

IN THE SUPREME COURT OF BELIZE A.D. 2003

ACTION NO: 484

	(ALFONSO CASEY	PLAINTIFF
	(
BETWEEN	(AND
	(
	(
	(BELIZE ELECTRICITY LIMITED	1 ST DEFENDANT
	(ATTORNEY GENERAL	2 ND DEFENDANT

BEFORE THE: Honourable Madam Justice Minnet Hafiz

Appearances: Mr. Oswald Twist for the Plaintiff
Mr. Phillip Palacio for the 2nd Defendant

DECISION

1. This is an assessment of damages in respect of land situated in Camalote Village, Cayo District being Society Hall Registration Section, Block 24, Parcel 1494 comprising 11.08 acres. The first Defendant, Belize Electricity Limited has erected poles and high tension electrical power lines in and over the Plaintiff's land. The poles and high tension electrical power lines occupy some three acres of the Plaintiff's land.
2. On the 30th September, 2003 the Plaintiff commenced action against the Belize Electricity Ltd., 1st Defendant for damage caused to the said land due to poles and high tension electrical power lines which passed in and over the said land preventing the said land from being used to its full potential. On 12th October 2006 the Attorney General was added as a Defendant and duly served with all relevant documentation. On the 30th April, 2008, Default Judgment was entered against the Attorney General, the second Defendant for failure to file an Acknowledgement of Service

and Defence. On 25th July, 2008 the court ordered damages to be assessed by way of affidavit.

3. The Plaintiff, Mr. Alfonso Casey filed an affidavit sworn and filed on 11th September, 2008 for the assessment of damages. He deposed that the first assessment was made by Certified Valuer, Calvin Neal who did the original assessment on May 20, 2003 and assessed the damage at \$22,844.25. See **Exhibit "A.C. 1"** for copy of assessment.
4. He further deposed that a second assessment was made on 2nd September, 2008 by certified valuer Marcos Flores who assessed the damage at \$33,387.75. See **Exhibit "A.C. 2"** for a copy of assessment.
5. Mr. Calvin did a ground inspection of the property on 20th May, 2003. He stated that the purpose of his Valuation is to show the extent of loss of use or damages on a portion of Block 24, Parcel 1494 situate in Camalote Village, which was caused by the installation and passage of the BEL Hydro-line through the said property.
6. On inspection of the property he found the following:

The subject property confirms to comprising 11.08 acres as Shown on Plan attached. The proposed development was for Tourism with Nature Trails and cabanas. This Project was Abandoned when the Hydro transmission line was passed through the property from the North West Section creating a cut off area of 3.089 acres and a buffer zone of 1.97 acres, a total of 5.059 acres considered and determined to be "loss to value" or "loss to usage". Wayleaves created by rights to carry electrical lines, poles or pylons do in fact create injurious affection to landowners. (See page 2 of Report).

7. In arriving at a value, Mr. Neal looked at comparable sales of land in the area which is \$5,000.00 to \$7,500.00 per acre for small tracts of 5 – 20 acres.
8. Mr. Neal in application of the values found compensation as follows:

The cut off area of 3.089 acres could be utilized for “other usage” but would need survey and new title issue at a cost. The Project was deferred because of the reduction of acreage. The buffer zone of 1.97 acres is LOSS TO USE AND VALUE And is applicable for comparables of sales with current Market Value of \$6,500.00 per acre. The 3.089 acres suffers only loss to value which is 50% of the loss to use and value, and would attract compensation.

I find compensation /value as follows:

1.	1.97 acres @ \$6,500.00 per ac.	=	\$ 12,805.00
2.	3.089 acres @ \$3,250.00 per ac.	=	<u>\$ 10,039.25</u>
3.	Recommended compensation	=	<u>\$ 22,844.25</u>

9. A second Valuation was done on 2nd September, 2008 by Mr. Marcos Flores. In his report he stated that the purpose of his appraisal was to establish and formulate a report based on the current market value, on the extent of loss to use or damages caused to Block 24, Parcel 1494.
10. Mr. Flores Inspection of the property confirmed that it is 11.08 acres as shown on the plan and that a total of 5.059 acres is considered and determined to have Depreciation Value or Loss to Usage. He also stated that Wayleaves created by rights to carry electrical lines, poles or pylons do in fact cause injurious affection to landowners.

11. Mr. Flores in arriving at a value looked at Comparable Market Values which shows property sales in the area to be \$9,000.00 to \$12,000.00 per acre for plots containing 5 to 20 acres.
12. In application of the value he found the following:

“3.089 acres that was cut off and can be used for ‘OTHER USAGE’, would require survey and new land certificate (title) to be issued. 1.97 acres buffer zone is LOSS TO USE AND VALUE and is applicable to market value comparison of \$9,500.00 per acre. The 3.089 acres is considered to suffer depreciation value of 50%.

CALCULATIONS:

1) 3.089 acres at \$4,750.00 per acre =	\$ 14,672.75
2) 1.97 acres at \$9,500.00 per acre =	<u>\$ 18,715.00</u>
	<u>\$ 33,387.75</u>

Compensation value based on current market value is \$33,387.75.”

13. It can be seen from both reports that the Valuers took into account Market Value and factors affecting those values. The difference in value can be explained because the first assessment was done in 2003 and the last assessment was done in 2008 which is five years later.

14. Mr. Twist submitted that in view of the assessment the court should award the Plaintiff \$33,387.75 as damages.
15. Mr. Palacio, for the Attorney General submitted that the matter was brought for nuisance and that the normal measure of damages for nuisance is diminution in value.
16. It is trite law that where the nuisance causes damage to land, the measure of damages will usually be the depreciation in value of the land. In the case of **Hunter v Canary Wharf Ltd. (1997) 2 All ER 426** Lord Hoffmann said that damages should be fixed by the diminution in capital value of the land as a result of the damage to the land.
17. The two Reports by Mr. Neal and Mr. Flores who are Certified Valuers has shown the depreciation in value of the land as a result of the nuisance. In my view, a reasonable compensation should be that as shown in the report of Mr. Flores who did his report in September 2008, which is nine months ago. I therefore award the sum of \$33,387.75 as damages to the Plaintiff.
18. I award 6 per cent interest per annum on general damages of \$33,387.75 from the date of the claim, 30th September, 2003 to the date of Judgment.

19. I award costs to the Claimant in the sum of \$5,008.00. This is 60% of the prescribed cost in Appendix B as provided by Part 64 Appendix C of the **Supreme Court (Civil Procedure) Rules 2005**. 60 % of prescribed costs is allowed where an action concludes prior to trial up to the stage of default judgment and including assessment of damages. The prescribed cost is 25% of \$33,387.75 = \$ 8,346.93. 60% of \$8,346.93 = \$5,008.00.

**MINNET HAFIZ
SUPREME COURT JUDGE**

Dated 10th June, 2009