

IN THE SUPREME COURT OF BELIZE, A.D. 2020

CLAIM NO. 108 of 2020

**RUDY PLETT
KENNETH PLETT
ARTHUR PLETT**

**1st CLAIMANT/APPLICANT
2nd CLAIMANT/APPLICANT
3rd CLAIMANT/APPLICANT**

AND

**FRANK PLETT
GEORGE W. PLETT
HARVEY PLETT
ANNIE PENENR
ROSIE DUECK
ELMBER PLETT
DOROTHY LOEWEN**

**1st DEFENDANT/RESPONDENT
2nd DEFENDANT/RESPONDENT
3rd DEFENDANT/RESPONDENT
4th DEFENDANT/RESPONDENT
5th DEFENDANT/RESPONDENT
6th DEFENDANT/RESPONDENT
7th DEFENDANT/RESPONDENT**

BEFORE the Honourable Madam Justice Sonya Young

Hearings

2020

6th March

Written Submissions

Applicants – 5th March, 2020

Defendants – 6th March, 2020

Decision

10th March, 2020

Mr. Darrell Bradley with Mr. Dean Molina for the Claimants/Applicants.

Mr. Estevan Perera with Mr. Rene Montero Jr. for the Defendants/Respondents.

Keywords: Civil – Interim Injunction – Power of Attorney – Capacity of Donor – Revocation – Later Power of Attorney – Control of Business and Assets – Preserving Status Quo

ORAL JUDGMENT

1. This is an application for an interim injunction restraining the seven Respondents from acting upon, treating with or using a purported power of attorney purportedly made by Almon Plett on the 23rd January, 2020 and also restraining each of them from entering, seizing or possessing the management and control of or interfering in anyway with the business, assets and properties owned by Almon Plett.
2. The brief background is that the Applicants and the Respondents are all siblings. Their father Almon Plett on the 24th January, 2019, through a power of attorney gave power over various portions of his businesses, assets and properties to the Claimants. He then suffered a stroke in October, 2019. The Applicants say he was incapacitated and his competency was severely diminished.
3. Thereafter, in or around November, 2019, the Respondents begun making efforts aimed at taking possession and control of the said businesses. Inter alia, they forcibly remove them from the premises with police assistance, removed tires from farm equipment, sealed doors to the business shut, removed equipment and records and did all they could to disrupt the businesses. Rudy Plett was even served with a restraining order.
4. The Applicants say the business has ostensibly been at a standstill for a number of weeks and without the injunction the business will certainly suffer irreparable damage for which an award of damages will never be sufficient. There has been no claim form filed to date, the application for the injunction having been filed on the 19th February, 2020.

5. The Respondents do not deny doing any of the acts of which they have been accused. But they say they did all they did with their mother Katharina Plett's permission and by virtue of a power of attorney given to them by Armin Plett dated 23rd January, 2020. They aver that Katharina Plett is a joint owner of the businesses and properties and as such she had as much right to take control of the businesses and to permit them to do what they did in order to ensure control. They say that due to mismanagement, unexplained financial losses and unaccounted funds the Applicants' employment had been terminated.
6. Furthermore, the power of attorney under which the applicants purport to act is invalid since it had not been filed in accordance with the General Registry Act. In any event it does not confer the requisite authority on the Applicants to bring the present application and even if it did it has been revoked. They exhibit both a revocation (which they say is at the General Registry for filing) and two new powers of attorney which are all purported to have been signed by Almon Plett.
7. The first is in the Respondents' names and contains a clause which seeks to revoke the applicant's power of attorney, the other is in Katharina Plett's. Almon Plett the donor of the power has also provided two affidavits to the Court asserting that he no longer wishes the Claimants to have the power granted under his original power of attorney; accordingly he has revoked same and has currently chosen to give the similar power to the Respondents and his wife Katharina instead. He wishes the Respondents to manage his properties and affairs until the power of attorney given to Katharina is effected.

8. There is also an affidavit from a Dr who says he recently assessed Almon Plett and says he is in overall good physical health and has the ability to enter into binding agreements and make decisions on his own behalf.
9. On the other hand the Applicants maintains that Almon Plett was not competent to execute this new power of attorney so it must have been procured by fraud, deceit or undue influence and oppression or the signature is a forgery. It certainly was not his voluntary act. They provide a poorly translated letter (Spanish) from a Dr, dated 20th November, 2019 who noted that Almon Plett was not apt to make decisions. There was also an affidavit from Elizabeth Braun, a previous caretaker of Almon Plett (9mths from May 9th, 2019) who said that to her, his memory was poor and he seemed unable to remember minor details.

The Injunction:

10. A Court may grant an injunction where it is just and convenient to do so. I do agree with Counsel for the Applicant that there are no fixed rules for when an injunction should or should not be granted since the relief itself is intended to be flexible. However, the test for an injunction of this type rightly begins with whether there is a serious question to be tried - *America Cyanamid and Belize Telemedia*. This does not mean that the Applicant must convince the Court of its ultimate success or that the Court must embark on a mini trial to assess the strength of the opposing position. Rather, there must simply be a real cause of action with substance i.e. a real prospect of success.

Serious Issue to be tried:

11. The Applicants ask the Court to look at all the circumstances and to strive to preserve the status quo. They say they have been in control of Almon Plett's businesses, assets and properties for over 17 years. Apparently, even his will names Rudy Plett as his executor. However, the copy of the will before the court seems to be missing a page so the Court could not give this much weight. Rudy Plett also exhibited a number of farm vehicles which are in his and Almon Plett's names. He says all this, coupled with the power of attorney signifies that Almon Plett intended that he should have a significant role in managing his affairs. The Respondents' interference has never been denied and as such there are obvious serious issues to be tried.
12. The Respondents raised the validity of the Applicant's power of attorney, the scope of the power conferred and whether the power of attorney had been revoked.
13. This Court does find that the original power of attorney may possibly be construed to include the authority to prosecute a claim of this kind. This finding is preliminary and in no way binding. A full determination would require ventilation at trial and it is not appropriate to attempt such an exercise at this stage. The issue of validity is also not appropriate for determination here either. Counsel for the Respondents alluded to this when he began to assess the quality of the evidence presented by the Applicant in support of its validity.
14. The issue of Almon Plett's capacity is equally a triable issue and one on which a determination ought not to be hastily made in these proceedings. This also has a direct link to the issue of the revocation of the power of

attorney given to the Applicants. What is certain from all this is that there is sufficient from both sides to indicate that there are serious facts in dispute, hence serious issues to be tried.

15. The Respondents also proffered that Katharina Plett is a joint owner of the businesses and has certain rights as such. If we seriously consider this allegation we are certain that this too must be a triable issue since the original power of attorney, the execution of which no one questions, never refers to Katharina Plett as a part owner of the business.

The Court now turns its attention to whether damages would be an adequate remedy.

Adequacy of Damages:

16. The Applicants say damages would not be adequate since there would be the disruption of their control of the businesses. They urge the court to consider a number of cases which demonstrated that even where damages may have been the only remedy available, the courts were still willing to grant an injunction when the circumstances of the case were considered. In *Banks Holdings Ltd v Belize Citrus Growers Association* the court considered that there were issues related to the management and control of large assets and holdings including businesses which were going concerns and found that damages would not have been adequate.
17. This Court considers that beyond declarations and injunctions the only available remedy, to the present Applicants, would resound in damages. However, there is indeed the deeper concern for the control and management of the businesses which informs that damages would not be adequate. In fact, this Court is also doubtful that damages would be appropriate for the

other side if it is proven at trial that the injunction was wrongly granted. A consideration of the balance of convenience must therefore be made.

18. The Court considers the status quo and what it has been for either the last five or seventeen years. The Court also considers that there are affidavits from Almon Plett before this Court which purport to make his position clear. The Court appreciates that he has the right to revoke his power of attorney to the Applicant since there is nothing in it which could be construed as it being irrevocable by Almon Plett himself. In any event, a donor of power retains power unto himself notwithstanding. However, until the Court is able to determine definitively what Almon Plett's capacity is, the balance tips in favour of the Applicants. The injunction will, therefore, be granted in the terms prayed with the usual undertaking as to damages.
19. Because of the delicate nature of this matter the court will endeavor to bifurcate proceedings as they relate to Almon Plett's capacity and to deal with them speedily as they underpin every other allegation relating to the control and management of the businesses. Directions in that regard will be given once the pleadings are closed.

Order:

1. The Application is granted as prayed.
2. The Applicant is to file and serve his Claim Form and Statement of Claim by Monday 16th March, 2020.
3. Costs shall be in the cause.

**SONYA YOUNG
SUPREME COURT JUDGE**