

IN THE SUPREME COURT OF BELIZE, A.D. 2009

CLAIM NO. 163 of 2009

BETWEEN: FRANCIS W. CHICOINE CLAIMANTS
MARY A. CHICOINE

AND

MICHAEL JOHN CORDER DEFENDANT

Hearings

2009

13th November

25th November

11th December

2010

11th January

Mr. Jose Cardona for the Claimants
Mr. Kareem Musa for the Defendant

LEGALL J.

JUDGMENT

1. By a written agreement dated 11th January, 2008 the defendant agreed to purchase from the claimant a piece of land situate near Bullet Tree

Falls Village in the beautiful Cayo District in the west of Belize. The agreed purchase price was \$100,000 US dollars. The defendant made on 17th January, 2008 a deposit of \$80,000 US dollars and agreed to pay the balance on receipt of title for the property.

2. In April, 2008, the defendant was given possession of the property with the buildings thereon. The buildings were a dwelling house, four cabins and two utility buildings. The defendant, after taking possession, constructed a fence around the property and cut down some trees. On 30th October, 2008, the claimants passed title for the property in the name of the defendant by virtue of deed of conveyance dated 30th October, 2008. The defendant is presently residing at, and occupying, the property.
3. After the defendant received title for the property, the claimants requested from the defendant the balance of the purchase price of \$20,000 US dollars. The defendant refused to pay the balance of the purchase price on the ground that the claimants did not convey to him an elevated portion of land, that the claimants promised orally, and led him to believe, would be included as part of the land mentioned in the agreement. As a result, the claimants brought on 16th February, 2009 this claim against the defendant for specific performance, for declarations for a lien on the land, and that the deed of conveyance was void.
4. The defendant, in defence, said that prior to signing the agreement of sale the claimants offered to sell him roughly 2.5 acres of the land, the

boundaries of which were pointed out by the No. 1 claimant. The defendant said that the 1st claimant and himself walked through the land; and during the walk, he observed an elevated portion of land which was outside the boundaries of the roughly 2.5 acres, and he immediately told the said claimant that he would purchase the 2.5 acres only if the elevated portion was included in the sale of the land. The said claimant, according to the defendant, estimated the elevated portion to be roughly ½ acre.

5. The defendant claimed that when he received the title or deed of conveyance, for the land he realized that the elevated portion was not included. The defendant refused to pay the balance of the purchase price because he felt he did not get the 2.5 acres, plus the elevated portion of land he agreed to purchase.
6. Before signing the agreement of sale, both parties estimated the size of the land. The defendant estimated the size to be 2.5 acres, plus the half acre being the elevated portion, making a total estimation of 3 acres. The claimant also estimated the land to be about 3 acres. Instead of initially employing a certified land surveyor to obtain the exact measurements of the land to be sold, the 1st claimant went to a layman, a Justice of the Peace, to draft the agreement of sale based on the estimated size of the land.
7. The Justice of the Peace, a Mr. Morales, drafted the agreement and he described the land as “comprising approximately 2.75+ acres of land.” Also appearing in the agreement was a minus sign in ink after the

figures 2.75+. There is a dispute as to who inserted the minus sign. After the agreement was finally prepared it was signed by both the claimants and the defendant. It is advisable to quote the part of the agreement which states the estimated size of the land.

“AND WHEREAS MR. MICHAEL JOHN CORDER is purchasing a parcel of Land being a Portion of Block No. 4 comprising approximately 2.75+- acres of Land, situate near Bullet Tree Falls Village, Cayo District.

8. The parties therefore agreed to the estimated size of the land mentioned above, which was a rough estimation by the No. 1 claimant and defendant. The defendant before signing the agreement had wanted the size of the land to be described as 3 acres, which would have included, according to him, the elevated portion of the land. The No. 1 claimant told the defendant that the elevated portion was included in the agreement of sale; but because he, the claimant, did not know the exact size of the elevated portion, he was not in a position to insert an exact acreage of the land in the agreement of sale. He said that a survey would be done later and the exact size would be determined and put in the agreement. The defendant accepted this explanation of the claimant and signed the agreement and paid the deposit.
9. He should not have done so. He should have insisted that the survey be done prior to the making and signing of the agreement. If the parties had retained a good lawyer to prepare the agreement, I am sure

the lawyer would have insisted on a prior survey and an exact measurement of the land, before preparing the agreement of sale. But the parties, instead of retaining a good attorney-at-law, which is the correct thing to do when drafting agreements to buy and sell land, opted instead for a layman; and the result is, as is happening increasingly in Belize, litigation in court, which most likely would have been avoided, on this point, if a good lawyer was consulted instead. There is a need for legislation in this area, to make provision authorizing only persons possessing specific legal qualifications to draft binding agreements between persons for the purchase and sale of land.

10. As we saw above, when the land was surveyed and the conveyance passed to the defendant, it turned out that the size of the land was 2.592 acres. According to the defendant, it did not include the elevated portion. Hence his refusal to pay the balance of the purchase price.
11. The No. 1 claimant in reply to the defendant on the issue of the elevated portion said that “an elevated portion in which the defendant had expressed an interest is in fact included in the area he was shown, in the survey that was done, and it was part of the land conveyed to the defendant.” The said claimant is saying that the defendant got all the land he agreed to purchase, including an elevated portion.
12. The said claimant swore that the agreement of sale gave an estimation of the size of the land. The defendant agreed that the claimant

estimated the size of the land, including the elevated portion. In paragraph 4 of the defendant's witness statement he said:

“The first claimant made it clear to me that the size of the property was roughly 2.5 acres of land”

The defendant continued:

“After the walk through I then informed the first claimant that the only way I would purchase his 2.5 acres parcel of land was if he included in the sale the elevated portion (roughly ½ acre more that had been shown to me.”)

13. In paragraph 6 of his witness statement the defendant said that the first claimant estimated that the portion of elevated land was roughly half an acre. And in paragraph 2(e) of his defence, the defendant said that the first claimant estimated the area of the additional elevated portion to be one half of an acre. So the defendant agreed that the size of the land mentioned in the agreement which he signed was an estimation. This is not a case of misdescription of the land by the claimants or vendors. This is a case where both the claimants and defendant estimated in the agreement the size of the land which was otherwise correctly described.
14. The said claimant therefore submitted that the defendant received all the land he agreed to purchase which he saw during the walk through, including the elevated portion; but because both he and the defendant

were estimating the size of the land, when the written agreement was made, the agreement contained an estimation or approximate size of the land, which is the same size of land the defendant saw on the ground and decided to purchase. The defendant, as we saw above, stated that he did not get the elevated portion of the land he agreed to purchase. It is a question of fact whether or not the defendant got the elevated portion of land or any part thereof.

15. On Saturday 21st November, 2009 along with both counsel, and the parties I visited the land in question. According to exhibit F.C. 5, the land runs north to south, and there is a reserve road which runs east to west on the northern edge of the land. There is access to the land from the road. On entering the land from the road, there is a gradual elevation which is not steep. The elevation reaches a point where it levels off and flat land continues southward. The land is fenced with barbed wire and posts. On the flat portion there is a barbed wire fence constructed by the defendant marking the southern extremity of his land. There is a similar fence constructed by the defendant on the eastern and western extremities of his land. There is no fence on the northern part or at the entrance of the land. The southern fence sits on an elevated portion of the land. There is no further elevated portion of the land from that fence going straight south.
16. The defendant in his witness statement and in his defence, gave the court the impression that he did not get any part of the elevated portion of the land. In paragraph 25 of his witness statement, the defendant is expressing dissatisfaction in purchasing 2.592 acres of

land, “without the elevated portion being included.” So, according to the defendant the elevated portion was not included in the land he got, which, as we saw above, is 2.592 acres. But the claimant, as we saw above, said that an elevated portion was part of the land the defendant got. In order to decide who to believe, let us look once again at the evidence of the defendant and the No. 1 claimant.

17. After visiting the land, the defendant on 25th November, 2009, gave evidence on oath. In his evidence he is no longer saying that the land he got was “without the elevated portion being included.” He is now saying in his evidence that “about half of the elevation is within the fence line. I got 1/3 of the elevation.” The defendant is now saying that 1/3 of the elevation is within his southern fence. He is accepting, after the visit, that he did get a part of the elevated portion, which is different from what he swore to in paragraph 25 of his witness statement above. What the defendant is now saying is that he did not get all of the elevated portion he agreed to purchase: he only got 1/3 of it.

18. Further down in his evidence, the defendant seems less than frank. He said:

“I see the agreement of sale with the writing on it. I would say that the writing at the bottom of the page is mine, but I am not too sure of the first and second writing. I do not recall writing on the agreement of sale at all. I do not have a good memory at this time of my life.”.

19. So the defendant is saying, on the one hand, that some writing at the bottom of the page of the agreement of sale is his; but, on the other hand, he is saying he cannot recall writing on the agreement at all, thereby making it possible to argue on the basis of the latter statement that the writing which he said was his, may not be his. Another example of a lack of frankness is shown by the following. The defendant on being shown the agreement of sale said as follows:

“This is the agreement I signed. This looks like the agreement.”

20. A similar lack of frankness is shown in the No. 1 claimant's evidence. The said claimant swore in paragraph 4 of his witness statement that he, his wife and the defendant on 3rd January, 2008 went to see Mr. Morales, the person who prepared the agreement of sale. But in his oral evidence in court he swore that on 3rd January, 2008, the defendant was not present at Mr. Morales office. The claimant swore that on 3rd January, 2008 he went to Mr. Morales office to have the draft agreement prepared, and, at that time, he was the only person there with Mr. Morales.

21. The No. 1 claimant also said in evidence that he inserted one inch in width plastic pipes, two feet long, in the land as temporary markers to measure the property, using a 100 feet tape measure, and that the witness Tesecum and the claimant's wife were there. But the witness Tesecum testified that the said claimant's wife was not there.

22. Moreover, when the said claimant went to Mr. Morales and gave him instructions to prepare the agreement, Mr. Morales prepared it and the agreement was tendered as an exhibit and marked F.C. 2. On F.C. 2 the minus sign is written in ink after the figure "2.75+." The said claimant testified that he took F.C. 2 to the defendant and the defendant made changes in ink on the agreement. He, the claimant took back the altered agreement to Mr. Morales who prepared on his computer, a corrected agreement, exhibit F.C. 3 which included the alterations, made by the defendant. But in corrected agreement there still appeared the above mentioned minus sign in ink. It was suggested to the said claimant, in cross-examination, that he inserted in ink the minus sign in F.C. 3. The claimant denied that he put the minus sign in ink in the agreement F.C. 3 and stated that from what he recalled, the minus sign was inserted by Mr. Morales. Mr. Morales denied that he put in ink the minus sign in the final agreement exhibit F.C. 3.
23. I believe Mr. Morales on this point. Mr. Morales used his computer to insert the changes suggested by the defendant, and he would likewise, at the same time, used his computer to put in the minus sign, rather than insert it in ink. I believe that the said claimant inserted in ink the said minus sign, to indicate the possibility that the land to be sold may be less than 2.75 acres.
24. The above are inconsistencies and a lack of frankness in the evidence of both the No. 1 claimant and the defendant. The No. 2 claimant

did not give evidence. There are also agreement by both parties on some facts of the case, including the fact that the parties estimated the size of the land, and that the agreement of sale contained an estimated of the size of the land. Aspects of the evidence of both parties have been tarnished because of inconsistencies and lack of frankness. But I am entitled to accept a portion of the evidence of a witness and reject another portion.

25. The defendant's evidence is that the asking price by the No. 1 claimant was \$90,000 US for roughly 2.5 acres of land. I interpret roughly there to mean a little above or below 2.5 acres; but not reaching 2.592 acres which the defendant received. The defendant said that he decided to pay an additional US\$10,000, for the elevated portion of land. The defendant accepts, and the evidence supports this, that he got more than 2.5 acres; and he received, by his own admission, a third of the elevated portion, the whole of which he agreed to pay US\$10,000. I accept this portion of the defendant's evidence.

26. Now a third of the price of the elevated portion, using the \$10,000 US for the whole, would be US\$3,333. Since the defendant admitted he got a third of the elevated portion, I think that he should pay for what he received. On the defendant's own evidence, there was agreement to pay US\$90,000 for roughly 2.5 acres of land. But he has only paid \$80,000, leaving a balance of \$10,000 for the roughly 2.5 acres of land, excluding the elevated portion. He received 2.592 acres, which in my view, is more than "roughly 2.5 acres of land."

27. In my judgment, the defendant must pay the said balance of US\$10,000 for the roughly 2.5 acres, which he received, excluding the elevated portion, and pay US\$3,333 for one third of the elevated portion, which he admitted he received.

28. The deed of conveyance dated 30th October, 2008 states that the consideration for the land pursuant to the agreement of sale is US\$50,000. The parties agree that the purchase price stated in the agreement of sale is US\$100,000. It was submitted that the figure US\$50,000 was deliberately inserted in the deed of conveyance for the purpose of paying less stamp duty; and therefore, the conveyance was void. The No. 1 claimant and the defendant denied inserting the said figure in the deed of conveyance.

29. Section 36 of the Stamp Act Chapter 64 of the Laws of Belize states:

“36. If, with intent to evade the payment of duty under this Act, a consideration or sum of money shall be expressed to be paid on any instrument less than the amount actually paid or agreed to be paid, every such instrument shall be void.”

(emphasis mine)

30. There is no evidence before me specifically proving the identity of the person or persons who inserted the figure US\$50,000 in the deed of conveyance, instead of US\$100,000. Moreover, the evidence does not rule out the possibility that the insertion came about because of

negligence or carelessness or simply a mistake. The burden is on the claimants to prove that it was not negligence, carelessness or mistake, and that it was inserted with intent to evade the payment of duty. I am not satisfied on a balance of probabilities that the claimants discharged this burden.

31. The defendant brought a counterclaim against the claimants for specific performance of the agreement of sale, damages in lieu of specific performance and a declaration that the defendant fulfilled his obligations under the agreement of sale. It came out during the trial that at least a part of the disputed elevated portion of land, was sold as part of a larger piece of land, to a third party. Therefore an order for specific performance cannot be properly made against the claimants. Because the size of the land was estimated by both claimants and defendant in the agreement of sale, and therefore was not an estimation by the claimants alone, I am therefore not satisfied that the defendant is entitled to damages against the claimants. The evidence does not support a declaration that the defendant fulfilled his obligations under the agreement of sale.

32. In relation to the claims, I therefore make the following orders:

1. Defendant to pay to the claimants the sum of US\$13,333.00 or its equivalent \$26,666.00 BZ representing the purchase price for the 2.592 acres of land he received.
2. Defendant to pay interest on the said sum at the rate of 6% per

annum commencing from 16th February, 2009 until the sum is fully paid.

3. The counterclaim is dismissed.
4. The claims for a lien over the land and for a declaration that the deed of conveyance is void are dismissed.
5. In the circumstances, there is no order as to costs.

Oswell Legall
JUDGE OF THE SUPREME COURT
11th January, 2010

