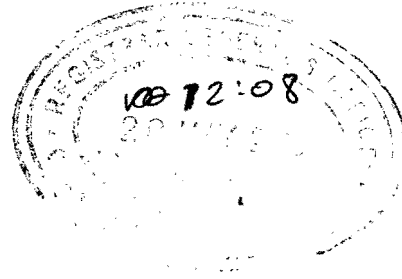


**EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**



**COMMONWEALTH OF DOMINICA
DOMHCV2009/0216**

BETWEEN:

Ivor Rolle as Personal Representative of the Estate of Phillip Alexander Rolle	Claimant
and	
The Attorney General	Defendant

Before: The Hon. Justice Brian Cottle

Appearances:

Mrs. Singoalla Blomqvist Williams for Claimant
Mrs. Francine Baron Royer Attorney General & Ms. Sanura Lambert
for the Defendant

JUDGMENT

[May 19th 2010]

- [1] **COTTLE J:** The Government of Dominica acquired certain real property belonging to Phillip Alexander Rolle, deceased, on 13th January 2006. Phillip Alexander Rolle had died on 7th December 1990. By his will he appointed two Executors. Both died without administering the estate. The last surviving executor left a will. By virtue of the chain of representation his executors are the executors of Phillip Alexander Rolle.
- [2] Despite this, and without first clearing them off, the claimant was able to obtain a grant of Letters of Administration de bonis non for the estate of Phillip Alexander Rolle. Subsequently the executors have obtained a grant of probate. It is not clear what has become of the earlier grant to the claimant.
- [3] Under the provisions of the will of Phillip Alexander Rolle the claimant was given a ¼ share of the property that the government acquired. He has received from the government one quarter of the agreed value of the property acquired. The sole issue which remains for consideration of this court is his claim for interest on the payment he has received from the date of the acquisition to the date of payment.

The Claimant's case

- [4] Under Section 6 of the Land Acquisition Act Chap 53:02 of the Revised Laws of Dominica, upon acquisition of land the Authorized officer must enter into negotiation with the owner of the land. Section 11 requires that all questions and claims concerning payment of compensation be submitted to a Board of Assessment.
- [5] Under section 21, the board, in awarding compensation, "may add thereto interest at the rate of six percent per annum calculated from the date upon which the authorized officer entered into possession of the land acquired until the date of payment of the compensation awarded by the board."
- [6] Counsel for the claimant submits that the appointment of a Board of Assessment is mandatory. It is an obligation of the defendant. The defendant should not be allowed to benefit from its own failure to appoint a Board so as to deny the claimant interest. Also the defendant is in possession of the land and should pay interest from the date of acquisition until payment.

[7] Counsel for the claimant cited the decision of the Privy Council in Blomqvist V Attorney General 35 WIR 162. In that case the Learned Law Lord Mackay said

“The Ordinance was the “law applicable” to the acquisition of the landowners parcel of land under section 6(2) (c) of the Constitution and the only right which the constitution gave to the landowner was that the acquisition should be performed in accordance with the Ordinance; accordingly, his only remedy for the delay in the payment of compensation was an order for interest payable in accordance with section 21 of the Ordinance that is at 6 percent simple interest.”

Therefore, counsel concludes, the minimum compensation to be paid was the value of the land and interest at 6 percent.

[8] The argument for the claimant is, with respect, flawed. Several things operate to deny the claimant relief he seeks. Firstly, it is by no means clear that the claimant has the right to bring the instant claim. The personal representatives of Phillip Alexander Rolle are the landowners for the purpose of payment of compensation for acquisition of the land. The claimant is not properly appointed personal representative.

[9] Secondly, the award of interest lies in the discretion of the Board of Assessment when such a Board is appointed. Where there is agreement between the government and the landowner as to the compensation payable there is no need to appoint a Board under section 11 of the Land Acquisition Act. No Board having been appointed, no question of the award of interest by the Board arises.

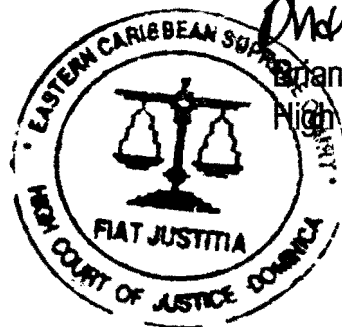
[10] The case of Blomqvist V. Attorney General differs from the instant case in the Blomqvist was awarded damages for breach of his constitutional rights under section 6 of the constitution. Interest was awarded and the Privy Counsel was only concerned to determine the appropriate rate of interest to apply once interest is awarded. The case does not provide authority for the proposition that any land owner who agrees compensation for his acquired land automatically is also entitled to interest at 6%.

[11] Rather, the case supports the proposition that a court, considering a constitutional claim for deprivation of property will apply the principles of assessment which guide a Board of Assessment including a discretion to award interest at 6%

- [12] The payment of compensation was also delayed because the claimant was unable to provide the Government with the Certificate of Title to the acquired property. The Certificate was eventually received from the attorneys of the Executors. Under section 23 of the Land Acquisition Act it was open to the government to pay the compensation into court until such time as a person competent to give a sufficient discharge for the compensation received could be identified.
- [13] This obligation on the Authorized officer arises where he has carried out diligent inquiry and cannot find such a person. On the facts of this case the government acted reasonably promptly to pay to the Executors after these had taken the grant of probate and produced the Certificate of Title to permit the acquired portion of land to be hatched off the larger parcel comprised in the certificate. As the delay is not ascribed to default on the part of the government it may well be that any Board of Assessment appointed may have declined to award the landowner interest.

Conclusion

- [14] For the above reasons I conclude that the claimant must fail. The claim is dismissed. The defendant is awarded the costs of this claim. As the matter was concluded on written submission on agreed facts I fix these costs at \$ 1,400.00 being one tenth of what the prescribed cost would be, the matter having been contested on the issue of interest only.



Brian Cottle

Brian Cottle
High Court Judge