

IN THE SUPREME COURT OF BELIZE, A.D. 2012

CLAIM NO. 159 OF 2012

HOPKINS BAY LOT OWNERS ASSOCIATION LIMITED Claimant

AND

BUCA SERVICES COMPANY LIMITED Defendant

IN COURT.

BEFORE: Chief Justice Kenneth Benjamin.

June 13 & 20, 2012.

Appearances: Mr. Jose Cardona for the Claimant/Respondent.
 Mr. Dean Molina for the Defendant/Applicant.

JUDGMENT

[1] The Claimant commenced proceedings by Claim Form filed on March 14, 2012 against the Defendant for liquidated damages in the total sum of \$6,978.96 being the costs of repairs to its vehicle for damages done by the Defendant's servant and/or employee together with the cost of a replacement vehicle while its said vehicle was being repaired. The Claim also seeks interest and costs.

[2] The Defendant has acknowledged service of the Claim Form on April 3, 2012. There has been no Defence filed to date.

[3] By a Notice of Application dated and filed on April 16, 2012, the Defendant applied for the Claim Form to be struck out pursuant to Rule 26.3(1)(a) and Rule

26.3(1)(b) of the Supreme Court (Civil Procedure) Rules 2005. The grounds, as set out in the application, were particularized as follows:

- “1. The filing of Claim No. 159 of 2012 in the Supreme Court is inconsistent with section 3(1)(a) of the District Courts (Procedure) Act, Chapter 97 of the Laws of Belize, Revised Edition 2000-2003, as amended by the District Courts (Procedure) (Amendment) Act 2010, which gives the District Court jurisdiction to deal with civil matters not exceeding fifteen thousand dollars.
2. Commencing proceedings in the Supreme Court is an abuse of process of the court in that it goes contrary to the Civil Procedure Rule 1.1(1) and (2) and sections 51 and 52 of the Supreme Court of Judicature Act, Chapter 91 of the Laws of Belize, as the Belmopan Magistrate Court is the most convenient venue for the matter to be tried.”

JURISDICTION OF THE SUPREME COURT

[4] The jurisdiction of the Supreme Court is conferred by the Belize Constitution. The Supreme Court is established by section 94 of the Constitution but its continuity from prior to Independence is preserved by section 139(1) which enacts that “the Supreme Court shall on or after Independence Day have all the powers which immediately before that day are vested in the former Supreme Court.” By section 95(1), the Supreme Court is clothed with unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law. The Supreme Court is constituted as a superior court of record by section 95(3) of the Constitution.

[5] The business of the Supreme Court is allocated to the Criminal Division and the Civil Division by section 17(1) of the Supreme Court of Judicature Act, Chapter 91 (“the Act”). The original jurisdiction of the Supreme Court is reinforced and restated in section 18(1) of the Act which provides:

“18.(1) There shall be vested in the Court, and it shall have and exercise within Belize, all the jurisdictions, powers and authorities whatever possessed and vested in the High Court of Justice in England, ...”

There is also provision by section 18(3) of the Act for additional jurisdiction to be conferred by the Act. In this regard, there is conferred by section 70 of the Act upon the Supreme Court a jurisdiction and powers to be exercised by a summary procedure quite apart from the unlimited jurisdiction of the Supreme Court.

JURISDICTION OF THE DISTRICT COURT

[6] The District Court owes its existence in law to section 6 of the Inferior Courts Act, Chapter 94 which provides for the establishing in each judicial district of a “District Court” which shall have and exercise civil jurisdiction in accordance with and in compliance with the District Courts (Procedure) Act, Chapter 97. The latter Act proscribes the civil jurisdiction of the District Court by section 3(1) which states:

“3(1). The court shall have jurisdiction to hear and determine –

(a) all personal actions for the recovery of any debt, demand or damages where the amount claimed, whether on balance of account or otherwise, does not exceed fifteen thousand dollars;

(b) all actions for the recovery of any chattel or thing, where the value of the chattel or thing does not exceed fifteen thousand dollars,

and such actions may be commenced in the court and dealt with in accordance with the provisions of this Act.”

It is to be noted that the statutory monetary limit was raised from \$5,000.00 to \$15,000.00 by the District Courts (Procedure) (Amendment) Act No. 10 of 2010 which came into force on April 17, 2010.

[7] Accordingly, the District Court and its civil jurisdiction are created and proscribed by statute. There can be no demur that claims must be limited to \$15,000.00 or less to fall within the purview of the District Court, except where the law otherwise permits.

DEFENDANT'S CASE

[8] Learned Counsel for the Defendant contended that the Claim ought to be struck out since the District Court sitting in the Cayo District at Belmopan is a more appropriate forum of competent jurisdiction. It was said that the Claim was filed in disregard of section 3(1)(a) of the District Courts Act in respect of which the jurisdiction was enlarged to \$15,000.00 for the stated purpose of relieving the Supreme Court of such claims and thereby lessen its caseload.

[9] It was further urged that by virtue of the use of the word "shall" in section 3(1) of the District Courts (Procedure) Act, a litigant wishing to commence suit in respect of a claim of \$15,000.00 or less was required to commence such proceedings in the District Court. In other words, the use of the word 'shall' was imperative in its effect.

[10] Learned Counsel for the Defendant relied on the overriding objective of the Supreme Court (Civil Procedure) Rules which states:

Rule 1.1 (1) The overriding objective of these Rules is to enable the court to deal with cases justly.

(2) Dealing justly with the case includes –

(a) ensuring, so far as is practicable, that the parties are on an equal footing;

- (b) saving expense;
- (c) dealing with the case in ways which are proportionate to –
 - (i) the amount of money involved;
 - (ii) the importance of the case;
 - (iii) the complexity of the issues; and
 - (iv) the financial position of each party;
- (d) ensuring that the case is dealt with expeditiously; and
- (e) allotting to the case an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.”

It must at once be observed that the overriding objective is intended to guide any discretion conferred by the Rules and to aid in the interpretation of the Rules (see Rule 1.2). It was never intended that the overriding objective would be prayed in aid of depriving a litigant of his entitlement to bring suit or to drive a party away from the judgment seat. The overriding objective is premised upon the existence of jurisdiction.

[11] The evidence upon which the Defendant relied was contained in the affidavit of Matthew Hulse in support of the Notice of Application. The main thrust of the affidavit was that the Magistrate's Court in Belmopan was best placed to deal with the matter justly and expeditiously and that forum was the most appropriate venue for these stated reasons, viz:

- “(a) The issues in this Claim are not complex;
- (b) The value of the claim is significantly below fifteen thousand dollars and thus the Magistrate Court in Belmopan has jurisdiction to hear and determine the matter;
- (c) The value of the claim amounting to the sum of \$6,978.96 is disproportionate to the cost of litigating the matter in the Supreme Court;
- (d) It was in Belmopan City that the cause of action arose;
- (e) I reside and carry on my business in Belmopan City;
- (f) The witnesses that I intend to call are all residents of Belmopan City and it would therefore be more convenient for them to attend court in Belmopan City;
- (g) The Claimant is based in Hopkins Village, Stann Creek District which is closer to Belmopan City than Belize City; and
- (h) The resources of the Supreme Court could otherwise be properly assigned to the resolution of more important and complex cases.”

As earlier iterated, these reasons cannot be applied in support of the overriding objective; although, it probably stands to reason that the rationale for the increase in the jurisdiction of the District Court had as its objective the proportionate distribution of cases between the District Court and the Supreme Court. There is also the likely well-intentioned reason of offering a swifter, more summary and cheaper procedure to litigants.

CLAIMANT'S RESPONSE

[12] Learned Counsel for the Claimant framed the issue quite accurately in my view, as being one of whether or not the Claimant ought to be relegated to the District Court and not be allowed to bring the Claim before the Supreme Court. At the outset, the summary procedure prescribed and permitted by section 70 of the Act was relied upon as the source of the Claimant's entitlement to bring the claim.

Learned Counsel went on to cite the dictum of Conteh, CJ in **Belize Telemedia Ltd & Dean C Boyce v Magistrate Edd Usher & Attorney General** – Action No. 695 of 2008, as applicable to the application to strike out the claim. The Hon. Chief Justice had this to say (at para. 20):-

“It is important to bear in mind always in considering and exercising the power to strike out, the Court should have regard to the overriding objective of the rules and its power of case management. It is therefore necessary to focus on the intrinsic justice of the case from both sides; why put the defendant through the travail of a full blown trial when at the end, because of some inherent defect in the claim, it is bound to fail, or why should a claimant be cut short without the benefit of trial if he has a viable case.”

It was submitted that there would be no injustice or prejudice visited upon the Defendant.

FINDINGS

[13] The summary procedure created by section 70 of the Act is a distinct jurisdiction separate and apart from the unlimited jurisdiction of the Supreme Court. This discrete jurisdiction has not been repealed by the Rules. Indeed Rule 2.2(3)(d) provides:

“These Rules do not apply to proceedings of the following kinds –

- (a) ...
- (b) ...
- (c)
- (d) any other proceedings in the Supreme Court instituted under any enactment, in so far as Rules made under that enactment regulate those proceedings.”

In any event, section 70 of the Act has not been repealed thus preserving the existence of the summary procedure in the Supreme Court. The separate existence of the summary jurisdiction is emphasized by section 71(2) of the Act and states:

“No rule of court relating to the unlimited jurisdiction of the Court not declared to be part of the summary procedure shall apply to any of the actions defined in section 70(2) unless specifically declared to be applicable thereto.”

It therefore follows that Order 74 of the Supreme Court Rules 1973 remains in force with respect to the summary procedure of the Supreme Court.

[14] The Claimant cannot avail himself of the summary procedure as the Claim has not been brought in compliance with the said Order 74. The Claim Form adopts the form applicable to proceedings in the Rules.

[15] There is no merit in the argument that section 3(1) of the District Courts (Procedure) Act renders it imperative that all claims of \$15,000.00 or less be brought in the District Court. The use of the word ‘shall’ relates to the conferring of jurisdiction making it mandatory for the District Court to assume jurisdiction in all cases brought before it within the monetary limit. As was pointed out to Learned Counsel in the course of argument, the last sentence in section 3(1) reads “such actions may be commenced in the court (the District Court)”. This confers upon a

litigant the option of bringing his claim in the District Court or electing to commence suit in the Supreme Court in its unlimited jurisdiction or in its summary procedure jurisdiction. Section 3(1) does not operate to confer an exclusive jurisdiction on the District Court.

[16] The non-exclusive jurisdiction of the District Court is further borne out by section 88 of the Act which states:-

“No costs shall be allowed to a successful plaintiff in any action brought by him in the Court which might have been heard in a district court unless the Court is of opinion that the action was one which it was expedient to bring in that manner and certifies accordingly.”

This provision contemplates that actions that are amenable to the jurisdiction of the District Court can be entertained by the Supreme Court subject to the discretionary disallowance of costs.

[17] The net effect of the foregoing is that the Claimant is not precluded from bringing the claim in the Supreme Court. It follows that the Claim cannot be treated as an abuse of process. It is for the trial judge to determine whether to disallow the costs in his or her discretion as provided for by section 88.

[18] In the premises, the application to strike out the claim is dismissed. The costs of the application shall be the Claimant's in the cause.

KENNETH A. BENJAMIN
Chief Justice