

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT  
COMMON LAW AND EQUITY DIVISION  
2007/CLE/GEN/01015**

**IN THE MATTER** of **ALL THAT** piece parcel or lot of land containing approximately 18.39 acres being a lot of land on a plan recorded in the Department of Lands and Surveys of New Providence situate in Moores Island, Abaco Bahamas

**AND IN THE MATTER** of the Acquisition of Land Act, (Chapter 252)

**AND IN THE MATTER** of an Application for an Assessment and Compensation pursuant to the Acquisition of Land Act, (Chapter 252)

**between**

**VERONICA L WILLIAMS**

**Plaintiff**

**and**

**THE ATTORNEY GENERAL**

**Defendant**

**BEFORE:** His Lordship The Honourable  
Mr Justice K Neville Adderley

**APPEARANCES:** Mr Dion D Smith, for the Plaintiff  
Mr Patrick Mackey, for the Defendant

**14 November 2008, 26 January 2009 and  
25 September 2009**

**D E C I S I O N**

## **Adderley, J**

The Government of the Commonwealth of The Bahamas compulsorily acquired 18.39 acres (“the selected land”) located in Moores Island Abaco from the plaintiff under the Acquisition of Land Act Chapter 252 (the Act”) for the public purpose of expanding an airport.

2. There are differences of opinion on what compensation the plaintiff being the person interested should receive.

3. The government’s assessor appraised the selected land at \$3,000 per acre but the government offered the plaintiff \$4000 per acre. The plaintiff’s assessor appraised it at \$30,000 per acre.

4. The plaintiff therefore applied by way of originating summons filed 7 August 2007 for the following orders inter alia:

“1. That the selected land be assessed pursuant to Section 15 of the Acquisition of Land Act Chapter 252

5. that the plaintiff be compensated pursuant to sections 28 and 29 of the said Act.”

5. This summons of assessment was filed 13 June 2008 for the assessment pursuant to section 15 of the Act and for compensation pursuant to sections 27, 28, and 29 of the Act. The plaintiff also seeks a declaration that the defendant is in breach of Article 27 of the constitution for failing to provide adequate compensation.

6. A preliminary issue was raised by Mr Mackey that the plaintiff had failed to make out title so the assessment should be deferred until that issue was settled. The plaintiff denies that on various grounds and the evidence shows that previously the defendant accepted the title of the plaintiff. Prima facie this raises the issue of estoppel for the defendant but the question of title is not before the

court and under section 16 (1)(b) of the Act it is not necessary for the court to decide that issue to make its assessment.

7. Counsel for the plaintiff also argued that the plaintiff was entitled to damages for breach of her constitutional rights under Article 27 of the constitution which provides inter alia that no one should be deprived of their property without compensation.

8. Oral evidence was given on behalf of the plaintiff by Mr Dwight Watkins, a duly appointed appraiser since 1995 and a former employee in the Crown Lands Office for 27 years since 1972. He was accepted by the court as an expert witness. Oral evidence on behalf of the defendant was given by Mr Richard Hardy, Acting Deputy Director of Lands and Surveys Department and Assistant Director of Crown Lands. He was registered as an assessor since 1995. The court accepted him as an expert witness also. Mr Watkins had in July 2005, made an assessment of the fair market value of 1,268.691 acres of land in Moores Island. The selected land was somewhere on that land. He assessed the 1200 plus acres at \$59,628,500.00.or \$47,000 per acre. That figure was later amended to \$30,000.00 per acre as he disclosed that he arrived at the figure by a weighted average of the value of the property using a per acre estimate of \$60,000 for the front portion nearest the beach, \$30,000 for the middle portion and \$18,000 for the back portion. Mr Watkins included three different definitions of market value in his report. There is no statement of definition in which he used. Mr Hardy's assessment was an open market value which was defined in the report made on 22 May 2008. As the date of declaration was 26 November 1997; both assessors had to be extrapolated back to 26 November 1997 from 2005 and 2008 respectively.

9. Because it is vacant land, Mr Watkins said that he used the sales comparative approach. His instructions were in respect of approximately 1268 acres of land which stretched backward from the sea and the selected land was

in the middle. His instructions were that the appraisal was preparatory to an investment and he considered that because of the large acreage, it had a potential for a large investment such as a hotel or subdivision. He did not know the exact intended location of the government airport at the time so he did not do an appraisal of the selected land. He approached the task by determining how many average sized lots (7000-8000 square feet) could be derived per acre and determined what such lots could fetch on the open market. He then applied a value per lot based on his research on the price of similar lots in the area. He took into account that beach front properties attracted a higher price than inland properties. According to him, most of the selected land was not beach front. There were three main areas, one third nearer to the waterfront which he valued at \$60,000 per acre, a middle third hilly area which he valued at \$30,000 per acre, and a third back flatland which he valued at \$18,000 per acre.

10. He searched the Registry of Records for recorded conveyances to find recent sales in the area. He did not find any sales at \$3000 per acre; that would yield about \$600 per lot. He referred to a conveyance of approximately 1 ½ acres (\$48,650 square feet) of land located in Moores Island dated 31 October 2006 and made between William Edward and Neil Armstrong recorded in volume 107 at pages 327 to 332 for \$20,000.00. On cross examination he was unable to confirm if land in the conveyance was similar to the selected land as to location, elevation, proximity to and amount of infrastructure, or other buildings or businesses in the area. Mr Watkins also produced a conveyance that showed for approximately 1 ½ acres of land located on Don Mackey Boulevard a main thoroughfare in Marsh Harbour for \$30,000.

11. Mr Watkins stated that He did not visit the selected land or do an assessment of it. He was not able to say if the selected land was swampy or susceptible to flooding where the airport is located. He was shown evidence where the plaintiff had accepted payment from the government for \$1500 per acre for 2.5 acres on 2 March 1989. Mr Watkins stated that that was not market

value and 9 years later the selected land would have a higher value. In confirming that she owned the selected land the plaintiff, a rather old woman, admitted accepting the \$1500 per acre for land acquired by the government for water wells in 1989 but said she agreed with the price because at the time that she did not know that she had the right to challenge the government.

12. Mr Hardy assessed the selected land. According to his report dated 22 May 2008, it was located off the west coast of Abaco in the northern section east of the settlement of Hard Bargain just immediately south of Black Wood Pond on level land to the east of the airstrip. There were no adjacent utilities. Since the valuation was done in 2008 he had to make an estimate of what it was valued in 1997. He produced a public magazine advertisement for sale in 2008 of 800 acres on Moores Island described to include beach front property for \$7.2 million or \$9000.00 per acre.

13. His definition of market value was the open market value that the land would realize between a potential purchaser willing to buy and a potential vendor being willing to sell after the land had been reasonably advertised. He would discount special purchases such as, for example, where a person would pay more because he had adjacent land and wanted to create one large continuous area.

14. The date of the Declaration of Vesting is 26 November 1997 and publication in the Extraordinary Gazette 2 December 1997. The Notice of Possession of the selected land was dated the 6 January 1998 and published in the Extraordinary Gazette the 7 January 1998.

## **The Law**

15. Section 28 of the Act provides guidelines for determining compensation to interested persons for land compulsorily acquired based inter alia on the market

value of the property at the date of the declaration of intended acquisition. Market value is not defined in the Act but there was no dispute as to its meaning in this case.

16. Under section 18(1) of the Act the claimant is entitled to the market value plus 5 percent per annum for the date of declaration of intended acquisition to the date of payment.

17. Section 15(1) provides that where the assessors disagree the court can make the determination. Section 28(a) sets out the matters that should be taken into consideration by the court in determining the compensation, and section 28(b) the things that ought not to be taken into account. The portions relevant to this case read as follows:

- “(a) (i) The market value of the selected land at the date of declaration made under section 6 of the Act;
  - (ii) The damage (if any) sustained by the persons interested at the time of awarding compensation by reason of severing such land from other land of the persons interested;
  - (iii) the damage (if any) sustained by the persons interested at the time of awarding compensation by reason of the acquisition injuriously affecting other property belonging to him whether real or personal in any other manner or his actual earnings;...”
- “(b) (i) the degree of urgency which has led to the acquisition
  - (ii) any disinclination of the persons to part with the selected land;
  - (iii) any damage sustained by the persons interested which if caused by a private person would not constitute a good cause of action;
  - (iv) any damage which after the time of awarding compensation is likely to be caused by or in

consequence of the use to which the selected land will be put;

- (iv) any increase in the value of the selected land likely to accrue from the use to which it will be put when acquired;
- (v) any increase in the value of unselected land likely to accrue from the use to which selected land will be put;
- (vii) any outlay or improvements on selected land made, commenced or effected with the intention of enhancing the compensation to be awarded under the Act.”

18. Section 29 provides inter alia that in consideration for the compulsory nature of the acquisition the court shall award to the person interested a sum of ten per cent of the market value as determined under the Act.

19. Under the proviso to section 18(1) of the Act if the land is compulsorily acquired before payment is made, interest at five percent on the award should be paid from the time of publication of the notice in the Gazette until payment to the person interested.

## **Conclusion**

20. I reject the argument advanced by Mr Smith under Article 27 of the constitution. It is misconceived because subsection 4 of Article 27 makes provision for compulsory acquisitions in the public interest, and the delay so far has been due to what appears to have been bone fide negotiations between the plaintiff and the defendant, and the process of the courts.

21. The evidence on the value of the selected land was not entirely satisfactory. It is impossible to have such a wide disparity in the value: \$30,000 as opposed to \$3,000 per acre. In reviewing the report and evidence of Mr Watkins, I was not able to rely on his figures for a number of reasons; he did not

appraise the selected land in question nor at the time required, the rationale for his choice of \$60,000 per acre for beachfront property, \$30,000 for middle property and \$ 18,000 per acre for back land on the approximately 1200 acres in which the selected land was located was not satisfactorily explained, and the comparative sales data provided in evidence did not support his appraisal. Mr Hardy who did an assessment of the specific piece of land arrived at a figure of \$3000.00 per acre which on the evidence was arrived at by projecting his 2008 estimate back to 1997.

22. Based on the evidence in this case there is no assessment on which the court can reasonably rely except that of Mr Hardy.

23. Directing my mind to the relevant guidelines set forth in section 18 and for the foregoing reasons I make the following award in respect of the selected land, namely, 18.39 acres located at the eastern end of the Moores Island airport which is located at the northern end of the settlement of Hard Bargain shown outlined in RED on the plan marked AB4/00 bounded on the North by mangrove swamp (Black Wood Pond):

- a. pursuant to section 28(a)(i) \$55,170.00 plus Interest at 5% per annum is to paid on that sum from 2 December 1997 until payment.
- b. \$5517.00 being 10% of the award shall be paid to the plaintiff pursuant to section 29.

24. Costs shall paid to the defendant by the plaintiff to be taxed if not agreed.

Dated the 25th day of September 2009

K Neville Adderley  
**Justice**