

IN THE SUPREME COURT OF BELIZE, A.D. 2014

CLAIM NO. 302 of 2012

**IN THE MATTER of sections 3(d), 17(1) and 20(1) of the Belize
Constitution**

AND

**IN THE MATTER of the National Lands Act, Chapter 191,
And the Registered Land Act, Chapter 194**

**BETWEEN BARBARA ESTELLA ROMERO CLAIMANT
(Executrix of the Estate of Cesar Romero,
Deceased)**

AND

THE MINISTER OF NATURAL RESOURCES	1st DEFENDANT
THE REGISTRAR OF LANDS	2nd DEFENDANT
THE ATTORNEY GENERAL	3rd DEFENDANT
THE MINISTER OF FINANCE	4th DEFENDANT

AND

DIANOVA (BELIZE) LIMITED (formerly Le Patriache Non-Profit Corporation Limited)	1st INTERESTED PARTY
--	--

Y.B. HOLDING COMPANY LIMITED	2nd INTERESTED PARTY
---	--

ATLANTIC INTERNATIONAL BANK LIMITED 3rd INTERESTED PARTY

BARANA HOLDINGS LIMITED 4th INTERESTED PARTY

TIMOTHY OWEN CARROLL J 5th INTERESTED PARTY
And MARGARET NELS CARROLL

EDWARD K. YOUNG 111 and 6th INTERESTED PARTY
JULIE B. YOUNG

JERALD OSIECKI and PATRICIA OSIECKI 7th INTERESTED PARTY

NEIL PIVAR, TINA MALKO 8th INTERESTED PARTY
And LORAIN Viner

BEFORE THE HONOURABLE MADAM JUSTICE SONYA YOUNG

Hearings
2014
8th May

Mr. Fred Lumor, SC for the Claimant.
Mr. Herbert Panton for the Defendants.

RULING

1. This is an application by the 1st to 4th defendants to strike out the claim on the ground that (a) by reason of delay it is an abuse of process and /or (b) for failure to disclose any reasonable grounds for bringing the claim. The applicants seeks to have the court exercise its jurisdiction under Part 26 of

the Supreme Court (Civil Procedure) Rules 2005 (hereinafter CPR). More particularly Part 26.3 (1) (b) and (c). They relied on the undated affidavit of William Vallejos filed on the 20th September, 2012 and the first affidavit of Iliana Swift filed on the 28th November, 2012.

2. **THE HISTORY:**

The Fixed Date Claim Form in this matter was filed on the 30th May, 2012. An affidavit in response to the claim was filed by the defendants on the 24th September, 2012. On that same date the Judge, originally assigned, conducted a first hearing. At that time he gave certain directions for service of the claim form on some parties out of the jurisdiction, time for filing the acknowledgement and defence and listed the matter for case management on 26th November, 2012. The precise progress of the matter thereafter is uncertain from the court file, save and except the filing of this application to strike out on 28th November, 2012. It appears that the first assigned judge left the jurisdiction in early 2013 and the application was never heard. The file was re-assigned in April 2014. The application was heard on the 8th April, 2014. This is the reserved decision.

3. **BACKGROUND:**

The Claimant is the Executrix of the Estate of Cesar Romero who died on the 7th day of May, 2001. Cesar Romero held title to a parcel of land situated on Placencia Peninsula. His deed of conveyance was recorded in the Deeds Book Volume 10 of 1981. That land, the claimant alleged, was on the 5th October, 1998, sold by virtue of a Minister's Fiat (Grant) No. 476 of 1998 to the 1st Interested Party by the Minister of Natural Resources as national land. Thereafter, the property was designated as two parcels on

compulsory registration. It was subsequently transferred, “mutated,” subdivided and a portion became the subject of a mortgage. Those persons who have held the various titles and charge are joined as the Interested Parties 2 to 8.

THE CLAIM:

4. The claimant says that the property is private property and the Minister of Natural Resources had no statutory authority to assume ownership of private property and to sell that property as if it were national land. That by doing this, he acted outside the scope of his statutory duties and in excess of his jurisdiction. Therefore he illegally and without justification deprived the claimant of title to the property in contravention of her fundamental rights guaranteed by section 3(d) of the Belize Constitution. She asked the court to find that the sale and the registration were accordingly void and a nullity. She also claimed the following reliefs:

- (1) A declaration that the 1st, 2nd, 3rd and 4th Defendants contravened the rights of the Claimant guaranteed in Section 3(d) of the Belize Constitution when they abused their powers, assumed ownership of the private property of the Claimant, and purportedly transferred the same to the 1st Interested Party, Dianova (Belize) Limited formerly Le Patriache Non-Profit Corporation Limited.
- (2) A declaration that the sale by the Minister of Natural Resources of the Claimant’s property, approximately 10 acres of land situate at 1.2 Miles North of Seine Bight Village in the Stann Creek District, Belize, to Le Patriarche Non-Profit Corporation Limited now Dianova (Belize) Limited, and all the subsequent transfers and the transactions conducted

in respect of the said property are unconstitutional and contravenes the rights of the Claimant guaranteed in Section 3(d) of the Belize Constitution.

- (3) An order therefore that the sale by the Minister of Natural Resources of the 10 acre parcel of land owned by the Claimant to Dianova (Belize) Limited is ultra vires the National Lands Act, Cap. 191 and therefore unconstitutional and a nullity.
- (4) A declaration that the Registered Land Act, Cap. 194 having failed to make provisions for the payment of compensation to the Claimant when the Estate stands to lose the private property in the registration process in the Land Registry to that extent the Registered Land Act, Cap. 194 contravenes Section 17(1) of the Belize Constitution and therefore unconstitutional.
- (5) Further, the Registered Land Act, Cap. 194 having granted immunity to the Registrar of Lands and the staff of the Land Registry against all claims and liabilities in circumstances when they expropriated the property of the Claimant contrary to the provisions of the National Lands Act, the Registered Land Act and Section 17(1) of the Belize Constitution, to that extent the Act is unconstitutional.
- (6) A declaration that the Claimant is the owner and ought to be registered as proprietor of the 10 acre parcel of land.
- (7) An order directing the Registrar of Lands to rectify the Land Register by cancelling the sale of the Claimant's property to Dianova (Belize) Limited and all subsequent transfers or registrations made in the Lands Registers in the Land Registry affecting the 10 acre parcel of land.
- (8) In addition, damages and/or compensation.
- (9) Interest on any amount or damages found to be due to the Claimant in

accordance with Section 166 of the Supreme Court of Judicature Act, Cap. 91.

- (10) Costs.
 - (11) In addition or in the alternative, the appropriate declarations and orders as would secure and enforce the rights of the Claimant guaranteed in Sections 3(d) and 17(1) of the Belize Constitution pursuant to Section 20(2) of the Constitution, including an order of mandamus directed at –
 - a) the Registrar of Lands to rectify the Land register by cancelling the registration of Dianova (Belize) Limited and all subsequent transferees as proprietors of Parcel 289 and 290;
 - b) the Minister of Finance to liquidate the amount outstanding on the charge or mortgage of Atlantic International Bank Limited and discharge the charge secured on Parcel 289 to enable the title to be restored to the Claimant.
 - c) the Minister of Finance to compensate Y.B. Holding Company Limited and subsequent transferees to enable title to parcel 290 to be restored to the Claimant.
5. The parties on the 29th day of April, 2014 were ordered to file written submissions by 2nd May, 2014 and they complied. At the hearing these submissions were amplified by counsel. The respondent/claimant sought and was granted leave to provide further authorities to the court and to the applicant/defendant on a particular issue by 9th May. He likewise complied. An attempt was made by the claimant to present further written submissions to the court. They were returned unread as at the end of the hearing the applicants had asked to do same and had been refused leave. This court

extends its gratitude to counsel on both sides for their helpful submissions and authorities.

6. THE ISSUES:

The issues for the court to decide were: (1) Whether there was a delay in bringing the claim for constitutional redress and if there was, whether that delay constituted an abuse of the process of the court; (2) Whether there was any or any sufficient evidence provided to prove how the root of title averred to in the claim was one and the same as the property in question and the exact nature of the interest of the Estate of the deceased. Whether the absence of such was sufficient to show that the claimant had no reasonable grounds for bringing the claim.

7. THE COURT'S POWER TO STRIKE OUT:

In this case is derived from:

“Rule 26.3(1) In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court –

- (a)
- (b) that the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;
- (c) that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim.”

8. This power is undoubtedly draconian and Blackstone's Civil Practice 2013 at 33.6 p 526 tells us that it ought to be used sparingly. Care should be taken to keep such applications within their proper limits so that a party is not deprived of the right to trial on issues *Swain v. Hillman (2001) 1 All E.R. 91*, or the ability to strengthen their case through disclosure or other court procedures. "A judge should therefore only use this jurisdiction in the clear obvious case when it can be seen on the face of it that a claim is obviously unsustainable, cannot succeed or in some way is an abuse of the process of the court and should not be the first and primary response of the court," *Baldwin Spencer v. The Attorney General Antigua & Barbuda et al (Civil Appeal No. 20A of 1997)* Dennis Byron CJ (Ag). An application to strike out is not a mini trial nor is it an application for summary judgment and it ought not to be treated as such.

9. The court begins by assuming that the facts pleaded are true and will be capable of proof at the trial. However, those facts should be closely and carefully scrutinized to ensure that they are not mere conclusions or inferences *Citco Global NV v. Y2K Finance Inc BVI HCV AP 2008/022*. It is no part of the courts function at this stage to try to resolve conflicts of evidence or affidavits as to facts on which the claims of either party may ultimately depend, nor to decide difficult questions of law which call for detailed argument and mature consideration. The court must simply ensure that the Claimant's cause of action has substance and reality and is not an abuse of the court's process.

10. NO REASONABLE GROUNDS FOR BRINGING CLAIM:

In *Citco Global Custody N.V. v. Y2K Finance Inc (Supra) 22 of 2008* Edwards JA explained that: “Where the claim sets out no facts indicating what the claim is about or if it is incoherent and makes no sense or if the facts it states, even if true, do not disclose a legally recognizable claim then striking out is appropriate.” This means that even if every factual allegation contained in the Statement of Case are proved and those facts would still not establish the essential ingredients of a cause of action, then clearly they would be no reasonable grounds for bringing the claim. Ergo, once the Statement of Claim discloses some cause of action or raises some question fit to be decided by trial it ought not to be struck out. When this limb is relied on the onus is on the party who seeks to have the claim struck out to show that there is no cause of action.

11. The applicants contend that the claimant has provided no evidence to show that the property in the Crown grant of 1881 and the conveyance to the claimant’s husband (father) in 1981 are related to the same property. This, they say is the singular issue on which the claim rests. In response the claimant filed her second affidavit in which she sought to outline the chain of title. During oral submissions the defendant stated that ‘certain parts’ of this affidavit should be struck out as the claimant never stated what information were in her own actual knowledge and which were matters of information or belief. An application was never made for permission pursuant to Part 11.13 CPR. That issue was therefore not considered by the court. During the course of submissions both oral and written the applicant seemed to change this ground somewhat. It became mainly that the claimant had not shown that the property he claimed to own was one and the same as

the property transferred to the 1st Interested Party. In striking out we must remember that the issue is not one of proof but one of facts.

12. There has always been a grey area between material facts and evidence. “Every pleading must contain and contain only a statement in summary form of the material facts on which the party pleading relies for his claim or defence as the case may be, but not the evidence by which those facts are to be proved, and the statement must be brief as nature of the case admits.” *Bullen & Leake on Pleadings and Precedents 1 – 25*. Therefore, the fact that there is no direct rule to the effect that evidence should not be contained in a statement of case does not mean that a statement of case is automatically defective if evidence is not included. It may of course be that in some instances a verified statement of case will contain all the particulars and evidence necessary to entitle an applicant to the remedy sought, but there will be many instances in which it will not.” *Blackstone’s Civil Practice 2013 24:19 pg. 443*. A good claim should enable the parties and the court to narrow down and identify the central issues in dispute.
13. I find that the claimant’s statements at paragraph 4 (1-4) of the section in her affidavit headed “The Facts” fulfilled the requirements of facts needed to identify the central issue in dispute.
 - (4) The claimant discovered that-
 - (1) Sometime in 1991, unknown to the late Cesar Romero and his Estate, the 1st Interested Party made an Application dated 3rd July, 1991 to the First Defendant in which it sought to “purchase 10 acres of Crown land bounded to the best of its belief” in

“Maya Beach Area” in the Stann Creek District. A copy of the Application is now produced and shown to me marked “BR-4”.

- (2) As a result, the Commissioner of Lands and Surveys in the Office of the Minister of Natural Resources by a letter dated 1st August, 1991 granted permission to the 1st Interested Party to “survey 10 Acres + Le Patriache, Placencia Peninsula, Stann Creek District.” A copy of the letter dated 1st August, 1991 is now produced and shown to me marked “BR-5”.
- (3) The Minister of Natural Resources, ALMOST SEVEN (7) YEARS AFTER the grant of permission, sold to the 1st Interested Party “10.07 acres of lands situate on the Placencia, Peninsula, approximately 1.2 miles north of Seine Bight Village, Stann Creek District” for the sum of \$12,300.00. The Minister of Natural Resources issued to the 1st Interested Party as grantee, Minister’s Fiat (Grant) No. 476 of 1998, dated 5th October, 1998 as title. A copy of the grant and the Plan of Survey is now produced and shown to me marked “BR-6”.
- (4) The Government of Belize issued a revenue collector’s receipt for the sum of 12,300.00 paid as the purchase price for the Claimant’s property. The money was paid into the Consolidated Revenue Fund of Belize which is administered by the Minister of Finance.

14. Her primary issue that she was deprived of her property otherwise than by due process of law raised the overarching dispute of facts. Any issue as to proof could be done in the conventional matter and be dealt with under the court’s wide case management powers conferred by Part 56.11:

“56.11 (1) At first hearing the judge must give any directions that may be required to ensure the expeditious and just trial of the claim and the provisions of Parts 25 to 27 of these Rules apply.

- (2) In particular the judge may –
- (a) make orders for –
 - (i) witness statements or affidavits to be served;
 - (ii) cross-examination of witnesses; and
 - (iii) disclosure of documents;
 - (b) allow the claimant to –
 - (i) amend any claim for an administrative order;
 - (ii) substitute another form of application for that originally made;or
 - (iii) add or substitute a claim for relief other than an administrative order.

15. *In my view this application may have been a tad premature as it was made prior to the actual case management. The issue of nexus may well fall away if the claim is properly investigated. I hasten to add that ‘no real ground’ is not the same as ‘no real prospect of success’. As far as this court is concerned the Statement of Case does disclose a reasonable ground for bringing the claim and I decline to strike it out on that ground.*

16. DELAY:

Is an issue for trial. It is a dispute of fact and must be specifically pleaded. It is well settled that where debatable issues of limitation arise, it is

inappropriate or undesirable to attempt to decide them on interlocutory applications except in the clearest of cases. Furthermore, time in and of itself is not proof of delay and the defence of laches, on the other hand, does not have an inflexible rule for determining what length of time constitutes an unreasonable delay. However, a great lapse of time, especially where the claimant had knowledge of his or her rights, can often be sufficient to create a presumption of inequity. The matter for the court to consider here is when does time begin to run. Is it as the applicants states from the moment the property was transferred in a Minister's Fiat or perhaps from some other time. This too is an issue to be tried. Counsel for the applicant relies partly on the Statute of Limitation Cap. 170, stating that the claim may have been otherwise statute barred. He speaks there to the section dealing with dispossession and discontinuance of possession. However this claim is in no way a claim for recovery of possession. In my view the principles applicable to the cases under the Statute of Limitation Cap. 170 are also applicable to delay. Limitation is a procedural defence and doesn't affect the existence of the claimant's cause of action *Ronex Properties Ltd., v. John Laing Construction Ltd., (1983) QB 398*. Although it is a complete defence it will not be taken by a court of its own motion but must be specifically set out in the defence. This means that a Statement of Claim could proceed to trial if the defendant fails to plead it in his defence. Where it has been pleaded as a defence the claimant can either discontinue the claim or the defendants can apply to have it struck out as an abuse of process - *A Practical Approach to Civil Procedure by Stuart Sime pg 89*. The implication of this is that it is always open to a claimant to file a claim showing the existence of a cause of action. But a limitation defence may be a bar to proceeding with that cause of action *Deidre Anne Hart Chang v.*

Leslie Chang Claim No. 2010/HCV 03675 Supreme Court of Judicature Jamaica. The applicants nowhere in their defence affidavit averred to delay. It is therefore not open to them to rely on it as a ground for striking out the claim. In light of the foregoing I find that there is no basis for the court to strike out the claim on this ground either.

17. It is order that:

- (a) The application to strike out the claim is hereby dismissed.
- (b) The applicants shall pay the claimant's costs.
- (c) Costs to be assessed if not agreed.
- (d) Matter is adjourned for case management on Wednesday 28th May, 2014.

SONYA YOUNG
JUDGE OF THE SUPREME COURT