

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM NO. 52 OF 2024

BETWEEN:

LYNDAIS ROSADO

Claimant/Applicant

and

ALBERT YOUNG

Defendant/Respondent

Appearances:

Mr. Ian Gray for the Claimant

Mr. Andrew Bennett for the Defendant

2024: June 11;

September 11

Catchwords:

APPLICATION FOR INJUNCTION

RULING

[1.] **NABIE, J.:** The application for injunction is refused. I have reviewed the application and the evidence and I have also considered the arguments of the parties. The applicant has not satisfied the requisite principles to be granted the injunction.

Background

The Substantive Claim

- [2.] By fixed date claim form filed on 14th February 2024, the applicant seeks inter alia the recovery of title and possession of the property described as Parcel 3109, Block 16, Ladyville/Lord's Bank (Parcel 3109). The applicant alleges that the respondent had entered into three contracts with her for goods and services. The applicant avers that she paid for all the goods and services and therefore still holds an equitable interest.
- [3.] It is alleged that the respondent has not paid the purchase price of \$30,000.00 for Parcel 3109. Further that, the respondent has breached contracts dated 30th October 2021 and 2nd November 2021. The applicant pleaded that it was both expressed and implied through the contracts that the respondent would perform caregiver services for the applicant. The contracts produced are the agreement for sale and the conveyance of the Parcel 3109. The applicant has pleaded "particulars of contract".¹
- [4.] The applicant alleges that it was agreed that the applicant would develop Parcel 3109 by installing two houses from the Mennonites and she would convey the property to the respondent and cover all related expenses. In return the respondent and his wife would perform caretaker services for the applicant and her home until her death. The applicant conveyed Parcel 3109 to the respondent by conveyance dated 2nd November 2021. The respondent obtained a Land Certificate for Parcel 3109 on the 25th October 2022.

¹ Particulars of Contract

- i. Convey the property into the defendant's name and cover all associated expenses.
- ii. Develop the property, custom build and install two houses from the Mennonites and locate them on the property
- iii. The defendant and his common law wife in turn were to be the care giver of the claimant up until her death
- iv. They were to ensure that the claimant and her home were kept to reasonable and livable standard while the claimant was in Belize
- v. The claimant on 25th October 2022, transferred the title of the property.

- [5.] The applicant averred that in mid-April 2023, she discovered that three cheques were missing from the cheque book. The respondent was accused of stealing the three cheques and cashing a cheque in the amount of \$9,000.00 at the Atlantic Bank Limited.
- [6.] The applicant alleges that the respondent breached the contracts by failing to pay the purchase price of the property and stealing three cheques in April 2023. The respondent has refused to return the title and possession of Parcel 3109. The applicant has also pleaded 'particulars of breach of contract'² and "particulars of damages and loss" in the sum of \$161,000.00

The Injunction

- [7.] By notice of urgent application for an order for interim injunction dated 31st January 2024 and filed on 5th February 2024, the applicant is seeking to restrain the respondent by himself or through his agents from dealing in any way with the title to Parcel 3109³. The grounds of the application are:

- "(1) That the Respondent entered into a labor contract with the Applicant and breached the terms and conditions of the contract.
- (2) That the Respondent entered into another contract to convey the subject property into his name and also breached that contract;
- (3) That the Respondent entered into a further contract with the Applicant to purchase two Mennonite homes and also breached that contract;

² Particulars of Breach of contract

- i. The defendant failed to pay the sums agreed to the Claimant for the purchase of the property
- ii. The defendant stole three cheques from the claimant during April 2023, in which he breached the contracts expressly and impliedly
- iii. The Defendant cashed one cheque for \$9,000.00 by mid-April 2023, at the Atlantic Bank, Freetown Branch in Belize City, Belize; in which he breached the contracts by theft.
- iv. The Defendant has refused to return the title and possession of the property.
- v. The Defendant has obtained a second land certificate to the property in contravention of the registered land act. So he is attempting to sell the property using the second title.
- vi. As a result of the defendant's acts, omissions, breaches; the claimant suffered loss and damages.

³ An injunction restraining the Defendant/Respondent by himself, his servants, agents, workmen or otherwise from in any way dealing with the title to land being Registration Section, Ladyville/Lords Bank, Block 16, Parcel 3109, located in the Old Windmill Area, Ladyville Village, Belize District, Belize from selling, mortgaging, transacting, leasing, or dealing with the said property in any way until the trial of this action.

- (4) That Respondent has used misrepresentations and deception to induce the Applicant into entering these contracts to his advantage.
- (5) During or about April 2023 the Defendant breach the said labor agreement when he stole three personal check from the Claimant and cashed one of them at the Atlantic Bank.
- (6) The Applicant has made several verbal and written requests to the Responded (sic) to return her property with the dwelling houses and he has refused to so do.”

[8.] In support of the application, the applicant swore to an affidavit. She deposed that she is a part equitable owner of Parcel 3109. She deposed that she is the former employer of the respondent, who worked for her as a handyman and that his common law wife was a domestic worker. She further stated it was agreed between the parties that she would convey to the respondent, at no cost, a house and lot in the Old Windmill Area, Ladyville Village in return for caregiver services until her death. The applicant paid for all costs and fees of the conveyance which was done thorough an attorney at law. The applicant says that she invested over \$125,000.00 in Parcel 3109. In her view, the respondent breached the agreement by stealing three cheques. It was revealed in the hearing that the respondent had already sold Parcel 3109 and that this was the purpose of seeking injunctive relief. This transaction for the sale of Parcel 3109 has been put on hold by the filing of a “caution” by the applicant.

The Defence/Response to Injunction

[9.] The respondent denied that he was a party to contracts for goods and services with the applicant. He also denied that there were any implied or express terms or the particulars of contract of the sale agreement for the conveyance for caregiver services. The respondent admitted to the agreement for sale and the conveyance. The respondent also admitted that that there has been improvements to the property but could not verify the costs associated with same.

[10.] It was pleaded in the defence that the respondent returned to the applicant the sum of \$9,000.00 which was unlawfully obtained by a third party. The respondent denied stealing the cheques as alleged by the applicant.

- [11.] The respondent swore to an affidavit in response to the application for the injunction. He stated that he met the applicant over 15 years ago and during those years the parties developed an amicable relationship and that he provided construction services and periodic maintenance from time to time at the applicant's home on Princess Margaret Drive. The respondent denies that he was employed by the applicant. The respondent avers that in 2018, the applicant asked the respondent and his common law wife to live in her downstairs free of charge so that she could have a sense of security. The respondent did odd jobs for the applicant without charging any fees. It was denied that there was any pre contractual discussions for caregiving services in exchange for the house and lot in the Old Windmill Area, Ladyville (Parcel 3109).
- [12.] In answer to the application, the respondent deposed that in 2020, the applicant "expressed her desire to transfer all her interest in the land to me" which I take to be Parcel 3109. Her attorney on record prepared the sale agreement and conveyance. The respondent indicated that the applicant instructed her attorney to draft a sale agreement followed by a deed of conveyance to enact the transfer. There is Land Certificate in the respondent's name dated 25th October 2022.
- [13.] Further, the respondent confirmed that there were improvements to the property (Parcel 3109) in terms of the construction of a fence and installation of chattel houses. He indicated that those were done by the applicant on her own. The respondent denied that he stole any cheques and that he was now charged with a summary offence for which he pleaded not guilty.

Applicant's Reply to Defence and the Injunction

- [14.] The applicant in her affidavit in reply⁴ maintains that the respondent and his wife lived at her house as a handyman and domestic respectively until 2023. The applicant agreed that she expressed the desire to transfer one of her lots to the respondent. She deposed that the transfer gift would be accompanied by terms and

⁴ Affidavit of Lyndais Rosado filed on 10th May 2024

conditions. The implied term was that the respondent would conduct business with care and skill and honesty. The gift was conducted through a Deed of Conveyance to assure that the respondent received the gift in the event that the applicant died before the transaction was completed. The applicant stated that the respondent was fully aware of what his duties and obligations were pursuant to the gift. She also deposed that she spent in excess of \$275,000.00 to improve the property – Parcel 3109. The applicant highlighted the need for the injunction that being that the respondent has sold the property and the sale is in progress. The applicant has filed what is called “Further Skeleton Argument Evidence on behalf of the claimant”⁵ which annexes an application for a Caution registered on 21st March 2024 and a record of cases against the respondent.

[15.] Further, the applicant claims that she paid \$300,000.00 in doing improvements to Parcel 3109 in her Reply to Defence.

Issue: (1) Whether the injunction should be granted?

(2) Is there a serious issue to be tried?

(3) Where does the balance of convenience lie?

Law and Discussion

[16.] This is a rather unfortunate set of circumstances. There has been a transfer of house and land (Parcel 3109) from the applicant to the respondent. The circumstances surrounding this transaction are disputed by the parties. In addition to the pleadings in the substantive claim, the parties have both sworn evidence in the application for the injunction.

[17.] The law regarding granting an injunction is clear. But before I embark on that I would like to examine the evidence and pleadings so far.

⁵ Filed on 21st June 2024

- [18.] In her pleadings, the applicant alleges breach of three contracts, only two have been produced. Those two contracts are the sale agreement and the conveyance for Parcel 3109 as aforesaid. The conveyance has in it the usual clause: **“the vendor hereby acknowledges receipt thereof”** and that is in respect of the purchase price of \$30,000.00. There is no mention of caregiving and maintenance in either of the agreements. The applicant in her statement of case claims damages in the sum of \$161,000.00. In her affidavit in support of the injunction she deposed that she invested \$125,000.00 in Parcel 3109, but in her reply to defence she pleaded that she invested over \$300,000.00.
- [19.] The application for the injunction sets out in the grounds what are the three contracts which that the respondent entered into namely a labor contract, a contract to convey the property to the respondent and a contract with the Mennonites to deliver 2 chattel houses. This is different from what was pleaded in the statement of case. There is also the allegation of the stolen cheques which the applicant seems to think forms part of an agreement.
- [20.] The applicant’s case for breach of contract surrounds the alleged actions of the respondent not to pay the purchase price of Parcel 3109, stealing cheques from the applicant’s cheque book and not providing caregiver and maintenance services to the applicant and her home. However, this differs from her reply in the injunction where she deposed that the transfer was in fact a gift.
- [21.] The respondent denies the claim, he denies any agreement implied or express, verbal or written that there was any obligation to provide care giving and maintenance services to the applicant. He did say that he lived on the applicant’s property from 2018 as a security measure for her. This was for free of charge. What is interesting is the in paragraph 13 of his affidavit the respondent says **“In 2020 the Applicant expressed her desire to transfer all her interest in the land to me”**. It is telling that the words **“sell”** or **“purchase”** or **“buy”** were not used. He pointed out the words in the conveyance I have identified which signals that the purchase price had been paid to the applicant. The respondent never deposed that he had

paid the purchase price in fact he deposed that these arrangement for the transfer to be done by deed of conveyance was done by the applicant

[22.] I find that the applicant's claim is essentially that she spent money in developing a lot of land, parcel 3109 which she inherited from her late husband. She gifted the property on which she had constructed the fence and put chattel houses on it for the respondent and his common law wife. She did the transfer as a conveyance for sale and in the in the conveyance there is consideration for Parcel 3109 in the sum of \$30,000.00 which was acknowledged as being paid in the conveyance. As aforesaid, the applicant has not pleaded fraud or mistake on the transfer, her case is breach of contract.

[23.] I am of the view that the applicant is unable to rely on the conveyance for breach of contract given the foregoing. There is no evidence that there was breach of any agreement for care giver/maintenance services in the documents. There was no pleading or evidence of this being in the alleged third contract which was not produced. I find that there is no merit for breach of contract regarding the allegation of the stolen cheques. The link is not clear to me. That in my view is a separate issue being dealt with before a Magistrate.

Law on Injunctions

[24.] A court is required to consider the following in an application for an interim injunction, namely:

- “(i) Whether there is a serious issue to be tried,
- (ii) Where does the balance of convenience lie and
- (iii) The adequacy of damages.

[25.] The purpose of an interim injunction is to improve the chances of the court being able to do justice after a determination of the merits at the trial. At the interlocutory stage, the court must therefore assess whether granting or withholding an injunction is more likely to produce a just result.”⁶The following guidelines emanate from the case of the **American Cyanamid Company v Ethicon Ltd**⁷:

- “(i) The court must be satisfied there is a serious issue to be tried.
- (ii) Unless the evidence available at the hearing of the interlocutory application fails to disclose that the plaintiff has a real prospect of success in his claim for a permanent injunction at the trial, the court should then proceed to consider whether the balance of convenience is in favour of granting or refusing the interlocutory relief sought.
- (iii) The governing principle in considering the balance of convenience is whether the plaintiff if successful at trial and can be adequately compensated in damages for any loss he would sustain by the defendants’ continued acts between the application for an interlocutory injunction and the trial. If damages are an adequate remedy then no interim injunction should be granted.
- (iv) However, if damages would not be an adequate remedy, the court should then consider if the defendant is successful at trial, he would be adequately compensated for the loss he sustained from the injunction.
- (v) The question of balance of convenience will arise where there is doubt on the adequacy of the respective remedies in damages available. Whichever party is unsuccessful on the application for interim injunction would suffer disadvantages such as inability to compensate him fully if such party is successful at trial. This is a significant factor in assessing where the balance of convenience lies.”⁸

⁶ National Commercial Bank Jamaica Ltd v Olint Corp. Limited, Privy Council Appeal No. 61 of 2008 (para 16)

⁷ [1975] AC 396

⁸ Inshan Ishmael v. Weston Rawlins and COTT Claim no. CV 2023-00753 (T&T)

[26.] The court has to also consider the likelihood of the claimant's case. In the **Belize Telemedia Limited v Keith Arnold et al**⁹, the court in that matter at paragraph 24 asserted that:

“Regarding establishing an arguable case with prospects of success, it is not necessary that the case be established to a standard prima facie case. The hearing of an application for an interim injunction order is not the stage at which to decide highly contentious facts raised in the affidavits, or to get bogged down with a difficult question of law. Court is required to examine the merit of the claim and defence to a limited extent in order to decide whether the claim has substance and reality about it”.

[27.] With regard to whether there is a serious issue to be tried, I refer to the matter of **Re Lord Cable (deceased) Garratt and others v Waters and others** [1976] 3 All ER 417 @ pages 430-431:

“Nevertheless, it is in my judgment clear, not only from the American Cyanamid case but also from more recent decisions of the Court of Appeal, that it remains incumbent on a plaintiff seeking an interlocutory injunction to establish that there is at least a serious question to be tried. On any claim for an interlocutory injunction the court must still, as a first step, consider whether the evidence available to the court discloses or fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial; if the available evidence fails to disclose this, the motion must fail in limine and questions of balance of convenience will not fall to be considered at all ... in my judgment it is still necessary for any plaintiff who is seeking interlocutory relief to adduce sufficiently precise factual evidence to satisfy the court that he has a real prospect of succeeding in his claim for a permanent injunction at the trial.”

[28.] The applicant's claim is for recovery of title and possession of Parcel 3109, in which she alleges breach of contract. The applicant has not pleaded fraud or mistake, but misrepresentation is a ground in the application for interim injunction. The applicant conveyed the Parcel 3109 to the respondent by deed and acknowledged receipt of the consideration. The respondent does not specifically deny this this transaction but points out in the conveyance that the vendor acknowledges receipt of the purchase price. The respondent, however, categorically denies that it was done in

⁹ Claim no. 145 of 2011

exchange for handyman and domestic services to be done by the respondent and his common law wife.

- [29.] The only contract produced was the conveyance of the land – Parcel 3109. The applicant has not provided any other written contract which can be examined by the court.
- [30.] I agree with the respondent's argument that there are no contracts annexed for the court to make a determination of the terms captured and whether damages are an adequate remedy.
- [31.] The applicant's claim came by way of a fixed date claim form for recovery of title and possession to land, but it appears that she relies on breach of contract to establish same. The applicant's case is therefore not properly set out and is not in compliance with the CPR. I am of the view that the applicant has not pleaded her claim properly for recovery of title and possession to land.

Conclusion

- [32.] Unfortunate as it might be, the applicant on the application made on her behalf has not shown that there is a serious issue to be tried. This Court is unable to point to the issue to be tried in the circumstances due to the drafting of the applicant's pleaded case. Based on what is before me, the applicant has not presented a prima face case on her pleadings or on her application that the conveyance included an obligation on the part of the respondent to provide handyman and caregiver services to her. I have also noted that the common law wife of the respondent was not a party to the conveyance. It is my view that this fact 'flies in the face' of the applicant's allegation for breach of contract based on the conveyance. Also, on the face of the conveyance, there was consideration. The applicant has not, at this juncture, produced any other contract as alleged for the court to consider the matters raised in her claim.

[33.] Having found that there is no serious issue to be tried, I need not delve into considering the issue of adequacy of damages and the balance of convenience.

Disposition

[34.] It is hereby ordered:

- (1) The application is dismissed
- (2) There is no order as to costs.

Nadine Nabie
High Court Judge