

counsel Mr. Lionel Welch, was unable to call witnesses at trial. He had earlier failed to file any witness statement. None of his witnesses attended court. Mr. Welch informed the court that he had been in contact with his client only through the former wife, Ms. Alexandra Nicholson, and that the wife was out of the country and would return the following day. Mr. Welch did not ask for the hearing to be adjourned to the following day so that Ms. Nicholson would attend and testify. In any case, a witness statement from her had not been filed. Moreover, the question had arisen earlier whether Ms. Nicholson had a power of attorney from the claimant, to give instruction to an attorney to file these proceedings at all. I made direction order that a power of attorney appointing her a special attorney of Mr. Wendling for the purposes of prosecuting this claim be filed. That has not been done.

2. On the trial date, one of the witnesses for the defendants travelled to testify in court from the USA; he was a practising physician there. Another witness was from San Pedro, Belize; he was sickly, and needed to travel to the USA for medical attention soon after testifying. It was said that his return was uncertain.

3. The claim of Mr. Wendling, filed on 24.7.2008, was in regard to a sale of title or interest in land, Block 7, Parcel 4234 San Pedro Registration Section. It had a seafront measuring 55 feet. San Pedro, Belize, is a popular tourist destination. The claimant stated in the statement of claim that he bought the land from the first and second defendants, but had to wait for approval for sub-dividing of the land, by the Minister responsible, before transfer of title could be made to the claimant. He said that he registered a caution, which was fraudulently removed so that the first and second defendants were able to transfer title to the third and fourth defendants. The particulars of the fraud were not given. The claimant claimed the reliefs of: a declaration of fraud, cancellation of the registered joint title of the third and fourth defendants, exemplary damages and others.

4. On 3.8.2008, the claimant obtained an interim injunction order restraining the defendants from dealing with the property, until the determination of the claim or further order. The undertaking as to damages was a mere statement that Ms. Nicholson would pay in the event the defendants suffered loss wrongfully as the result of the interim injunction order.

5. Case management conference was held. Some of the documents disclosed were illegible. At pre-trial review I ordered that legible copies be served on the defendants and be filed. That has not been done by the date of trial, 7.4.2008. Witness statements for the defendants had been filed; none had been filed for the claimant.

6. At the trial Mr. Welch asked for adjournment. I refused to grant it. He then asked that an affidavit filed in support of the application for the interim injunction order be used as evidence. I refused that too and dismissed the claim. It was my view, based on the many non-compliance with the Rules and court orders, that the claimant was not pursuing his claim seriously, and that his points of defence were too general to cause me to overlook his several non-compliances. There also seems to be, at this stage, a strong defence of limitation of time to bring the claim.

7. Last Friday, 18.7.2008, the claimant by a new attorney, learned counsel Mr. A. Saldivar, presented this application for an order to set aside the order of 7.4.2008, dismissing the claim. The reason given was that Ms. Nicholson did not attend court because she had travelled

to the USA with a minor daughter who had been raped. There was no explanation as to why her witness statement or the claimant's had not been filed, and why the claimant, Mr. Wendling, could never give his contact address to his attorney. It was also curious that even his agent Ms. Nicholson, was said not to know the claimant's address, she had to wait to be contacted by the claimant.

8. It is pretty obvious now that this is a case in which the defendants could have applied for security for their costs to be provided before the claim could be proceeded with. It is apparent that should they successfully defend the claim, they will not be able to recover their costs from such an elusive claimant.

9. For the above reasons, the application of the claimant, dated 22.4.2008, for an order setting aside the order of this court made on 7.4.2008, is dismissed. The claimant is to pay costs of all the defendants in this application in the sum of \$1,500.00 to each defendant. This order for costs is in addition to the order for costs made on 7.4.2008.

10. Delivered this Tuesday the 22nd Day of July, 2008.
At the Supreme Court
Belize City

Sam Lungole Awich
Judge