

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

**CLAIM No. 285 of 2015**

**BETWEEN**

**STUART ELLIOT**

**APPLICANT**

**AND**

**PROPRIETORS OF STRATA PLAN NO. 10**

**1<sup>ST</sup> RESPONDENT**

**JAMES JANMOHAMED**

**2<sup>ND</sup> RESPONDENT**

**ORDER OF** The Honourable Madam Justice Patricia Farnese

**HEARING DATE:** June 30, 2020

**APPEARANCE**

**Mr. Andrew Bennett and Mr. David Morales, for the Applicant**

**Mr. Fred Lumor, S.C. for the 1<sup>st</sup> Respondent**

**No appearance by the 2<sup>nd</sup> Respondent**

**ORDER FOLLOWING INTERPARTES APPLICATION FOR INJUNCTION**

**Introduction**

[1] On May 4<sup>th</sup>, 2022, the Proprietors of Strata Plan No. 10 (Proprietors) obtained an order from this court that Parcel 3851 (H51) Block 7 of Strata Plan No.10 (Unit 21A) be sold to satisfy a judgment debt owed by the Mr. Janmohamed. Mr. Janmohamed is the registered titleholder of Unit 21A. The Proprietors are acting upon a default judgment that was issued by Madam Justice Michelle Arana, as she then was, in July of 2015. Arana J. also issued an order preventing the registration of any further charges on the title of Unit 21A so that there would be no encumbrances to its sale to satisfy the judgment debt.

[2] On June 20, 2022, Mr. Elliot applied for an urgent *ex parte* injunction to prevent the sale of Unit 21A. Mr. Elliot asserts an equitable interest in Unit 21A. The injunction application was

heard on an *ex parte* basis on the eve of the closing of the auction sale for Unit 21A. On June 21, 2022, I granted an interim injunction preventing the respondents from announcing the successful auction bid or taking any steps to conclude the sale of Unit 21A until such time as this court decides the applicant's application for injunction on an *inter partes* basis. I further ordered that the *inter partes* hearing be held on June 30, 2022. After reviewing the oral and written submissions of the parties, I have decided to dismiss the injunction application. Mr. Elliot has not met the necessary burden to demonstrate that continuing the injunction is justified.

## Issue

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

## Analysis

*Is there a serious issue to be tried?*

[4] Mr. Elliot raises two issues that he says are serious and ought to be tried. The first issue is the effect of the equitable interest he asserts in Unit 21A. Mr. Janmohamed has unsuccessfully argued before this court on at least two occasions<sup>2</sup> that the legal effect of agreements for the sale of land he had with third parties, including Mr. Elliot, ended his obligations as an owner. On both of those occasions, that argument was found to have no reasonable prospect of success. As the Proprietors correctly outlined, section 26 of the *Registered Land Act*<sup>3</sup> vests absolute ownership upon registration. The *Registered Land Act* creates a system of priorities based on registration date. Persons, such as the Proprietors, are entitled to rely on the registry to identify any prior interests that have priority over their interest. Mr. Elliot does not hold a prior registered interest in Unit 21A that would give him priority over the Proprietors' claim.

[5] Mr. Elliot chose to advance the purchase price, to assume liability for condominium fees, and to invest in improvements based on an agreement for sale on the mere promise of transfer of title to Unit 21A. By doing so, he assumed the risk that an interest would be registered against that title that would have priority to his. While Mr. Elliot may have a viable claim against Mr. Janmohamed for breach of their agreement, the Proprietors' claim to Unit 21A has priority as it was registered first. No authority has been provided that establishes that knowledge of an prior

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

<sup>2</sup> This argument was made in the application to set aside the default judgment in this matter and in a summary judgment application in Supreme Court Claim No. 576 of 2019 with the Proprietors.

<sup>3</sup> R.S.B, 2011, c.194.

unregistered interest defeats the priority of a subsequent registered interest. Consequently, the first issue does not support continuing the injunction as it has no reasonable prospect of success.

[6] The second issue relates to the doctrine proprietary estoppel. Mr. Elliot argues that the doctrine governs such that the Proprietors ought to be estopped from selling Unit 21A because they had notice of Mr. Elliot's equitable interest, treated him as an owner, and accepted payment of HOA fees. When I consider these facts with the other evidence available to me, I find that Mr. Elliot has no reasonable prospect that a claim seeking a proprietary estoppel remedy will be successful.

[7] Proprietary estoppel is an equitable doctrine that can be used where a person wishes to assert a property interest on the basis that the owner of property has led them to believe through representations or assurances that they have or will have rights to that property. If the person relies on those representations or assurances to their detriment, the doctrine holds that it would be unjust and unconscionable to allow the property owner not to deliver those rights.<sup>4</sup>

[8] Even if I were to accept that contention that the Proprietors treated Mr. Elliot as an owner, they are not property owners and are in no position to transfer rights to Unit 21A. To hold otherwise would mean that one's property interests could be transferred to a third party without their consent and as a result of the actions of another. Such a result is not in keeping with the wide recognition that the right to alienate is a defining feature of ownership. Therefore, Mr. Elliot has no reasonable prospect of success because proprietary estoppel is not an available remedy in a claim against the Proprietors.

*Are damages an adequate remedy?*

[9] Mr. Elliot argues that damages are not an appropriate remedy because he has extensively renovated Unit 21A to become his permanent home upon retirement. The family has significant attachment to the property. Mr. Elliot wishes the court to also consider his advanced age and the burden that finding a new retirement home will be for him.

[10] The undisputed evidence before me, however, also establishes that Unit 21A has primarily been managed as a rental property since its purchase. Damages are adequate to replace investment properties provided that the property can be replaced. I have no evidence before me that there is a paucity of oceanfront real estate investment opportunities on Ambergris Caye. I also have no evidence as to the timeline for when Mr. Elliot plans to relocate. I do not doubt that having to find a new property will be an inconvenience, but the burden will be lessened if there is no time pressure to do so. As a result, I am unable to conclude that damages are not an adequate remedy.

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<sup>4</sup> *Thorner v Major* [2009] UKHL 18.

*In whose favor does the balance of convenience lie?*

[11] The balance of convenience lies with the Proprietors. The Proprietors have actively pursued their legal remedies against Mr. Janmohamed. As a result, they have secured their priority to his assets with an enforceable judgment from this court.

[12] On the other hand, Mr. Elliot's strongest argument in support of an injunction is an unproven claim against Mr. Janmohamed for breach of the 2011 agreement for sale of Unit 21A. Inexplicably, Mr. Elliot has chosen not to pursue his claim against Mr. Janmohamed despite affidavit evidence that demonstrates that he has been aware of the vulnerability of his legal position for many years. In an email from Mr. Elliot's daughter, Amanda Syme, an affiant in this application, to the Proprietors in 2019, Ms. Syme writes that she has waited 7 years to get title. Mr. Elliot's belief and repeated assertions that he is the owner of Unit 21A does not make it so.

**IT IS HEREBY ORDERED that:**

1. The interim injunction granted on June 21<sup>st</sup>, 2022 in this claim is lifted.
2. The application for injunction dated June 17<sup>th</sup>, 2022 is dismissed.
3. The Proprietors of Strata Plan No. 10 are entitled to prescribed costs from the applicant.

DATED the 1<sup>st</sup> day of July, 2022.

Justice Patricia Farnese