

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF JUSTICE

CLAIM NO. 547 OF 2023

BETWEEN:

JUAN CARLOS PEREZ

Claimant

and

SOLID ROCK BAPTIST CHURCH

Defendant

Appearances:

Mr. Orson J. Elrington for the Claimant  
Mr. Allister Jenkins and Ms. Kristy Lopez for the Defendant

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2023: December 13;

2024: May 28.  
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## JUDGMENT

### APPLICATION FOR STAY OF PROCEEDINGS

[1] **Nabie J.:** I have considered the submissions of the parties and I find favour with the defendant's position. Accordingly, a stay of these proceedings is granted.

### BACKGROUND

[2] By fixed date claim form filed on 30<sup>th</sup> August 2023 and supported by the first affidavit of the claimant, the following reliefs are inter alia sought:

- (i) a declaration that the claimant is entitled to possession of the property located in Sarteneja Village, Corozal District, and more particularly

described as Sarteneja Block 3 Parcel 822, issued in the name of Juan Carlos Perez.

- (ii) An injunction prohibiting the defendant whether by themselves, their servants or agents, or others, however, from being upon or entering upon the plaintiff's property.
- (iii) further or alternatively, an Order that the defendant pay the claimant damages for trespass and for damages done on its property. Such damages are to be assessed.
- (iv) interest on damages found due to the claimant pursuant to **sections 166 and 167** of the **Supreme Court of Judicature Act**.

**[3]** The claimant deposed that in 1997, he was shown a property by Enrique Salazar Jr who is a pastor and director of the defendant. Mr. Salazar produced title to the property by way of Conveyance No. 877/97 dated 7<sup>th</sup> April 1997, recorded in Deeds Book Volume 10 of 1997 at Folios 777 to 782 at the General Registry in fee simple and free from encumbrances (*"the property"*). The property was conveyed to the claimant by Mr. Salazar on 30<sup>th</sup> December 1997. In 2017, the claimant applied for the first registration of the property.

**[4]** The claimant further stated that in or around July 2019, he had sent his workers to clean the land he thought was the property and they were told that the land was owned by someone else. The claimant thereafter retained a surveyor to establish the correct location of the property. The surveyor determined that the actual property purchased had in fact a structure on it. This is the defendant's church and school.

**[5]** It is the claimant's evidence that he notified the defendant to vacate the property. Mr. Salazar had accepted that they had built in error and requested that the claimant donate the property to them. The claimant refused this suggestion and thereafter the defendant offered to purchase the property at a price of **Ten Thousand Dollars**

**(\$10,000.00)**. The claimant has refused this offer and has made repeated requests for the property to be vacated, however, the defendant remains in occupation.

- [6] The defendant filed the first affidavit of Mr. Salazar on 12<sup>th</sup> October 2023 in response to the claim. Mr. Salazar admitted that the property is registered to the claimant. The defendant has not vacated the property as it has been advised that pursuant to **section 138** of the **Registered Land Act** as a result of its continuous uninterrupted occupation for over twenty (20) years, it is entitled to the property by prescription.
- [7] The defendant occupies parcels 822 (*the property*) and 823 in its operations of a church and school. Mr. Salazar further deposed that the conveyance to the claimant was done in 2002 and at the time, it was believed that the lot identified was lot 822. After the survey it was realised that the lot that was identified before the conveyance was in fact lot 821. Lot 822 was in fact conveyed to the claimant but is now occupied by the defendant. The defendant began construction on the property of a church in 2002 and another building in 2003 and the claimant has been aware of all of this. Mr. Salazar goes on to inform about the various parcels in the area of the disputed property and offers for sale of the parcels which are not relevant to the present application.
- [8] By notice of application dated 9<sup>th</sup> November 2023, the defendant is seeking a stay of these proceedings on the ground that the claimant has not satisfied the costs order made against him in Claim No. 174 of 2020 (*“the 2020 matter”*) in relation to a consent order that struck out and discontinued parts of the 2020 matter. This application was supported by the second affidavit of Enrique Salazar. The 2020 matter seeks in essence, the same relief in the present matter, namely, possession of the property and damages for trespass. The 2020 matter was also stayed pending the payment of the costs order. Enrique Salazar and Rosina Salazar were the named defendants in the 2020 matter.

## DEFENDANT'S ARGUMENTS

[9] The defendant's case is simply that the claimant has brought earlier proceedings namely, the 2020 matter for possession of the property. Further, by virtue of a consent order the parties agreed to have parts of the 2020 matter struck out and thereby in effect a partial discontinuance of the claim. The claimant has yet to pay the costs awarded against him in the 2020 matter. The defendant pointed out that rather than adding the defendant to the 2020 matter, the claimant has not paid the costs and has filed fresh proceedings for substantially the same relief, vacant possession of the property. The defendant urged the court that situations that could lead to an abuse of the process should not be encouraged. The defendant highlighted authorities on this point. It was submitted that it did not matter that the defendants were different legal entities. The defendant relies on the case of **Lenaghan International Transport Limited v Lombard Ireland Ltd & Ors**<sup>1</sup>, where the court referred to the case of **M'Cabe (Pauper) v. Bank of Ireland**<sup>2</sup> where it was established that where a plaintiff fails in one action and brings a second action, the second action must be stayed until the costs of the first action are paid. The court in **Lenaghan** also referred to the case of **Martin v. Earl Beauchamp**<sup>3</sup>. In **Beauchamp**, there were subsequent proceedings for substantially the same cause of action, where the plaintiff in the second matter was suing as a personal representative. It was asserted that the discretionary power to grant a stay could be exercised where "*a plaintiff, having failed in one action, commences a second action for the same matter, the second action should be stayed until the costs of the first action have been paid.*" It was further contemplated in **Beauchamp** that the discretion may be exercised despite a technical difference in the capacity in which the subsequent action is brought.

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<sup>1</sup> [2017] IEHC 298

<sup>2</sup> (1889) 14 App. Cas. 413

<sup>3</sup> (1883) 25 Ch. D 12

[10] The defendant submitted that the court has the inherent jurisdiction quite apart from the powers under **Part 26** of the **Civil Procedure Rules (CPR)** to grant a stay to avoid an abuse of process. It was submitted that a stay of these proceedings would further the overriding objective.

### **CLAIMANT'S ARGUMENTS**

[11] The claimant agreed on the importance of the overriding objective. He argued that the court must take notice of the fact that there were two different defendants in the instant matter and in the 2020 matter. Further that all the authorities relied on by the defendant had one common thread, the defendants in the two proceedings were the same legal entity/person. Counsel submitted that the defendant in the 2020 matter is trying to insert himself in the instant matter, and that is an abuse of process. Counsel went on to say that what is materially important is that the overriding objective and the court's inherent jurisdiction must protect against an abuse of process and in order to do that the stay must be denied.

[12] The defendant in this matter, Solid Rock Baptist Church was not a party to the 2020 matter, therefore they are different legal entities. It was pointed out that the parties in the authorities cited by the defendant were the same in all the proceedings, whereas in this matter the defendants in the 2020 matter was Enrique Salazar and Rosina Salazar.

### **LAW AND DISCUSSION**

[13] **CPR** provides that a court may stay the whole or part of any proceedings generally or until a specified date or event<sup>4</sup>. It is further provided that where a court has struck out a claimant's statement of case and is ordered to pay costs to the defendant but before those costs are paid, the claimant starts a similar claim against the same defendant based on substantially the same facts, the court may on an application of

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<sup>4</sup> CPR 26.1(2)(e)

the defendant stay the subsequent claim until the costs of the first claim has been paid<sup>5</sup>.

[14] Where a claimant has discontinued a claim after the defendant against whom he discontinued the claim filed a defence<sup>6</sup> and the claimant has made a subsequent claim against the same defendant<sup>7</sup>, arising out of the same facts which are the same or substantially the same as those relating to the discontinued claim and the claimant has not paid the defendant's costs of the discontinued claim<sup>8</sup>, the court may stay the subsequent claim until such time as the discontinued proceedings are paid.

[15] Quite apart from the powers under the **CPR**, the court has its inherent jurisdiction to stay proceedings. This jurisdiction is discretionary and may be used in appropriate circumstances with conditions. Under the inherent jurisdiction, the court is entitled to prevent an abuse of process and to ensure fairness in the litigation process. Litigants are not to be encouraged to ignore cost implications in litigation. In this matter, it was argued that the claimant has filed successive matters seeking essentially the same result. This must be inspected in closer detail.

[16] In **De'Mars Stone Company Limited v. Bella Vista Development Limited and Lopez Equipment Company Limited**<sup>9</sup> is instructive on this point. Shoman J. (as she then was) commented as follows at paras 10-12:

*“10. There is no disagreement about 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 a trial or hearing of the claim taking*

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<sup>5</sup> CPR 26.3(2)

<sup>6</sup> CPR37.1 (a)

<sup>7</sup> CPR 37.1(b) (i)

<sup>8</sup> CPR 37.1 (b)(iii)

<sup>9</sup> Claim No. 691 of 2014 (Supreme Court of Belize)

*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;**”.*

[17] In support of this application, the defendant has filed the second affidavit of Enrique Salazar Jr. on 9<sup>th</sup> November 2023. Mr. Salazar as aforesaid, is the defendant in the 2020 matter for recovery of the same parcel of land as in this matter filed by the same claimant and this is clear from the contents of the said affidavit as aforesaid and the reliefs sought in the fixed date claim form. The fixed date claim form and the affidavit of the claimant are exhibited to the said affidavit. The contents of paragraphs 3 and 11 of the claimant’s affidavit are as follows:

“3. *That I am the owner of all that piece of (sic) parcel or land being Parcel 822 Block 3 Registration Section Sarteneja (hereinafter referred to as “the property”). A copy of the said Land Certificate dated 17<sup>th</sup> day of August 2018 is now shown to me and exhibited hereto marked “JP#1”.*

.....

11. *That in the premise, I seek the assistance of the Court in obtaining an Order for possession and for damages for trespass by the Defendant.”*

The relief sought inter alia in the “2020 matter” are:

- (i) *Possession of all that piece or parcel of land*
- (i) *Damages for trespass*

## CONCLUSION

- [18] In considering the facts, it cannot be disputed that the claimant is seeking substantially the same relief, possession of the property in this matter and in the 2020 matter. The filing of successive matters seeking the same relief amounts to an abuse of process. Before me is an application by the defendant for a stay because the claimant had not paid the costs order from the 2020 matter. This costs order was part of an order made by consent on a striking out application of part of the 2020 matter which resulted in a partial discontinuance of that claim. In fact, the 2020 matter is stayed pending the payment of the said costs order. While the defendants are different in the two claims, the court is bound to take notice that Mr. Salazar is a pastor and an officer of the defendant, the Solid Rock Baptist Church. In fact in the 2020 matter it is Mr. Salazar who sold a property to the claimant which has now been identified as the property upon which the defendant has built a church and a school. In the 2020 matter, Mr. Salazar's wife was by consent removed as a defendant. In the present matter the claimant seeks vacant possession of the property upon which the church and the school were built some time ago from the defendant. The facts and defendants in the two claims are in my view inextricably bound.
- [19] The court is duty-bound to discourage situations which can give rise to an abuse of its process. In this scenario, the claimant had the option of amending the 2020 matter to include the defendant in this claim, the Solid Rock Baptist Church but he chose not to do that rather he chose to file fresh proceedings for the same relief. The claimant has found himself in a predicament with regard to the purchase of the property, but there are consequences to litigation. I am of the view that the claimant ought not to be allowed to continue this claim without the payment of the costs order in the 2020 matter. I will therefore grant the application for the stay under my inherent jurisdiction<sup>10</sup>.

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<sup>10</sup> Halsbury's Laws of England Vol. 11 (2020) paras 1-496



## DISPOSITION

**[20]** It is hereby ordered as follows:

1. All further proceedings in this Claim be stayed until the satisfaction of the order for costs made on the 7<sup>th</sup> day of December 2021 in High Court Claim No. 174 of 2020, Juan Carlos Perez v. Enrique Salazar.
2. Costs are awarded to the defendant.

**Nadine Nabie**  
Judge