

**IN THE SENIOR COURTS OF BELIZE**

**IN THE HIGH COURT OF BELIZE**

**CLAIM No. FD 94/2024**

**BETWEEN:**

**JUDITH MARION BODDEN**

Claimant

**AND**

**PHILIP D. USHER**

Defendant

**Appearances:**

Ms. Emmertice Anderson for the claimant  
Mr. Philip D. Usher represented himself

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2024: December 09;  
December 30  
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**JUDGMENT**

**Contract - purchase of land – specific performance – Stamp Duties Act**

**GOONETILLEKE, J.:**

The Claim

[1] The claimant, by Claim Form dated 27<sup>th</sup> February 2024, sought to enforce a written agreement dated 6<sup>th</sup> October 2018 (Agreement) entered into with the defendant whereby the defendant had agreed to transfer a parcel of land identified as Parcel No. 1, South West Caye, Glovers Reef Atoll, containing

1.95 acres of land for a price of six hundred thousand dollars (\$ 600,000/-) to be paid in installments. The claimant alleges that despite the total purchase price having been paid the defendant has neglected or refused to transfer title of the said land to the claimant. The claimant seeks specific performance of the contract; an injunction restraining the defendant from leasing or transferring the land in question to deprive the claimant of her interest in the subject land; a declaration that the claimant is the equitable owner of the land and for damages.

#### Proceedings leading up to Trial

- [2] This matter came up for first hearing on 9<sup>th</sup> of May 2024, on which date the defendant was represented by Ms. Ardel Sabido. The counsel indicated that it may be possible to reach a settlement and on that basis the first hearing was adjourned to 7<sup>th</sup> of June 2024 to enable parties to engage in discussions. On the 7<sup>th</sup> of June, counsel for both parties indicated that they required further time for discussions. The matter was therefore adjourned to the 5<sup>th</sup> of July 2024. On that date counsel for both parties informed court that it was not possible to settle.
- [3] The matter was therefore adjourned to 17<sup>th</sup> of July 2024. When the matter was called for case management on 17<sup>th</sup> July 2024, Ms. Sabido who represented the defendant moved to recuse herself as attorney for the defendant. The defendant was present in the hearing remotely via video link and moved for time to retain an attorney. The matter was therefore adjourned for report on 20<sup>th</sup> September 2024 and parties were informed that the date for filing of the defence would be given on the next date.
- [4] On the 20<sup>th</sup> of September 2024, the defendant's wife (Mrs. Usher) appeared on his behalf and informed that he had taken ill and was in hospital and moved for an adjournment. The court directed that a medical certificate be filed and fixed the matter for report on 27<sup>th</sup> September 2024. A medical certificate was duly filed. Mr. Usher then appeared on 27<sup>th</sup> of September and undertook to retain an Attorney to represent him. The court granted the defendant time till the 25<sup>th</sup> of October 2024 to file his defence if any. Accordingly, the matter was fixed for case management on 7<sup>th</sup> November 2024.
- [5] On the 7<sup>th</sup> of November 2024, Mr. Usher represented himself, no defence had been filed and he moved for further time to file his defence. The court declined this request as it had been made after the date fixed for filing of the defence and as the defendant had been granted many adjournments and sufficient

time to retain an attorney if he had chosen to do so. The claimant was then directed to file witness statements and trial was fixed for 9<sup>th</sup> of December 2024.

Evidence for the claimant

- [6] The claimant presented herself as a witness and relied on her witness statement dated 30<sup>th</sup> of November 2024. She was cross examined by the defendant. The claimant produced the agreement dated 6<sup>th</sup> October 2018 between herself and the defendant and on which she relied on. She was cross examined on the point that the agreement contained a “*Non-Disclosure*” clause and therefore she could not produce the agreement.
- [7] The claimant stated that she paid the purchase price of six hundred thousand dollars (**\$ 600,000**) as follows; \$50,000 and \$10,000 as earnest deposit upon signing of the agreement – receipt produced, \$100,000 on 20<sup>th</sup> November 2018 – receipt produced; \$177,000 by cheque of the defendant’s attorney – receipt of payment produced, \$ 240,020 by 9 online payments and a debit order confirming payments made to the defendant from 7<sup>th</sup> October 2019 to 18<sup>th</sup> June 2024. These payments add up to **\$577,000**. The claimant then states that the remaining balance of **\$23,000** was satisfied by handing over the ownership of a blue colour 2003, Dodge Ram pickup truck to the defendant in lieu of the \$ 23,000, which the defendant accepted. Further, the defendant states that on 2<sup>nd</sup> March 2022, she paid an additional sum of **\$ 40,552.95** as interest on the sums that had been due under the Agreement as had been required by the Agreement.
- [8] The defendant in cross examining the claimant put to her that he was her brother, that there was no clause in the agreement about the transfer of a vehicle as part of the purchase price for the land. The claimant acknowledged the defendant to be her brother and stated that while there was no clause in the agreement about the vehicle, the defendant had agreed to accept the vehicle in lieu of the balance outstanding \$23,000.
- [9] The defendant also produced a letter of her attorney dated 14<sup>th</sup> November 2023 which had been served on the defendant demanding the transfer of the land to the claimant as the full purchase price had been paid.
- [10] Mr. Edward Usher, the son of the claimant (and the nephew of the defendant) gave evidence to corroborate the fact that a blue Dodge Ram vehicle was handed over to the defendant. He stated that

his mother was to buy him that vehicle and that before the vehicle was transferred into his name, his uncle (the defendant) had approached him and said he was willing to accept the blue Dodge Ram in lieu of the cash sum of \$ 23,000 that was due on the Agreement with his mother. Mr. Edward Usher then stated that his mother (the claimant) thereupon requested the seller of the vehicle to transfer the vehicle to his uncle, the claimant. Mr. Edward Usher also stated that he drove the truck with his uncle in it and handed it over to him and that the vehicle was in a good condition at the time.

[11] Mr. Edward Usher was cross examined by the defendant and the defendant put it to him that the vehicle was given to him - the claimant - (as a present) not as a set-off for the \$23,000 due on the Agreement. Mr. Edward usher denied this suggestion. In cross examination it was also put Mr. Edward Usher that the vehicle was not worth \$23,000 but was in a bad condition. This position was also denied by Mr. Edward Usher who stated that the vehicle may now be in bad condition due to the neglect of the defendant, but that it was in a very good condition when it was handed over to his uncle and was worth more than \$23,000 at that time.

[12] The defendant has not field a defence and thus gave no evidence.

#### Submissions of the parties

[13] After evidence was given, I invited counsel for the claimant and the defendant to make oral submissions.

[14] On behalf of the claimant, Ms. Anderson submitted that the claimant had made full payment and was therefore entitled to the relief claimed. In regard to the non-disclosure clause in the agreement, she stated that as the defendant was not fulfilling his obligations under the agreement, the non-disclosure clause could not prevent the claimant seeking legal remedies under the agreement. In response to a question from court in regard to payment of stamp duty for seeking specific performance, Ms. Anderson stated that if judgment is granted in favour of the claimant, the claimant would pay the stamp duty.

[15] The defendant submitted that the claimant had not paid the full purchase price and was not entitled to the transfer of the land. The defendant also submitted that there were several inconsistencies in the letter of demand dated 14<sup>th</sup> November 2023 sent by the claimant's attorney. He also submitted that the financial records submitted by the claimant were disputed and therefore the claimant was not entitled to the relief claimed.

## Discussion and analysis

- [16] The defendant in his cross examination of the claimant did not suggest that there was no Agreement for the transfer of land. Therefore, the Agreement between the parties to transfer the land is not in dispute.
- [17] What is disputed in terms of the cross examination is whether the full payment under the Agreement has been tendered to the defendant. Having considered the evidence given by the claimant, I conclude on a balance of probability that these payments have been made by the claimant to the defendant. From the line of cross examination of the defendant when questioning both the claimant and her son Mr. Edward Usher, there was no suggestion that the claimant did not give the blue Dodge Ram pickup truck to the defendant. The court therefore concludes that the claimant caused the said vehicle to be received by the defendant. What was suggested in cross examination by the defendant was that the truck was not worth \$23,000 and that the truck was given to defendant (as a gift) and not as payment for the land. Both the claimant and her son denied these suggestions. The relationship between the parties appeared to be less than cordial and in these circumstances it is not probable that the said vehicle was just given (as a gift) to the defendant by the claimant, even though the defendant is the claimant's brother. It is therefore more probable that the vehicle was given to the defendant as valuable consideration rather than as a gift.
- [18] It is clear from the evidence, that the defendant has received substantial payments amounting to more than half a million dollars from the claimant and a Dodge Ram pickup truck as consideration for the purchase and transfer of the land. I also hold on balance of probability that the above said consideration given by the claimant to the defendant amounts to the total purchase price of the land together with the interest payable thereon. The defendant has failed to transfer the land to the claimant in keeping with his obligations under the agreement between the parties. I hold therefore on a balance of probability that the claimant is entitled to the beneficial ownership of the land.
- [19] The non-disclosure clause in the agreement cannot preclude the agreement being placed before court. To say otherwise would make the agreement of no practical use as it would then not be enforceable except with regard to the honour of the parties. A close reading of the non-disclosure clause indicates that the parties did not intend it to be disclosed to third parties and not that it cannot be disclosed in court. The clause reads as follows:

*“The information in this agreement is of **PROPRIETARY** and **CONFIDENTIAL NATURE**, the disclosure of which to any other party could result in damages to the Purchaser and Seller and/or Business. Both Parties agree that neither the Vendor nor Purchaser will disclose the Information as contained in this agreement. Parties further agree that they will not disclose to any third party any information surrounding the sale and transfer of the property except to the extent required by law”.*

I therefore hold that the non-disclosure clause in Agreement dated 6<sup>th</sup> October 2018 between the claimant and the defendant does not preclude the court from viewing the contract.

### Stamp Duty

[20] The Agreement between the parties has a clause regarding possession, which reads as follows; *“The Purchaser shall be allowed to take possession and full enjoyment of the property upon the execution of this Agreement. Consent is given to the Purchaser to apply for sub division of the property (if necessary)”.*

[21] In the Agreement the clause regarding stamp duty reads as follows; *“The Purchaser shall be required to pay Stamp Duties and other transfer fees to be charged by the Government of Belize to the effect the transfer of the said Properties to the Purchaser”.*

[22] The Stamp Duties Act<sup>1</sup>, **Section 20** required an agreement transferring land to be registered within thirty (30) days of the execution of that agreement. The relevant section reads as follows;

**“20.-(1) Unless otherwise provided or prescribed, an instrument charge-able with stamp duty shall be stamped before or at the time of notification by the Commissioners of the duty chargeable on such instrument, Provided that the instrument chargeable shall be submitted to the Commissioners within thirty days of the date of the execution thereof, and shall not be stamped after that time except with an impressed stamp on payment of the proper penalty.**

**(2) An instrument chargeable with an ad valorem duty not being a promissory note or bill of exchange may be stamped with an impressed stamp without the payment of a penalty at any time within thirty days after it was first executed...”**

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<sup>1</sup> CAP 64, Law of Belize Revised Ed. 2020

[23] **Section 21** of that Act, relates to the penalties payable and reads as follows;

**“21.-(1) The Commissioners shall stamp with an impressed stamp any instrument after the time when it ought to have been stamped on payment of the unpaid duty and of the proper penalty.**

**(2) The proper penalty shall be the sum of five dollars for the first week or part of a week, and the sum of ten dollars for each week or part of a week after the first week, which has elapsed since the time when the instrument could have been stamped without the payment of a penalty, with the maximum of fifty-five dollars.**

**(3) The payment of a penalty payable on stamping shall be denoted on the instrument by the Commissioners.**

**(4) The Minister may, if he thinks fit, mitigate or remit a penalty payable on stamping”.**

[24] **Section 72** of that Act, sets out the rates of stamp duty payable on the value of the land or the consideration whichever is greater *“in respect of a transfer of land, whether by sale, exchange or gift, or pursuant to testamentary disposition or devolution on intestacy”*.

[25] It is clear from the above reading of the Stamp Duties Act that the Agreement between the parties should have been registered and stamp duty paid if the claimant requires specific performance. This issue was discussed in the case of ***John Diaz v. Ivo Tzankov and Others***<sup>2</sup>. In that case, the claimant had entered into an agreement with first defendant for transfer of land and had paid the purchase price, however, the first defendant then rescinded the agreement and entered into another agreement with the second and third defendant in that case and the second and third defendants registered that agreement and paid stamp duty and received a land certificate. The claimant in that case had not registered his agreement nor paid stamp duty. It was held that the claimant could not proceed against the second and third defendants as the claimant had not registered his agreement and had not paid stamp duty and that in the circumstances of that case, it could not be cured by payment of penalty.

[26] In ***Diaz’s*** case it was discussed that section 71(4) of the Stamp Duties Act, required for stamp duty to be paid on any instrument that passed an interest in land. **Section 71(4)** reads as follows;

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<sup>2</sup> Claim No. 187 of 2007, decided on 10<sup>th</sup> October 2007 per Hon. Justice Sir John Muria.

*“(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”.*

The Act as it then was had a **sub section 71(5)** which read as;

***“(5) An agreement, instrument, deed or share referred to in subsection (1) or (3), or in section 71(4) shall, unless the stamp duties payable therefor have duly been paid***

***(a) be incapable of creating or transferring any legal rights or interests; and***

***(b) have no effect unless and until registered.”***

The court in that case deliberating on the issue at hand had this to state about section 71(5) –

*“Mr. Courtenay submitted that the above provisions are designed to deal with the mischief of avoiding stamp duty by purchasers who bought land, acquired the right of possession and yet do not go into immediate possession. I respectfully agree”.*<sup>3</sup>

That interpretation has a material bearing on this case as the Agreement between the claimant and defendant in this case enables the claimant to take possession of the land upon execution of the Agreement.

[27] Section 71(5) was however transposed to Section 73 of the Stamp Duties Act by an amended in 2017<sup>4</sup> which introduced a new **Section 73 A**, which reads as follows;

***“73A.-(1) There shall be paid by a purchaser or occupier of land under an agreement for the sale, exchange or gift of land whether or not the agreement includes a clause giving the purchaser or occupier a right of possession or occupation to the land, stamp duty at the applicable rate specified in section 72, of the value of the land or the amount of consideration, for the land, whichever is greater.***

***(2) Sub-section (1) shall apply only where the land has not been transferred as provided in section 72(1).***

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<sup>3</sup> Claim No. 187 of 2007, decided on 10<sup>th</sup> October 2007, page 14, per Hon. Justice Sir John Muria

<sup>4</sup> Act No. 42 of 2017.



**(3) Where a company– (a) owns lands; and (b) sells the shares in the land, or in any development carried out on the land to any person and the person who purchases the shares or an interest in the development carried out on the land possesses special rights as a result of such purchase which may include– (i) the right to possession or occupation of a piece or the whole of the land;**

**(ii) the right of access to the common areas of the land; or**

**(iii) other customary rights of share-holder,**

**there shall be paid by the company, on the issuance of such shares or interest which create the special rights referred to in paragraph(b), stamp duty at the applicable rates specified in section 72, of the value of the land or the development, as the case may be.**

**(4) Sub-section (3), shall apply to a person, a group of persons, an entity or an unincorporated group of persons, so that–**

**(a) references to a “Company” in that sub-section and section 72 shall be read and construed as references to the person, group of persons, entity or unincorporated group of persons; and**

**(b) references to “shares” in that sub-section and section 72 shall be read and construed as references to some other mechanisms used to create the special rights specified in subsection(3)(b).**

**(5) An agreement, instrument, deed or share referred to in sub-section (1) or (3), or in section 71(4) shall, unless the stamp duties payable therefor have duly been paid–**

**(a) be incapable of creating or transferring any legal rights or interests; and**

**(b) have no effect unless and until registered.”**

[28] What was section 71(5) is now repeated as Section 73 A (5), after the amendment of the Act. The effect of section 73A is to make stamp duty payable on transactions where persons have agreements but there is no clause for immediate possession upon execution of the agreement. Section 73 A (3) also captures companies selling interest or shares in the land which was hitherto not covered by the Act.

[29] The claimant in this case has not pleaded that her Agreement with the defendant is registered. Nor is there any indication that the claimant has paid stamp duty. In terms of section 20 of the Act, the Agreement dated 6<sup>th</sup> October 2008 should have been registered within thirty (30) days thereof. Further,

in terms of Section 73A (1) of the Stamp Duties Act the claimant would have to register the Agreement irrespective of the clause granting possession to the claimant upon the execution thereof.

[30] The claimant is now faced with the stricture placed in section 30 of the Stamp Duties Act, which requires stamp duty to be paid on an instrument if it is to be received in evidence. **Section 30** of the Act reads as follows;

**“30.-(1) Upon the production of an instrument chargeable with any duty as evidence in any court of civil jurisdiction or before any arbitrator, notice shall be taken by the judge, magistrate or arbitrator of any omission or insufficiency of the stamps thereon, and if the instrument is one which may legally be stamped after the execution thereof, it may, on payment to the officer of the court whose duty it is to receive the instrument, or the arbitrator, of the amount of the unpaid duty, and the penalty payable on stamping the same, and a further penalty of five dollars, be received in evidence, saving all just exceptions on other grounds.**

**(2) The officer or arbitrator receiving the duty and penalty shall give a receipt for it and shall communicate to the Commissioners the name or title of the cause or proceeding and of the party from whom he received the duty and penalty and the date and description of the instrument and shall pay over to the Commissioners the money received by him for the duty and penalty.**

**(3) On production to the Commissioners of any instrument in respect of which any duty or penalty has been paid together with the receipt, the payment of the duty and penalty shall be denoted on the instrument.**

**(4) The decision of the judge, magistrate or arbitrator as to the necessity or sufficiency of stamp upon any document, or as to the amount payable for stamp duty thereupon, shall be final.**

**(5) Except as mentioned in sub-section (1), an instrument in any part of Belize, or relating, wherever executed, to any property situate, or to any matter or thing done or to be done, in any part of Belize shall not, except in criminal proceedings, be given in evidence or be available for any purpose whatever, unless it is duly stamped”.**

Disposition

- [31] Due to the deficiency of the Agreement not having been registered nor stamp duty having been paid thereon, the claimant is not entitled to specific performance of the Agreement until stamp duty has been paid.
- [32] I however, grant the claimant the injunction as prayed for, restraining the defendant from leasing or transferring title or in any other way depriving the claimant of her interest in land described as Parcel No. 1 situated at South West Caye, Glover Reef Atoll, consisting of 1.95 acres of land.
- [33] I also grant the claimant a declaration that she is the equitable owner of the parcel of land described as Parcel No. 1 situated at South West Caye, Glover Reef Atoll, consisting of 1.95 acres of land.
- [34] The claimant while praying for damages has not quantified damages nor given evidence as to damage suffered by her. I therefore award no damages.
- [35] The claimant is ordered to submit the original of the Agreement entered into with the defendant to the Registrar of this court who will forward the same to the Commissioners under the Stamp Duties Act, to assess the stamp duty and penalty payable on the same and inform the Registrar of such amount with copy of such assessment communicated to the claimant. The Registrar shall also upon receipt of the information of the amount of stamp duty payable, communicate to the claimant the amount due. The claimant thereupon may pay such stamp duty and penalty to the Registrar who shall thereafter act in terms of **section 30(2)** of the Stamp Duties Act.
- [36] Thereupon, the claimant will be entitled to have title to the parcel of land described as Parcel No. 1 situated at South West Caye, Glover Reef Atoll, consisting of 1.95 acres of land, and the claimant may move this court for further orders in that regard.
- [37] The claimant is entitled to the costs of this claim.
- [38] **IT IS HEREBY ORDERED AND DECALRED THAT**
- (1) The defendant is restrained whether by himself, his servants, or agents or otherwise from leasing or transferring title or in any other way depriving the claimant of her interest in the land

described as Parcel No. 1 situated at South West Caye, Glover Reef Atoll, consisting of 1.95 acres of land.

- (2) The claimant is declared to be the equitable owner of the parcel of land described as Parcel No. 1 situated at South West Caye, Glover Reef Atoll, consisting of 1.95 acres of land.
- (3) The claimant is ordered to submit the original of the Agreement dated 6<sup>th</sup> October 2018 entered into with the defendant, to the Registrar of this court who will forward the same to the Commissioners under the Stamp Duties Act in terms of Section 28 thereof, to assess the stamp duty and penalty payable on the same and inform the Registrar of such amount with copy of such assessment communicated to the claimant. The Registrar shall also upon receipt of the information of the amount of stamp duty payable, communicate to the claimant the amount due. The claimant thereupon may pay such stamp duty and penalty to the Registrar who shall thereafter act in terms of **section 30(2)** of the Stamp Duties Act.
- (4) Thereupon, the claimant will be entitled to have title to the parcel of land described as Parcel No. 1 situated at South West Caye, Glover Reef Atoll, consisting of 1.95 acres of land, and claimant may move this court for a further orders in that regard.
- (5) The defendant shall pay the costs of claimant in this claim.
- (6) The costs are to be assessed.

**Rajiv Goonetilleke**  
High Court Judge