

**IN THE SUPREME COURT OF BELIZE A. D. 2015
(APPELLATE JURISDICTION)**

Inferior Court Appeal No. 49 of 2015

Appeal from the Inferior Court for the Belmopan Judicial District

	(SOPHIA THOMAS	APPELLANT
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BETWEEN	(AND	
	(
	(THE ATTORNEY GENERAL	RESPONDENT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mr. Oswald Twist for the Appellant

Ms. Leonia Duncan, Crown Counsel, for the Respondent

D E C I S I O N

The Facts

1. Ms. Sophia Thomas was offered employment by the Government of Belize as a Training Officer at the National Emergency Management (NEMO) on 20th October, 2011. She accepted this offer on 3rd November, 2011 by way of letter. The salary offered to her which she accepted was \$27,792.00 per annum. Ms. Thomas was to be paid a one-time salary adjustment payment of \$896.52 for the period of October 20th to 31st, 2011 (the period prior to her being placed in the system). Sometime in 2013 it was discovered that through the

inadvertence of the Human Resources Management Information System Unit of the Ministry of the Public Services (HRMIS), this payment was repeated over the next eleven (11) months until the 31st day of October, 2012. Ms. Thomas resigned from NEMO with effect from 16th October, 2012 but continued to receive her salary up to November 15th, 2012. Letters were sent by the Ministry to Ms. Thomas upon discovery of the mistake asking her to repay the money, and notifying her that failure to do so would result in legal action being taken against her. She did not respond to any of the letters and on 24th February, 2015 this claim was instituted by the Government to recover the \$12,640.03 mistakenly paid to Ms. Thomas. After hearing the evidence and submissions made on behalf of both parties, Magistrate Aretha Ford found in favour of the Government and ordered Ms. Thomas to pay back the total sum of \$12, 694.03. in monthly installments of \$200.00 with effect from 31st day of March, 2015. It is from this decision that Ms. Thomas now appeals having received a stay of execution from the Magistrate.

The Grounds of Appeal

2. Mr. Oswald Twist on behalf of the Appellant submits two grounds of appeal:
 - i) The decision was based on a wrong principle and the Inferior Court viewing the circumstances reasonably could not properly have so decided;
 - ii) The decision was erroneous in point of law.

3. ***Whether the decision was based on a wrong principle and whether the inferior Court viewing the circumstances could not have properly so decided***

Mr. Twist first argues that the Magistrate in dealing with estoppel said that 11 months was not an unreasonable time for the Ministry to recover the repayment. He rejects this finding by the magistrate because the evidence shows that Ms. Thomas never had any extra monies and there was no determination as to what her monthly expenses were. He further argues that the sums overpaid would not be an extraordinary loss to the Ministry and they were at fault for overpaying Ms. Thomas.

He also submits that contrary to the Magistrate's finding that Ms. Thomas would suffer no detriment by repaying the amount owe, he claims that Ms. Tomas would have to borrow on interest or work overtime because she has no extra money. She used the money to pay bills.

He cites Nathan J in the ***Attorney General v. Reginald Pitts Supreme Court of Belize*** Claim No. 238 of 1994 as follows:

"The defendant has failed to act to avoid that detriment whether by fulfilling the assumption of expectation or otherwise. In this case the Attorney General has done nothing other than to ask for immediate repayment. Mr. Pitts in no way contradicted, either by action or inaction, the government's assumption that it had an obligation to pay him."

Mr. Twist submits that Ms. Thomas's case is similar to that of Reginald Pitts in terms of request for repayment by the Government of Belize. He then goes on to argue that in reaching her decision the Learned Magistrate used the law of mistake as well as the law of estoppel; he goes on to argue that the law of mistake and the doctrine of estoppel are separate and distinct. He cites paragraphs from the decision which in his view reflect the Learned Magistrate fell into error in her Reasons for Decision:

Page 10, paragraph 7 (a) to 7 (c): *“Three conditions must be satisfied in order for a person making a payment under mistake be estopped from pursuing recovery of the overpayment.*

- a. Firstly, that the government in some way represented the payment was actually due to the employee. By sending the payment to Ms. Thomas's account made her believe that the money was hers to keep;*
- b. Secondly, Ms. Thomas must show that this inaccurate information led her to believe that she was entitled to this money. Ms. Thomas told the court that she never looked at her pay slips; therefore, she could not have known about the overpayment.*
- c. Thirdly, Ms. Thomas must show that because of the mistake, she changed her position in reliance upon the payment so as to make it equitable for her to repay the money. Ms. Thomas told the court that she used the monies to pay her bills and expenses. She has not*

provided any evidence to the court to suggest that she has changed her position and that it would be detrimental to her to repay back the money.”

Page 11 paragraphs 9 to 12:

“9. Firstly, the character of this representation here was one endured for 11 months. The Belize Government represented to Ms. Thomas for 11 months that she was entitled to receive the overpayment. In regards to the Pitts case, he received pension for 11 years so I find that it is not unreasonable to ask Ms. Thomas to repay back the money which she had received for 11 months.

10. Secondly, the reasonableness of Ms. Thomas relying upon that representation that the monies paid to her by the government was hers. It was reasonable for Ms. Thomas to assume that the monies were hers due to the fact that the monies were paid into her account by the government.

11. Thirdly, the reliance placed upon the representation. Ms. Thomas received the money and used it to pay bills and expenses. When she was asked in cross-examination if she had extra monies after paying her bills, her response was that she never had any extra monies.

12. Fourthly, the nature and extent of the detriment suffered by this reliance if the representation were resiled from. Ms. Thomas would not

suffer any detriment were she obliged to repay the money. Her financial position would not be ruined if she were to repay back the \$9,861.72.”

Mistake relates to the Law of Contract and Estoppel is a doctrine founded upon the principles of equity and can be applied to the law of mistake in a limited sense. His submission is that no change of position is required in the doctrine of estoppel and the Appellant only has to establish the three criteria set out in the **Reginald Pitts** case to make it unconscionable for her to pay back. The Learned Magistrate ought to use either the Law of Mistake or the Doctrine of Estoppel and she fell into grave error in using both of these coming to the wrong conclusion.

Whether the decision was erroneous in point of law

4. Mr. Twist submits that the Learned Magistrate was erroneous in point of law in that she used the Law of Mistake and the Doctrine of Estoppel and thereby came to a wrong conclusion. If she had only use the Doctrine of Estoppel he believes her decision would have been otherwise based on the arguments proffered in Ground One. He relies on **Taegar v. Belize Tourist Board**, 1998 Supreme Court of Belize, Belize Law Reports 235 and **The Attorney General of Belize v. Reginald Pitts**, Action No. 238 of 1994.

Legal Submissions made on behalf of the Respondent

5. Ms. Leonia Duncan argues on behalf of the Government of Belize that the decision of the Learned Magistrate was based on the right principle and having

viewed the circumstances reasonably she had properly decided. She submits that it is a general principle of law that where money is voluntarily paid under a mistake on the payer's part it may be recovered in an action for money had and received. She cites **Atkin's Court Forms paragraph 19 Recovery of Money Paid**

By Mistake:

"This is an instance of the principle of unjust enrichment. Money Paid under a mistake of fact is recoverable. It is now established that money paid under a mistake of law is also recoverable."

Ms. Duncan further bolsters her argument with a citation from **Tolley's Employment Law Service**.

(1) Over-payment of wages or expenses

"On the other hand, recoverability has always been possible where payment was made under mistake of fact. There are three exceptions, however. For example, a person making a payment under mistake of fact may be estopped from pursuing recovery of the overpayment. For this to happen, three conditions must be satisfied. First, that the payer (the employer) in some way represented the payment was actually due to the employee. Secondly, the payee must show that this inaccurate information led him to believe he was entitled to the money. Thirdly, the payee must show that because of the mistake, he changed his position in

reliance upon the payment so as to make it inequitable for him to repay the money.”

6. Ms. Duncan submits that the Appellant has failed to show that she had changed her position in reliance upon the overpayment so as to make it inequitable for her to repay the money. She cites the case of **Citibank** again stating that:

“Indeed unless a payee has been misled into acting to his prejudice, what is there unconscionable in requiring him to repay an amount paid to him in error?”

Learned Counsel therefore submits that the Appellant has failed to prove that she has acted to her prejudice or altered her position to her disadvantage. **Citibank** also clarified that it was not sufficient for a Defendant to say he used the money to pay off some of his debts and his staff as that was expenditure which he had to meet in the normal course of events, and there was nothing unusual about making those payments. Ms. Duncan relies on the following passage from Goff and Jones on **The Law of Restitution** Second Edition at p. 546:

“The defence of change of position may be generous; but the decisions from the jurisdictions which accept it suggest that it is not easily established. The mere spending of the money is not in itself, sufficient to establish the defence. So, where the recipient has spent the money simply on ordinary living expenses, or in the payment of previous debts, the payer can recover. The recipient must, therefore, show a detrimental

change of position as a result of a particular payment. This is a heavy onus to discharge.”

Ms. Duncan submits that since the Appellant’s evidence is that she spent her money on paying her bills and on ordinary living expenses, that is not enough to establish the defence of change of position. Consequently the Respondent can recover the moneys inadvertently paid to her.

7. Ms. Duncan also submits that the Appellant cannot rely on the Proprietary Estoppel as a bar to the recovery of the overpayment as she not only failed to prove a change in her course of conduct, she also failed to provide evidence with respect to detriment. In the alternative, even if she could show that there was a change in her course of conduct which resulted to her detriment, it would still not be unconscionable for her to repay the moneys as clearly her detriment would be minimal. Ms. Duncan cites the following passages from ***Halsbury’s Laws of Canada - Estoppel VI, Proprietary Estoppel 4. Reliance(5) Materiality of Statement:***

“The change of course of position has to be of some significance in order to qualify as reliance necessary for an estoppel. A trivial reliance or change of course of conduct is not sufficient.”

Halsbury’s Laws of Canada - Estoppel VI. Proprietary Estoppel 5. Detriment(4) Substantive and Clear Detriment:

“There must be evidence of detriment. The burden here is the same as for reliance and will generally be on the Claimant. If there is no evidence with respect to detriment, the claim will fail.”

Halsbury’s Laws of Canada - Estoppel V. Promissory Estoppel 3. Elements of the Estoppel (5) Equitable Constraints para. 8:

“Even if there is reliance and detriment it is still possible that it is not inequitable to refuse any effect to the promise or assurance. To a certain extent this is simply another way of stating that there has not been any detriment (or prejudice) as a result of the reliance by the promise. So for example if the detriment is minimal, there is no need for the estoppel. Beyond such equitable constraints other equitable considerations - such as clean hands - can affect the availability of promissory estoppel.”

Ms. Duncan contends that since the Appellant knew or ought to have known that the additional \$896.52 monthly was a mistake by reason of her employment letter (which clearly stipulated her annual salary) and by her monthly pay slips, she is not before the court with clean hands. Consequently, she should not be allowed on the doctrine of estoppel. The Magistrate was therefore correct on basing her decision on this principle.

The decision was correct in point of law

8. Ms. Duncan argues that the Magistrate’s decision was correct in point of law, and she goes on to distinguish the two cases cited by Mr. Twist, ***Taegar v Belize***

Tourist Board 1998 Supreme Court of Belize and Action No. 238 of 1994 **The Attorney General of Belize v. Reginald Pitts**, from the case at bar. She points out that **Taegar's** case was concerned with the termination of the Plaintiff's contract by the Defendant, who contended that the contract should not be regarded as valid as it was not attested. The Plaintiff relied on estoppel and the court held, inter alia, that the Defendant was estopped from denying the validity of the contract and its terms relating to termination payments. The court found that Ms. Taegar acted to her detriment when she took up the Board's offer of employment, which was for a fixed term contract with no provisions as to extension. It found that there was evidence that she relied upon the Board's representatives that the contract was valid and she was paid pursuant to it. Having found that the Board's behavior was outrageous and unconscionable, the court found that estoppel must have enured.

In the case at bar, although the Appellant relied upon the overpayment by spending it each month, there is no evidence that the Appellant acted to her detriment and there is nothing to suggest that the Respondent's behavior is unconscionable.

9. In the case of **Reginald Pitts**, the Government of Belize paid the Defendant pension funds by mistake and sought the recovery of the overpayment. She cites Nathan J. in that matter:

“Therefore, I am faced with the collision of two legal principles. One: overpayments pursuant to an innocent mistake should be recoverable, Two, estoppel point that it would now be unconscionable to require repayment and the Attorney cannot now deny that the payments were made properly.”

Ms. Duncan submits that Nathan J said that unconscionability functions as a balancing item through which the Court can ensure that unconscionable conduct dictates the availability of equitable relief. He stated that the character of the representation, the reasonableness of it and the reliance placed upon it as well as the nature and extent of the detriment suffered by this reliance if the representation were resiled from, are factors which the Court must weigh in determining whether the representor has behaved unconscionably.

He therefore examined: (i) the character of the representation - the Government represented to Mr. Pitts for more than 11 years that he was entitled to receive pension; (ii) the reasonableness of the representee relying on the representation and the nature and extent of the detriment he might suffer if it were disavowed - it was reasonable for Mr. Pitts to assume that he was entitled to the pension so paid as prior to his retirement he knew that his salary was sourced by both the UK authorities and the Belize government; (iii) reliance placed on the Government’s representation - Mr. Pitts relied upon the moneys and which he spent for over a decade. Accordingly Nathan J found that the detriment Mr. Pitts would suffer if he were to be obliged to repay was manifest. His Lordship posed

the question *“Where would a man retired for the past 11 years, be expected to find a ready lump sum of \$71,000.00?”* Nathan J therefore found that the Government had acted unconscionably, estoppel was made out, and this barred the Government’s claim for restitution.

Ms. Duncan contends that the character of the representation by the Respondent in the case at bar lasted for approximately one year, and it was unreasonable for Ms. Thomas to assume that she was entitled to the overpayment. Ms. Thomas knew or ought to have known the amount of her monthly salary and there is no evidence to prove that the reliance placed upon the representation would cause or have caused her to suffer detriment. She further submits that the Government is seeking to recover \$12,694.03. Ms. Thomas is gainfully employed and she has the option of repaying that amount in monthly installments as ordered by the Magistrate.

Decision

10. I am grateful to both counsel for your submissions on this appeal. Having reviewed the submissions and the authorities on behalf of the Appellant and the Respondent, I find that the Appellant has failed to establish the grounds of appeal lodged that:

- i) The decision was based on a wrong principle and the Inferior Court viewing the circumstances reasonably could not have properly so decided;
- ii) The decision was erroneous in point of law.

Ms. Thomas knew she was to receive a salary from the Government of \$27,792.00 per annum as stated in the terms of her employment letter dated November 3rd, 2011. She also knew that the payment to her of \$896.52 was a one-time salary adjustment. Her only reason/explanation for spending the monies mistakenly paid to her by Government was that she had used it to pay bills. The law clearly states that such an explanation does not amount to a defence of change of position. Applying the criteria to determine “unconscionability” as set out by Nathan J in the **Reginald Pitts** case, i.e., (i) character of the representation – The Government’s representation to Ms. Thomas that she was to be paid an additional \$896.52 lasted approximately a year, so in my view it did not last for a very long period; (ii) the reasonableness of the representee relying on the representation – I find it was unconscionable for Ms. Thomas to just spend the additional monies as she knew what the amount of her salary was and; (iii) reliance placed on the Government’s representation – There is no evidence that Ms. Thomas acted to her detriment in spending the sum overpaid to her by Government. By her own evidence, she used the funds to pay her bills, and as this was expenditure which she had to pay in the normal course of events, it does not amount in law to a change of position. The Government is therefore not estopped from requesting that Ms. Thomas repay in full the funds paid to her in error.

For all the reasons so cogently and persuasively argued by Ms. Duncan on behalf of the Government in her legal submissions as set out above, I must state that I

agree with her submissions on the relevant law and facts in their entirety. I therefore affirm the decision of Magistrate Aretha Ford and I order that Ms. Thomas is to repay the sum of \$12,694.03 in monthly installments of \$200.00 per month to the Government of Belize until the entire amount is repaid in full. The Appeal is dismissed. Each party to bear their own costs.

Dated this 2nd day of December, 2016

Michelle Arana
Supreme Court Judge