

IN THE SUPREME COURT OF BELIZE, A.D. 2022

CLAIM No. 84 of 2022

BETWEEN

NEIDY RODRIGUEZ **CLAIMANT**
*(as Administratrix Ad Colligenda Bona
Of the Estate of James Lynskey)*

AND

DANIEL DYKGRAAF **1ST DEFENDANT**

BRUCE BOBBY HUNT **2ND DEFENDANT**

LL CAYE CAULKER COMPANY LIMITED **3RD DEFENDANT**

BEFORE The Honourable Madam Justice Patricia Farnese

Hearing Date: March 15, 2022

Appearances

Ms. Priscilla Banner, for the Claimant

Mr. Dean Barrow, S.C. with Mr. Rodwell Williams, S.C. for the Defendants

**REASONS IN SUPPORT OF ORAL JUDGMENT ON INTERIM INJUNCTION
APPLICATION**

Introduction

[1] This matter arose first as an urgent without notice application for interim injunction where I granted a partial injunction until such time as the matter was able to be heard on an interparty basis. Ms. Rodriguez alleges that the defendants have unlawfully taken possession of, trespassed on, laid waste to, dissipated, and converted the property and assets of Mr. James Lynskey. Ms. Rodriguez in her capacity as *Administratrix Ad Colligenda Bona* of the Estate of James Lynskey, seeks an order that the *status quo ante* be restored by granting her immediate

custody of property, businesses, assets, and funds located thereon. She asks that an injunction remain until her claim against the defendants is resolved.

[2] The defendants have disputed these claims and assert they are acting as lawful receiver in accordance with the terms of an unregistered charge on the property of The Split Holdings Limited. The charge arises from an agreement between the first defendant, Mr. Daniel Dykgraaf and Mr. James Lynskey in which Mr. Dykgraaf invested US\$3,000,000 as a silent partner in The Split Holdings Limited. The defendants allege that The Split Holdings Limited is in default of the terms of the loan agreement. As such, the property is not part of Mr. Lynskey's estate because it is receivership property. They request that the partial injunction I previously ordered be discharged.

[3] After reviewing the submissions of all parties, I issued an oral decision on March 16, 2022 that vacated my previous injunction and ordered an interim injunction be granted on the terms outlined in the claimant's amended application for an interim injunction. The following are the reasons for my decision.

Issue

[4] The only issue to be decided is whether the claimant is entitled to an injunction. The test for whether an injunction should be granted is well established.¹ The test considers whether there is a serious issue to be tried, whether damages would be an appropriate remedy, and the balance of convenience.

Analysis

Is there a serious issue to be tried?

[5] The claimant has established that there are serious issues to be tried and that she has a real prospect of obtaining a permanent injunction. She has established that this court has previously named her Administratrix *Ad Colligenda Bona* of the Estate of James Lynskey. Mr. Lynskey was the sole director and sole shareholder of Split Holdings Limited. Split Holdings Limited owns land, businesses, and assets located on Parcel 950, Block 12, Caye Caulker ("the Split Property"). As Administratrix, she alone is authorized to take control of the Split Holdings Limited and its assets, including the Split Property, as part of her obligations to settle Mr. Lynskey's estate.

[6] Mr. Dykgraaf admits that he has prevented Mrs. Rodriguez from taking control of Split Holdings Limited, but disputes that Split Holdings Limited is part of Mr. Lynskey's estate. Mr. Dykgraaf defends his right to be in possession of the Split Property on the grounds that he is

¹ *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 as endorsed in *Belize Telemedia Limited V Speednet Communications Limited* Civil Appeal No 27 of 2009.

acting as a lawful receiver in relation to a charge on the Split Property executed by Split Holdings Limited in 2019.

[7] The claimant argues that Mr. Dykgraaf is not entitled to act as a receiver because his charge is unregistered. Subsection 67(3) of the *Registered Lands Act* outlines that a “charge is completed by its registration.” Even if he were permitted to avail himself of the rights of a receiver, he requires the court’s permission to modify the rights granted by s. 75. Mr. Dykgraaf does not have the court’s permission. Mr. Dykgraaf disagrees that s.75 only applies to registered charges and asserts that the agreement that created a charge on the Split Property expressly authorizes the receivership. He further maintains that he is an equitable mortgagee who is entitled to foreclose on the property when the mortgage goes into default. Split Holdings Limited’s obligations to Mr. Dykgraaf arising from an alleged default of the loan agreement between the parties is a serious issue.

[8] A further serious issue to be tried has emerged from the various filings by the parties in response to the application for injunction. Two documents with different terms are purported to be the agreement that was signed by Mr. Dykgraaf and Mr. Lynskey on behalf of Split Holdings Limited. The authenticity of these agreements is a further serious issue that must be tried.

Are damages an adequate remedy?

[9] I find that damages are not an adequate remedy. This action involves control and the right to direct profit from very valuable property. It is true that the property and businesses are not at risk of flight. Nonetheless, the property has become part of an estate. The Administratrix must be given the opportunity to conduct a full inventory of the assets in order to carry out her responsibilities to manage the estate. The claimant has established that this cannot be achieved without the Administratrix being in possession and control.

[10] I would also add that in disputes involving the possession of land, courts have long recognized that damages may not appropriate and have awarded specific performance especially where land has unique characteristics or value. The Split Property undoubtedly falls within that description.

In whose favor does the balance of convenience lie?

[11] The balance of convenience weighs in the claimant’s favor. As the Administratrix, she has been given the authority by this court to stand in the place of Mr. Lynskey who was unquestionably in lawful possession of that property when the defendants entered. The court is balancing the rights of clear title holder with a party’s whose claim is unproven at this point.

[12] While the claimant would like me to perceive the defendants’ conduct as deliberately in disregard of the law, my decision to award the injunction is not an endorsement of that perception. I have heard the Mr. Dykgraaf when he said that Mr. Lynskey was served with notice that he was in default on the debt and I have been given no reason to doubt Mr. Dykgraaf’s

assertion that Mr. Lynskey knew these actions were coming. No actions, however, were taken while Mr. Lynskey was in a position to respond. As such, the court does not know what his response would have been to the defendants taking possession and control of the Split Property.

[13] Without Mr. Lynskey's consent, the defendants were required to pursue remedies through lawful means. Despite my specific request, I was provided no judicial authority that establishes that an unregistered charge is to be treated like a registered charge, that a receiver can take possession of land without the court's consent, or that one can foreclose on land subject to an equitable mortgage without the court's approval. To not grant the injunction in light of these facts would be an endorsement of actions that are not consistent with the operation of the rule of law. While ultimately, the defendants may be entitled to everything that they took, they must avail themselves of the established legal avenues to proclaim that entitlement.

Patricia Farnese
Justice of the Supreme Court