to be paid, the very circumstance, that the condition is not performed at the time stipulated, may prove his ruin,

³ [1997] A.C. 514 at page 518

⁴ Ibid, page 520

notwithstanding all the court can offer as compensation.

When a vendor exercises his right to rescind, he terminates the contract. The purchaser's loss of the right to specific performance may be said to amount to a forfeiture of the equitable interest which the contract gave him in the land. But this forfeiture is different in its nature from, for example, the vendor's right to retain a deposit or part payments of the purchase price. So far as these retentions exceed a genuine pre-estimate of damage or a reasonable deposit they will constitute a penalty which can be said to be essentially to provide security for payment of the full price. No objectionable uncertainty is created by the existence of a restitutionary form of relief against forfeiture, which gives the court a discretion to order repayment of all or part of the retained money. But the right to rescind the contract, though it involves termination of the purchaser's equitable interest, stands upon a rather different footing. Its purpose is, upon breach of an essential term, to restore to the vendor his freedom to deal with his land as he pleases. In a rising market, such a right may be valuable but volatile. Their Lordships think that in such circumstances a vendor should be able to know with reasonable certainty whether he may resell the land or not.

*It is for this reason that, for the past 80 years, the courts in England, although ready to grant restitutionary relief against penalties, have been unwilling to grant relief by way of specific performance against breach of an essential condition as to time.*⁵

(Emphasis added)

WAS THE ALLEGED BREACH OF CONTRACT WAIVED BY THE DEFENDANTS?

44. The particular facts in this case do not show that the Defendants waived any breach by either Laura Prince or the Claimant at all, despite the making of small and sporadic payments made by Mr. Pollard on account.
45. These payments did not even add up to the amount of the first installment payment, and no payment was made until after the time had expired for the payment of the first installment.

⁵ Ibid at 520

46. I accept the submission made by the Defendants that a contract such as this one, for the sale of land which is required to be reduced to writing, is cannot be waived other than in writing, per Denman CJ in **Goss v Lord Nugent**⁶ as follows :

“By the general rules of the common law, if there be a contract which has been reduced into writing, verbal evidence is not allowed to be given of what passed between the parties, either before the written instrument was made, or during the time that it was in a state of preparation, so as to add to or subtract from, or in any manner to vary or qualify the written contract, but after the agreement has been reduced into writing, it is competent to the parties, at any time before breach of it, by a new contract not in writing, either altogether to waive, dissolve, or annul the former agreements, or in any manner to add to, or subtract from, or vary or qualify the terms of it, and thus to make a new contract; which is to be proved, partly by the written agreement, and partly by the subsequent verbal terms engrafted upon what will be thus left of the written agreement.

And if the present contract were not subject to the control of any Act of Parliament, we think that it would have been competent for the parties, by word of mouth, to dispense with requiring a good title to be made to the lot in question, and that the action might be maintained. The Statute of Frauds has, however, made certain regulations as to contracts for the sale of lands, and by s 4 it is enacted, that "No action shall be brought whereby to charge any person upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised.

It is to be observed that the statute does not say in distinct terms that all contracts or agreements concerning the sale of lands shall be in writing; all that it enacts is that no action shall be brought unless they are in writing. As there is no clause in the Act which requires the dissolution of such contracts to be in writing, it should rather seem that a written contract concerning the sale of lands may still be waived and abandoned by a new agreement not in writing, and so as to prevent either party from recovering on the contract which was in writing. It is not, however, necessary to give an opinion upon that point, as

⁶ 110 ER 713 at page 716

this is not a waiver and abandonment of the whole written agreement, but only a part of it; and the question is: What is the effect of that?

(Emphasis Added)

47. The Defendant was thereby entitled to treat the contract as having been terminated by failure of Laura Price and/or Mr. Pollard to make payment, thereby as a repudiatory breach, to treat the contract as being terminated and hence to close the account, and then sell the property to Blue Jalacte Investments Ltd. or any other buyer.
48. There is no clause contained in the Land Purchase Approval form to state that if payment is made late, that the money shall be considered forfeit. If this is what the Defendants contend, then that language must be included in the Land Purchase Approval form in a clear manner.
49. In the current case, therefore, the Defendants should refund to the Claimant, those sums paid on account towards the purchase price for the 9.5 acres of the purchase price of the Turneffe Island property. Some 21 payments were made towards the purchase price of 9.75 acres at Turneffe Islands by Anthony Emerson Pollard, in amounts of between \$40.00 to \$50.00, the last payment being March 4th, 2019; for a total of \$1.535.00.
50. I thank both Counsel for the Claimant and Counsel of the Defendants for their fulsome written submissions which did prove of great assistance to the Court. Counsel for the Defendants however, should be reminded that it does not benefit any Court to be provided with prolix submissions that repeat the same points in a rambling manner.

ORDERS

51. The following Orders are made:

- (a) The Claimant's claim is not made out and the Claimant is not entitled to any declaration nor for damages;
- (b) The Defendants were entitled to treat the contract as having been terminated by failure of Laura Price and/or Mr. Pollard to pay the first installment and purchase price within the time limited for the same;
- (c) The Defendants shall reimburse the Claimant for any purchase price payments made in respect of this property;
- (d) Both sides shall bear their own Costs.

DATED THIS 26th DAY OF OCTOBER, 2021

**LISA M SHOMAN
JUSTICE OF THE SUPREME COURT**