IN THE HIGH COURT OF BELIZE A.D. 2023

CLAIM No. CV163 of 2022 (No. 2)

BETWEEN:

[1] BYRON LEE CANTO

Claimant

and

[1] MINISTER OF NATURAL RESOURCES, PETROLEUM & MINING

First Defendant

[2] ATTORNEY GENERAL OF BELIZE

Second Defendant

[3] CORNELIO CANTO SR.

Intervening Party

Appearances:

Ms. Payal Ghanwani for the Claimant

No Appearance for the Defendants

Mr. Aaron Tillett for the Intervening Party

2024: May 02;

July 10.

RULING

Civil Practice & Procedure – Addition of Parties – CPR 19.2 & 19.3 – At Any Stage of Proceedings – Applicant Not a Party to Claim – Sale and Transfer of Land – Default Judgment – CPR 12.10(4) & (5) – Judgment on Claims for "Some Other Remedy" – Final Order versus Interlocutory Judgment – Full Satisfaction of Judgment – No Enforceability of Orders – Abuse of Process – Setting Aside Judgment – CPR 13.3.

[1] **ALEXANDER, J.**: In this matter, the applicant seeks to be added as a party to a case that was heard, and judgment delivered by this court on 6th October 2022. He also seeks an order setting aside that judgment, which was granted in default of defence.

[2] The applicant is Mr. Cornelio Canto Sr. He is the father of Byron Lee Canto, the claimant in the substantive claim. Mr. Cornelio Canto Sr. makes this application after the judgment in default was entered and fully satisfied between the parties to the claim.

[3] Mr. Cornelio Canto Sr. was not a party to the proceedings in Claim No. CV163 of 2022 ("the claim") to which he now seeks to be added. He was also not privy to the contract between the parties in that case. By his application, Mr. Cornelio Canto Sr. is seeking to re-open the claim for the purposes of setting the judgment aside and relitigating it.

[4] I refuse to make the order to join Mr. Cornelio Canto Sr. as a party to the claim, which is no longer live. I find that in the present proceedings, he has no right to revive the claim that is already determined between different parties, when he has other avenues to treat with any alleged wrong done to him. Mr. Cornelio Canto Sr. may vindicate whatever rights he asserts over the disputed property via separate legal proceedings and is at liberty to use the pleadings and judgment issued in that claim as evidence. In short, Mr. Cornelio Canto Sr. is not without a remedy.

[5] I am also not satisfied that he meets the threshold conditions for setting aside the default judgment. Consequently, I dismiss his application.

Background

[6] The present application has a rather strained and strange history. On its face, this is a deceptively simple application to add a party to a claim and to disturb an order dated 6th October 2022 issued by Young J ("the 6th October order"). It was granted pursuant to an application made under the Civil Procedure Rules 2005, Rule 12.10 (4) & (5) so was a default judgment "for some other remedy". These provisions read:

> 4. Default judgment where the claim is for some other remedy shall be in such form as the court considers the claimant to be entitled to on the statement of claim.
> 5. An application for the court to determine the terms of the judgment under paragraph (4) need not be on notice but must be supported by evidence on affidavit and Rule 11.15 does not apply.

[7] The 6th October order made certain declarations and granted judgment in favour of the claimant against the defendants. Unfortunately, there were no reasons given by Young J for her judgment. I repeat this declaratory order here as it is not the usual default judgment order that is entered by the court office on money claims:

The 6th October order

IT IS HEREBY DECLARED THAT:

1. The Claimant is the rightful owner of Parcel 12-111-633 situated in the Caye Caulker Registration Section.
2. The Claimant has completed payment in full of the sum of $1,500.00 as agreed by the Contract made between the Claimant and the First Defendant dated the 31st day of October 2019 for the sale to the Claimant of the national land described as Parcel 12-111-633 situated in the Caye Caulker Registration Section.
3. The Claimant is entitled to have the land transfer instrument in respect of Parcel 12-111-633 situated in the Caye Caulker Registration forthwith executed in his favor (sic) by the First Defendant.
4. Costs are awarded to the Claimant on the prescribed basis in the sum of $7,500.00.

[8] Mr. Cornelio Canto Sr., who was not a party to the claim, took issue with the 6th October order. He claims that he has an equitable interest in the disputed property that is the subject of the 6th October order and wants to be heard. By his notice of application filed on 13th February 2023, Mr. Cornelio Canto Sr. seeks first an order to add himself as a party, possibly as a third defendant or an interested party, and then to set aside the 6th October order. If successful, he intends to relitigate the issues.

[9] By the time of the filing of the application, the substantive matter was already disposed of, and the claim was satisfied in full between the parties. The application, therefore, was a bid to resurrect the claim. I find it necessary for context to deep dive into the history of the main proceedings.

The Claim

[10] Sometime in October 2019, the claimant in the main case ("Byron Lee Canto") applied to the first defendant to purchase national land described as Parcel 12-111-633 in the Caye Caulker Registration Section ("the Property").

[11] The application was approved on 31st October 2019, with a Land Approval Form ("the sale agreement"). The sale agreement stipulated a purchase price of $1500, payable immediately or within three years, after which title would be issued.

[12] Byron Lee Canto paid $1000 in July 2020 as soon as the register for the Property was opened. He then paid the remaining $500 in December 2020, along with the fee of $30 for the Land Certificate so that title for the Property may be issued to him.

[13] Despite his payment in full and inquiries into the status of his title, the defendants failed to transfer the Property to Byron Lee Canto or to issue the Land Certificate in his name.

[14] On 16th March 2022, Byron Lee Canto filed a claim form and statement of claim for the following reliefs:

a. Specific Performance of the contract between the Claimant and the First Defendant dated the 31st day of October 2019 for the First Defendant to sell national land described as Parcel 12-111-633 situated in the Caye Caulker Registration Section to the claimant for the sum of $1,500.00.
b. An Order directing the First Defendant to execute the Transfer of Land instruments in favor (sic) of the Claimant in respect to Parcel 12-111-633 situated in the Caye Caulker Registration and to forthwith issue to the Claimant the Land Certificate for said parcel.
c. A declaration that the Claimant is the rightful owner of Parcel 12-111-633 situated in the Caye Caulker Registration.
d. Further or in the alternative, damages for breach of contract in addition to or in lieu of specific performance at common law being the market value of the said parcel which the Claimant would have possessed had the contract been performed along with the value of the improvements made thereon to be assessed.

[15] The defendants were served with the claim on the 31st March 2022 and filed an acknowledgement of service on 01st April 2022. They did not file a defence.

[16] On 19th May 2022, Byron Lee Canto applied under CPR 12.10 (4) & (5) for judgment in default of defence, i.e., judgment for some other remedy with terms to be determined. The 6th October order was issued by Young J declaring Byron Lee Canto as the rightful

owner of the Property and ordering the defendants to issue title to him and pay his legal costs.

[17] On 7th October 2022, the Land Certificate was issued for the Property and the defendants have since paid the costs of the claim as ordered. No further action was needed to enforce the judgment. The effect is that the 6th October order was satisfied.

The Case of Mr. Cornelio Canto Sr.

[18] I now briefly state the case of Mr. Cornelio Canto Sr. for context.

[19] In his first affidavit, he stated that he has had exclusive physical and factual possession of the Property since 1981. He made several developments of the land, turning it from swamp to habitable land and constructing several buildings on it that are occupied by his children. He began paying property taxes in 2002 and paid same for the period 1981 to 2002. He exhibited three receipts evidencing these payments.

[20] Sometime in 2009, he made attempts to get title to the Property in his name, initially through recommendations by a minister and then through the chairperson of the Caye Caulker Village Council. In 2010, he acted on the advice of a land consultant to apply for permission to survey the Property, and received approval to survey but had to abandon this as the area was already surveyed. Over the period, he made numerous checks on the processing of the grant of title to the Property to him, but all were futile.

[21] He gave permission to his son, Byron Lee Canto, to enter onto the Property and reside in 2016. It is unclear whether he intended to and did in fact surrender his rights and interests to the Property or whether he gave his son permission to reside on the Property as a tenant.

[22] In April 2021, he applied for permission to survey, purchase and mutate the property. He states that his intention was to give Byron Lee Canto his portion. He obtained a survey plan, but on 14th May 2021, the Ministry of Natural Resources and first defendant in the

present claim advised him that the Property was under investigation, and he is to cease all developments. By subsequent letter dated 7th October 2021, he was advised to resume developing and occupying the Property. He provides these correspondence and other documents into evidence.

[23] He advances as his case or defence that he has expended significant monies on the development of the Property, with the knowledge and consent of the Government of Belize ("GOB"). He was never informed of any competing interest to his but only that his application was at various stages of being processed. At some point, the name of Mr. Cornelio Canto Sr. was removed as the presenter[1] on the Land Registry Receipt of Instrument, which showed his application to mutate and have first registration. His name was replaced with that of Byron Lee Canto. He claims that the issue of title to Byron Lee Canto was pursuant to an invalid contract and done fraudulently.

[24] Given the above, Mr. Cornelio Canto Sr. claims an interest in the Property that is the subject of and/or is connected to the dispute in the now finalised claim. He stated that adding him as a party would help the court to resolve the disputes before it. His draft defence pleads fraud, denies that Byron Lee Canto has any equitable interest in the Property or legal standing to obtain an order for specific performance, but contains no counterclaim or reliefs being sought.

Issues

[25] I have identified the following as the issues arising for resolution on this application:

i. Whether Mr. Cornelio Canto Sr. is entitled to be added as a defendant at this stage of the proceedings i.e. after judgment had been entered in the main claim?
ii. Whether the application is an abuse of process?
iii. Whether the 6th October order should be set aside?

[1] In Belize, 'a presenter' is the person who makes the application for a grant of title under the First Time Land Ownership Program.

Discussion

Issue No.1: Whether Mr. Cornelio Canto Sr. is entitled to be added as a defendant at this stage of the proceedings i.e. after judgment had been entered in the main claim?

[26] The first question I must address is the addition of a party to proceedings. Usually, this issue is not contentious. However, that is not the position in the present case.

[27] CPR 19.3(1) provides that, "The court may add, substitute or remove a party on, or without, an application."

[28] In Belize, CPR 19 contemplates that the exercise of the court's discretion to add, remove or substitute a party would take place at a case management conference ("CMC"): see CPR 19.2(6). A court is also empowered to grant an order for addition or substitution, on an existing party's application, **after a CMC** if it is satisfied of *some change in circumstances* that became known after the CMC: see CPR 19.2(7). It does not make provision for changes to the parties after judgment.

[29] Certainly, a claimant may add a new defendant to proceedings, without permission, at any time **before the CMC**: see CPR 19.2. This is done by filing an amended claim form and statement of claim.

[30] The present application does not involve a pre-CMC application but one that was filed post-judgment. Further, the application is made by a non-party or by "a person who wishes to become a party." The application of a non-party is catered for under CPR 19.3(2). These facts raise the question whether Mr. Cornelio Canto Sr. is entitled to bring the application at this stage of the proceedings, i.e., after judgment, on the narrow issue of the validity and enforceability of the contract that Bryan Lee Canto had entered with the GOB, represented by the Minister of Natural Resources.

The Procedure

[31] The procedure for the addition of parties and the prerequisites for so doing are clearly set out in the Rules. The main thrust for the exercise of this discretion is for the purpose of resolving "all the matters in dispute in the proceedings". The term "proceedings" has been interpreted as covering every stage of the litigation from commencement to judgment and includes enforcement steps.[2] In my view, the proceedings before me were no longer "continuing" to necessitate an addition of a party to aid the court with resolving "all the matters in dispute". In the instant matter, the application came after the dispute between the parties was already resolved, and costs were already paid, and there was no lingering issue of enforcement of the judgment. Is Mr. Cornelio Canto Sr. entitled, therefore, to re-open the matter as an interested party or a "third defendant" at this stage?

[32] Mr. Tillett submitted that Mr. Cornelio Canto Sr. is in actual occupation of the Property. He, therefore, has the necessary standing and/or sufficient interest to bring this application. Mr. Tillett relies on the case of **Oceana In Belize et al v Minister of Natural Resources and the Environment**[3] and quotes Legall J who stated at paragraph 3 that:

> Before exercising the jurisdiction of the court to add a party to a claim, the court ought to be satisfied, from the evidence, that the claim has a direct connection or effect on the rights or interest or property of the party, and therefore the party has a sufficient interest on the claim.

[33] **Oceana In Belize** is not factually on all fours with the present matter, but I do accept that the principle being relied on is relevant to the instant application. The point of departure, however, is found in the fact that the instant matter before me had been finalised when the application for addition was made. Mr. Tillett raised no issue of the stage of the proceedings at which the application was being made but focused on the rights of Mr. Cornelio Canto Sr. to bring the application.

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[2] C Inc plc v L et al [2001] 2 All ER (Comm) 446.
[3] Claim No. 810 of 2011.

[34] In this regard, Mr. Tillett submitted further that the interest of Mr. Cornelio Canto Sr. is found both at common law and statute. He references section 31(1)(g) of the Registered Land Act 194 R.E. 2020 which states:

> 31.–(1) Subject to sub-section (2) of this section, unless the contrary is expressed in the register, all registered land shall be subject to such of the following over-riding interests as may for the time being subsist and affect it, without their being noted on the register,
> …
> (g) the rights of a person in actual occupation of land or in receipt of the rents and profits thereof except where injury is made of such person and the rights are not disclosed.

[35] Mr. Tillett's submissions on standing based on occupation of the Property is not really the issue. The main question is the timing of the application or stage of the proceedings. This is addressed in further submissions by Mr. Tillett who strenuously argues that the addition of a party is allowed under the CPR <u>at any point in the proceedings</u>. This position is advanced because, according to Mr. Tillett, there is no provision in the Rules that prevents the application at any stage of the proceedings. I address this issue below at paragraphs 46-59.

The Rules

[36] At this point, I think it is appropriate to set out the pertinent rules.

CPR 19.2

(3) The court may add a new party to proceedings without an application, if -

(a) **it is desirable to add the new party so that the court can <u>resolve all the matters in dispute in the proceedings</u>**; or

(b) **there is an issue involving the new party <u>which is connected to the matters in dispute</u> in the proceedings** and it is desirable to add the new party **so that the court can resolve that issue**.

…..

(6) The court may add, remove or substitute a party at the case management conference.

(7) <u>The court may not add a party (except by substitution) after the case management conference</u> **on the application of an existing party** unless that party can satisfy the court that the addition is necessary because of **some**

change in circumstances which became known after the case management conference.

CPR 19.3

(1) The court may add, substitute or remove a party on, or without an, application.
(2) An application for permission to add, substitute or remove a party may be made by -

(a) an existing party; or
(b) **a person who wishes to become a party.**

….
(6) Where the court makes an order for the removal, addition or substitution of a party, it must consider whether to **give consequential directions** about-
(a) filing and serving the claim form and statements of case on any new defendant;
(b) serving relevant documents on the new party; and
(c) the management of proceedings;
and subject to such directions, Rule 19.2(2) applies. [My Emphasis].

[37] The Rules are clear that the addition of a party is "desirable" where issues involving the new party are connected to the dispute before the court. The addition is desirable or necessary to enable a court to resolve all disputes in the proceedings before it. This is clear since the Rules empower the court, that grants an order for addition of a new party to proceedings, to give consequential directions for filing and serving the claim and other documents as well as for case management of the matter. On a plain reading of the Rules, they seem to contemplate an order for addition that pre-dates judgment in the matter and/or satisfaction of the judgment order. See paragraph 36 above which sets out the relevant rules.

Analysis

[38] Given the peculiar circumstances of the present application, there are several pertinent factors at play. First, a judgment was entered against the defendants. Secondly, that judgment was fully satisfied. Thirdly, the judgment related to a contract between parties in a claim to which Mr. Cornelio Canto Sr. was not a party. Fourthly, while the judgment is not against Mr. Cornelio Canto Sr., he claims to have, and now seeks consideration of, an equitable interest in the Property which is the subject of the 6th October order. In that regard, he states that his rights are affected. Fifthly, he now seeks to intervene by being

named as a defendant, presumably the third defendant, to set aside a judgment against other persons, not himself. As stated above at paragraph 24, his draft defence is silent as to the reliefs he is seeking and contains no counterclaim.

[39] Mr. Cornelio Canto Sr. highlights as an issue in dispute the validity of the contract between the parties in the main claim and asserts that he has an interest (equitable) in the Property that is 'connected' to that dispute. Notably, this "dispute" (i.e. the validity of the sale agreement) was not an issue or dispute in the claim. The issue related to a breach of a valid contract. Mr. Cornelio Canto Sr. now wishes to raise the validity of the sale agreement as an issue, but not through the filing of a separate claim. Interestingly, Mr. Cornelio Canto Sr. was not privy to the contract whose validity he now questions.

[40] The Rules do not speak to an application for addition of a party that is made post-judgment whether by an interested party or even an existing party. Whilst the Rules allow the application by a non-party wishing to be added as a party during the currency of the claim, they seem to contemplate that the addition is 'desirable' in the context of allowing a court to resolve all disputes in the proceedings and to enable the court to make consequential orders to manage the matter. Of course, the court always retains its discretion to deal with cases before it. In the present case, the proceedings are moribund or fully completed. There is no further action required to enforce the judgment.

Addition of a Party After a Final Order and/or a Fully Satisfied Judgment

[41] I will examine next the jurisprudence on a person's right to intervene in a claim after a final order and/or a judgment is fully satisfied and the conditions for such an 'intervening' application to be granted or refused. The question is whether the 6th October order is a final order.

[42] Ms. Ghanwani argued that the 6th October order is **a final order** issued against the defendants in a claim for breach of contract. The court has no further function to perform in this claim, rendering the application to be added as a new party and/or a third defendant entirely inappropriate.

[43] I find that the 6th October order by Young J was determinative of the issues between the parties in the claim before the court. In **Lux Locations Ltd (Appellant) v Yida Zhang (Respondent) (Atigua and Barbuda)**[4] the Privy Council in discussing a default judgment under CPR 12.10 (4) & (5) or "for some other remedy" outlined the proper test for determining whether such a judgment or order is final or interlocutory. I set out this test in full below as the guidance provided by the Board is instructive to my deliberation in this matter:

> **… the test of whether an order or judgment is final or interlocutory specified in the Rules is whether "it would be determinative of the issues that arise on a claim**, whichever way the application could have been decided": see rule 62.1(3)(b). Applying this test, the judgment granted on Mr. Yida's application to the court under rule 12.10(4) and (5) <u>is an interlocutory judgment because, if the application had been refused, it would not have been determinative of the issues that arise on the claim</u>.

[44] In **Lux**, the Board also stated that a judgment for "some other remedy" is based on "an exercise of judgment by a judge" and is not a mere administrative task capable of performance by a member of the court office.[5] It means that a judge who determines an application under CPR 12.10 (4) & (5) is "acting in her capacity as a judge of the High Court and taking a step which, on the contrary, cannot be taken by a member of the court staff."[6] The Board also outlined the differences between default judgments for money matters and those granted under CPR 12.10 (4) & (5) for "some other remedy", and as such requiring judicial scrutiny of the application. The Board puts it thus:

> Where the remedy sought is an award of money only, a default judgment can be obtained automatically by an administrative process without any judicial scrutiny. **But it does not follow that where an application to the court is required, the court should only ever consider what remedy is appropriate given the allegations made and have no regard to whether those allegations have any legitimate basis.**[7] [My Emphasis].

[45] In effect, a judgment under CPR 12.10 (4) & (5) attracts a remedy that "the court considers the claimant to be entitled to on the statement of claim" so is one that is subject to judicial

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[4] [2023] UKPC 3 page 11 paragraph 34, delivered on 31st January 2023.
[5] Ibid, page 11 paragraph 33.
[6] Ibid.
[7] Ibid, paragraph 51, page 18.

scrutiny to determine the legitimacy of allegations in the statement of claim in order to grant the appropriate remedy. In short, the 6th October order by Young J, which was determinative of the issues in the claim and which was fully satisfied, was a final order.

Stage of Proceedings

[46] Having accepted that the 6th October order was a final order, there are no proceedings and no remaining matters in dispute between those parties, in that claim, to trigger CPR 19.2(3)(a). The submissions of Ms. Ghanwani makes this position clear. She stated that the validity of the sale agreement was never in dispute but its breach was. The reliefs were all aimed to enforce the obligations of a valid sale agreement that did not involve Mr. Cornelio Canto Sr. and where the orders sought were neither enforceable against Mr. Cornelio Canto Sr., nor did they have any direct effect on him. Ms. Ghanwani advances, further, that Mr. Cornelio Canto Sr. is claiming rights to the Property under the doctrine of Proprietary Estoppel based on an alleged relationship and/or correspondence between the GOB and Mr. Cornelio Canto Sr. He was wronged, allegedly, by the GOB and not by Byron Lee Canto. Mr. Cornelio Canto Sr.'s rights ought, therefore, to be advanced against the GOB and not against Byron Lee Canto. Byron Lee Canto was wrongly or improperly brought to court.

[47] I must commend Ms Ghanwani for her skilful advocacy of Byron Lee Canto's position. I, however, disagree with her submissions that the 6th October order would have no impact on Mr. Cornelio Canto Sr. He does claim equitable rights in the Property. In fact, Mr. Tillett frontally addresses her arguments by pointing out that they were misleading. The 6th October would displace Mr. Cornelio Canto Sr. and his family from their land and deprive them of the benefits of their significant investments in developing the Property. Mr. Tillett argues, and I agree, that where a dispute exists between two parties and its determination will directly affect the legal rights or pockets of a third party, the court could allow their addition to the claim, at any stage of the proceedings. It is at this point (i.e. the stage) that I depart in my agreement with Mr. Tillett. I agree only that a third party should be added where it is necessary for disposing of the live disputes in the proceedings and/or their

legal rights or pockets are affected. This principle was stated in **Gurtner v Circuit et al**[8] and is relied on by Mr. Tillett. I restate it here but note that the facts of that case are dissimilar to ours and distinguishable, albeit Mr. Tillett neglected to recognize this. In **Gurtner**, Lord Denning MR stated:

> It seems to me that when two parties are in dispute in an action at law, and the **determination of that dispute will directly affect a third person in his legal rights or in his pocket, in that he will be bound to foot the bill, then the court in its discretion may allow him to be added as a party** on such terms as it thinks fit. By so doing, the court achieves the object of the rule. It enables all matters in dispute to 'be effectually and completely determined and adjudicated upon' between all those concerned in the outcome. [My Emphasis].

[48] Of note is the statement of Diplock LJ in his concurring judgment that as long as the liability to satisfy the judgment is legally enforceable against the third party, "the court has a discretion to add that person as a party and ought normally to exercise its discretion by granting the application to be added."[9] For several obvious reasons, the principle must be viewed in its context of allowing for the complete adjudication of all issues in dispute before the court. Our case does not share a similar factual context as **Gurtner**.

[49] The critical question here is whether a person wishing to be joined to a claim could do so after a final order and/or a default judgment that is fully satisfied. It is accepted that the present application comes at the end stage, where judgment was entered and satisfied. At paragraph 36 above, I have set out the Rules on joinder. It is shown that in Belize, our CPR, specifically CPR 19, do not include the phrase "at any stage of the proceedings." On a plain reading of the CPR 19, the addition of a new party is allowed before and at a CMC. CPR 19.2(7) also allows for such an addition **after** the CMC, in clearly defined circumstances. The application is to be made by an existing party to the claim and would be granted **only** if the court is satisfied that there is some change of circumstances. There is a wealth of case law on the concept of 'some change of circumstances' becoming known after the CMC, which I will not delve into here as that discussion is not needed to dispose of this application.

[8] [1968] 2 QB 587 at page 595.
[9] Gurtner pages 602-603.

[50] In my view, these prerequisites in CPR 19.2 and 19.3 exist to facilitate or help the court in managing the case towards resolving the dispute before it. In the present case, the application came after the CMC, and after judgment. There is no longer any dispute to be resolved between the parties as same was satisfied pursuant to the 6th October order. At this stage, Mr. Cornelio Canto Sr. wants to revive a resolved matter, to litigate an alleged "wrong" done to him by the parties. Can he be allowed to do this in light of the 6th October order? I do not agree with Mr. Tillett that I am to ignore the absence in the Rules of the phrase 'at any stage of the proceedings' and proceed as if that phrase formed part of our Rules so that Mr. Cornelio Canto Sr. can get his order. I also do not agree with Mr. Tillett's arguments that the major consideration for revisiting the claim is the effects on the rights of Mr. Cornelio Canto Sr. and that adding him as a party would help me to adjudicate, in one proceeding, on the rights of all parties.

[51] Mr. Cornelio Canto Sr. has approached the court to resuscitate a claim in circumstances where following judicial scrutiny, the 6th October order was issued and thereafter the judgment was fully satisfied.

[52] In respect to the argument that the addition of a party to the claim at this stage is wholly inappropriate, Ms. Ghanwani relies on two cases in support of her position: **Attorney General v Corporation of Birmingham**[10] and that of **C Inc plc v L and Another**.[11]

[53] In **Corporation of Birmingham**, the English Court of Appeal determined that parties could not be added after a final order. That case was determined under the previous Rules[12] while the present application is made pursuant to the Belize CPR 2005. The English Rules at that time provided that a judge may, <u>at any stage of the proceedings</u>, either upon or without the application of either party, and on such terms as may appear to the court or a judge to be just, order that the name or names of any party or parties, whether as plaintiffs or as defendants, improperly joined, be struck out; and that the name or names of any party or parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the court may be necessary in order to enable the court

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[10] (1880) 15 Ch. D. 423.
[11] [2001] 2 All ER (Comm) 446.
[12] Order XVI Rule 13 of the original post Judicature Act English Rules.

effectually and completely to adjudicate upon and settle all the questions involved in the action, be added. Essentially, the then English Rules allowed for the addition of parties to a claim at any stage of the proceedings.

[54] The phrase "at any stage of the proceedings" garnered much traction and focus in the first instant court in **Corporation of Birmingham**. Bacon V.C. interpreted the phrase as allowing for the addition of parties after a decree. This interpretation was rejected by the Court of Appeal by Jessel M.R., with James and Brett L.JJ. concurring, to wit:

> A statement of claim or bill cannot be amended after final judgment. If it becomes necessary to enforce that judgment against persons who have acquired a title after it was made, **an action must be brought for that purpose**.

[55] The approach of the Court of Appeal in **Corporation of Birmingham** provides guidance to Mr. Cornelio Canto Sr. in the present matter. It remains open to Mr. Cornelio Canto Sr. to enforce his alleged equitable rights by the right approach should he be so disposed.

[56] I have considered if anything turns on the fact that the Belize CPR 19 does not contain the words "at any stage of the proceedings". The Belizean draftsman was careful to exclude these words from CPR 19, and the matter is at a stage where the application post-dates not only the CMC but the judgment. While the discretion of the judge to hear and determine applications made before the court is not removed, these applications are to be considered in the light of the Rules and the case law on the area.

[57] I note that our CPR confine these applications to a stage in the proceedings that would still enable the court or judge to manage the case to resolve all disputes. The CPR allow an existing party to make such an application after a CMC, where there is some change in circumstances that became known after the CMC. Mr. Cornelio Canto Sr. cannot claim to satisfy these requirements as he is not an existing party, and it is hardly likely that he can satisfy the court that his rights in proprietary estoppel are a 'change in circumstances' or that these rights were previously unknown. Arguably, he was unaware of the claim not having been served, and as he was not a party to the breached contract. These facts, including the existence of a judgment that was fully satisfied, do not prevent Mr. Cornelio

Canto Sr. from taking steps to vindicate any rights he might have and against any party who has wronged him: see **Corporation of Birmingham**.

[58] Ms. Ghanwani also relies on the case of **C Inc plc v L and Another** (supra) to make the point that a new party should not be added after a final order. In **C Inc plc**, a default judgment was entered against the defendant and the court was asked to deliberate on the issue of whether a new party could be added to the claim at that stage. Aikens J. stated at paragraphs 82 & 83 of the judgment:

> [82] It seems to me that the sole issue on joinder is: has the court power to join a new party when judgment has been obtained against the only existing party? Mr. Wood's first argument turns on the proper meaning of the word 'proceedings' in CPR 19.2. 'Proceedings' is not defined as a term in CPR 2.3 ('Interpretation'). Nor is it referred to in the 'Glossary' that is appended to the CPR. I think that cases on the Rules of Court extant prior to 1883 are not much help. But in any event the two cases on which Mr. Wood relied were instances of the claimant wishing to pursue the existing judgment against a new party. That is not the position in the present case.
>
> [83] In my view the word 'proceedings' should be given a broad interpretation in CPR 19.2. It should embrace all stages of an action from the time it has been started until it becomes finally complete or moribund. **There are many 'proceedings' in which a judgment is obtained but it is not satisfied.** <u>At that stage further action may be needed in order to enforce the judgment</u>. The 'proceedings' have not finished at that point. A claimant may wish to appoint a receiver by way of equitable execution to get in the assets of the defendant to satisfy the judgment. Or he may wish to obtain a freezing order in aid of execution. The 'proceedings' must still be continuing in those instances. In my view the 'proceedings' against Mrs. L are still continuing. [My Emphasis].

[59] While the Belize CPR do not reference the phrase "at any stage of the proceedings", it is inescapable that at the time of the filing of the present application, the proceedings were finalised. The relevance of this should not be dismissed. Critically, in our case there was no further action needed for enforcement or to completely satisfy the 6th October order. The proceedings were moribund or finalised as a matter of law. In this respect, the case of **C Inc plc** is distinguishable albeit the statements made therein are helpful. Unlike **C Inc plc**, there is no argument in our case that the proceedings between the parties were finished.

[60] The purpose of the present application is simply to resurrect and then upend a completed matter. In my judgment, Mr. Cornelio Canto Sr. is not entitled to be added as a new party for those purposes. He was neither privy to nor a party to the breached agreement that gave rise to that claim. Further and based on his draft defence and affidavits, the equitable rights being claimed by Mr. Cornelio Canto Sr. were not derived from "some change in circumstances" that became known after the first CMC. In any event, the main claim was finalised between the parties to that claim, and there is no dispute left on those pleadings for the court to manage and decide.

[61] I dismiss the application for addition of a new party.

Issue No. 2: Whether the application is an abuse of process?

[62] I find that the application is an abuse of process.

[63] A final order existed that was fully satisfied at the time of making of the application. This was known to Mr. Cornelio Canto Sr., yet he persisted in seeking to revive this moribund claim, initially doing so erroneously by simply changing the title of the proceedings by adding himself as an applicant and without the court's permission. Armed with his cause of action in proprietary estoppel, he is entitled to pursue an action to enforce or defend his rights by following the proper procedures available to him.

[64] In light of my finding that it is not open to Mr. Cornelio Canto Sr. to be added as a new party after a final order, I do not find it necessary to deliberate further on the issue of abuse of process.

Issue No. 3: Whether the 6th October order should be set aside?

[65] A default judgment is based on procedural failures and can be set aside even after an assessment of damages: see **Strachan** v **The Gleanor Company Ltd.**[13] The 6th October order is a default judgment, granted for failure to defend the claim but which was made

[13] PC No. 22 of 2004 delivered on July 25, 2005.

pursuant to CPR 12.10 (4) & (5), so was subject to judicial scrutiny. Ms. Ghanwani submitted that the 6th October order should not be set aside. I consider this question below.

[66] CPR 13.3(1) provides that a court may set aside or vary a judgment entered under Part 12 if the defendant satisfies three conditions:

(a) applies to the court as soon as reasonably practicable after finding out that judgment had been entered;
(b) gives a good explanation for the failure to file an acknowledgement of service or defence, as the case may be; and
(c) has a real prospect of successfully defending the claim.

[67] All three preconditions must be satisfied for a regularly obtained default judgment to be set aside. The defendant alone bears the burden of proof to convince the court that the judgment is to be set aside[14]. All conditions must be satisfied to overturn the judgment.

[68] The present application is one where the interested party who seeks to disturb the default judgment is not a defendant to those proceedings and I have refused to add him as a party. Mr. Cornelio Canto Sr. would, therefore, face certain challenges to satisfy the three pre-conditions (discussed below). Despite this, I will for completeness address the principles governing an application for setting aside a default judgment.

[69] Regarding as soon as reasonably practicable, Mr. Cornelio Canto Sr. stated that he became aware of the default judgment in the instant claim on 16th November 2022.[15] He filed the notice to set aside on 13th February 2023. This was approximately three months (less three days) of learning of the judgment (or two months and 29 days).

[70] There is no settled timeframe to satisfy the requirement of "as soon as reasonably possible". Each case is viewed on its own facts and the court will exercise its discretion accordingly.

[14] ED & F Man Liquid Products Ltd. v Patel et al [2003] EWCA Civ. 472 at paragraph 9.
[15] Paragraph 27 of the First Affidavit of Mr. Cornelio Canto Sr.

[71] To justify his delay, Mr. Cornelio Canto Sr. stated that he was unable to obtain copies of the documents in the claim until 13th January 2023, nearly two months after finding out about the judgment. His counsel, Mr. Tillett, submitted that the scenario involving the 'search' to obtain the documents in the claim occurred during the Christmas vacation period. This excuse was only introduced in the written submissions, and not in the affidavits. It does not justify the delay.

[72] The Christmas vacation is not one where the court office is closed. A simple visit to the court office would have resulted in the obtaining of the necessary copies. In any event, these documents are available online. Court vacations do not stymie the retrieval or filing of documents. I find that in the context of this claim, Mr. Cornelio Canto Sr. failed to satisfy the requirement to act "as soon as reasonably possible".

[73] On the issue of good explanation, this matter presents an interesting conundrum. The Rule requires that a defendant gives a good explanation for the failure to file an acknowledgement of service or a defence. The facts before me are clear that Mr. Cornelio Canto Sr. was not served as he was not a party to the claim. He has the ultimate "good explanation" for the failure to participate in these proceedings.

[74] Finally, on the question of a real prospect of successfully defending the claim, "real" refers to prospects that are not imaginary or fanciful.[16] Any challenge to the claim or defence must carry a measure of conviction.[17] A defendant is not required to prove that their case will be successful but is required to provide sufficient evidence to point at least to an arguable case. The case raised by Mr. Cornelio Canto Sr. is based on proprietary estoppel and claims of fraudulent conduct, which are not fully fleshed out.

[75] In submissions, Mr. Tillett admitted the evidentiary deficiencies in the case. He stated that Mr. Cornelio Canto Sr., had failed to provide "testamentary proof … to show that the contract between the initial parties was fraudulent". He asked for time to bring the documentary and other evidence. He stated that the court should consider the circumstantial evidence that a flawed procedure for the distribution of national lands was

[16] Swain v Hillman et al [2001] 1 AER 91.
[17] Ed & F Man Liquid Products v Patel et al (2003) EWCA Civ. 472.

employed, since the recommendation of the Advisory Council pursuant to the National Lands Act Chapter 191 R.E. 2003 could not have been procured given that the application and approval of the purchase of the Property were all effected on the same day. In **Park v CNH Industrial Capital Europe Ltd (t/a CNH Capital)**[18] the principles for setting aside of a judgment obtained by fraud in an earlier action (through the bringing of a second action) are discussed and while the case is not on all fours with the present matter, it is helpful.

[76] The main claim involved a breach of a sale agreement, which Mr. Cornelio Canto Sr. now alleges was an invalid contract. He provided no evidence that the sale agreement was invalid and could only have been effected through fraudulent means. He admitted that he did not have the evidence but wanted time to get evidence. Apart from the absence of privity of contract, he attaches a draft defence with unsubstantiated statements for which he seeks time to prove. Further, the draft defence does not seek any reliefs for declaration of his interest or rights in the Property nor does it contain a counterclaim. On the evidence, his reliefs are unclearly mapped out and his prospect of success uncertain. He did not satisfy me that he has crossed this limb.

[77] In my judgment, Mr. Cornelio Canto Sr. is entitled to approach the court to determine his rights in the Property but must do so using the correct approach and setting out the reliefs he claims that he is entitled to. Having failed to satisfy me that he should be added as a new party after a final order, his application to set aside the judgment is at best tenuous.

[78] I dismiss this application for setting aside of the 6th October order.

Costs

[79] Regarding the question of costs, the general rule obtains, which is that costs usually follow the event. During the hearing of oral submissions, I invited and did hear parties on the appropriate costs award in this matter. I have considered the work done by counsel

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[18] [2021] EWCA Civ 1766.

to respond to these applications and would exercise my discretion to award reasonable costs in the circumstances.

[80] The successful party in this application is Byron Lee Canto. He is awarded the sum of BZ$4000 as costs.

Disposition

[81] It is ordered as follows that:

1. The notice of application filed on 13th February 2023 is dismissed.
2. Costs of the application are awarded in the sum of BZ$4000 to the claimant.

Martha Alexander

High Court Judge