

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

CLAIM NO.578 OF 2014

(MASHAKE MCCONNER JR. CLAIMANT
BETWEEN (AND
(JOHN D. LONG DEFENDANT
(Administrator of the Estate of Henry Curtis Long)

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mrs. Agnes Segura-Gillett for the Applicant/Defendant

Mrs. Melissa Balderamos Mahler for the Respondent/Claimant

D E C I S I O N

1. This is an application for summary judgment on the basis that the Claimant has no real prospect of succeeding on the Claim or issue. The substantive claim is for the payment of the sum of US\$30,000 due and payable as a debt by the late Henry Curtis Long Sr. (and by extension his estate) to the Claimant under a judgment delivered by the District Court of Clark County, Nevada U.S.A. dated 14th October, 2008, interest and costs. The Defendant in its Amended Defence refutes the claim on the basis that since the Nevada District Court found that the sale agreement between the parties failed to comply with the Stamp Duties Act of Belize and was therefore illegal and unenforceable, it would be contrary to public policy for the Supreme Court of Belize to allow the Claimant to enforce this Agreement. In his Reply, the Claimant states that the basis of the Ruling of the Nevada District Court was

not the Stamp Duties Act (and the validity and enforceability of the sale agreement or lack thereof) but rather the principle of unjust enrichment in that the court held that to allow the late Henry Curtis Long to retain the deposit paid to him by the Claimant would offend against the principle. The present application seeks to have the Claim struck out and have summary judgment entered in favor of the Applicant/Defendant on the basis that, pursuant to Rule 15(2) of the Supreme Court (Civil Procedure) Rules, the Respondent/Claimant has no real prospect of succeeding on the claim or issue.

The Applicant/Defendant's Submissions on the Application to Strike Out Claim

2. Mrs. Agnes Segura-Gillett on behalf of the Applicant submits that the Claimant has no real prospect of succeeding on the Claim. The Claimant does not deny that the claim arises from a judgment of the Nevada Court for the repayment of sums under a void contract. The contract is void because it failed to comply with the provisions of the Stamp Duties Act of Belize, therefore making it illegal and unenforceable. The Claimant is seeking to distance itself from the illegal contract by claiming that the sum of US\$30,000 is a mere claim for debt owed pursuant to the Court judgment which is founded upon the principle of unjust enrichment. The Defendant argues that the US\$30,000 is tainted by illegality of the contract pursuant to which it was paid. The Defendant therefore maintains that it would be contrary to public policy for this Court to assist the Claimant in what would be tantamount to collecting monies paid pursuant to an illegal contract.

3. Mrs. Segura Gillett cites Conteh CJ in SCA No. 185 of 2001 ***Prophecy Group LC v. Seabreeze Co. Ltd.*** where after stating that the manner of enforcement of foreign judgments in Belize

is by bringing an action in the Courts in Belize on the foreign judgment, His Lordship went on to qualify that statement by saying that *“The principle that a foreign judgment is enforceable by an action on the judgment is, however, subject to certain exceptions namely, that the foreign judgment was obtained by fraud, or that the foreign judgment is contrary to public policy, or that it was obtained contrary to natural justice or that it is for taxes or penalties”*.

Halsbury’s Laws of England Vol. 3 4th Ed. states the principle thus at paragraph 725:

“Subject to three exceptions a judgment in personam of a foreign court of competent jurisdiction which is final and conclusive on the merits is conclusive...”

Mrs. Segura-Gillett contends that it is clear that the general rule that Courts in Belize will enforce foreign judgments is subject to various exceptions, one being that the foreign judgment is contrary to public policy. The Defendant’s ground for opposing this Court’s enforcement of the foreign judgment therefore comes within the recognized exceptions.

4. In relation to the Sale Agreement between the late Henry Long and Mashake Mcconner, it is argued that the Agreement contravened Sections 71, 72 and 73 of the Act which set out provisions under which stamp duty is payable to the Government of Belize. Learned Counsel for the Applicant/Defendant says that the Respondent/Claimant does not contest the fact that Stamp Duty was payable on the Sale Agreement, or that failure to pay Stamp Duty rendered same being null, void and unenforceable. Learned Counsel for the Applicant/Defendant relies on ***Chitty on Contracts*** Volume 1 Sweet & Maxwell (2004) which reads as follows:

“While cases in which the plaintiff seeks the enforcement of an illegal contract are governed by the maxim ex turpi causa non oritur action, those in which he seeks some release from its operation fall within the principle in pari delicto potior est conditio defendentis. The result of the application of this principle is that where both parties, contracting on equal footing, are aware of the illegal nature of the contract, whether it be on its face illegal or whether the common intention be to carry out the contract in an illegal manner, neither party can recover anything paid or transferred thereunder. So, in a contract to secure a title for the plaintiff in return for the payment, the plaintiff, when he failed to receive his title, could not recover back what he had paid, the contract being turpis and the parties being in delicto.”

Mrs. Segura- Gillett also cites the decision of this court in SCA 34 of 2012 **Bernard Deuck v. Cornelius Deuck**, where this court held that a share purchase agreement could not be enforced because the share transfers were executed in breach of the Stamp Duty Act.

5. In conclusion, the Applicant/Defendant contends that the legal authorities set out make it clear that the Court will not assist a Claimant whose cause of action is tainted by illegality. Although on the face of it, the judgment on which the Claimant relies is not illegal or void, it is tainted by the illegal contract pursuant to which it was issued. It is therefore the Defendant’s position that allowing the Claimant to recover sums paid under the void contract would be contrary to public policy. In reliance on the aforementioned, the Defendant submits that this Court ought to give summary judgment in favor of the Defendant pursuant to CPR 15.2 which allows the Court to give summary judgment in a

claim or on a particular issue if it considers that (a) the Claimant has no prospect of succeeding on the claim or issue.

Respondent/Claimant's Submissions opposing the Application to Strike Out Claim

6. Mrs. Melissa Balderamos-Mahler on behalf of the Respondent/ Claimant argues that the essence of the current application before the court is that the Claimant should not seek to enforce or benefit from an illegal and unenforceable contract and that the current claim is for reimbursement of money paid under an illegal contract. However, the Claimant's position is that that position is misguided and misconstrued and the basis of the Order of the Nevada Court is misconstrued. Contrary to what has been alleged by the Applicant, the claim before the court itself is not grounded on an illegal contract. Rather, the current claim is founded on the Order of the US Court which is based on the principle of unjust enrichment. The Nevada Court held that because the applicable stamp duty had not been paid on the written agreement between the parties, that sale agreement was invalid and unenforceable, as seen in the written decision of the Nevada Court attached as an exhibit to affidavit of the Respondent/Claimant. Despite the finding of invalidity of the purchase agreement, the court ordered that the late Mr. Long return the money paid to him on the basis of unjust enrichment.

On page 4 of the judgment, the court states that *"unjust enrichment occurs when a Plaintiff confers a benefit upon a Defendant who accepts and retains the benefit and it would be against the principles of justice to allow the Defendant to keep the benefit"*. The Court says further that *"the Defendant Henry Long has the Plaintiff's thirty thousand dollar down*

payment and, to allow him to retain the thirty thousand dollar deposit when the Plaintiffs do not have a valid, enforceable contract on a property that the Plaintiffs allege Defendant Henry Long misrepresented, would constitute unjust enrichment”.

Mrs. Balderamos-Mahler therefore submits that the basis of the Order of the Court was therefore not the purchase agreement, which the court in Nevada found to be invalid. Rather the basis of the Order of the court was the equitable principle of unjust enrichment. The Claimant is seeking to rely on the Order of the Nevada Court which has created a debt in his favor by the deceased Henry Long and his estate. The Claimant is simply seeking to enforce a judgment already made in his favor. ***Halsbury’s Laws of England*** Para 426 Vol 19 (2011) 4 states:

“Subject to certain exceptions, a judgment in personam of a foreign court of competent jurisdiction which is final and conclusive on the merits is conclusive between the parties as to any issue upon which it adjudicates. It is not impeachable or examinable on the merits, whether for error of fact or law.”

Learned Counsel for the Respondent/Claimant contends that the judgment of the Nevada Court is conclusive between the parties, and to allow the Defendant to seek to impeach or to set aside the said Order would amount to a second bite at the cherry. The Defendant participated in the legal proceedings in the State of Nevada, submitted himself to the jurisdiction of that court and should therefore not be allowed to avoid what has already been ordered against him (payable through his estate).

7. In addressing the submission by the Applicant/Respondent that the US order would be contrary to public policy, Mrs. Balderamos-Mahler says that that submission is simply an attempt to resist enforcement proceedings and is entirely without merit. She cites ***IPOC International Growth Fund Ltd. v. LV Finance Group Ltd.*** Civil Appeal No. 30 of 2006 (BVI Court of Appeal) where LV Finance obtained arbitration awards in proceedings in Zurich, Switzerland and obtained an Order that permitted the recognition and enforcement of the awards in Bermuda. It then applied for and obtained an order to recognize and enforce the awards in the BVI, even though an option agreement between the parties was found to be an illegal transaction and therefore unenforceable. IPOC applied to set aside the Order, which was dismissed. It then appealed to the Court of Appeal of the OECS, and alleged that the awards were unenforceable on account of public policy, and were tainted by illegality since the tribunal stated that there was illegal conduct by both parties. Rawlins JA said at page 21 of the decision at paragraph 49:

“... case law and textbook writers make it clear that the public policy defence to an enforcement application is one which has a narrow scope and extends only to a breach of the most basic notions of morality and justice.”

The court found that while the tribunal declared the option agreement may have been tainted with illegal conduct of the parties, the award itself was not tainted by that illegality. By the enforcement application, LV Finance was seeking to enforce the conclusion in the arbitration award. This, the court held could not be contrary to public policy under the Arbitration Act of the BVI. The court found that LV Finance was merely seeking to uphold the finality of the tribunal’s decision and upheld the enforcement of the award made by the

court below. The court was not prepared to go behind the facts and reasons as they appeared on the award to determine whether the contract should not be enforced on grounds of illegality and public policy.

8. In conclusion, Mrs. Balderamos-Mahler submits that the Claimant's claim is based on the Amended Order of the District Court of Clark County, Nevada, United States of America, pursuant to which that Court ordered that the late Henry Curtis Long pay to the Claimant the sum of US\$30,000. Mr. John D. Long, as Administrator of his father's estate, has not denied the debt owed to the Claimant, Mr. Mcconner. The application before this court is nothing more than an attempt to skirt his obligations by law to pay the debt owed by his father to the Claimant pursuant to the Order of the Nevada Court. The discretion of the court to refuse to recognize and enforce a foreign judgment is one to be most sparingly exercised and should not be exercised in the case at hand. The application made by the Defendant and the grounds thereof are an attempt to have a second bite at the pie, in that he is trying to reverse what was already decided by a court of competent jurisdiction to which he had submitted. That decision of the Nevada Court was final and conclusive and should be recognized and enforced. The Claimant has a good cause of action and his claim has a realistic prospect of success. The Defendant has no real defence to this claim and should be ordered to pay the costs of this application to the Claimant. Further, the Claimant urges this Court to act in accordance with Rule 26.1(2)(j) of the Supreme Court (Civil Procedure) Rules 2005 and to dismiss the application of the Defendant and give judgment in favor of the Claimant on the claim for the payment of US\$30,000 with interest at the rate

of 8.25% per annum from the 14th October, 2008 or alternatively pursuant to sections 165 or 167 of the Supreme Court of Judicature Act, and for costs.

Decision

9. I wish to express gratitude to both counsel for their comprehensive submissions which greatly assisted the court in reaching its decision. Having considered the submissions made on behalf of the Applicant/Defendant and Respondent/Claimant in their entirety, I am of the view that the arguments made on behalf of the Respondent/Claimant are entirely correct and should prevail. The decision of the Nevada court which ordered the return of the deposit to Mr. Mcconner is not based on the void contract, but on the equitable principle of unjust enrichment as articulated by the learned trial judge. It is no part of this court's function to seek to re-litigate the issues already determined by the Nevada court in setting aside the contract between the parties; the court has already decided that that contract is illegal and therefore void. The substantive claim is seeking to enforce a foreign judgment in a court after proceedings in which the Defendant submitted to its jurisdiction and participated. I see no basis on which this court should refuse to allow that judgment to be enforced, as this claim as in the LV Finance case cited above by counsel for the Respondent/Claimant, is merely an attempt to uphold the finality of the decision reached in a foreign tribunal. I agree with Mrs. Balderamos-Mahler's submission that this application to strike out claim is an attempt by the Applicant/ Defendant to circumvent the order of the Nevada Court that he pay the sum of US\$30,000 owed by his late father to Mr. Mcconner. I therefore order that the application to strike out this claim is dismissed with costs awarded to the Respondent/Claimant to be paid by the Applicant/Defendant to be agreed or

assessed. I also order judgment in favor of the Respondent/Claimant on the Substantive Claim as there appears to be no viable defence to the claim. I order in accordance with Rule 26.1(2)(j) of the Supreme Court (Civil Procedure) Rules 2005 the dismissal of the application to strike out by the Defendant and judgment in favor of the Claimant on the claim for the payment of US\$30,000 with interest at the rate of 8.25% per annum from the 14th October, 2008 up to the present date, and for costs to be paid by the Defendant to the Claimant on the substantive claim to be agreed or assessed.

Dated this Tuesday, 26th day of September, 2017

Michelle Arana
Supreme Court Judge