IN THE SUPREME COURT OF BELIZE A.D. 2018
(CIVIL)

CLAIM NO. 78 of 2018
BETWEEN

G.A. ROE & SONS LIMITED	**CLAIMANT/Respondent**
AND	
COMMISSIONER OF STAMPS	**1st DEFENDANT**
ATTORNEY-GENERAL OF BELIZE	**2nd DEFENDANT/Applicants**

Before: **The Honourable Madame Justice Griffith**
Date of hearing: **7th May, 2018; 23rd May, 2018 (Oral Decision)**
Appearances: **Ms. Leonia Duncan and Ms. Marcia Mohabir, Crown Counsel for the Applicants; Mr. Andrew Marshelleck S.C. for the Respondent.**

DECISION

CPR 2005 Part 56 - Claim for Declarations - Application to Strike Out claim - Abuse of Process — Whether Appropriate Relief Claimed – Whether Claim one for Judicial Review.

Introduction

1. The Claimant GA Roe & Sons Ltd ('the company') commenced proceedings by way of fixed date claim pursuant to CPR 2005 Part 56 for a declaration that the market value assessed by the Commissioner of Stamps ('the Commissioner') in relation to property purchased by the company at a public auction, is amongst other things unreasonable, and ultra vires the powers conferred on the Commissioner pursuant to the Stamp Act, Cap. 64 ('the Act'). The Claimant also seeks an injunction restraining the Defendants from assessing stamp duty against the purchased property on the basis of the increased value fixed by the Commissioner. The Defendants contend that whilst the Claimant is entitled to seek only declaratory relief pursuant to Part 56, the proceedings are an abuse of process, as a declaration only within the circumstances of the claim would not be the appropriate remedy. Additionally, the Defendants contend that the Claimant failed to exhaust an alternative remedy in the form of a statutory appeal which was available under section 29 of the Stamp Act.

Issues

2. The following issues arise for determination, but are conveniently dealt with together:-

   (i) Whether it is appropriate in the circumstances of the claim for the Claimant to have sought declaratory relief only, as opposed to seeking permission to file a claim for judicial review;

   (ii) If not appropriately filed as a claim for declaratory relief, should the proceedings be adjudged an abuse of process and struck out?

Background and Submissions

Facts

3. Both parties filed affidavits for purposes of the hearing of the application. The brief facts of the matter as gleaned from these affidavits are set out as follows below. According to the Claimant, the company purchased property at a public auction for the sum of one hundred and fifty thousand dollars ($150,000.00) and in January, 2017 presented the conveyance for registration at the Land Titles Unit ('the Department') of the Ministry of Natural Resources, Belmopan. The conveyance was stamped for duty by that Department at six thousand five hundred dollars ($6,500.00) which was duly paid by the company. In October, 2017, the Claimant was notified that the Commissioner upon review of the assessment made in respect of the conveyance, advised that the value of the property purchased was determined to be three hundred and thirty-five dollars ($335,000) and as such stamp duty would be charged on that amount. The Claimant by letter written by his attorney, refuted the increased value on the basis that the price paid at auction was the market value of the property.

4. The Claimant states that albeit having requested reasons for the increased value assessed by the Commissioner, no such reasons were provided, hence the claim which has been instituted. The Commissioner alleged in her affidavit that as enabled by the Act, after collection of stamp duty from the Department, there was an internal process of valuation carried out in relation to the property.

Following the valuation exercise conducted by the Department, the value of the property was increased by a method of valuation taking into account the circumstances of the sale, as well as comparative values of neighbouring properties. The Commissioner claims that as contemplated by the Act, the Department was capable of making an initial assessment of duty based upon the documentation presented. However, the conveyance remained subject to any assessment carried out by the Commissioner to ascertain the true value of the land. The Commissioner holds the position that there was no reassessment of the property carried out but an assessment which she was entitled to do in accordance with the provisions of the Act.

Submissions

5. The Applicants acknowledge the right of the Claimant to seek only declaratory relief, as was held by the Court of Appeal in **The Association of Concerned Belizeans et al v The Attorney-General et al (*'the Association of Concerned Belizeans case'*).**[1] However, they also contend that the claim is in fact seeking judicial review of the Commissioner's decision regarding the market value of the property. Therefore the Claimant ought to have been required to obtain permission to file an application for review and in so doing, satisfy the Court of the conditions precedent to the grant of permission. By way of illustration, Counsel for the Applicant referred to **Mark Sewell & Duane Sewell v The Attorney-General et anor**[2] in which then Justice Awich acknowledged the four distinct types of administrative claims available under CPR Part 56.1[3] but opined that it was still possible in relation to claims for declarations only, to find abuse of process if it could be shown that there was an intention to avoid the requirements for filing a claim for judicial review. With respect to this case, the Defendants contend that had the Claimant sought permission for judicial review, it would have failed to obtain leave by virtue of its failure to exhaust the statutory right of appeal provided in section 29 of the Act. For this reason alone, the Defendants contend that the claim should be struck out as an abuse of process.

[1] Civil Appeal No. 18 of 2007

[2] Belize Supreme Court Claim No. 291 of 2007 @ para. 23

[3] Applications to be brought under CPR Rule 56.1 – (a) judicial review; (b) relief under Constitution; (c) declaration against Crown or other public body; and (d) power to quash under enactment, of order etc. of Minister or Government Department.

6. Additionally, the Applicants contend that the declaratory relief sought would provide no useful purpose, given the absence of any coercive orders to enforce it and as stated in the ***Association of Concerned Belizeans et al*** – the court could refuse to grant a declaration, where it would serve no useful purpose. Finally, the Applicants contend that given that the declaration is a discretionary remedy, there are factors that the Court is obliged to consider in deciding whether or not to grant the remedy. Inclusive of such factors, would be the existence of the alternative remedy in the form of the statutory appeal which the Claimant was obliged to exhaust. In support of the obligation to exhaust all available remedies, reference was made to **Belize Telemedia Ltd et al. v The Attorney General of Belize**[4]. Then Chief Justice Conteh in this case held that the claimants therein had failed to exhaust their statutory right of appeal under the Income and Business Tax Act and as such their fixed date claim for declarations seeking to impugn the assessments of the Commissioner of Income Tax was an abuse of process. Counsel for the Applicants commend this decision onto the Court for application in the same vein.

7. On the other hand Senior Counsel for the Claimant makes a number of responses to the Crown's submissions and maintains that the claim for declaratory relief is properly brought. It was accepted as a matter of broad principles that (i) the grant of the declaratory relief being discretionary, the Court could still refuse to grant the declaration sought, even where wrongdoing was found; but (ii) a determination of whether or not to exercise the discretion in favour of granting the declaration was a matter for consideration upon conclusion of the trial after hearing and determining the evidence; and (iii) the existence of the stand-alone right of the Claimant to institute proceedings for declaratory relief only does not preclude a Court from striking out a claim as an abuse of process. It was submitted however, that there was nothing within the circumstances of this claim that would merit the Court exercising its power to strike out - at this stage. With respect to the existence of an alternative remedy, senior counsel contended that there was in fact no alternative remedy capable of being exercised having regard to the circumstances of the claim.

[4] Belize Supreme Court Claim No. 464 of 2008

8. In respect of this argument, it was submitted that the mere existence of a statutory right of appeal does not always preclude a claimant from seeking other means of redress from the Court, and with respect to the availability of an alternative remedy, the requirements for filing a claim for judicial review should not be imposed against other types of administrative claims. Additionally, an alternative remedy, if it exists, must be convenient and effective, so that it is necessary to examine the availability of the statutory appeal with reference to the circumstances of the case. In this regard it was submitted that the right to appeal under section 29 of the Act was not triggered, as there was (by the Commissioner's own words), no reassessment of the duty carried out. Further, as evidenced by the letters before action written to the Commissioner, the Claimant had requested reasons for the assessment of the value of the property purchased, but received no answer. Additionally, the appeal provided in section 29 required the Commissioner, who had already failed to respond to a request for reasons, to state a case to the Supreme Court. In these circumstances it was said that the statutory appeal provided was neither an effective nor suitable remedy for the Claimant to pursue.

9. With respect to the Defendants' argument that a claim for judicial review was the appropriate remedy rather than the declaratory relief claimed, Senior Counsel pointed out that albeit seeking to invoke the supervisory jurisdiction of the Court, the claim was not one for judicial review as there were no prerogative orders sought. Therefore, the Claimant, in accordance with the dicta of the Court of Appeal in **Association of Concerned Belizeans,**[5] was expressly entitled to pursue declaratory remedies in public law, outside of a claim for judicial review. With respect to the submission that the declaration would serve no useful purpose for want of enforceability, Senior Counsel contended that it was the process (or lack thereof) which the Commissioner undertook to arrive at her valuation of the property that was challenged. In respect of this process, it was submitted that despite the fact that the legislation has existed and been imposed for some time, the office of the Commissioner was relatively new and the discharge of the Commissioner's duties under the Act had thus far not been the subject of any decision of the court.

[5] Supra.

In this regard, the declaration sought would serve the very useful purpose of defining the limits within which the Commissioner was obliged to operate in respect of assessments of duty pursuant to section 28, as well as clarifying procedures generally under the Act. In the final analysis, Senior Counsel submitted that the objections raised by the Defendant's would become relevant at the conclusion of the proceedings if the Court having found for the Claimant, was then required to decide whether or not to grant the declaratory relief sought.

Discussion and Analysis

Authorities

10. As has been acknowledged by both sides in this matter, this application is not concerned with the issue of whether or not the Claimant is entitled to seek declaratory relief only in its claim for an administrative order under Part 56 of CPR 2005. This issue has been well settled by virtue of the Court of Appeal's decision in **Association of Concerned Belizeans et al v The Attorney General et al.**[6]Instead, what this case concerns is the extent to which the Court is entitled to look behind the mode of proceedings employed, to ascertain whether there is any abuse of process occasioned by the Claimant's choice of administrative order, relative to the true circumstances of the claim. More specifically as the Court sees it, – the issue in this case is whether the declaratory relief sought is intended to achieve a result, which properly, ought only to be achieved by way of judicial review. This for the most part, is the heart of the objection that needs to be considered. In the first instance, the Court commences its consideration of the application by framing the context of the charge of abuse of process.

11. In **Hunter v Chief Constable of West Midlands**[7] a UK civil appeal from an application to strike out a claim for abuse of process, Lord Diplock opened his consideration of the appeal as follows (emphasis mine):-

> *'My Lords, this is a case about abuse of process in the High Court. It concerns the inherent power which any court of justice must possess to prevent misuse of its*

[6] Civil Appeal No. 18 of 2007.
[7] [1981] 3 All ER 727 at 729

procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right thinking people. The circumstances in which abuse of process can arise are very varied; those which give rise to the instant appeal must surely be unique. It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in which the court has a duty (I disavow the word discretion) to exercise this salutary power.'

As evident from the above extract, the central concern of a charge of abuse of process relates to the permissible use of the Court's procedure but in a manner that would be unfair to a party before it, or contrary to the administration of justice. In the instant case, the procedure objected to, is the Claimant's exercise of an option to seek only declaratory relief, albeit that a claim for judicial review also arises on the face of the claim and the Claimant is said to have failed to exhaust an alternative remedy. The Claimant is clearly permitted to file its claim for a declaration relating to the Commissioner's valuation of the property, however the Court will examine a few authorities to determine whether an abuse of process arises.

12. The first authority examined is **Belize Telemedia Ltd et al. v The Attorney-General of Belize et anor.,**[8] cited by the Defendants. In this case, then Chief Justice Conteh had before him an application to strike out a claim for declarations as to the lawfulness of the actions of the Commissioner of Income Tax. The application contended that the claim ought to be struck out by virtue of the existence of a statutory right of appeal which the claimant failed to exhaust. The learned Chief Justice declined to determine the issue of abuse of process but nonetheless struck out the claim on the basis that an alternative remedy by way of statutory appeal existed. It is the approach of the learned Chief Justice, not the result which engages the attention of this Court.

[8] Belize Supreme Court Claim No. 464 of 2008.

The learned Chief Justice examined the statutory scheme in the Income and Business Tax Act for the imposition, assessment and collection of business tax, and for the resolution of any dispute arising therefrom between the taxpayer and revenue authorities. The learned Chief Justice concluded[9] that there were 4 tiers of redress available to the claimant under the Act in question, so much so that the '*scheme and intendment of the Act are such that the Courts are contemplated and provided to be the last recourse for the taxpayer who is dissatisfied with an assessment of his tax liability by the Commissioner of Income Tax*.'

13. The take away for the Court from the above case is the approach of the learned Chief Justice in coming to the conclusion that the claimant was obliged to exhaust the statutory appeal before seeking redress to the Court. That conclusion was drawn after careful examination of the availability and mechanisms associated with the remedy itself as opposed to reliance upon the mere fact that the remedy existed. The learned Chief Justice also satisfied himself that the machinery existed for the remedy to be utilized (in this case the taxpayer was also entitled to appeal to a judge in chambers even if the other remedies prescribed were not immediately available). This take away is important, as the ***Association of Concerned Belizeans case*** did not address the issue of alternative remedies relative to the right to seek declaratory relief under Part 56. By way of further consideration, reference is made to **Mark Sewell & Duane Sewell v The Minister of Foreign Affairs & Attorney-General**,[10]also cited by the Defendants. The claimants in this case sought declaratory relief only in relation to decisions concerning the actions of the Executive following upon an extradition request made by the Government of the United States of America.

14. The defendants applied to have the claim struck out for abuse of process, arguing that the claim should have been brought by way of judicial review. Although it seems to have been decided after the ***Association of Concerned Belizeans case***, no mention was made in this case (***Sewell***) of that authority.

[9] Ibid. @ paras 29 - 39
[10] Belize Supreme Court Claim No. 291 of 2007.

Awich J's decision was nonetheless in line with the Court of Appeal, insofar as he concluded[11] that Part 56 conferred a right upon a claimant to seek any of the four prescribed modes (in Rule 56.1) to bring a claim in public law. This right aside however, Awich J also concluded that in respect of declarations only, it was still possible to find instances of abuse of process, if it could be shown that the claimant intended to avoid any of the requirements for seeking permission for judicial review. In respect of the application before him, Awich J. concluded that there was no objection to be had in relation to the form of seeking only declaratory relief and proceeded to hear and determine the claim for declarations. All of the declarations sought were refused but once again it is not the result of the case which engages the attention of this Court.

15. It is the process of reasoning applied by Awich J, whereby he considered the relevant question of whether the kind of abuse of process alleged was actually present. In this regard, the abuse of process alleged by the Defendants was an intent to circumvent the permission stage of judicial review. Awich J considered the circumstances of the case as against the requirements for permission and concluded that had the claimants applied for permission, they most likely would have been so granted. In the circumstances, he was unable to find any abuse of process. Additionally, it is worth mentioning that Awich J. adverted to the new power of the Court to convert an ordinary claim to a one for judicial review.[12] The learned judge concluded that the existence of that power to convert, demonstrated that the intention was no longer to:-

> *"…simply label a claim under public law brought by proceedings other than judicial review proceedings, an abuse of process and have it struck out. There must be real abuse of process, otherwise an error as to the correct proceedings may be corrected by a court order converting the initial proceedings to the appropriate proceedings."*[13]

[11] Ibid @ para. 23
[12] CPR 2005 Rule 56.6(3)
[13] **Sewell & Sewell V AG et anor** supra, @ para 25.

16. Finally, the Court refers (in some detail), to the very recent decision of the Privy Council arising out of Antigua & Barbuda, namely, **The Attorney-General et anor. v Isaac**[14]which was handed down on 18th May, 2018. The facts of this case are that the respondent Isaac, had been appointed as Executive Secretary of the Board of Education in 2000. In July, 2014 she was suspended for 28 days and upon her return found herself denied access to her office on the basis that her suspension had not yet come to an end. The respondent treated herself as having been constructively dismissed and brought an action against the Board seeking declaratory relief as to the unlawfulness of the Board's suspension of her, as well as damages. The declarations alleged the conduct of the Board in suspending the respondent as being arbitrary, wrong in law and thus void. The declarations also alleged several breaches of the respondent's public law rights in terms of a denial of natural justice. The Privy Council noted immediately that there had been no claim for the suspension to be quashed nor for the respondent to be reinstated to her position. The Appellants applied for the claim to be struck out as the claim was in effect one for judicial review and the respondent ought to have sought leave to file a claim for judicial review. The respondent maintained that her claim was for administrative orders other than judicial review and as such leave was not required.

17. The application to strike out was dismissed by the judge at first instance, and that dismissal upheld by the Court of Appeal, hence the appeal before the Board. The Privy Council per Lady Black, examined the first instance and court of appeal's decisions on the way to its own analysis and conclusion. Lady Black firstly acknowledged as accurate, the trial judge's determination that there were four different types of administrative orders available under the Eastern Caribbean Supreme Court Rules Part 56.[15] Additionally, Lady Black also identified that the trial judge's dismissal of the application to strike out was based on her conclusion that the claim was not one for judicial review as there were no prerogative remedies sought.

[14] [2018] UKPC 11

[15] Save for minor differences in paragraph numbering, the OECS CPR 2000 Part 56 is identical to Belize's CPR 2005 Part 56.

The Board also adverted to the trial judge's finding that there would usually be no need for an in depth analysis of the nature of the claim as the nature of the claim would normally be evident from the relief sought. Whilst stating that the Court of Appeal affirmed the trial judge's determination in that regard, the Board noted that the Court of Appeal went a bit further to acknowledge that given the array of relief available on judicial review besides prerogative orders, the relief sought could usually, but would not always be indicative of the nature of the claim. The Board then considered the submissions of counsel made during the hearing of the appeal.

18. The appellants' arguments were to the effect that the issue of whether or not a claim is one for judicial review, should not solely be determined with reference to the remedies sought, but emphasis should be placed more on the substance of the claim rather than form. Particularly, the appellants argued that drafting a claim so that it includes declaratory relief only does not ipso facto render the claim not one for judicial review. With respect to the specific circumstances before the Board, it was argued that considering that judicial review concerned a challenge to the process of arriving at a decision, and that the respondent's claim was challenging her suspension on grounds of illegality and procedural impropriety, her claim was in fact one for judicial review. As a consequence, the appellants submitted, should the suspension be declared wrongful, the court would have a duty to quash the suspension and could only do so by means of the prerogative remedies available in judicial review proceedings. The respondent in her arguments before the Board, conceded that if in reality she was seeking a prerogative order, leave would have to be sought for her to bring a claim for judicial review. The respondent however maintained that as was evidenced by the declarations sought in her fixed date claim, she was seeking the court's pronouncement on the legality in public law of the appellant's actions in relation to her suspension, but there was neither an order to quash sought, nor was she seeking to be reinstated to her position.

19. The Court will now examine the Board's consideration of the appeal. In the first instance, the Board opted to remove **O'Reilly v Mackman**[16] from their consideration altogether as it would provide little assistance on the issue of the true nature of the proceedings filed by the respondent. This view was taken on account of the differences in the respective positions between the jurisdictions, particularly insofar as the OECS' CPR made provision for the four types of proceedings available to bring a claim in public law. On the issue of whether in fact the respondent's claim was one for judicial review despite only seeking declarations and damages, the following points are extracted from the Board's deliberation.[17] These points will provide important guidance on the very issue which is now before this Court:-

(i) It is clear that the mere fact that a claim is of a public law type cannot be sufficient to make it a claim for judicial review. Something else must distinguish it as an application for judicial review as opposed to the remaining three types of proceedings available under Part 56.1;

(ii) With reference to the Rules, Rule 56.1(3)[18] is the only guide which speaks to what constitutes an application for judicial review. Insofar as this rule focuses on prerogative remedies, the presence or absence of these remedies will always be an important and potentially deciding consideration in determining whether an application is for judicial review;

(iii) Rule 56.1(3) however does not purport to provide an exhaustive definition of judicial review. It also does not prescribe that the question of whether or not an application is for judicial review is to be determined by looking at whether one of the prerogative remedies is sought. It further only states that judicial review '*includes*' (and lists the three prerogative remedies);

[16] [1983] 2 AC 237

[17] ***Attorney-General v Isaac*** supra @ paras 33 et seq.

[18] In Belize the same, which provides in effect that Judicial Review *includes* a claim for (and lists the prerogative remedies of certiorari, mandamus and prohibition).

(iv) Given the additional remedies available on judicial review, it is possible, and thus allowance has to be made, for the fact that an application can say nothing at all about prerogative remedies but is nonetheless an application for judicial review;

(v) CPR Rule 56 cannot be interpreted so narrowly as to permit a claimant to avoid the leave requirement simply by formulating his or her claim for relief in declaratory terms, where the application is in fact for judicial review;

(vi) It is therefore accepted (as contended by the appellants) that in some cases, it may be necessary to carefully look at the substance of the application rather than the form in which it is cast, in order to ascertain whether or not a claim is in fact one for judicial review;

(vii) The careful look at the substance of the application rather than the form however, should only be necessary in some cases, for as a general rule, the remedy sought will identify the true nature of the claim.

20. After concluding the discussion from which the above statements were extracted, the Board made reference to the ***Association of Concerned Belizeans*** case, its attention having been drawn to that case during oral arguments. Specifically, the Board made reference to the dictum of Carey JA, in which it is said he 'appeared to endorse' the submissions of counsel therein, that declaratory relief was properly sought where the claimant was not seeking a decision to be quashed, but was merely content to obtain a declaration of the unlawfulness of the decision under review. The Board identified this apparent endorsement of such boundaries, as lending support to their notion that when scrutinizing the substance of an application to see whether it should be more appropriately classed as an application for judicial review, the presence or not of a claim for prerogative order, would be of central importance. The Board thereafter proceeded to look behind the form of the relief sought in the appeal and concluded that the respondent Isaac was truly seeking only declarations in relation to the legality of appellants' past actions. In this regard, the Board considered it significant that by the time her fixed date claim was issued, the respondent had taken the view that she had been constructively dismissed from her employment and had moved on.

21. Further, (like the claimants in the *Association of Concerned Belizeans case*)[19], the respondent was not seeking any form of mandatory order (like reinstatement to her position), or to have any continuing or threatened unlawful act prohibited, or any unlawful act (such as her suspension) quashed. The Board specifically concluded that the respondent's claim against the appellants was only:-

> '*…for declarations that at the material time, now in the past, they* [the appellants] *acted inappropriately in the various ways specified in her claim form, together with damages to compensate her for the loss arising from that inappropriate conduct*.'[20]

The respondent Isaac was in reality therefore not seeking remedies of a purely judicial review nature and looking even beyond the nature of the remedies sought, there was nothing about the claim that warranted that it be treated as a claim for judicial review as opposed to a claim for the declarations sought[21].

The Court's Consideration

22. The three decisions reviewed above all inform the Court in different ways. The most important is that from the Privy Council - ***Attorney-General v Isaac*** as it offers important guidance on the issue of the Court's inquiry into whether or not the proceedings before it are in fact, or ought to be treated as, proceedings for judicial review. In determining this issue, it is firstly considered that this is a case in which the Court is obliged to look beyond the form of the proceedings and examine the substance. The declaratory relief sought by the Claimant is extracted in full as follows:-

> *"A Declaration that the decision by the Defendants to fix the market value of the property described below at $335,000.00for the purpose of assessing stamp duties on deed of conveyance dated 31st January, 2017, between the Belize Bank Limited and the Claimant, notwithstanding that the consideration stated in the deed of conveyance and on which stamp duties were in fact assessed, paid and collected by the Land Titles Unit is the true price for the property fetched at a duly advertised public auction sale of the property is unreasonable, irrational, disproportionate*

[19] ***Association of Concerned Belizeans et al v The Attorney General et al.*** *supra*.
[20] Attorney-General v Isaac, supra @ para. 42
[21].Ibid paras. 42 - 44

and ultra vires the powers conferred on the First Defendant by the provisions of the Stamp Duties Act generally and section 28 of the Act in particular and is void."

The Claimant also sought

"An injunction restraining the Defendants from unlawfully assessing or otherwise interfering with the stamp duties chargeable and/or payable and/or paid on registration of the above mentioned deed of conveyance dated 31st January, 2017."

23. As evident from the declaration sought, the Claimant takes issue with the Commissioner's valuation of the property purchased by the company in an amount higher than the consideration paid, the latter of which is asserted as the true market value for purposes of assessment of stamp duty. Albeit submitted that there was no actual assessment of stamp duty flowing from that higher value, it can only be the position that the Commissioner's determination of the market value of the property at a rate higher than the consideration paid, ipso facto determined the amount of stamp duty which would have to be paid. The Claimant's objection therefore is to the amount of tax he would certainly be called upon to pay, based upon the value of the property as determined by the Commissioner. To the extent determined important in assessing the true nature of a claim, it is clear that on the face of it the Claimant has sought no prerogative order to quash the Commissioner's decision determining the market value of the property. However, the Claimant seeks an injunction restraining the Commissioner from altering the stamp duty already paid on the transfer as initially charged and collected. In ***Attorney-General v Isaacs***, the Board's decision turned on the fact that the claimant therein was not in effect seeking anything beyond the Court's affirmation of the wrongfulness of her suspension.

24. That claimant was not seeking reinstatement of her position, nor to have any 'continuing or threatened unlawful act prohibited', or any act (such as her suspension) quashed. The Board also regarded the relief claimed vis-a-vis the circumstances of the claim in the ***Association of Concerned Belizeans case***, in like manner.

The Board was aided in coming to its conclusion in ***Attorney-General v Isaacs*** by the content of the declarations sought by the claimant therein. Particularly, at para. 29 of the judgment, Lady Black outlines the claimant's case as follows (emphasis mine):-

> *"In line with the declarations sought in her fixed date claim, Ms. Isaac says that a number of public law issues are raised by her claim, namely whether on the true construction of the Board of Education Act, the Minister of Education has the authority or power to issue instructions to her as the Executive Secretary of the Board of Education and to make recommendations to Cabinet for her suspension, and whether she was entitled to be heard before the publication by the Minister of an adverse investigatory report on her performance of her duties. She underlines that she is seeking declarations on these points, and damages, but no quashing order or coercive order…"*

In the instant claim (as is permissible), the Claimant's declaration does seek (without seeking a prerogative order), to impugn the process by which the Commissioner came to fix the value of the property in an amount higher than the consideration paid. This is evident by the charge that the decision is arbitrary and ultra vires the provisions of the Stamp Act.

25. In addition to the process however, the Claimant's declaration attacks the valuation itself as unreasonable, disproportionate and irrational, and that it be declared void. Should the Court so declare, as senior counsel himself submitted (in response to the Defendants' contention that the declaration would serve no useful purpose as it lacks any coercive power) the Commissioner would be obliged to respect the Court's ruling and by extension the rule of law, and refrain from acting contrary to the declaration. Moreover however, the Claimant, as is permitted by Rule 56.1(4), seeks injunctive relief to complement the declaration, in the form of restraining the Commissioner from altering the tax already charged and collected on transfer of the property, which would have been based on the lower amount of the consideration paid for the property. It is considered that the effect of the declaration and injunction sought, would be to nullify the Commissioner's decision by which the Claimant's liability to stamp tax was increased. The Claimant would then be afforded the benefit of a reversal of the Commissioner's increase in tax assessed, without any order of the Court quashing that decision.

As the subject matter of the declaration concerns the litigant's liability to pay tax to the Executive pursuant to law, the Court reverts to the former Chief Justice's decision in ***Belize Telemedia et al v The Attorney-General et anor.*** - to the effect that the regime prescribed in a taxing statute should be strictly applied. The underlying rationale which will similarly be applied in the instant case, is found to be the importance of issues concerning the revenue of the Crown. In the circumstances therefore, it is considered that it would not be appropriate for the Claimant to reap the benefit of what in effect would be a reversal of the Commissioner's decision on revenue raised pursuant to a tax law, without the force of a prerogative order.

26. At this juncture, the Court would have been minded to find the claim an abuse of process, however learned senior counsel applied at the conclusion of the Court's oral ruling for the Claimant to be permitted to amend its claim by amending the declarations sought to reflect relief appropriately claimed by way of declaration. In favourably regarding this application, the Court also recalls its reference above, to the decision in ***Sewell & Sewell v Minister of Foreign Affairs & The Attorney-General.***[22] Reference is again made to Awich J. having adverted to the Court's power under Rule 56.6(3) to convert ordinary proceedings to claims for judicial review. In particular, the statement that this rule demonstrates that it is no longer intended for proceedings determined to be more appropriately brought as judicial review proceedings (as in this case), to be deemed an abuse of process and struck out. In the instant case, it can fairly be said that the Claimant has an arguable case in public law as it relates to the decision of the Commissioner increasing the value of the property purchased by the Claimant for purposes of assessing stamp duty. In the circumstances, rather than strike out the claim, the Court considers that to grant the Claimant's request to amend the relief sought, would be more in line with the overriding objectives of the Rules.

[22] Para 13 supra.

Disposition

27. Having regard to the foregoing, the Defendants' application to strike out the claim as an abuse of the Court's process is determined as follows:-

(i) The particular relief claimed by the Claimant by way of a declaration and injunction should have been sought by means of an application for judicial review;

(ii) The Court declines to strike out the claim as an abuse of process as sought by the Defendants and instead grants the Claimant permission to amend its claim by altering the relief sought;

(iii) The Claimant is granted permission to file and serve an amended fixed date claim within 30 days of the date of this order;

(iv) The issue of costs arising from the application to strike out shall be determined at the 1st hearing of the amended fixed date claim.

Dated the 4th day of June, 2018.

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Shona O. Griffith
Supreme Court Judge.