

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No.241 of 2021

BETWEEN:

[1] REGINA LAWRENCE Claimant

and

[1] ALFRED WAKE FILED Defendant

Appearances:

Mr. Allister Jenkins for the Claimant

Mr. Rene Montero for the Defendant

2024: May 14

23

DECISION

[1] **Mansoor J:** The claimant filed a fixed date claim form seeking orders for *inter alia* the sale of two parcels of land and for the proceeds to be shared after deduction of expenses. On 15 March 2023, Farnese J referred the matter to mediation, which was successful. On 23 October 2023, the court stayed further proceedings except for the purpose of carrying into effect the terms of the mediation agreement.

[2] The present application is by the claimant under rule 55.6 of the Civil Procedure Rules 2005 ("CPR"). The claimant is seeking a direction that the costs of the valuator be borne by the parties equally. The application is supported by the claimant's affidavit. The defendant opposes the application.

[3] The claimant says that the parties agreed to obtain the services of a valuator to prepare valuation reports to aid negotiations during mediation. The mediation agreement did not spell out the way in which the valuator's fee was to be settled. The claimant says that his request to the defendant to pay half the costs of the valuator has been declined.

- [4] At the hearing, the defendant denied that he was liable to settle any part of the valuator's invoice as the mediation agreement did not require him to make such payment.
- [5] In the absence of an express provision on payment of the valuator's fee, it is necessary to consider the fixed date claim form, the orders of court and the overall terms of the mediation agreement to reach a just decision.
- [6] The valuator's invoice is for \$4,050.00 inclusive of goods and services tax of \$450.00. The valuator has rendered the parties a service, following which the parties were able to reach agreement. Those efforts must be compensated. The question before the court is whether both parties must take responsibility in settling the valuator's invoice.
- [7] One of the orders sought by the claimant's fixed date form is for the two parcels of land to be valued by a valuator appointed by the court. The order made by Farnese J on 15 March 2023 states that the parcels of land "are to be valued by a valuator agreed upon by the parties". The parties agreed on the valuator and the appraisal report was sent to the claimant's law firm by letter dated 4 August 2023. The properties were valued at \$370,000.00 and \$27,000.00 respectively and the date of valuation is given as 15 July 2023.
- [8] Counsel for the defendant concedes that the valuation has benefitted his client. The mediation agreement dated 23 September 2023 describes the claimant and the defendant as trustees of the sale and requires the parties to join efforts in effecting the sale. The proceeds of sales of the two properties are to be distributed in an agreed proportion after deducting all reasonable costs and expenses.
- [9] The court appointed valuator's service was to the benefit of both parties, and the cost of the service is incidental to the sale of the properties. The valuations helped the parties to settle their dispute and reach agreement on the sale of the properties. In these circumstances, it is reasonable to allow the application to share the valuator's costs equally.

ORDER

- A. The cost of the valuator is to be borne by the parties equally.
- B. The defendant is to pay the claimant's cost of this application as agreed or assessed.

M. Javed Mansoor

Judge