IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM NO. CV 702 OF 2023

BETWEEN:

JASON RICHARD ARNOLD

Claimant/Respondent

and

STEPHANIE ARNOLD

Defendant/Applicant

Appearances:

Mr. Ian Gray for the Claimant/Respondent

Ms. Karen Munnings for the Defendant/Applicant

2024: June 11

July 25

Catchwords:

STRIKE OUT CLAIM

JUDGMENT

[1] **NABIE, J**.: Before this court is an application by the defendant to strike out a claim for breach of an oral contract against the claimant.

[2] I have considered the submissions of both parties. For the reasons set out below, I find the claim to be an abuse of process and the claim is struck out in its entirety

Background

[3] The parties are husband and wife and have been separated for the past two years and are currently going through divorce proceedings distinct from these proceedings before me.

[4] The claimant filed his claim form and statement of case on November 13, 2023. In the claim form, the claimant alleges three breaches of contract by the defendant relating to an oral agreement concerning the payment of bank loans, which were undertaken by both parties to pay for their homes. The claimant contends the defendant failed to pay the agreed portion of 50% of the bank loans as was agreed to orally by the parties. As a consequence, the claimant states that he undertook three separate loans in order to pay the mortgages for the family homes.

[5] The claimant seeks relief of the outstanding sum of BZ$47,205.05, amounting to one-half of the remaining balance on the loans, plus interest and a refund of one-half of the total amount (BZ$467,385.25) being BZ$233,692.62 as reimbursement of the monies owed to the claimant. Alternatively, the claimant also seeks, damages for breach of contract, special damages, interest at the statutory rate and costs.

[6] In her defence dated December 18, 2023, Ms. Stephanie Arnold ("hereinafter called the defendant/applicant") refuted the claimant's allegations, contending that no such oral agreement was made between the parties. Additionally, the defendant/applicant asserts that the additional loans undertaken by the claimant/ respondent for the alleged repayment of family debts were taken after the claimant/respondent had left the matrimonial home, and these funds were not used for the benefit of the defendant/applicant or the parties' children.

[7] The claimant/respondent filed a Reply to Defence dated December 29, 2023, refuting the defence and reiterating the gravamen of the claim and statement of claim.

[8] On May 7, 2024, the defendant/applicant filed an application supported by affidavit evidence to wholly strike out the claimant's claim pursuant to CPR 26.3(1) (b) and (c) of the Supreme Court (Civil Procedure) Rules 2005 (Hereinafter the "CPR") and the inherent jurisdiction of the Court. The application was founded on three grounds. First, the defendant/applicant argued that the claim is an abuse of the court's process and discloses no reasonable ground for bringing or defending the claim. Second, the alleged oral agreement was not made in the prescribed manner for nuptial agreements, and therefore cannot be legally binding on the parties. Third, the defendant/applicant also argued that it is in the interest of justice, and in keeping with the overriding objectives of the CPR that the claim be struck out against the defendant. The defendant/applicant also sought orders inter alia for cost to be paid by the claimant to the defendant/applicant, and other reliefs as the court deems just.

The Law

[9] The Court's discretionary power to strike out is outlined in **CPR 26.3** which reads as follows:

> "26.3 (1) In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court –
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> (a) that there has been a failure to comply with a Rule or practice direction or with an order or direction given by the court in the proceedings;
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> **(b) that the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;**
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> **(c) that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim; or**
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> (d) that the statement of case or the part to be struck out is prolix or does not comply with the requirements of Parts 8 or 10." (Emphasis Mine)

[10] Additionally, the overriding objective of the CPR is a relevant consideration:

> "1.1 (1) The overriding objective of these Rules is to enable the court to deal with cases justly.
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> (2) Dealing justly with the case includes -
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> (a) ensuring, so far as is practicable, that the parties are on an equal footing;
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> (b) saving expense;
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> (c) dealing with the case in ways which are proportionate to -
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> (i) the amount of money involved;
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> (ii) the importance of the case;
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> (iii) the complexity of the issues; and
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> (iv) the financial position of each party;
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> (d) ensuring that the case is dealt with expeditiously; and
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> (e) allotting to the case an appropriate share of the court's resources, while taking into account the need to allot resources to other cases."

Issues

[11] Considering the facts before me and CPR 26.3(1)(b) and (c) as well as the overriding objective of the CPR, the relevant issues before the Court are distilled as follows:

1. Does the claim disclose any reasonable grounds for bringing the claim against the defendant?

2. Is the claim an abuse of process or is likely to obstruct the just disposal of the proceedings that should be struck out in its entirety?

Issue 1 - Does the Claim disclose any reasonable grounds for bringing the claim against the Defendant?

[12] First, I will consider what is meant by 'reasonable grounds for bringing the claim' and whether the claim before me can be considered as such.

[13] This was explained in the decision of **Citco Global NV v Y2K Finance Inc**[1] which was positively cited by Alexander J in **Claudia Esmeralda Membrano v Daren Dale Swasey** Claim No. CV153 of 2023. It can be said that a claim brings "no reasonable grounds" where:

> "…the claim sets out no facts indicating what the claim is about or it is incoherent and makes no sense or if the facts it states, even if true, do not disclose a legally recognizable claim."

[14] On this point, I am not convinced that the claimant discloses any reasonable grounds for bringing the claim against the defendant. In my view, the claimant has not provided any cogent evidence to demonstrate the existence of the purported oral contract between the parties, other than making bare assertions of its existence.

[15] The defendant/applicant, in her submissions for the application to strike out the claim, argued that there was no intention to create legal relations between the parties of the purported agreement, and, in any event the purported agreement was not legally binding because it was not made in the prescribed manner. This point is supported by reference to the decision of **Santos v Santos**, Claim No. 150 of 2016, which approved the following excerpt from the Learned Authors of **the Halsbury's Laws of England**[2]:

> "... One of the most usual forms of agreement which does not constitute a contract is the arrangements which are made between husband and wife. It is quite common, and it is the natural and inevitable result of the relationship of husband and wife, that the two spouses should make arrangements between themselves. Those agreements, or many of them, do not result in contracts at all, and they do not result in contracts even though there may be what as between other parties would constitute

[1] [2008] BVIHCV2008/0146.
[2] Halsbury's Laws of England, vol 9(1) (Reissue) 'Contract' (LexisNexis Butterworths) para 724.

consideration for the agreement. Prima facie, such agreements are outside the realms of the contract altogether, because the parties never intended that they should be sued upon, but is possible to show that this is a necessary implication from the circumstances of the parties.

On the other hand, the following are examples of situations where the courts have implied from circumstances an intention by the parties to enter a binding contract: a separation agreement made between spouses when they agree to live apart or after separation (but not such an agreement made during cohabitation); a promise before marriage by a man to his future wife to leave her a house if she married him, an agreement where the husband became the wife's tenant; and mutual wills."

[16] Bearing in mind the above, the onus is on the claimant to show, first, that there is a valid oral agreement, and secondly, that there was an intention to create legal relations between the parties in the purported oral agreement.

[17] This intention would have been clearly demonstrated if the purported agreement was made meeting the requirements typically seen in nuptial agreements. I refer to an excerpt from the learned authors of **Commonwealth Caribbean Family Law: Husband Wife and Cohabitant**,[3] which is instructive:

> "1) The agreement must be in writing and signed by the parties and witnessed by an attorney-at-law;
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> 2) There must be included in the agreement a statement to the effect that the signatory parties understand the nature and effect of the agreement consequent on the attorney explaining to the parties the effect and financial consequences of the agreement; and
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> 3) The parties must have had access to and received independent legal advice."

[18] I now refer to the following extract on domestic agreements from Cheshire, Fifoot and Furmston's Law of Contracts[4]

> "**Agreements between husband and wife.**
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> In the course of family life many agreements are made, which could never be supposed to be the subject of litigation. If a husband arranges to make

[3] Karen Nunez-Tesheira, Commonwealth Caribbean Family Law: Husband Wife and Cohabitant (Routledge 2016) 318.
[4] Michael Furmston, Cheshire, Fifoot and Furmston's Law of Contract, 16th edition

a monthly allowance to his wife for her personal enjoyment, neither would normally be taken to contemplate legal relations. On the other hand, the relation of husband and wife by no means precludes the formation of a contract, and the context may indicate a clear intention on either side to be bound. Whether any given agreement between husband and wife falls on the one side of the borderline or the other is not always easy to determine. Two contrasting cases may illustrate the position.

> In *Merit v Merit*
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> The husband left the matrimonial home, which was in the joint names of husband and wife and subject to a building society mortgage, to live with another woman. The husband and wife met and had a discussion in the husband's car during which the husband agreed to pay the wife £40 a month out of which she must pay the outstanding mortgage payments on the house. The wife refused to leave the car until the husband recorded the agreement in writing and the husband wrote and signed a piece of paper which stated 'in consideration of the fact that you will pay all charges in connection with the house …. Until such time as the mortgage repayments has been completed I will agree to transfer the property in to your sole ownership'. After the wife had paid off the mortgage the husband refused to transfer the house to her.

It was held by the Court of Appeal that the parties had intended to affect their legal relations and that the action for breach of contract could be sustained.

> In *Balfour v Balfour*
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> The defendant was a civil servant stationed in Ceylon. His wife alleged that, while they were both in England on leave and when it had become clear that she could not again accompany him abroad because of her health, he had promised to pay her £30 a month as maintenance during the time that they were thus forced to live apart.

The Court of Appeal held that no legal relations had been contemplated and that the wife's action must fail.

> Atkin LJ had no doubt that, while consideration was present, the evidence showed that the parties had not designed a binding contract:
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> It is necessary to remember that there are agreements between parties which do not result in contracts within the meaning of that term in our law. The ordinary example is where two parties agree to take a walk together or where there is an offer and an acceptance of hospitality. Nobody would suggest in ordinary circumstances that these agreements result in what we know as a

> contract, and one of the most usual forms of agreements which does not constitute a contract appears to me to be the arrangements which are made between husband and wife…To my mind those arrangements, or many of them, do not result in contracts at all… even though there may be what as between other parties would constitute consideration…They are not contracts because the parties did not intend that they should be attended by legal consequences.

In *Pettitt v Pettitt*, several members of the House of Lords, though accepting the principle enunciated in *Balfour v Balfour,* thought the decision on the facts very close to the line. It was also observed that though many agreements between husband and wife are not intended to be legally binding, performance of such agreements may well give rise to legal consequences.

> So Lord Diplock said:
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> Many of the ordinary domestic arrangements between man and wife do not possess the legal characteristics of a contract. So long as they are executory they do not give rise to any chose in action, for neither party intended that non-performance of their mutual promises should be the subject of sanction in any court (see *Balfour v Balfour).* But this is relevant to non-performance only. If spouses do perform their mutual promises the fact that they could not have been compelled to do so while the promises were executory cannot deprive the acts done by them of all legal consequences upon proprietary rights; for these are within the field of the law of property rather than of the law of contract. It would, in my view, be erroneous to extend the presumption in *Balfour v Balfour* that mutual promises between man and wife in relation to their domestic arrangements are prima facie not intended by either to be legally enforceable to a presumption of a common intention of both spouses that *no* legal consequences should flow from acts done by them in performance of mutual promises with respect to the acquisition, improvement or addition to real or personal property…for this would be to intend what is impossible in law."

[19] Considering the requirements above, from the evidence and submissions before me, it is clear that the purported oral agreement does not meet the requirements for a binding nuptial agreement. I also note that no legal authorities were presented by the claimant/respondent in his submissions to in reply to the application to strike out the claim, to counter the defendant/applicant's argument on the point of the showing that there was an intention to create legal relations, or the formalities of the

purported agreement. In the absence of cogent evidence to demonstrate the existence of the oral agreement, I find the claimant/ respondent has not disclosed reasonable grounds for bringing the claim.

Issue 2 - Is the Claim an abuse of process or is likely to obstruct the just disposal of the proceedings that should be struck out in its entirety?

[20] I turn now to the second issue before me, that is, whether these proceedings are an abuse of process and whether the claim should be struck out in its entirety.

[21] Concerning this issue, at the time of commencing these proceedings, the parties were separated and in the divorce process. The claimant/respondent in his submissions stated that the Decree Absolute was issued in May, 2024, while the defendant/applicant's submissions state that the Decree Absolute was issued in January 2024. I note that the exact date and a copy of the decree Absolute have not been provided to the Court by either party. I am of the view that, in any event, if the claimant/respondent had concerns about paying shared family debts or payment of the mortgage for matrimonial home, the more appropriate time for the claimant/respondent to raise any concerns about family maintenance or the division of interest(s) in the matrimonial property was after the petition for divorce was presented.

[22] I now refer to section 147(1) of the **Senior Courts Act** which speaks to the appropriate time such applications should be presented to the Court:

> "147.–(1) When a petition for divorce or nullity of marriage has been presented, proceedings under section 161 or section 162(3), which respectively, confer power on the Court to order the provision of alimony and the securing of money for the benefit of the children, may, subject to and in accordance with rules of court, be commenced at any time after the presentation of the petition, Provided that no order under the said section or under the said sub-section, other than an interim order for the payment of alimony under section 161, shall be made unless and until a decree nisi has been pronounced, and no such order, save in so far as it relates to the preparation, execution or approval of a deed or instrument and no settlement made in pursuance of any such order, shall take effect unless and until the decree is made absolute."

[23] Also instructive is the recent decision of **Claudia Esmeralda Membrano v Daren Dale Swasey.**[5] In this decision, Alexander J considered whether to strike out a claim which concerned a property settlement claim. Sharing many similarities with the present case before me, I echo the words of Alexander J at paragraph 7 in explaining her basis for striking out the claim:

> "Having not dealt with the property settlement at the right stage, and with an ill-defined claim…the claim is an abuse of process and discloses no reasonable grounds for bringing or defending it."

[24] Chief Justice Conteh (as he then was) opined in **Belize Telemedia Ltd. and Dean Boyce v Magistrate Ed Usher and The Attorney General**[6] at paragraphs 15-17 and 19 as follows:

> "15. An objective of litigation is the resolution of disputes by the Courts through trial and admissible evidence. Rules of Court control the process. These provide for pre-trial and the trial itself. The rules therefore provide that where a party advances a groundless claim or defence, or no defence, it would be pointless and wasteful to put the particular case through such processes, since the outcome is a foregone conclusion.
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> 16. An appropriate response in such a case is to move to strike out the groundless claim or defence at the outset.
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> 17. Part 26 on the powers of the Court at case management contains provisions for just such an eventuality. The case management powers conferred upon the Court are meant to ensure the orderly and proper disposal of cases. These in my view, are central to the efficient administration of civil justice in consonance with the overriding objective of the Supreme Court Rules to deal with cases justly as provided in Part 1.1 and Part 25 on the objective of case management.
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> ……
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> 19.The provision of the Rules in art 26.3(1)(c) which enables the Court to strikeout a claim because it discloses no reasonable grounds for bringing or defending the claim is undoubtedly a salutary weapon in the Court's armory, particularly at the case management stage. It is intended to save the time and resources of both the Court itself and the parties: why devote the panoply of the Court's time and resources on a claim such as to go

[5] **Claim No. CV153 of 2023.**
[6] Action no.695 of 2008

through case management, pre-trial review and scheduling a trial with all the time and expense that this might entail, only to discover at the end of the line that there was no reasonable ground for bringing or defending a claim that should not have been brought or resisted in the first place? This provision in the rules addresses two situations:

> (i) when the content of a statement of case is defective in that even if every factual allegation contained in it were proved, the party whose statement of case it is cannot succeed; or
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> (ii) where the statement of case, no matter how complete and apparently correct it may be, will fail as a matter of law.

Disposition

[25] This claim is a non-starter. The claimant/respondent's case concerns matters appropriately raised in the division of matrimonial assets provided for under the Senior Courts Act. This claim involves for domestic arrangement of the parties while married regarding the payment of household debts expenses inclusive of the mortgages of two homes. The allegation that there was any oral agreement that each party is to bear 50% of the mortgage/ debt payment is rejected. The evidence and law in my view does not support this contention. To bring fresh proceedings in this manner is conclusively an abuse of the court's process as the appropriate forum for the claimant/respondent to seek redress for his contribution to the family homes would be in the property settlement flowing from the matrimonial proceedings. Bearing in mind the Overriding Objective and CPR 26.3(1) I find the claim to be an abuse of process.

[26] It is hereby ordered that:

1. The claim against the defendant /applicant is struck out in its entirety;
2. The claimant/respondent shall pay costs to the defendant/applicant in the sum of $2000.00.

Nadine Nabie

High Court Judge