

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. 115 OF 2023

BETWEEN:

ROLANDO ESPAT

Claimant

AND

DARYL JONES

Defendant

Appearances:

Mr. Lynden Jones for the Claimant

Mr. Bryan Neal for the Defendant

2024: May 29

June 10

DECISION

Practice & Procedure – Summary judgment – Sale & purchase agreement – Rule 15 (2) (b) of the Civil Procedure Rules (CPR) 2005

- [1] **Mansoor J:** This is an application by the claimant for summary judgment. The claimant is seeking a declaration that the agreement for the sale and purchase of real property is null and void and an award of \$535,500.00 based on rent income derived by the defendant from 1 April 2020. The defendant opposes the application.
- [2] The claimant's action is for breach of an agreement for the sale of two parcels of land in Ambergris Caye in San Pedro Town. The purchase consideration of \$250,000.00 was to be settled in five years, by 1 April 2020. The payments were to be made at the rate of \$2,000.00 per month and a balloon payment of 185,221.58 as the last installment on 1 April 2020.

- [3] The defendant settled all monthly payments at the rate of \$2,000.00 until the final balloon installment became due. The claimant states that the defendant failed to pay the final installment of the purchase consideration in terms of the sale and purchase agreement, and thereby, he was in breach of contract.
- [4] The claimant states that on 13 July 2021, his lawyer gave the defendant notice of 30 days in terms of section 3 of the agreement to rectify the breach. However, the outstanding sum was not settled. The claimant says that the defendant is collecting income by renting out 20 rooms on the property and because of the breach he is entitled to recover those earnings.
- [5] The defendant filed an affidavit and tendered another affidavit through Robert S Hamilton in response to the claimant's application. The defendant deposed that an essential term of the agreement was to provide a copy of the title. He states that he paid \$120,000.00 in the belief that the claimant is the owner of the lands and that he was to pay the balance outstanding on their transfer. However, he states, the claimant has not proved his title to the lands.
- [6] The defendant states that an examination at the Lands Department revealed that parcel 10848 was not listed under that number but was shown under parcel 11026. The search also showed, it is deposed, that the parcel was owned by the government of Belize and leased to the San Pedro Town Council. The affidavit refers to a meeting with the claimant's attorney to resolve the dispute and to written communications on the matter.
- [7] Mr. Hamilton's affidavit supports the contents of the defendant's affidavit. He said that the sale and purchase agreement was hurriedly executed to accommodate the claimant who wanted to leave San Pedro without delay. The affidavit states that it was later learnt that one of the land parcels did not belong to the claimant. The affidavit states that although the claimant was asked to produce title to the land to continue payment, this was not done.
- [8] Both parties made submissions at the hearing and filed written submissions on 3 June 2024. Counsel for the defendant submitted that the dispute between the parties could be settled if the claimant produced his title to the property, in which event his client would settle the balance of the purchase consideration.
- [9] The claimant's complaint is that a substantial part of the agreed payment was not settled on the given date or even thereafter when demanded by letter dated 13 July 2021 to rectify the default within 30 days. The claimant argues that the agreement is null and void because of the defendant's breach of contract through default in payment and failure to rectify the defect when called upon to do so. A further contention is that the defendant did not call for the title deeds at the time of executing the agreement.

- [10] The pleadings and the clauses of the sale and purchase agreement relied upon by the parties require consideration in deciding whether the claimant's application bears merit. The pleadings and the affidavits filed by the parties show material disagreement on the facts.
- [11] Clause 3 of the agreement deals with the purchaser's default. In the event of a default by the purchaser, the clause allows the seller, *inter alia*, to serve a notice to declare the purchaser in default and to declare the agreement null and void at the termination of a period of 30 days if the default is not remedied within the given period and, all monies paid to the seller would be forfeited and belong to the seller as liquidated damages. The clause provides that time is of the essence.
- [12] A contention in support of the application is that the defendant has not provided an explanation for failing to remedy the breach over a period of 19 months. The claimant submits that the agreement was prepared by the defendant, a representation that is not denied, and, therefore, the defendant was aware of his obligation to settle the purchase consideration on time.
- [13] Paragraph 8 of the agreement provides that the seller agrees to provide to the purchaser copies of all relevant documents related to the purchase. The defendant relies on this clause in saying that there was an obligation on the claimant to have provided proof of his title to the lands upon signing the agreement. Counsel for the defendant submits that if the claimant's title can be disclosed, the balance outstanding would be settled.
- [14] The claimant cited the decisions in ***Yambou Development Company Limited v Sally Helena Kauser (St. Vincent and the Grenadines)***¹, ***Saunders v Anglia Building Society (formerly known as Northampton Town & County Building Society)***² and ***Lloyd Bent v Maurice Fong***³. In the *Yambou Development Company* case, the claimant filed action seeking specific performance. In the appeal before the Privy Council, the evidence which led to findings in the lower courts were considered. In the second case, *Saunders v Anglia Building Society*, the House of Lords discussed the principle of *non est factum*, which is not in issue in this proceeding. In *Bent v Fong*, the Court of Appeal of Jamaica dealt with an appeal from an order refusing an application for interlocutory injunction. These cases are not helpful in dealing with the question of whether summary judgment in the circumstances of the case is appropriate.
- [15] Rule 15.2 of the Civil Procedure Rules (CPR) 2005 states that the court may give summary judgment on the claim or on a particular issue if it considers that (a) the claimant has no real prospect of succeeding on the claim or the issue or (b) the defendant has no real prospect of successfully defending the claim or the issue. Rule 24.2 of the English CPR is broadly similar in language to rule 15.2 of our CPR.

¹ [2000] UKPC 40

² [1970] UKHL 5

³ [1995] 32 J.L.R 67, 69 F

[16] In the English Court of Appeal decision of **Swain v Hilman**, Lord Woolf MR stated:

“Under r 24.2, the court now has a very salutary power, both to be exercised in a claimant’s favour or, where appropriate, in a defendant’s favour. It enables the court to dispose summarily of both claims or defences which have no real prospect of being successful. The words ‘no real prospect of succeeding’ do not need any amplification, they speak for themselves. The word ‘real’ distinguishes fanciful prospects of success or, as Mr Bidder QC submits, they direct the court to the need to see whether there is a ‘realistic’ as opposed to a ‘fanciful’ prospect of success”.⁴

[17] The usefulness of the court’s power to give summary judgment in a suitable case was explained in this way in the same case by the English Court of Appeal:

“It is important that a judge in appropriate cases should make use of the powers contained in Pt 24. In doing so he or she gives effect to the overriding objectives contained in Pt 1. It saves expense; it achieves expedition; it avoids the court’s resources being used up on cases where this serves no purpose, and I would add, generally, that it is in the interests of justice. If a claimant has a case which is bound to fail, then it is in the claimant’s interests to know as soon as possible that that is the position. Likewise, if a claim is bound to succeed, a claimant should know that as soon as possible”.⁵

[18] The defendant has filed a defence and a counterclaim in response to the claim form. The defence is that full payment was not made as the claimant did not show proof of ownership of the parcels of land. The defendant seeks specific performance of the agreement or, in the alternative, an order for restitution of monies paid and damages for breach of contract.

[19] The claimant has not persuaded the court that the defendant has no prospects of defending the case or that his prospects of doing so are fanciful. Calling upon a seller to disclose title to property prior to full settlement does not seem an unreasonable request based on the matters that the parties have placed before court.

[20] The material before the court is insufficient to show that the sale and purchase agreement is not enforceable or that it is null and void for the reasons stated by the claimant. It is imperative to hear the witnesses before reaching any findings in adjudging the issues between the parties. The claimant and the defendant will have the opportunity to disclose to court all relevant material giving rise to the controversy. Therefore, the declaration that the claimant asks cannot be made at this point.

[21] In addition to seeking declaratory relief, the claimant seeks to recover rents earned by the defendant from the lands that are the subject of the sale and purchase contract. The claimant seeks to recover damages in the sum of \$535,500.00 based on the belief that the defendant could have earned \$8.00 per hour as rent income

⁴ [2001] 1 All ER 91 at 92

⁵ At 94

from the properties. The defendant denies those claims. These assertions must be proved by evidence at the trial. On the reasoning given above, an award of damages computed on alleged rent income cannot be made based on the statement of claim or the claimant's affidavits which are denied by the defendant.

[22] On the material before the court, the case must proceed to trial.

ORDER

1. The application dated 24 January 2024 is struck off.
2. The claimant is to pay the defendant costs in the sum of \$500.00.
3. The case is to be fixed for case management conference on 20 June 2024.

M. Javed Mansoor

Judge