

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF JUSTICE

CLAIM NO. 744 OF 2021

BETWEEN

[1] ALEX ROQUETA

[2] BEATRIZ FERRER VALENTINE

Claimants

and

[1] A.B. #8601 ACB LTD

[2] REGISTRAR OF LANDS

[3] COMMISSIONER OF LANDS

[4] ATTORNEY GENERAL

Defendant/Ancillary Defendants

Appearances:

Mr. Rene Montero for the Claimants

Mrs. Agnes Segura-Gillett for the 1st Defendant/ Ancillary Claimant

Ms. Alea Gomez for the 2nd, 3rd and 4th Defendants/1st, 2nd, 3rd Ancillary Defendants

2024: April 15;

October 11.

Catchwords:

Application to strike out claim

Application to strike out ancillary claim

DECISION

- [1.] **Nabie J.:** Before me are (i) an amended notice of application to strike out the claim dated 7th June 2022 and supported by the affidavits of Alex Roqueta and (ii) a notice of application to strike out the ancillary claim dated 18th November 2022. Both strike out applications were filed by the Crown (the 2nd, 3rd and 4th defendants). The bases of these applications are largely the same and the issues as well. This matter raises the issue of the duty of the Registrar under the Registered Land Act which should be ventilated at trial in light of the circumstances of this which resulted in a situation where the claimants and the 1st defendant are both hold documents evidencing ownership of the same property. I therefore dismiss the notices filed by the Crown to strike out the matter.

Background

- [2.] Jose Paz held a Minister's fiat (grant) No. 1019 of 2006 for Lot 320 comprising 913.26 square meters situate in the Subdivision known as Ambergris Bay 3.5 miles North of San Pedro Town, Ambergris Caye, Belize District, being more particularly shown on Plan No. 1019 of 2006 at the Land Titles Unit, Belmopan and attached to Minister's Fiat (grant) No. 1019 of 2006 and at the Lands and Survey Department registered in Register 16 Entry 7378 (the property). Jose Paz by deed of conveyance dated 21st November 2006 sold the property to one David Mitchell.
- [3.] The claimants purchased the property from the said David Mitchell on or about 19th October 2007 and they were issued a Transfer Certificate of Title (TCT).
- [4.] On or about 15th December 2011 using the same Minister's fiat No. 1019 of 2006, Jose Paz or one Ardelle Smith on behalf of Jose Paz applied for first registration of title for the property with a letter from Jose Paz. This letter verified that Jose Paz was applying for first registration and that he was submitting a certified copy of the Minister's Fiat. Mr. Paz declared that he would compensate anyone who suffered damage as a result of lodging a wrong first registration. A Land Certificate with

Instrument Number: LRS -201202441 was issued to Jose Paz for the property which was thereafter recognized as Parcel 8601, Block 7, San Pedro Registration Section.

[5.] Thereafter Jose Paz transferred the property to the 1st Defendant for the consideration of sixty thousand United States dollars (\$60,000.00 USD). This was done with Instrument Number LRS- 201406706. The 1st defendant asserts himself as a bona fide purchaser for value.

[6.] In 2021, the claimants did a search of the property and discovered that the 1st defendant had been issued a Land Certificate for the property. Hence the claimants filed the instant claim by amended claim form and statement of case dated 28th September 2022 for inter alia the following reliefs:

- a) a declaration that the claimants are the proprietors of the property.
- b) an order that the Registrar do rectify the register by deleting the 1st defendant and inputting the names of the claimants.
- c) damages if the register is unable to be rectified.
- d) damages for loss of use and loss of opportunity.

[7.] The 2nd, 3rd and 4th defendants filed an ancillary claim dated 22nd January 2022 against Jose Paz for a contribution from him or that he should indemnify them in respect of any liability of the 2nd 3rd and 4th defendants to the claimants' claim. It appears that service has not been effected on Jose Paz.

[8.] The 1st defendant also filed an ancillary claim against the 2nd 3rd and 4th defendants for breach of statutory duty. The 1st defendant seeks the following:

- a) Indemnity in respect of any and all Orders and Judgments made by the Court in respect of the substantive claim between the claimant and the 1st, 2nd, 3rd, and 4th defendants.
- b) Compensation in respect of any and all losses and damage suffered by the 1st defendant as a result of any and all Orders and Judgments made by the Court in respect of the substantive claim between the Claimant and the 1st, 2nd, 3rd and 4th defendants.

[9.] The 2nd 3rd and 4th defendants have pleaded a similar or same defence to the claim and ancillary claim. Their amended defence to the claim is dated 26th March 2022 and their defence to the ancillary claim is dated 18th November 2022. The claimants filed a reply to defence on 8th February 2022. The 1st defendant filed its amended defence on 19th July 2023.

Strike out applications

[10.] The crown has filed an amended notice of application to strike out the claim dated 7th June 2022 and a notice of application to strikeout the ancillary claim dated 18th November 2022. The same grounds appear in both notices (i) that the claims are an abuse of process of the court or is likely to obstruct the just disposal of the proceedings and (ii) that the claims disclose no reasonable cause of action for the bringing of the claim.

Submissions of the Crown (in support of the applications to strike out)

[11.] The submissions of the Crown were essentially that it was the actions of Mr. Jose Paz that lead to the claimants having a TCT for the property and the 1st defendant having a Land Certificate for the property. It was submitted that any action for fraud should be against Jose Paz as he applied for first registration of the property after he had already passed title to it in 2007 by deed of conveyance in favour of David Mitchell and subsequently in 2011 after obtaining first registration of the property then sold it again to the 1st defendant.

[12.] It is the Crown's position that based on Section 8 of the **Registered Land Act**, the Registrar is merely a record keeper and acted in good faith. It was submitted that there is no evidence before the court that the registrar acted in bad faith or in collusion with Jose Paz in any fraudulent manner. It was posited that any action therefore for fraud and damages should be against Jose Paz.

[13.] The Crown submitted that this matter was a breach of contract and it was not privy to any contract between the claimants and Jose Paz. Further, that it would be an abuse of process for litigants to bring claims for constitutional and declaratory relief under Part 56 in matters where there is an alternative remedy.

[14.] Lastly the Crown submitted that the 1st defendant in the ancillary claim has not properly pleaded fraud against the 2nd and 3rd defendant.

Claimant's submissions in opposition to the notice to strike out the claim

[15.] It was submitted by the claimants that when there is a declaration of compulsory registration of an area under the **Registered Land Act** it is incumbent on the Registrar to give notice of the process. The claimants say that they were not required to do anything. The Registrar's inaction was the crux of the mistake resulting in fraud, breach of statutory duty and negligence. It was argued that the claimants being in possession of a TCT in essence meant that they had title to the property.

[16.] The claimants contend that they did not have to apply to move the lands under the **Registered Land Act**, the registrar should have moved the land from the general registry to the land registry and then be informed by Registrar of this, so that they could bring in the TCT and be issued a Land Certificate under the **Registered Land Act**. It is the claimants' position that on the evidence there was a general breach on the part of the Registrar to transfer titles from the general register to the under the **Registered Land Act**.

[17.] The claimants say that there was a breach of section 12 of the **Registered Land Act** which resulted in a cause of action in fraud, negligence and breach of statutory duty. The claimants argued that if the Registrar had complied with section 12 and a search had been done then it would have been known that the land was owned by them.

[18.] The claimants deny that this matter is a breach of contract as there was no contract between the claimants and the 1st defendant and/ or Jose Paz. The claimants say that having discovered that the property was wrongfully transferred to the 1st defendant in 2021, any limitation period would begin to run from that time.

- [19.] The claimants contend that there is no evidence that the Registrar acted in good faith and this is evident from her omission to prepare the Register. The claimants went so far as to point out that there appeared to be different signatures of Jose Paz in the letter dated 13th December 2011 and that in the deed of conveyance to David Mitchell.
- [20.] Finally on the strike out application the claimants referred to authorities that establish that to strike out a claim must not be used except in the clearest of cases. They submitted that this is not the clearest of cases and there is a real prospect of success.

Submissions by the 1st defendant in opposition to the notice to strike out the ancillary claim

- [21.] The 1st defendant relied on the claimants' submissions.
- [22.] It was highlighted that the same set of facts can give rise to multiple causes of action, in as much as these facts reveal a cause of action against Jose Paz, they can also reveal cause of action against the Crown. The 1st defendant contends that it is entitled to pursue the cause of action that would obtain adequate compensation.
- [23.] The 1st defendant submitted that he has a cause of action against the Registrar for the omission to perform her duties under the **Registered Land Act**. Section 12 is clear on what these duties are, it is a duty imposed on her by the once there is compulsory registration for an area. This, the 1st defendant says amounts to recklessness and bad faith. Further, the definition of "bad faith" according to **Black's Law Dictionary** means the opposite of "good faith" and generally implies or involves actual or constructive fraud or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation.

- [24.] It was argued that even if there was no willful act, but by her omission, the Registrar created a situation that affected the proprietary rights of the claimants and the 1st defendant who did nothing but conduct a regular business transaction for land. The evidence of Terence Bunch shows they were thorough in the due diligence process as there was a search of register and it showed Jose Paz was the owner of the land.
- [25.] Further the 1st Defendant says by virtue of section 41, there was no other obligation on the 1st defendant to search register of the general register. The 1st defendant holds itself to be a bona fide purchaser for value. It had relied on the register prepared by the Registrar under the **Registered Land Act**. The 1st claim for indemnity against the registrar, any loss was due to a breach of the Registrar.
- [26.] It was also submitted that the Registrar cannot be allowed blanket immunity as this only extends to acts done in good faith. It was argued that she did not act in good faith, her duties as set out in section 12 were not done. The 1st defendant highlighted rulings where the Registrar has been held liable in negligence.
- [27.] The 1st defendant pointed out that the ancillary claim was based on negligence and breach of statutory duty and the Crown's argument therefore that the fraud was not sufficiently particularized was without merit.

Reply by the Crown to the Claimants and the 1st Defendant

- [28.] The Crown argued that even if the Registrar failed to carry out her duties, there is no evidence that she acted in bad faith or in collusion with Jose Paz. The Crown indicated that there was in fact no evidence at the time as to whether the Registrar had in fact carried out her duties under Section 12.
- [29.] The Crown emphasized that it was Jose Paz who contracted with the 1st defendant for the property. The court was reminded that Jose Paz is assumed missing and there is no death certificate issued and in that regard Jose Paz could still be held accountable for his actions.

Discussion

[30.] The applications are by the Crown to strike out the claim and the ancillary claim. The court's power to strike out the claim is found in CPR 26.3 (1) (b) and (c).The court has to consider whether the claim and/or the ancillary claim amount to an abuse of process and whether there is a reasonable cause of action against the Crown.

[31.] It is necessary to set out the relevant sections of the **Registered Land Act** as much contention in the claim is based on the actions of the Registrar and her duties under same. These sections concern the duties of the Registrar and the indemnity relied on by the Crown.

Section 8 of the **Registered Land Act**:

“The Registrar shall not, nor shall any other officer of the Registry, be liable to any action or proceeding for or in respect of any act or matter done or omitted to be done in good faith in the exercise or supposed exercise of the powers and duties under this Act or any regulations made thereunder”.

.....

Section 12(1)

“On the declaration by the Minister of a compulsory registration area under section 4 of this Act, the Registrar shall, in relation to every parcel of land situated in that area the title to which is already registered under the General Registry Cap.327, prepare a register in the prescribed form showing all subsisting particulars registered under that Act.”

[32.] The authorities in this jurisdiction on strike out application are clear. A court must take care and consideration of the facts and law presented in the claim they are asked to adjudicate upon. A court therefore must be certain that the claim is hopeless and without merit in order to use the power to strike out a claim and deprive litigants at an early stage in the proceedings the opportunity of a trial. In this case I agree with the claimants and the 1st defendant that it is not a clear case where the power to strike out may be used by the court. The claimants and the 1st defendant are now both holding documents that establish that they are both owners of the same property.

[33.] I find that some of the arguments raised by the crown in support of the applications are frivolous. Certainly this is not a claim in contract and neither have proceedings been filed under CPR 56. The circumstances that gave rise to the facts in this case are rather unfortunate. The evidence is that Jose Paz has been missing since 2018 after an airplane incident in Panama. There is no evidence that he has been declared dead. The claims against the Crown are in my view are arguable and ought to be fleshed out at a full trial. The property cannot have two (2) owners.

[34.] In **Belinda Francisco Young v Dinesh Advani et al**, Justice Farnese stated that:
“Striking out is not appropriate where an arguable case is presented or where complex facts or legal issues are raised by the case. The burden of proof is on the Applicants to establish on a balance of probabilities that the claim ought to be struck.”

[35.] With respect to the issue of limitation in **Placencia Land & Development et al v R&B Construction Co Ltd**. Claim no.212 of 2017 at paragraph 6, the court held:

“I agree with that proviso in that section applies to the facts of this case in that the act, neglect or default of the Registrar of Lands (to execute his duty and register the restrictive covenants in the register as required under the Registered Land Act) is a continuing one which has not been remedied to date.”

[36.] In **Michael Bogart v the Commissioner of Land and Survey**, Claim no. 317 of 2019, Acting Justice James gave the following guidance on strike out applications:

“This is considered a nuclear option and the rule ought not to be used except in the clearest of cases where a claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the court. Where an arguable case is presented or in the case raises complex issues of fact or law its use is inappropriate and so the burden of proof in this regard is on the applicant. The Defendants, as applicants, must satisfy the Court that no further investigation will assist it in its task of arriving at the correct outcome. The Applicant must persuade the Court either that a party is unable to prove allegations made against the other party; or that the Statement of Claim is incurably bad; or that it discloses no reasonable ground for bringing or defending the case; or that it has no real prospect of succeeding at trial.”

[37.] Consequently, I am unable to grant the applications by the Crown to strike out the claim and the ancillary claim. The Registrar is called upon to answer the claim. It is a case that requires further investigation. The role of the Registrar in the circumstances that led to the claimants and the 1st defendant to both having title documents to the same property ought to be fully argued to determine whether in fact and/ or law there has been a breach of statutory duty that may have led to the filing of this claim.

Disposition:

[38.] It is hereby ordered as follows:

1. The Notice of Application filed by the 2nd, 3rd and 4th defendants on the 7th June 2022 is dismissed.
2. The Notice of Application filed by the 2nd, 3rd and 4th defendants on the 18th November 2022 is dismissed.
3. Costs are awarded in the cause.

**NADINE NABIE
HIGH COURT JUDGE**