IN THE SUPREME COURT OF BELIZE A.D. 2019

CLAIM NO 82 OF 2019

	(CLAUDETTE WALDMAN	CLAIMANT
	(	
BETWEEN	(AND	
	(	
	(KENROY STAINE	DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Kevin Arthurs for the Applicant/Claimant

Richard Bradley Jr. for the Respondent/Defendant

1. This is an Application for Summary Judgment by the Applicant/Claimant pursuant to Rule 27.2.1, 27.2.2 and 27.2.3 of the Supreme Court (Civil Procedure) Rules. There is also an Application by the Respondent/Defendant for Relief from Sanctions pursuant to Rule 26.1(2) (c) and Rule 26.8 of the Supreme Court (Civil Procedure) Rules. The substantive claim is a claim by way of Fixed Date Claim form filed on February 7, 2019 seeking recovery of possession. The Claimant seeks an order that the Defendant vacate the property and deliver up possession of that property with immediate effect, as

well as an injunction restraining the Defendant from trespassing on or occupying the property.

2. At the first hearing of this Claim on April 4, 2019, Mr. Arthurs on behalf of the Applicant/Claimant has sought summary judgment pursuant to Rule 27.2.1 and 27.2.3 of the Supreme Court Civil Procedure Rules. As the Defendant appeared unrepresented at that time, the Court adjourned the matter to give him time to seek counsel. On May 22, 2019, Mr. Richard Bradley Jr. brought an Application for relief from sanctions on behalf of the Defendant/Respondent. He claims that he was only retained by Mr. Staine on May 17th 2019 and as such the Defendant was not able to file his Defence in time. The matter was argued before me in chambers on September 26, 2019, and I now hand down my ruling.

3. Applicant/Claimant's Submissions In Support of the Application for Summary Judgment

On the Application for summary judgment, Mr. Arthurs submits that the court should treat the first hearing as a trial of the Claim if it is not defended or if the Court considers that the claim can be dealt with summarily. He says that since no Defence has been filed by the Defendant, although the Defendant was duly served on March 23, 2019 with the Fixed Date Claim Form and Affidavit as evidenced by Affidavit of PC Mark Tucker #710 dated

March 24, 2019, the Court should enter summary judgment for the Claimant. Learned Counsel urges upon this court the judgment of Sykes J (as he then was) of the Jamaica Supreme Court in **Leymon Strachan v. Jamaican Development Foundation Inc. Claim No HCV 3381 of 2006.** In that case, His Lordship dealt with the situation where Rule 15.3 of the Civil Procedure Rules of Jamaica Supreme Court precludes the court from giving judgment in any proceeding commenced by way of a fixed date claim form. At the same time Rule 26.1(2) (j) of those same civil procedure rules permits the court to dismiss or give judgment on a claim after a decision on a preliminary issue. Mr. Arthurs relies on the reasoning of Sykes J. (as he then was) in this case at paragraphs 54 and 55 of this judgment as follows:

> "… It was brought to my attention that under Rule 15.3 of the Civil Procedure Rules ("CPR") the court is precluded from giving summary judgment in any proceeding commenced by fixed date claim form. However, Rule 26.1(2) (j) permits the court to dismiss or give judgment on a claim after a decision on a preliminary issue. Rule 27.2(2) gives the court at the first hearing all powers of case management conference in addition to any other powers the court may have at first hearing. Rule 27.2(8) empowers the court to treat the first hearing as the trial

of the claim if the claim is not defended or the claim considers that the claim can be dealt with summarily. The procedural issue arose because this hearing is the first hearing. The previous first hearing scheduled for April 17, 2007 was adjourned to October 19, 2007.

55. It would seem to me that in keeping with the duty of the courts to identify the issues at an early stage and deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others (as per Rule 25.1(b) and (c), there can be no objection exercising its powers under Rule 26.1(2) (j) or under Rule 27.2(8). In my oral judgment I have said that I would be acting under Rule 26.1(2) (k) and dismiss the claim after deciding the preliminary issue of whether clauses 13 and 14 impose a penalty. On reflection, that would not be quite accurate since that is not a preliminary issue but the claim itself. The better view appears to be that I should act under Rule 27.2(8) and deal with the claim summarily. The issue raised by Mr. Strachan is purely one of construction of the agreement and can be dealt with summarily. This is what I have

done. The claim is dismissed. I have given Judgment on the notice of application for court orders filed by JRF."

4. Mr. Arthurs submits that the Claim is for summary judgment pursuant to Rule 27.2.1 and 2.3 of the Civil Procedure Rules and there has been no Defence filed. The court can grant judgment as the claim is one for possession. Ownership by the Claimant can only be displaced by someone with a better title. The Claimant in her Affidavit dated 7th February 2019 states that she is the owner of this piece of property in the Queen Square Registration Section namely Parcel 46 Block 45 comrising 429.1 square yards. She exhibits her title as Land Certificate in **Annex CW1.** On August 14, 2013 the Claimant says that she travelled to Belize from the USA where she works and she bought this property from Orlando Smith, Mazie Smith and Teresa Smith as the former owners went to live in the US and the property had become dilapidated and uninhabitable. The Transfer forms are attached as **Annex CW2.** Ms. Waldman says in her affidavit that she became aware that Mr. Staine had begun to trespass on her property in late 2016 when she learnt he had begun to build a small structure on it. She claims that she spoke to Mr. Staine and told him in early 2017 that she owned the property. He told her that his wife had been given the property by one Chrystalyn Jones and that Hand in Hand

Ministry was helping him to build a house on the land. Ms. Waldman secured the services of one Donald Mackay land surveyor who after conducting his own research accompanied the Claimant to the property. Mr. Mackay indicated to Mr. Staine that he was trespassing, and that the property he thought belonged to Ms. Jones was another property 2 lots down. Despite this, Mr. Staine persisted in his trespass, and Ms. Waldman went to the Legal Advice and Services Center where she consulted Mrs. Peta Gaye Bradley. Mrs. Bradley took instructions from the Claimant and wrote a formal letter of demand to the Defendant dated March 1, 2017. The letter informed Mr. Staine that Ms. Waldman had title to this property and asked that he remove himself and his house from the land. However, Mr. Staine continues living on the property to date, despite subsequent warnings from the police. Ms. Waldman finally filed this fixed date claim form on February 7, 2019 seeking recovery of possession of the property and that the Defendant deliver up vacant possession, an injunction restraining the Defendant from trespassing on the property, damages, costs and other relief.

5. On the Application for Relief from Sanctions filed by the Applicant/Defendant, Mr. Arthurs said that that relief should not be granted. No Acknowledgment of Service has been filed on behalf of the Defendant. A letter dated April 12, 2021

was written on behalf of the Defendant and sent to the court, but a letter is not a procedure recognizable under the CPR as having any effect on the pleadings. Mr. Arthurs submits that there is no indication as to intention to defend the Claim. The purpose of filing a Defence is to give evidence so that the issues between the parties are joined. He submits that it would be an unreasonable exercise of the Court's discretion if the Court were to refuse summary judgment in this case where the only evidence is that of the Claimant. As there is nothing before the court, then there is no duty on the Claimant to respond to the allegations raised by the Defendant.

6. **Respondent/Defendant's Submissions Resisting the Application for Summary Judgment**

Mr. Bradley argues that this is not a matter which should be disposed of summarily and that Justice Sykes' judgment in **Strachan v. Jamaican Redevelopment Foundation Inc. Supreme Court of Jamaica No HCB 3381 0f 2006** is not relevant to the issue before the court. He says that there is no evidence before this court that the Civil Procedure Rules of Jamaica are the same as those of Belize. He conceded that the Defendant has placed no evidence before the court to rebut the affidavit evidence of the Applicant/ Claimant. Mr. Bradley argues that Mr. Staine is in the position of someone who has greater title in that he claims that he has been living on the disputed

property beyond the statutory period i.e. for more than 12 years. He submits that the conditions for the grant of summary judgment have not been fully met by the Applicant/Claimant. Mr. Bradley seeks a dismissal of the Application for summary judgment because the Defendant is not present to answer.

7. **Application for Extension of Time for Relief from Sanctions and to file a Defence**

Mr. Bradley argues on behalf of the Applicant/Defendant on this Application for Relief from Sanctions and Extension of time, that Mr. Staine says he was unable to get an attorney to Defend the Claim because he had been working on and off until April 2019. Mr. Bradley argues that Mr. Staine had every intention to defend this claim as shown by his letter dated 12th April, 2019 which requested an adjournment. There has been no delay on the part of Mr. Staine as he had to source funds to pay his attorney and as soon as he did he moved with dispatch. Mr. Staine visited Mr. Bradley's office on May 17, 2019. He believes that he has a good Defence to this claim because he has been living on this property since 1996. Mr. Bradley says that this Application for Relief from Sanctions if granted by the court would not prejudice the Claimant as the case is just starting and no trial date has been set. He further argues that in **John Palacio v the Football Federation of Belize Claim 546 of 2017**, the question before the court was whether an Application to File a Defence had

been made promptly. In that matter, Griffith J found that the seven weeks taken by the Defendant to file a Defence was not the most prompt, but not unduly tardy. Mr. Bradley argues that there was no delay on the part of the Defendant in that he sought an attorney and found only one that he could afford. There is no other order or rule that the Applicant/Defendant has not complied with. The fixed date claim was served on Mr. Staine on April 2, 2019. He needed an attorney as he could not defend this claim by himself. There is no evidence of intentional non-compliance by the Applicant/Defendant. Mr. Bradley also cited **Claim 395 of 2016 Alain Langlois v. Alba Barahona** where there was no fault on either the attorney or the client as both acted as quickly as possible and there was a good explanation for failing to file the Defence in time. Mr. Bradley concedes that the failure to file a defence in time was his fault as Mr. Staine's attorney, as he left to go on vacation at the time when the claim was set for hearing. The Applicant/Defendant is a man of little means who claims he has been living on this property since 1996 and has raised his 5 children on it since 1998. In the interest of justice and in keeping with the overriding objective, the court should grant this application for Relief from Sanctions.

8. Mr. Arthurs on behalf of the Respondent/Claimant on this Application argues that the Application for Relief from Sanctions and Extension of Time should not be granted. Rule 26.8 of the Civil Procedure Rules (CPR) sets out

considerations for Relief from Sanctions. The first is that the Application for Relief should be made promptly. Re-tracing the history of this matter before the Court, Mr. Arthurs gave this brief timeline:

1) Claim Form Filed on February 7, 2019

2) Claim Form served on March 23, 2019 as shown by Affidavit of Service

3) First Hearing was held on April 4, 2019

4) The Claimant submitted an authority for the Court's consideration in June 2019

5) The parties appeared on June 20, 2019

6) Matter adjourned to July 8, 2019

The Defendant sent a letter on April 12, 2019. No application was made for a month then on May 22, 2019 the Application for Relief from sanctions and extension of time was filed on behalf of the Applicant/Defendant. Mr. Arthurs submits that this Application for Relief from Sanctions by the Defendant was prompted by the Claimant's Application for Summary Judgment. There are 60 days between March 23, 2019 when the Defendant was served with the substantive claim and May 22, 2019 when the Application for Relief was filed. Mr. Arthurs argues that 60 days is not "promptly" as the Defendant did not even file an Acknowledgment of Service. Learned Counsel also says that it is

not a good and sufficient reason that the Defendant could not afford an attorney. The cost of filing an Acknowledgment of Service is $7.50. He further contends that the CPR was designed in a way that the average lay person could follow them so that was not a valid excuse. April 12 to May 22, 2019 was not prompt, especially since counsel took instructions since March 23, 2019. The Affidavit on behalf of the Defendant does not provide any evidence of Mr. Staine being impecunious. Even if he is in fact impecunious, Mr. Arthurs submits that that is no defence in law. The Affidavit contains a bare denial that failure to file a Defence in time was not intentional. There is no evidence that such failure was accidental, unknown etc. There must be a good explanation for failure to file a Defence and the fact that Mr. Staine's attorney had to go on vacation was not a good defence. The Defendant has not discharged his duty under the CPR. Mr. Arthurs argues that the court would therefore be endorsing intentional non-compliance with the CPR if the Application for Relief from Sanctions were to be granted.

RULING

I thank both counsel for their submissions on these Applications before the Court. I will deal first with the Application for Summary Judgment filed on behalf of the Applicant/Claimant Ms. Claudette Waldman. Having considered the submissions of both counsel on whether this Application should be

granted, I find myself in agreement with the arguments raised by Mr. Arthurs. The Applicant/Defendant clearly states in his Affidavit dated May 22, 2019 that he was served with this claim form on March 30, 2019. He says he was unable to retain his attorney until April 11, 2019 and his attorney went on vacation leave on April 15, 2019. Mr. Bradley as his attorney wrote a letter to the court dated April 12, 2019 stating that this matter had been set for hearing on April 17, 2019 and asking for a date that this matter be further adjourned for a date after he returned from his vacation. This sequence of events shows that the failure to file a Defence within the period of days stipulated in the C.P.R. Rule 27 was clearly the fault of the Defendant's Attorney, as Mr. Bradley has rightly conceded. To date, no Acknowledgment of Service has been filed for or on behalf of the Defendant in this claim; this failure constitutes yet another breach of the CPR in that the Rule requires that an Acknowledgment of Service must be filed by the Defendant within days after he has been served with the Claim. While it is true that the court must strive to ensure that claims are dealt with justly in keeping with the overriding objective, justice is not merely for one party, in this case the Applicant/Defendant. As Mr. Arthurs argues, correctly in my view, there is no evidence that the Applicant/Defendant has a good reason for non-compliance with the time lines set out in the CPR. I agree that the court would

be condoning non-compliance with the requirements of the Rules of the Supreme Court if these applications for relief from sanctions and extension of time were to be granted. Each case must turn on it particular facts and I find that in these circumstances the delay of 60 days to be excessive. On the Application for Summary trial, I have read the judgment of Sykes J in **Strachan v. Jamaican Redevelopment Foundation Inc. Supreme Court of Jamaica No HCB 3381 0f 2006** by Mr. Arthurs and I find it to be completely relevant to the case at bar. The court is entitled to treat the first hearing of a claim as the trial of that claim where the defendant has failed to file a Defence. The Claimant has produced legal title to this property while the Defendant is seeking to establish prescriptive title to the property. It is clear that should this matter proceed to trial the likelihood of the Defendant succeeding in his Defense is minimal. On this basis, the application for Summary Judgment is granted to the Claimant and the applications for relief from sanctions and extension of time to file a Defence is refused.

Each party to bear own costs.

Dated this day of January, 2021

Michelle Arana

Chief Justice (Acting)

Supreme Court of Belize