

IN THE SUPREME COURT OF BELIZE, A.D. 2013

CLAIM NO. 667 OF 2011

BETWEEN:

CARLOS JEX	Claimant
AND	
REEF VILLAGE ESTATES LIMITED	Defendant
AND	
BELEAF ENTERPRISES LIMITED	Third Party/ Interpleader

In Chambers.

BEFORE: Hon. Chief Justice Kenneth Benjamin.

June 3 & 4, 2013.

Appearances: Mrs. Julie-Ann Ellis Bradley for the Claimant.
Mr. Darrell Bradley for the Third Party/Interpleader.

JUDGMENT

[1] On November 17, 2011, default judgment was entered against the Defendant in favour of the Claimant for the sum of \$89,377.50 together with interest at the rate of 6% per annum from the date of such judgment until payment. At the request of the Claimant a writ of execution was issued on February 13, 2012 against the Defendant for the recovery of the judgment debt.

[2] On April 3, 2012, the marshal took in execution and marked the following chattel:

“One 1985 Komatsu Excavator MOD # PC 220 LC-3”

By notice dated March 28, 2013, Beleaf Enterprises Ltd. (“Beleaf”) claimed to be the owner of the chattel. The Deputy Registrar gave written notice of the claim to the claimant/judgment creditor who thereupon disputed the title of Beleaf by notice of April 18, 2013.

[3] Beleaf filed an application for relief by way of interpleader by a notice of application dated May 29, 2013. The application was supported by an affidavit sworn to by Ronald Sutherland, a director of Beleaf. In response, the Claimant swore to and filed an affidavit opposing the application.

[4] Beleaf asserted its ownership of the chattel. Ronald Sutherland stated that it was purchased from the company’s monies and brought into Belize from Houston. In support of the claim of ownership, there were exhibited to Sutherland’s affidavit a copy of an auctioneer’s invoice and a customs entry. It was categorically stated that the Defendant had no proprietary interest in the chattel.

[5] The so-called auctioneer’s invoice is headed ‘Invoice’. It records the sale by auction by Ritchie Brothers Auctioneers (America) Inc. to Perera Auto Sales on November 8, 2007 of one “Komatsu PC 220LC-3 Hydraulic Excavator s/n 20801” for the sum of USD \$11,000.00. The Customs Declaration Form named ‘Beleaf Enterprises’, as the importer and ‘Trans-Global Imp./Exp. Inc.’ of Ontario, Canada as the exporter with the goods being described as “1985 Komatsu Excavator Mod # PC 220LC-3, Serial #20801”. The latter document is dated December 10, 2007.

[6] The two documents undoubtedly refer to the same subject matter which is properly identified as the chattel marked by the Marshal and claimed by Beleaf. The auctioneer’s invoice plainly refers to parties unknown to the Court and no explanation was offered as to their identity in the Sutherland affidavit. The Customs Declaration identified Beleaf as the importer and no evidence has been forthcoming to challenge this indication of what is in my view prima facie ownership of the chattel. No bill of sale,

receipt or other document has been tendered to evidence any transfer of ownership nor has any other document showing any contrary title or ownership of the chattel been adduced to the Court. On the face of the Customs Declaration, Beleaf has therefore presented itself as the owner of the chattel.

[7] The affidavit of the Claimant in answer to the claim by Beleaf was based on his knowledge and recall as a director of the Defendant and as one of its accountants at the time the excavator was imported into Belize. It was recalled that the excavator was delivered to the defendant's premises by a barge and the details as to the acquisition of the excavator were directly handled by Jeff Pierce, a director of the defendant.

[8] The Claimant stated that he was informed by Jeff Pierce that he had worked out an arrangement with Ron Sutherland, who was Pierce's personal friend. The Claimant averred that so far as he understood, the excavator was procured in exchange for Ron Sutherland being given a condo at Reef Village and other things. Indeed, he was aware that Ronald Sutherland was given possession and ownership of a condo for which he had not made payment up to March 2011 when the Claimant resigned as a director. It should at once be observed that the value of a condo would be grossly disproportionate to the value ascribed to the excavator on the auctioneer's invoice. Accordingly, it would defy reason that such a barter arrangement would be made by two prudent businessmen. Further, the matter of the purchase of an excavator which was subsequently used to reclaim land on the defendant's property would hardly escape the attention of the defendant's board of directors.

[9] The affidavit went on to detail the use of the excavator exclusively to reclaim land for the Defendant although the Claimant was unaware of any payment being made by the defendant to Beleaf. Further, it was said that the excavator was operated by a person employed by the defendant. In addition, the Claimant swore that searches conducted at the Companies Registry revealed that Ronald Sutherland has been a director of the defendant since December, 2012.

[10] There can be no doubt that the recollection and observation of the Claimant, accepted as being the truth (as I have been offered no reason to otherwise conclude),

are evidence of an arrangement between Beleaf acting through Ronald Sutherland on the one hand and the Defendant on the other as to the use of the excavator. However, the evidence is equivocal in that it is equally consistent with a rental arrangement which falls short of any transfer of ownership. In any event, the perceived gratuitous possession and ownership of a condo belonging to the Defendant by Ronald Sutherland cannot be treated as consideration flowing to Beleaf, which is a separate corporate entity. Such an arrangement, if it did exist in fact, would also be consistent with an arrangement for the rental in contradistinction to the purchase of the excavator.

[11] By virtue of the foregoing reasons, the Claimant has failed to displace the proof of prima facie ownership demonstrated by Beleaf evidenced by the Customs Declaration Form. Accordingly, Beleaf Enterprises has established its claim and is entitled to relief.

[12] In the premises, it is ordered that the Komatsu Excavator be released to Beleaf Enterprises Ltd. The interpleader Claimant, Beleaf Enterprises Ltd., shall be entitled to its costs fixed in the sum of \$500.00 to be paid by the Claimant.

KENNETH A. BENJAMIN
Chief Justice