

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

CLAIM NO. 678 OF 2020

BETWEEN

**MICHAEL ELLISMERE BELGRAVE CLAIMANT/APPLICANT
(BENEFICARY IN THE ESTATE OF ELLISMERE IRVIN BELGRAVE)**

AND

**DOUGLAS THOMPSON DEFENDANT/APPLICANT
(EXECUTOR IN THE ESTATE OF ELLISMERE IRVIN BELGRAVE)**

BEFORE THE HONOURABLE MADAM JUSTICE LISA SHOMAN

HEARINGS: January 20, 2022 & February 11, 2022

Written Submissions 2022

January 6, 2022 – Claimant’s Amended Written Submissions

November 18, 2021 – Defendant’s Written Submissions in Opposition to Injunction Application

November 18, 2021– Defendant’s Written Submissions in support of Strike Application

APPEARANCES: Ms. Sharryn Dawson for the Claimant

Mr. Derek Courtenay SC & Ms. Vanessa Retreage

for the Defendant

RULING

BACKGROUND

1. The Claimant in this claim, Michael Belgrave is a beneficiary under the will of his late father, Ellismere Irvin Belgrave. The Defendant, Douglas Thompson is the Executor in the Estate of the late Ellismere Irvin Belgrave and is named in this claim in that capacity.

2. The matters which are before this Court for resolution are two applications. One is an Application by the Claimant for an Interim Injunction, which was heard inter-partes; and the other is an Application by the Defendant to strike out certain documents and portions of documents filed by the Claimant as being an abuse of process and for an order that the entire claim is struck out, in the alternative that the Defendant is to file and serve the Claimant with accounts. Each Application is examined and addressed in turn.

A. CLAIMANT'S APPLICATION FOR INTERIM INJUNCTION

3. The Claimant has applied to the Court for an Interim Injunction for the following orders:
 - (a) preventing the Defendant from further having any dealing with the Estate of the late Ellismere Irvin Belgrave until the Claim is heard and/or until such time as this Honourable Court deems fit;
 - (b) a freezing order on the bank account(s) housing proceeds of sale of land amounting to some BZ\$2,000,000.00 BZD;
 - (c) costs in the claim;
 - (d) Any other relief the Honorable Court deems fit

4. The grounds of the Claimant's Application are that:
 1. The Application is made pursuant to the Civil Procedure Rules 17.1(a) and 17.1(f)(ii) which empowers the Court to grant an Interim Injunction and make orders to restrain a party from dealing with any assets whether located within the jurisdiction or not; and
 2. There is a real risk of dissipation of the assets (both the land under sale and proceeds of sale thereon amounting to some \$2,000,000.00 BZD or more) by the Defendant frustrating any possible judgment in favor of the Applicant

5. The Defendant opposes the Application. Both parties have filed several Affidavits in support of their respective positions.

The Law

6. The jurisdiction of the Court to grant injunctions derives from Section 27 of the Supreme Court of Judicature Act, Chapter 91 of the Laws of Belize which provides that subject to rules of court, the Court may grant an injunction by an interlocutory order "*in all cases in which it appears to the Court to be just or convenient to do so.*" In addition, Part 11 of the Supreme Court (Civil Procedure) Rules, 2005, read in conjunction with Part 17 also confer jurisdiction on the Supreme Court to grant interim injunctions and freezing orders pending the outcome of substantive proceedings.

7. In the Belizean case of **Internet Experts S.A. D.B.A. Insta Dollar v. Omni Networks Limited (In Liquidation) et al.**¹ Madam Justice Young sets out the jurisdictional foundation for freezing orders as follows:

"The jurisdiction to grant this type of injunction derives from the Belize Supreme Court of Judicature Act Cap. 91 Sec 27(1). It enables the court to grant same in all cases where it appears to the court to be just and convenient so to do. A freezing order is a

¹ Claim 803 of 2010 (unreported), at paragraph 7

supplementary remedy granted for the limited purpose of protecting the efficacy of court proceedings. It restrains the defendant from dealing with or disposing assets over which the claimant asserts no proprietary right but which following judgment may be attached to satisfy a money judgment. “

8. In the same paragraph, Young J goes on to refer to freezing orders as being “...*one of the two nuclear weapons says Donaldson LJ in Bank Mellat v. Nikpour [1995] 87. It has even been called thermo-nuclear by another judge. As such it demands a number of procedural safeguards for the respondents and conditions for the applicant.*”

9. The test for granting a Freezing Order is still that which is set out by the court in **Mareva Compania Naviera SA v. International Bulkcarriers SA**² as being:
 - (a) A cause of action;
 - (b) A good arguable case;
 - (c) The Defendant(s) has/have assets in the jurisdiction;
 - (d) There is a real risk of dissipation of the assets by the Defendant(s) before judgment;
 - (e) The Defendant will be adequately protected by the Claimant(s)’s undertaking in damages.

10. The principles which the Court should apply to the grant of any interim injunction have been restated by the Belize Court of Appeal in **Belize Telemedia Limited v Speednet Communications Limited**³ by Mr. Justice of Appeal Morrison who noted that in determining whether to grant an interim injunction,: “*the proper approach to the question*

² [1975] 2 Lloyd’s Rep 509

³ Civil App 27 of 2009

*whether or not an injunction should be granted, having first ascertained that there is a serious issue to be tried, is to consider which course is least likely to cause irremediable prejudice to one party or the other, bearing in mind the question of what role an award of damages on either side is likely to play”.*⁴

A SERIOUS ISSUE TO BE TRIED

11. The first of the applicable tests is therefore whether there is a serious issue to be tried.

12. The Claimant has an existing cause of action in Belize, having made a claim that the Defendant has breached his fiduciary duties in the administration of the Testator’s Estate, and seeking the following remedies via an Amended Fixed Date Claim dated January 6, 2021:
 1. *An order that the Respondent Douglas Thompson be made to account for all activities in the Estate pursuant to Section 49, 50, 51 and 52 of the Administration of Estates Act, Cap 197;*
 2. *An order that the Respondent Douglas Thompson produce and deliver up to the Claimant title absolute for Parcel 81, Block 16 4 Independence Drive, Buttonwood Bay, Belize City bequeathed by the Testator and duly transferred under the said Estate pursuant Section 35 of the Administration of Estates Act, Cap 197;*
 3. *An order granting a Caveat against any dealing in the Testator’s unregistered land situate at Crown Land Book No. 403 of 1997 in the Ranguana Range, 5 East, Punta Gorda Town, Toledo District (23 miles off Placencia Village) until the Honorable Court determines the matter and/or such time as the Court deems fit to protect the unregistered interests of the beneficiary;*
 4. *An Order that the Probate granted to the Respondent Douglas Thompson be revoked and letters of administration be given to the Claimant; and;*
 5. *Any other order(s) and relief(s) the Honourable Court deems fit;*

⁴ Ibid, Paragraph 53

6. *Damages;*
7. *Interests; and*
8. *Costs.*

13. The Claimant's written submissions in support of this Application⁵ state that his claims for the above reliefs are based on the following:

- a. The Estate is "*froth (sic) with maladministration*" and the Defendant has failed to file accounts in the Estate of Ellismere Belgrave since the issuance of the grant of probate as required;
- b. The Defendant proposes to "*arbitrarily, irresponsibly dispose of the Testator's commercial properties (comprising a group of Caye Islands registered under a company, Serenade Island Resort Limited owned by the Testator and his wife who predeceased him) situate at situate at Crown Land Book No. 403 of 1997 in the Ranguana Range, 5 East, Punta Gorda Town, Toledo District(23 miles off Placencia Village) without putting said sale up for public tender to obtain the best possible offer for the shareholders and beneficiaries contrary the defendant's fiduciary duties of a trustee.*"

14. The Claimant states that he is applying for an interim injunction in the circumstances, "*restraining the Defendant from dealing in any and all assets in the Estate of the late Ellismere Irvin Belgrave, until the Court determines the Claim and a freezing order on the bank account(s) housing the proposed proceeds of the sale of Caye Islands comprising the Ranguana property (Serenade Island Resort) until the Court determines the Claim and any other relief the Honorable Court deems fit*"⁶

⁵ Claimant's Amended Written Submissions at page 1 to 2, paragraphs 2 and 3

⁶ Ibid, Paragraph 4

The Evidence

The Accounts

15. The Defendant, Mr. Thompson, has admitted his failure to file accounts as required in respect of this Estate. By his Affidavit filed and dated January 13, 2021, at paragraph 6, he admits the failure and has provided reasons to the Court for the failure. He says that as a result of the current proceedings, he has delayed distribution of the assets of the Estate, pending proceedings and that he has not been able to file the required annual financial accounts *“because of difficulties arising out of the identification of separate interests of the Testator and his deceased wife in property and projects conducted by them jointly.”* He also states that *“I have lately engaged the firm of Swift and Associates to undertake an Independent preliminary review of the Executorship accounts maintained by me in the Estate.”*
16. The Defendant also submitted as Exhibit **DT 9**, a Letter from George Swift dated January 4, 2021 in respect of that review of accounts. This evidence was not challenged or controverted.
17. The Submissions filed by Mr. Thompson’s Counsel and argued before the Court are that while he did not comply with the obligation to file the accounts of the Estate, he is prepared to do so and asks this Court for an opportunity to so do.
18. The Defendant submits that the remedy available to the Claimant is specified in section 50(1) of the Administration of Estates Act which provides as follows: *“Wherever an executor or administrator fails to file the account with the Registrar...any person having an interest in the Estate may apply to the Court for an order calling upon him to show cause why the account has not been filed...”*

19. Rule 66.5 (1) of the Supreme Court (Civil Procedure) Rules provides that the Court “*need not make any judgment or order in an administration claim unless satisfied that the question in issue cannot be determined by other means.*”
20. Rule 66.5(2) (i) also authorizes the Court, where “*a person claiming to be entitled under the will*” (such as the Claimant) alleges that no, or no sufficient accounts have been furnished by the executors, to “*stay the proceedings until a specified date and direct the executors...to supply proper accounts to the Claimant.*”
21. The Defendant’s admission of his failure to file accounts in the Estate is not in dispute and does not therefore constitute a serious issue to be tried by the Court in this Claim.

The Buttonwood Bay Property

22. As to the Claim by the Claimant that the Defendant produce and deliver up to the Claimant title absolute for Parcel 81, Block 16 4 Independence Drive, Buttonwood Bay, Belize City (“the Buttonwood Bay Property”) bequeathed by the Testator and duly transferred under the said Estate pursuant to Section 35 of the Act, the Claimant has admitted in Court on more than one occasion that the title absolute for the Buttonwood Bay Property was in fact transferred to him.
23. A letter from Mr. Phillip Zuniga SC addressed to Ms. Sharryn Dawson and dated October 20, 2020, which is exhibited by the Defendant’s Second Affidavit in Reply to Claimant’s Application dated 8th February, 2021 as Exhibit **DT11**, in fact certifies that the Claimant is registered as proprietor with Title Absolute to Parcel 81, Block 16 Caribbean Shores Registration Section by Land Certificate No. LRS-202004781. A copy of the said Land Certificate for the Buttonwood Bay Property, in the name of Michael Ellismere Belgrave is also exhibited at Exhibit **DT11**.

24. Moreover, the Claimant concedes that he is and has been in physical possession of the Buttonwood Bay Property to the Defendant since July of 2020. The evidence shows that although the Defendant states that he caused the actual title to be delivered to the Claimant, the Claimant states that he has never received the actual copy of the Land Certificate for Parcel 81, Block 16 Caribbean Shores Registration Section, being the Buttonwood Bay Property.
25. The Claimant is the only one who can make an application to the Lands Department in respect of his Land Certificate, and therefore in the circumstances, there is in fact, no serious issue to be tried in respect of the claim that Mr. Thompson should produce and deliver up to the Claimant ***“title absolute for Parcel 81, Block 16 4 Independence Drive, Buttonwood Bay, Belize City bequeathed by the Testator and duly transferred under the said Estate pursuant Section 35 of the Act.”***

The Ranguana Cayes Property

26. The Claimant also claims an order granting ***“a Caveat against any dealing in the Testator’s unregistered land situate at Crown Land Book No. 403 of 1997 in the Ranguana Range, 5 East, Punta Gorda Town, Toledo District (23 miles off Placencia Village) until the Honourable Court determines the matter and/or such time as the Court deems fit to protect the unregistered interests of the beneficiary”.***
27. The Claimant avers that the Defendant sold the property situate in the Ranguana Caye Range which belonged to the Estate ***“arbitrarily, without transparency and/or consultation with the Claimant”.***
28. The evidence shows, however, that the property situated at the Ranguana Caye Range (“the Ranguana Caye Property”), as the Claimant’s written submissions concede, is property

“comprising a group of Caye Islands registered under a company, Serenade Island Resort Limited owned by the Testator and his wife who predeceased him.”

29. The Ranguana Caye Property was in fact owned by a Belizean Limited Liability Company, Serenade Island Resort Limited. The Defendant’s 2nd Affidavit in Reply to Claimant’s Application dated 8th February 2021, exhibits 2 Minister’s Fiat Grants in the name of Serenade Island Resort Ltd. as Exhibit **DT13**, Fiat Grant No. 401 of 1997 dated 9/9/97, and Fiat Grant No. 402 of 1997.
30. The Defendant submits that the Ranguana Caye Property does not form part of the assets of the Estate of Ellismere Belgrave, and that the Claimant, as a beneficiary of the Estate, has no right to make any demand of this Court regarding the sale of an asset belonging to Serenade Island Resort Limited (“the Company”). The Company is not a party to this claim.
31. The evidence of the Defendant in his 2nd Affidavit in Reply to Claimant’s Application dated 8th February 2021 is that the Testator held 49% of the shares in the Company and that his late wife, Carrie Fairweather was the majority shareholder with 51%.⁷ This evidence was not disputed.
32. The evidence of the Defendant is that the Company owned 3 small islands in the Ranguana Caye Range, and that the property was sold by the Company on the 20th of October, 2020 for the sum of BZD \$2,200,000.00.⁸

⁷ 2nd Affidavit of Douglas Thompson in Reply to Claimant’s Application dated 8th February 2021 at Paragraph 5

⁸ Ibid, Paragraph 6

33. Claimant's Counsel submits, however that the Claimant is entitled, to not only the interest of the Testator, his late father, as his residuary estate, but also the entire interest of Carrie Fairweather, the late wife of the Testator, in the Ranguana Caye Property, and therefore has a beneficial interest in the sale of those assets.
34. The Defendant's Affidavit Evidence discloses that he is also the Executor of the Estate of Carrie Fairweather⁹, this is not in dispute. Her will is exhibited.¹⁰ Moreover Mr. Thompson obtained a Grant of Probate in respect of the Estate of Carrie Fairweather.¹¹
35. The Defendant's Second Affidavit in Reply to Claimant's Application states that the purchase money for the sale of the Ranguana Caye Property is not an asset nor any part of the property of the Estate of the Testator¹²
36. Counsel for the Claimant has argued most vigorously that since *"the Caye Islands comprising Serenade Island Resort Ltd. was not bequeathed to any particular beneficiary, it falls to be included in the residue of the Testator's Estate and gives rise to the Applicant's undisputed equitable interests as beneficiary"*. I cannot agree.
37. The Ranguana Caye Property was owned by Serenade Island Resort Ltd. That entity has its own legal personality. What did fall to the Estate of the Testator in this claim, as personal property, were those shares held by him in that Company. But the Ranguana Caye Property was an asset of the company, and are not assets of the Estate of the Testator.

⁹ Ibid at Paragraph 3

¹⁰ Ibid, as Exhibit DT 6 at Paragraph 3

¹¹ Ibid, Paragraph 4

¹² Ibid, Paragraph 7

38. I am therefore obliged to conclude that the Claimant would not be able to make out a serious issue to be tried in this claim in relation to the Ranguana Caye Property.
39. In relation to a freezing order, the Claimant would need to show, that he had a **“good arguable case.”** This is the minimum threshold for the exercise of the court’s discretion when considering a freezing injunction application see **Ninemia Maritime Corporation v. Trave**¹³ which imposes a test with a higher threshold higher than that of a **‘serious issue to be tried’**, which is the standard for other types of Injunctions.
40. I accept, without conducting any manner of “mini-trial” of the competing facts and issues in this claim, that it is the Claimant who bears the burden of crossing the necessary hurdle of showing this Court that a good arguable case exists.
41. I do not find, as a matter of fact, based on the evidence presented by the Claimant (and also by the Defendant in opposition) in this claim, that the Claimant has either a serious issue to be tried or a good arguable case in respect of the orders claimed by him in this claim.
42. I do not find it necessary therefore, to proceed to consider whether there is a risk of dissipation of the assets; or to consider which course is least likely to cause irreparable prejudice to one party or the other, bearing in mind the question of what role an award of damages on either side is likely to play.

¹³[1983] 1 WLR 1412

B. APPLICATION FOR STRIKE OUT AND SUMMARY JUDGMENT

43. The Defendant has applied to the Court, by Amended Notice of Application dated November 15, 2021 for the following:
- a. Orders to strike several portions of the Claimant’s pleaded case as being an abuse of the Court’s process pursuant to Supreme Court (Civil Procedure) Rule 26;
 - b. Orders for summary judgment on specified reliefs claimed; and
 - c. Pursuant to Supreme Court (Civil Procedure) Rule 66.5, an Order staying the proceedings and granting the Defendant time within which to file accounts in the Estate of Ellismere Irvin Belgrave.
44. Specifically, the Defendant sought an order pursuant to Rule 26.3 1(b) of the Supreme Court (Civil Procedure) Rules (“CPR”) that the following documents filed in the above-captioned proceedings be struck out on the basis that the documents are an abuse of the process of the court and are likely to obstruct the just disposal of proceedings:
- i. Affidavit in Support of Fixed Date Claim Form filed of Michael Ellismere Belgrave sworn the 23rd December, 2020;
 - ii. Affidavit of Claimant in support of Fixed Date Claim Form sworn the 24th November, 2020.
45. At the hearing, Counsel for the Defendant, Ms. Retreage submitted that CPR 8.1 provides as follows: ***“A Claimant starts proceedings by filing in the Court office the original and one copy for the sealing of –***
- (a) the claim form and (subject to Rule 8.2);***
 - (b) the statement of claim; or***

(c) where any Rule or practice direction so requires, an affidavit or other document.”

46. Counsel submitted that based on Rule 8.1 then, the Claimant, upon commencing proceedings should have filed a Fixed Date Claim Form along with either a Statement of Case or an Affidavit, but not both without leave of the Court. Ms. Retreage submitted that in breach of Rule 8.1, the Claimant filed the following documents to commence proceedings:

18th November, 2020 - Fixed Date Claim Form and Statement of Claim;

24th November, 2020 - 1st Affidavit of Michael Belgrave in Support of Fixed Date Claim Form; and

23rd December, 2020 - 2nd Affidavit of Michael Belgrave in Support of Fixed Date Claim Form

47. The Defendant submitted that the 1st and 2nd Affidavits of Michael Belgrave which were filed in support of the Fixed Date Claim were in breach of the Civil Procedure Rules, rendered the scope of the Claimant’s claim undecipherable, and amounted to an abuse of the Court’s process and that the 1st and 2nd Affidavits of Michael Belgrave ought properly to be struck out.

48. After Claimant’s Counsel, Ms. Dawson clarified that the Affidavit of Michael Belgrave dated 23rd December, 2020 was filed in support only of an application for an Interim Injunction. This does not impact the Fixed Date Claim and is permitted to remain.

49. As to the 1st Affidavit of Michael Belgrave in Support of Fixed Date Claim Form dated 24th November, 2020; I take guidance in this regard from a Barbadian Supreme Court case: In **Maria Agard v. Mia Mottley & Jerome Walcott**¹⁴

¹⁴ Supreme Court of Barbados, Claim No. 1753 of 2015

50. In that case, the Claimant commenced proceedings by use of a Fixed Date Claim Form, a Statement of Claim and an Affidavit. The Court, on an application to strike out the Affidavit, was of the view¹⁵ that under the Rules, the Claimant is required to file a claim form and a statement of claim and that CPR 8.1(1) (c) allows for the filing of an affidavit or other document “*where such rule or practice direction permits*” The Supreme Court (Civil Procedure) Rules in Belize are identical. Mr. Justice Alleyne summed up the matter thus: “*Nothing in CPR 8.1 requires the filing of both a statement of claim and an affidavit, and nothing requires that an affidavit be filed merely because there is no statement of claim.*”
51. The Court in the Maria Agard case found that the affidavit had been wrongly filed and that therefore the Defendants are entitled to “*ignore the Claimant’s Affidavit*”¹⁶ and Alleyne J went on to state as follows:
- “A Defendant cannot be called upon to rummage through a document not required by the rules to determine the full extent of a Claimant’s case. CPR8.5 (1) requires that the facts on which the Claimant relies be included in the claim form or statement of claim. That requirement is not met by non-specific references to parts of other documents.”*¹⁷
52. Only the 1st Affidavit of Michael Belgrave in Support of Fixed Date Claim Form dated 24th November, 2020, will be ordered to be struck out – since that Affidavit was not filed in accordance with the rules.
53. At the hearing of the Defendant’s Application on January 20, 2022 and again on February 11, 2022, Counsel for the Defendant abandoned the application for Orders listed in the Amended Notice of Application at (b), having to do with portions of the Statement of Case dated November 18, 2020 and Amended Statement of Case dated January 16, 2021.

¹⁵ Ibid at Paragraph 85

¹⁶ Ibid, Paragraph 87

¹⁷ Ibid, Paragraph 89

54. I now move to the Amended Notice of Application at (c), asking for an Order pursuant to Rule 15(2) (a) of the CPR, that the Claimant has no real prospect of succeeding on the following issues, and that summary judgment be entered in favor of the Defendant.
55. At (c) (i) – the Defendant has sought an order in respect of Relief No. 2 as listed on page 1 of the Fixed Date Claim Form of the Claimant dated 18th November, 2020 which states as follows:
- “2. An order that the Respondent, Douglas Thompson to produce and deliver up to the Claimant TITLE ABSOLUTE for Parcel 81, Block 16, 4 Independence Drive, Buttonwood Bay, Belize City, Belize bequeathed him by the Testator and duly transferred under the said Estate pursuant to section 35 of the Act;”*
56. The Defendant submits that this claim for the production and delivery of title in respect of the Buttonwood Bay Property has no prospect of succeeding, since the Claimant has already been provided with the Title. According to the Defendant, the Certificate of Title to the subject parcel of land was given to the Claimant in July of 2020.
57. As pointed out above, the Claimant has admitted in Court on more than one occasion that the title absolute property was in fact transferred to him. The letter from Mr. Phillip Zuniga SC addressed to Ms. Sharryn Dawson and dated October 20, 2020, which is exhibited by the Defendant’s Second Affidavit in Reply to Claimant’s Application dated 8th February, 2021 as Exhibit **DT11**, certifies that the Claimant is registered as proprietor with Title Absolute to Parcel 81, Block 16 Caribbean Shores Registration Section by Land Certificate No. LRS-202004781. A copy of the said Land Certificate in the name of Michael Ellismere Belgrave is also exhibited at Exhibit **DT11**

58. The Claimant is in physical possession of the Property since July of 2020, and even though the Claimant says that he has never received the actual copy of the Land Certificate for Parcel 81, Block 16 Caribbean Shores Registration Section, being the Buttonwood Bay property, he is now the only person who can make an application to the Lands Department in respect of his lost Land Certificate.
59. In the circumstances, as stated before, there is no serious issue to be tried in respect of the claim that Mr. Thompson should produce and deliver up to the Claimant “title absolute for Parcel 81, Block 16, 4 Independence Drive, Buttonwood Bay, Belize City bequeathed by the Testator and duly transferred under the said Estate pursuant Section 35 of the Act.” This portion of the claim is therefore ordered to be struck out.
60. Order c (ii) - The Defendant is also seeking summary judgment in relation to relief no. 3 which states as follows: ***“3. An order granting a Caveat against any dealing in the Testator’s unregistered land situate at Crowns Lands Book No. 403 of 1997 on the Ranguana Range, 5 Miles East of Punta Gorda Town, Toledo District (23 Miles off Placencia Village) until the Honourable Court determines the matter and/or until such time as the Court deems fit to protect the unregistered interest of the beneficiary.”***
61. The Defendant/Applicant submits that the request for an order for summary judgment is being sought since the deceased Testator, Ellismere Belgrave, did not own the Ranguana Caye Property; and that this evidence has not been controverted. In any event, summary judgment is not available as a remedy for a fixed date claim form under the terms of CPR Rule 15.3(b). The Defendant concedes the point.

62. The evidence before the Court on the Affidavit of the Defendant/Applicant is that the property was owned by a company named Serenade Island Resort Limited;¹⁸ of which. Ellismere Belgrave was only a minority shareholder of the Company.
63. Mr. Thompson says that the lands in question never formed a part of the Testator's Estate and that the Claimant has no right to any portion of the lands. He says also that the Amended Inventory of the Estate of Ellismere Belgrave shows that the real property is the Buttonwood Bay home now owned by the Claimant; and that the 100,000 shares in Serenade Island Report were listed as personal property.¹⁹
64. The Submission of Defendant's Counsel is that Serenade Island Resort Limited is not a party to these proceedings; and that a company has a separate legal personality from that of its shareholders and directors.
65. Ms. Retreage for the Defendant helpfully cites the UK House of Lords case of **Macaaura v. Northern Assurance Company Limited and others**²⁰, which held that creditors and shareholders have no legal or equitable interest in the assets of a company, and as a result, had no insurable interest in the assets of the Company.²¹
66. Lord Buckmaster put the matter thus: *"Now, no shareholder has any right to any item of property owned by the company, for he has no legal or equitable interest therein. He is*

¹⁸ Affidavit of Douglas Thompson filed in support of this Application filed 5th July 2021 at Paragraphs 5 to 7

¹⁹ Ibid at Exhibit **DET 2**

²⁰ [1925] AC 619

entitled to a share in the profits while the company continues to carry on business and a share in the distribution of the surplus assets when the company is wound up...”

“No shareholder has any right to any item of property owned by the company, for he has no legal or equitable interest therein. He is entitled to a share in the profits while the company continues to carry on business and a share in the distribution of the surplus assets when the company is wound up.”

67. In this claim, it is the shares of Serenade Island Resort Limited owned by the Testator that were bequeathed to the Claimant and his sister, as part and parcel of “the rest and residue...both real and personal” of the Estate of the Testator Ellismere Belgrave. The late Mr. Belgrave did not own the real property being the three islands comprising the Ranguana Caye Property.
68. The Claimant makes no claim as a shareholder or even a prospective shareholder of Serenade Island Resort Limited, and his counsel insists that he is not saying that he in fact has any claim for shares to be transferred to him in the Company. Ms. Dawson says instead that he is only asking for a Caveat based on his “right to inherit shares” by the terms of the last will and testament of his late father, the Testator.
69. This Court cannot grant any order, including the Caveat which the Claimant asks for in his Amended Claim, in respect of those islands which do not form any part of the Estate concerned in this claim.
70. In the premises, any portion of the Amended Statement of Case that refer to the relief in respect of the Certificate of Title for Parcel 81 Block 4, Caribbean Shores Registration Section, or the Ranguana Caye Property are struck out on the basis that the portions of the

Statement of Case that refer to such relief are an abuse of process of the Court. This includes Paragraph 8-21 of the Amended Statement of Case dated January 6, 2021.

CONCLUSION

71. The Claimant's Application for Interim Injunction is refused for the reasons already detailed above.
72. The Defendant's Application for Strike Out is granted as outlined above, and for the reasons provided.
73. Rule 66.5 of the CPR provides that where an administration claim is brought by a person claiming to be entitled under the will of a dead person and the Claimant alleges that no accounts have been furnished by the executor, the Court has the power to stay proceedings until a specified date and direct the executor to provide accounts to the Claimant. Accordingly, the Defendant will be granted a period of 90 days from the date of this Ruling to provide accounts to the Claimant and to file the same.
74. All further proceedings in this matter are to be stayed until the period of 90 days for filing accounts as ordered has passed, and either party has made an application to the Court or the Court has set a date for further hearing of this matter.

ORDERS

75. The following Orders are made:
 1. The Claimant's Application for an Interim Order and Freezing Injunction is refused;
 2. The 1st Affidavit of Michael Belgrave in Support of Fixed Date Claim Form dated 24th November, 2020, is struck out;

3. The Claimant's Claim for an order that the Respondent, Douglas Thompson produce and deliver up to the Claimant TITLE ABSOLUTE for Parcel 81, Block 16, 4 Independence Drive, Buttonwood Bay, Belize City, Belize bequeathed him by the Testator and duly transferred under the said Estate pursuant to section 35 of the Act is struck out;
4. The Claimant's Claim for an Order granting a Caveat against any dealing in the Testator's unregistered land situate at Crowns Lands Book No. 403 of 1997 on the Ranguana Range, 5 Miles East of Punta Gorda Town, Toledo District (23 Miles off Placencia Village) until the Honourable Court determines the matter and/or until such time as the Court deems fit to protect the unregistered interest of the beneficiary is struck out;
5. The Defendant is ordered to provide accounts in relation to the Estate of Ellismere Belgrave and to file and serve the Claimant within 90 days from the date of this Ruling with the said accounts;
6. All further proceedings in this matter are to be stayed until the period of 90 days for filing accounts as ordered has passed, and either party has made an application to the Court or the Court has set a date for further hearing of this matter;
7. The Claimant shall pay the Defendant costs and Parties are invited to make submissions to the Court in respect of the same.

DATED MAY 08, 2022

LISA M. SHOMAN

JUSTICE OF THE SUPREME COURT OF BELIZE