

In the Supreme Court of Belize A.D. 2014

Claim No. 691 of 2014

(DE’MARS STONE COMPANY LIMITED CLAIMANT
(
BETWEEN (AND
(
(BELLA VISTA DEVELOPMENT LIMITED FIRST DEFENDANT
(
(LOPEZ EQUIPMENT COMPANY LIMITED SECOND DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE LISA SHOMAN
ON WRITTEN SUBMISSIONS FROM PARTIES COUNSEL BY CONSENT

Ms. Julie Ann Ellis Bradley for the Claimant

Ms. Naima Barrow for the Second Defendant

Written Submissions

Claimant/Applicant –December 3, 2021.

Second Defendant/Respondent – December 1, 2021

RULING

1. The Claimant (“**De’Mars Stone**”) is a Belizean Limited Liability Company.
2. The Second Defendant (“**Lopez Equipment**”) is also a Belizean Limited Liability Company.
3. By Application dated 25th , De’Mars Stone has applied for the following orders:
 - (1) to lift a stay against Lopez Equipment dating back to 23rd February 2015;

- (2) for an order that Lopez Equipment pay \$72,685.50 plus interest from June 2, 2015 at a rate of more than 16% per annum; and
 - (3) for costs of this application.
4. On December 10, 2021, the Parties agreed for Court to deal with this matter on the papers filed by Parties including their written submissions.
5. The Stay of Proceedings against the Second Defendant, Lopez Equipment Company Limited is lifted and the Claimant is at liberty to pursue its claim against the Second Defendant. No other order will be made because the Claimant has not obtained default judgment against the Second Defendant and there has been no determination that the Second Defendant owes the Claimant any money. Costs are to be costs in the cause.

Application for Stay of Proceedings

6. An Order was on July 10, 2015 and perfected on November 16, 2015 and the terms state rather simply that: *“1. The stay against the First Defendant is lifted, 2. The Claimant has liberty to apply to lift the stay against the Second Defendant”*.
7. When the stay was granted, a default judgment had been entered against the First Defendant, (**“Bella Vista Development”**). Lopez Equipment filed a Defence to the Claim of De’Mars Stone and a Reply to said Defence was duly filed.
8. The application is supported by two Affidavits sworn by Denni Grijalva filed on 20th October, 2020 and 23rd November, 2021. The application is opposed as set out in the Affidavit of Alex Lopez dated November 8, 2021.

9. Lopez Equipment opposes the application on the following grounds:
- a) The Claimant's conduct is an abuse of process and the claim should be struck out
 - b) there has been no determination that the Second Defendant owes the Claimant any money;
 - c) the Claimant is estopped by convention from proceeding against the Second Defendant;
 - d) the Claimant is entitled to its costs in this claim to the day when it accepted the First Defendant's offer; and
 - e) Costs of these proceedings are payable by the First Defendant.

The Law on Stay of Proceedings

10. There is no disagreement what a stay of proceedings is - it arises under an order of the court which puts a stop or stay on the further conduct of the proceedings in that court at the stage arrived at so that the parties are precluded thereafter from taking any further step in the proceedings without leave.
11. A stay prevents a further step from taking place by a party or parties, whether that step is trial or hearing of the claim taking place; where the court thinks it is just and convenient to make such an order, to prevent either undue prejudice being occasioned to the opposite party or to prevent the abuse of process. It is a discretionary order and is made without a trial on the substantive merits of the case.
12. The power to stay is exercised by the Court under its inherent jurisdiction and case management power, and under Supreme Court Civil Procedure Rule (CPR) 26.1 (2) (e). which provides that ***“Except where these Rules provide otherwise, the court may... - (e) stay the whole or part of any proceedings generally or until a specified date or event;”***

13. Furthermore, CPR 12.9 makes provision for circumstances where the claim is against more than one Defendant and a default judgment is not obtained against all Defendants. This rule provides that:

“(1) A claimant may apply for default judgment on a claim for money or a claim for delivery of goods against one of two or more defendants and proceed with the claim against the other defendants.

(2) Where a claimant applies for a default judgment against one of two or more defendants - (a) if the claim can be dealt with separately from the claim against the other defendants - (i) the court may enter judgment against that defendant; and (ii) the claimant may continue the proceedings against the other defendants; or

14. Counsel for the Applicant also cites CPR 35.11 (1) which provides that

“(1) If the offeree accepts an offer which is not limited in accordance with Rule 35.8, the claim is stayed upon the terms of the offer.”

15. Counsel also relies CPR 35.11 (7)

“(7) Where an offer is accepted but its terms are not complied with, any stay arising on acceptance ceases to have effect”

16. According to Counsel for De’Mars Stone, the stay was granted against Lopez Equipment ***“in light of the liability of the Defendants being joint and several which would mean that if the 1st Defendant did in fact fulfil its promise to satisfy the judgment its satisfaction would inure to the benefit of the 2nd Defendant”***.

17. Counsel for De’Mars Stone argues that this cuts both ways, since “because of joint and several liability”, Lopez Equipment “remains liable for any sums due to De’Mars Stone”, which are

not satisfied by Bella Vista Development; and that Lopez Equipment's liability is extinguished only to the extent of the payments made in satisfaction of the judgment, whether paid by either Defendant. With all due respect, those are matters which cannot be determined by this Court upon such an inquiry as this one.

18. According to Mrs. Ellis-Bradley, the Court did not grant a stay to bar De'Mars Stone from pursuing its claim against Lopez Equipment; and that the stay order expressly granted liberty to apply and De'Mars applies to this Court pursuant to that liberty. Counsel says that the Rules make it clear that even where default judgment is entered against one party the Claimant may proceed against the other party. And finally, Counsel concedes that at this point, the Court is not called upon to examine the substantive matters in dispute in the claim or to conduct a mini trial. The Court needs only determine that it would be just in the circumstances to lift the stay.
19. Is it just and convenient to lift the stay? Counsel for De Mars Stone says it is. Counsel for Lopez Equipment says that it would be an abuse of process to do so because, the contract from which this claim arises is over eight (8) years old and that De'Mars Stone, though aware of its right to do so, has done nothing to enforce its judgment against the First Defendant obtained in January 2015.
20. Both parties agree that over six years has passed since the claim against the Second Defendant was stayed.
21. Ms. Barrow says that Alex Lopez as representative of Lopez Equipment has deposed¹, and the Claimant has not been able to say or show otherwise, that Lopez Equipment has heard nothing from the Claimant about this claim for over six (6) years, and had no way of knowing of the First Defendant's failure to abide by the terms of the settlement agreement

¹ Para 10 of the Affidavit of Alex Lopez dated 8th November 2021

22. Ms. Barrow argues that while the Claimant has described its failure to prosecute the claim against the Second Defendant as “being patient”, De Mars has not proffered any reason for “warehousing” the claim for so long, and that in the circumstances, the Claimant’s claim now amounts to an abuse of process and this Honourable Court should exercise its powers conferred by CPR 26.3(1)(b) to strike out the Claimant’s claim.
23. I cannot agree that the current situation is akin to failure by the Claimant to prosecute the Claim, and then warehousing the matter. Lopez Equipment obtained a respite from being prosecuted pursuant to the claim filed by the Claimant under the terms of a settlement agreement made between the Claimant and the First Defendant. That is all. The Claimant was unable to proceed against the Second Defendant by virtue of the Stay Order which did however expressly provide Liberty to the Claimant to apply to lift the Stay.
24. It does not amount to warehousing or an abuse of process and the Court will decline exercise its discretion to make any order to strike the Claimant’s Claim against the Second Defendant.
25. I do agree with the submissions by Ms. Barrow that there has been no judicial determination that the Second Defendant owes the Claimant any monies. In any event, this was in fact already conceded by Mrs. Ellis Bradley. I will not therefore make any order ordering Lopez Equipment to pay the Claimant.
26. Since Parties are agreed that the Claimant and the First Defendant entered into an agreement for the First Defendant to settle the Claimant’s entire claim and that pursuant to that agreement 2/3 of the Claimant’s claim was paid, the Court will lift the stay to provide the Claimant with liberty to pursue its claim against the Second Defendant.
27. The issues raised by both parties such as estoppel; joint and several liability; and other such arguments are matters which the Court cannot embark upon without conducting a forbidden mini-trial and I abstain from temptation, though courted by both sides.

28. Costs of this stay of proceedings are accordingly to be costs in the Cause between the Claimant and the Second Defendant.

29. This matter will go back to Case Management if the Claimant wishes to proceed against the Second Defendant.

DATED MAY 13, 2022

LISA M. SHOMAN

JUSTICE OF THE SUPREME COURT OF BELIZE