

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No 9 OF 2022

BETWEEN:

TRACEY ANN NICHOLAS-HANSON

Applicant

AND

GEORGE HERBERT HANSON

Respondent

Appearances:

Ms. Robertha Magnus-Usher SC for the Applicant
Ms. Darinka Munoz for the Respondent

May 30

2024: December 12

DECISION

Practice – change of terms of reference to expert previously approved by court – Whether chattels to be valued for the purpose of dividing matrimonial property – Accidental slip – Variation of previous order by the court – Rules 42.5, 42.8 & 42.10 of the High Court (Civil Procedure) Rules 2005 – Section 202 (1) of the Senior Courts Act 2022

[1] Before me is a summons by the respondent/ applicant (“respondent”) on 30 January 2024 seeking an extension of time and permission to provide terms of reference to the expert together with other reliefs and a summons for directions filed on 22 February 2024 by the applicant/ respondent (“applicant”).

[2] The main reliefs sought by the respondent’s summons are as follows:

1. The terms of reference approved by the court on 12 June 2024 to be provided to the experts.
2. An extension of time to provide the terms of reference to Glenroy Ferguson 14 days from the date on which the court determines the summons and to submit expert report within 50 days from the date of receiving the terms of reference.
3. A date by which parties may put questions in writing to the experts and a date for reply by the valuator.
4. Submissions on costs of the experts to be heard at a later date.
5. Experts to attend trial to be cross-examined.
6. Orders made on 26 September 2022, 7 December 2022, 12 June 2023 and 30 October 2023 to stand unamended.

[3] The terms of reference referred to in the respondent's summons were approved by Farnese J on 12 June 2023. The summons seeks *inter alia* an extension of time to provide the terms of reference within 14 days of determining the summons and for the expert to submit the report within 50 days of receiving the terms of reference.

[4] The affidavit in support by Jasnique Smith, a legal assistant of the respondent's law firm, states that draft orders of the orders made by Farnese J on 12 June 2023 and 30 October 2023 together with the expert's terms of reference dated the same day were sent to the applicant's law firm on 30 October 2023. She states that by email dated 3 November 2023 the applicant's attorney at law requested changes to the expert's terms of reference.

[5] On 22 February 2024, the applicant filed a summons for directions seeking further directions to the respondent's terms of reference. This is supported by an affidavit from the applicant. She states she has filed all pleadings in respect of her application for division of matrimonial property. The applicant states that the court approved terms of reference, apart from including the disclosure of all affidavits and evidence to the valutors (to which her counsel objected), requires the valuator to value

chattels. She states her application does not include chattels and the terms of reference relating to chattels are unclear and cannot be referenced to a valuator.

[6] The summons and the summons for directions relate to the order dated 12 June 2023 by Farnese J allowing a change of the expert witness and approving the respondent's proposed terms of reference. By that order, the judge gave directions for the filing of the expert report and for the parties to put written questions to the expert.

[7] The main proceedings arise from an originating summons filed by the applicant on 8 February 2022 seeking orders from the court to transfer property listed in its schedule as well as such other property or interest in the remaining properties. The properties listed in the schedule are lots 65 and 66 Xunantich Boulevard in Lords Bank village.

[8] By order dated 26 September 2022 Shoman J ordered valuation of the subject properties. Initially, the court appointed Mr. Armin Cansino and Mr. Talbert Brackett Sr. as experts. Neither expert was able to assist the court for reasons of their own. Subsequently, Mr. Herman Castillo, a district land survey officer was appointed to assist court. He also was unable to assist court. Thereafter, the court ordered each party to have its own expert. The subsequent orders were made by Farnese J.

[9] The terms of reference which were approved by the court on 12 June 2023 required the valuator to also value chattels and carry out certain other functions which the applicant says are not the functions of an expert. The applicant states that the court had by an oversight allowed the valuator to value the chattels as stated in the terms of reference.

[10] The applicant states that she asked the court to determine her interest in lots 65 and 66 and that she did not apply to determine her beneficial ownership of the remaining properties. She states that her affidavit in support of the originating summons made

no claim or demand for chattels. The applicant states that the terms of reference fails to identify specific chattels or furnishings for valuation. Upon receipt of the terms of reference, the applicant states that she amended and sent it back to the respondent. The court notes that there has been correspondence between the respective attorneys to amend the terms of reference.

- [11] The applicant contends that the respondent's terms of reference require the assessment of the value of improvements to the property and that it is for the court to decide on the value of improvements. The applicant submits that the assessment of improvements including furnishings should be excluded especially as the valuator cannot say which furnishings were obtained jointly or individually by the parties. The applicant submits that the valuer's duty is to value the building in its current condition and that the expert is not the adjudicator of facts on evidence presented to court. The applicant states that these matters can be corrected under the slip rule particularly as the parties have not submitted the expert's report and the terms of reference have not been sent to the respondent's expert.

Determination

- [12] The respondent seeks an extension of time to provide the court approved terms of reference to the expert, Mr. Glenroy Ferguson, within 14 days from the date of the decision. The respondent requests that the expert be allowed to submit his report within 50 days of receiving the terms of reference. The applicant seeks to vary the order made by Farnese J saying that some of the matters contained in the terms of reference can only be determined by the court and that these are not matters on which the expert can express an opinion. The main objection concerns the competence of the expert to express an opinion on the value of chattels.
- [13] The respondent states that it could not submit the terms of reference to the expert as the applicant's counsel did not execute and provide it on time. The respondent submits that the failure to provide the terms of reference was unintentional. The respondent relies on the decision in *Denton v TH White Ltd and another*;

Decadent Vapours Ltd v Bevan and others; Utilise TDS Ltd v Davies and others¹. The decision of the English court pertains to an application for relief from sanction.

- [14] The applicant contends that Farnese J's order was not appealed as it was not perfected and sealed, and that the time for appealing has not lapsed. Section 202 (1) of the Senior Courts Act provides for a notice of appeal or notice of application for leave to appeal within 21 days of the order being signed, entered or otherwise perfected. The applicant submits that as a slip has occurred, it is just that the slip be corrected rather than take the costly route of an appeal. The applicant submits that this court is competent to change the order made by Farnese J under the slip rule.
- [15] Rule 42.5 of the High Court (Civil Procedure) Rules 2005 ("CPR") concerns the drawing up of orders and judgments. A party that is directed to draw up an order must do so within 7 days. When there is a failure to do so any other party may draw up the order. In this instance, neither party has drawn up the order as required by the rules. Rule 42.8 states that a judgment or order takes effect from the day it is given or made, unless the court specifies that it is to take effect on a different date. The applicant relies on Rule 42.10 (1) of the CPR which allows the court at any time without an appeal to correct a clerical mistake in a judgment or order or an error arising in a judgement or order from any accidental slip or omission.
- [16] The rule to correct an accidental slip or omission is a useful mechanism to correct an unintended error. However, as Lord Goff opined in ***Mutual Shipping Corporation v Bayshore Shipping Company***, the animal is usually recognisable when it appears on the scene.² In other words, the accidental slip or omission must be evident as such. While it is possible to give effect to the intention of the court, the

¹ [2015] 1 All ER 880

² [1985] 1 Lloyd's LR 189

rule must not be used to correct an error of substance or for the court to express second thoughts on the matter.

- [17] The applicant's objection to Farnese J's order mainly concerns the terms of reference which allows the valuation of chattels for the purpose of dividing matrimonial property. Farnese J approved the terms of reference having considered the respective positions of the parties. When the pleadings and the affidavits are considered, there is no clear indication that the judge erred in making the order or that the order did not reflect the intention of the court. The judge must be taken to have considered the positions of the parties in allowing the terms of reference. An attempt to vary the order could result in a departure from what was intended by the judge who heard the matter previously.
- [18] The applicant has failed to establish that the order was made by oversight. The judge may have considered the broad definition of the term 'property'. The affidavit filed in support of the originating summons refer to the chattels to which she contributed. The originating summons refers to the property listed in the schedule "as well as such other property or interest in the remaining properties". The court cannot speculate on the reasoning of Farnese J' orders and vary the orders of the court based on conjecture. This court does not have the jurisdiction to do so. These are matters that could easily have been clarified by making an application to Farnese J without delay. The applicant has not taken any steps to rectify the order it says was made by an oversight.
- [19] After the court approved the terms of reference on 12 June 2023, the respondent prepared and sent a draft order to the applicant's attorney at law on 30 October 2023. The respondent does not explain the delay in preparing and sending the draft order to the applicant. An amendment was suggested by the applicant on 3 November. Nothing seems to have taken place thereafter except for the exchange of a couple of emails between the respective attorneys at law. The applicant made no application to the previous judge to clarify the order. The respondent also made

no attempt to perfect the order as required by the rules. The respondent's summons was filed on 30 January 2024. The applicant raised the matter a few weeks later, on 22 February 2024. The respondent's summons and the applicant's summons for direction were filed after Farnese J ceased to hear this case.

[20] The applicant's objection that the respondent's expert may not have sufficient experience in valuing chattels is not convincing. If an expert is inexperienced in a particular area, steps can be taken to appoint a suitable candidate for the exercise. If there are doubts relating to the expert report, questions can be put to the expert so that the respective cases are clearly advanced. The expert can also be cross-examined. Moreover, the expert may apply to the court for directions. Ultimately, the court will make findings of facts based on the available evidence including the testimony of the expert. The expert is not an adjudicator of facts. Adjudication is the function of court.

[21] The applicant submits it has not received the orders made by the court on 7 December 2022, 12 June and 30 October 2023 and that these have not been filed although it returned the draft orders with requests to the respondent's counsel for amendments to be made. The applicant opposes the respondent's request that the orders of 7 December 2022, 12 June 2023 and 30 October 2023 remain unamended. The applicant also takes exception to the court's order on 7 December 2022 for the costs of the valuator to be shared by both parties. The applicant says it is unfair as one of the parties could be incurring a share of the significantly higher costs of the other party's valuator. The applicant submits that as the order has not been perfected, the court could issue further directions on the matter. The court disagrees on both matters. The applicant should have moved in the matter immediately after the orders were made and brought its concern to the attention of Shoman J and Farnese J. The applicant did not do so. There will be no change to any of the orders.

[22] The respondent's summons succeeds and time is extended as prayed for in the summons. The applicant's summons for directions is not allowed. The court is of the view that the parties must bear their own costs.

ORDER

- A. The respondent's summons is allowed

- B. The terms of reference as approved by Farnese J is to be sent to the expert with timelines stated in the summons to be observed.

- C. The applicant's summons for directions is declined.

- D. Parties to bear their costs

M. Javed Mansoor

Judge