

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE A.D. 2022

CLAIM No. CV 671 of 2022 [2]

BETWEEN:

**[1] ERIC GREGORIA VASQUEZ
[2] CARLOTTA GUADALUPE VASQUEZ**

Claimants

and

[1] JAMES RAM LOGAN

Defendant

and

**[1] ATTORNEY GENERAL OF BELIZE
[2] MINISTER OF NATURAL RESOURCES
[3] COMMISSIONER OF LANDS
[4] REGISTRAR OF LANDS**

Interested Parties

Appearances:

Ms. Kristy Lopez for the Claimants

Mr. Ian Gray for the Defendant

No Appearance for the Interested Parties

2024: November 28th;

December 11th.

RULING

Pleadings – Civil Practice and Procedure – Amendment – CPR 20.1(3) – Probate Reliefs Sought by Ordinary Claim – Application to Convert Ordinary Claim to a Fixed Date Claim Form – CPR 26.9(3) and CPR 67 – Application for Addition/Removal of Parties and Causes – CPR 19.2(7) – Use of Single Claim Form for Multiple Claims.

- [1] **ALEXANDER, J.:** This is a claim for probate reliefs that were erroneously brought by way of an ordinary claim. By this application, the claimants are seeking permission to convert their claim from an ordinary claim to a fixed date claim, in order to pursue the probate reliefs. They filed their notice of application on 12th July 2024 (“the application”).
- [2] By the application, the claimants also asked for permission to include in their probate claim, a claim to set aside a Deed of Conveyance dated 15th September 2020 between the defendant and a 3rd party, Mr. Zhike Wu (“Mr. Wu”). They allege that the conveyance was fraudulently done and that the property was part of the probate matter, so Mr. Wu ought to be added as a defendant to the present proceedings.
- [3] I grant the permission to convert the ordinary claim to a fixed date claim and to make the necessary amendments sought. I also allow the application for the addition of Mr. Wu as a defendant in these proceedings. Further, I give permission to use a single claim form to dispose of all the reliefs that are claimed in this matter.
- [4] I am satisfied that my ruling at paragraph 3 above will result in the efficient and most convenient use of resources and realise the overriding objective of the Civil Procedure Rules, 2005 (“CPR”). The claimants are alleging fraud in the conveyance of property forming part of the probate claim so the addition of Mr. Wu as a party to these proceedings is necessary for a proper and full disposal of all the issues in this claim. The combining of all claims in a single claim form will work in the interest of justice, achieve judicial efficiency and economy in the use of resources and so further the overriding objective of the rules.

History of Proceedings

- [5] The present proceedings relate to a claim for the revocation of the Grant of Administration No. 82 of 2012 dated 2nd May 2012 (“the Grant”) in the estate of Charles Card (“the deceased”). The deceased’s estate is comprised of some 20 acres of land in the Stann Creek District. The Grant was made in favour of the defendant

and by the time the matter was filed in court, there was a conveyance of land to Mr. Wu.

- [6] A previous application was granted in favour of Mr. Wu, striking out the claim against him because of gross procedural failures and/or non-compliances with the rules by the claimants. In a separate application, I gave an oral ruling where I struck out the claim against three other defendants and granted permission to name those defendants as interested parties in the matter. The matter was allowed to proceed only against the present defendant. The claimants wished now to abandon their previous claims for prescriptive title to the land and delivery of possession. They intend to only proceed with the probate claim and the setting aside of the conveyance to Mr. Wu.

Issues

- [7] The court finds that the issues for its determination in this application are:
1. Whether permission should be granted to convert the claim ("**Conversion**")?
 2. Whether the amendment ought to be granted ("**Amendment**")?
 3. Whether permission should be granted for addition of parties and removal of claims ("**Addition of Parties/Removal of Claims**")?
 4. Whether there was delay in making the application or any limitation bar, which ought to be considered in refusing it ("**Delay/Limitation Bar**")?
- [8] These issues will be addressed under the applicable subtitles or descriptions ascribed after each.

The Legal Framework

- [9] The several issues raised in the application cover a range of rules. I will, therefore, set out all the relevant rules that affect the determination of this matter.

CPR 8.1(5)

“Form 2 (fixed date claim form)⁸ must be used –

(a) in proceedings for possession of land; ...”

CPR 19.2(7)

“The court may not add a party (except by substitution) after the case management conference 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 20.1(1) (2) & (3)

“[1] A party may change a statement of case at any time before the case management conference without the court’s permission ...

[2] An application for permission to change a statement of case may be made at the case management conference.

[3] The court may not give permission to change a statement of case after the first case management conference unless the party wishing to make the change can satisfy the court that the change is necessary because of some change in the circumstances which became known after the date of that case management conference.”

CPR 26.9 (3)

“Where there has been an error of procedure or failure to comply with a Rule, practice direction, court order or direction, the court may make an order to put matters right.”

CPR 67.2

“(1) Probate proceedings must be begun by issuing a fixed date claim form in Form 2.

(2) The claim form must state the nature of the interest of the claimant and of the defendant in the estate of the dead person to which the action relates.

(3) The claimant must file a statement of claim with the claim form.”

CPR 67.3

“Every person who is entitled or claims to be entitled to administer the estate of a dead person under or by virtue of an unrevoked grant of probate of the dead person’s will or letters of administration of the estate **must be made a party to any proceedings for revocation of the grant.**” [My Emphasis].

Discussion

A. Conversion

[10] Conversion of the claim from an ordinary claim to a fixed date claim is necessary to properly bring the claim for a revocation of the Grant against the defendant.

[11] The rules require a probate claim to be made by way of fixed date claim form: see CPR 67.2(1). However, the claimants commenced the present claim by way of a regular claim form. This was a fundamental procedural error since they failed to comply with the rules for seeking probate reliefs.

[12] Recognising that the claim could not be converted by their own volition, the claimants approached the court for permission to convert the proceedings to a fixed date claim. The application was made pursuant to CPR 26.9 (3), which empowers the court to put right matters where it is found that there were procedural errors or non-compliances with the rules of court, a practice direction or a court order or direction.

[13] Parties are *ad idem* with the rules and the interpretation regarding the power of the court to put right matters before it. In fact, Mr. Gray, counsel for the defendant, seemed to have tacitly accepted that the matter could be converted to a fixed date claim. His foci, in his submissions, were on resisting the nature of the proposed amendments, arguing against the addition of a party and raising the issues of delay and prejudice.

Mr. Gray's arguments are addressed below but, in my view, they place no hold on the exercise of my power to convert the proceedings.

[14] Ms. Lopez, counsel for the claimants, submitted that the conversion would not alter the fundamental nature of the claim. In fact, should the conversion be allowed, the claimants would maintain the reliefs under the regular claim in the fixed date claim. According to Ms. Lopez, the proposed conversion of and/or amendments to the fixed date claim form align in substance with the ordinary claim. Both seek to address the alleged fraudulent administration and conveyance of assets in the deceased's estate. In the circumstances, the court may order that the proceedings be converted "to put matters right" in accordance with Rule 26.9(3).

[15] The rules vest the court with the power to correct errors of procedure. CPR 26.9(3) allows for the correction of precisely such procedural errors as are currently engaging this court's attention. Under its case management powers, therefore, the court could use its discretion to put right matters arising before it.¹ The present conversion request does not alter the nature of the relief(s) sought in the probate claim, which is the revocation of the Grant. The conversion is directed at curing an error of procedure by making right the use of the proper approach to seeking reliefs from the court and bringing the pleadings into compliance with the rules of court. In any event, both counsel have agreed that the court could convert the present proceedings before it from an ordinary claim to a fixed date claim.

[16] I grant the application for conversion of the ordinary claim to a fixed date claim.

B. Amendment

[17] CPR 20 allows for amendments to be made to the pleaded case of any party. CPR 20.1(3) states that the court may give permission to change a statement of case after

¹ *Antonia Webster (Appellant) v The Attorney General of Trinidad & Tobago (Respondent)* [2011] UKPC 22; see also *Michael Bogaert v Commissioner of Lands et al Claim No 317 of 2019*, Belize.

the first case management conference (“CMC”) where the party wishing to make the change can satisfy the court that the change is necessary because of some change in the circumstances which became known after the date of the CMC.

[18] An amendment could be made to a claim including, among other things, to the title of the proceedings, the pleadings and/or prayer for reliefs, to parties and causes of action and/or to correct any aspect of the claim. Generally, a court would facilitate these applications to ensure that all matters in dispute between the parties are before it.

[19] The procedure for making amendments is set out in the rules. As stated above, the rules allow parties to amend their claims *without permission* before a CMC. However, where, as in the present case, parties are already before the court at a CMC and the matter is being case managed towards trial preparedness, the party seeking to amend its claim must seek the leave of the court.

[20] I find helpful to insert below the following comments on amendments as a prelude to my discussion:

“... some amendments may be made without court permission, but whether or not such permission is required the court exercises control over amendments with a view to promoting the overriding objective of dealing with cases justly, **and in particular in order to ensure that amendments do not undermine the court’s ability to decide the dispute in a proportionate and expeditious manner** and with proper use of the court resources.”² [My Emphasis].

[21] CMC directions have not been issued in this claim, as this court has been dealing with a spate of applications in the process of readying the matter for trial. The present application is the sixth application in this matter, with each application being robustly contested by parties. The claim is, therefore, highly contentious, with parties refusing to cede ground to advance the matter to trial.

² Zuckerman on Civil Procedure – Principles of Practice 4th Edition, Sweet & Maxwell.

[22] The original claim sought, among other things, an order for the revocation of the Grant, declarations that all actions taken under the Grant be deemed void and restraining orders to prevent further dealings with the estate property. A major component of the original claim was a claim based on prescriptive title. The proposed amended fixed date claim would include similar prayers for reliefs including an order to set aside all conveyances involving the estate property. Moreover, the claimants intend to abandon the claim for prescriptive title. The present amendments, therefore, align closely with the main relief, in the original claim, of revoking the Grant, and to treat with the conveyances deriving from the allegedly fraudulent administration. I think it is convenient at this juncture to set out the proposed amendments.

[23] Regarding the amendments, the claimants submitted that they intend to amend their statement of claim in the following terms:

a) To remove the following:

1. The claim for a declaration that the claimants are, by prescription, the owners of Block 207H (207HA and 207HB); and
2. The claim for an order for delivery of possession of Block 207H (207HA and 207HB).

b) To include the following:

1. A claim for an order that the Deed of Conveyance dated the 24th of June 2013 between the 1st Defendant as administrator of the Estate of Charles Card and himself filed the 2nd of July 2013 with Instrument No. LTU-201301202, be set aside on the basis of fraud.
2. A claim for an order setting aside the Deed of Conveyance dated the 15th of September 2020 between the Defendant and Mr. Wu filed the 23rd of September 2020 with Instrument No. LTU-2020001091, on the basis of fraud.
3. A claim for a declaration that the Estate of Charles Card hold Block 207H (207HA and 207HB) on trust for the Estate of Rose Card.
4. To add Mr. Zhike Wu as a defendant in these proceedings.

[24] The amendments would, therefore, allow the claimants to clearly show in their pleadings the nature of the claimants' interest, if any, in the deceased's estate and capacities in which they are claiming, if they are to avoid consequential applications: CPR 67.2(2). The original claim was silent as to the claimants' interest in the deceased's estate.

[25] Ms. Lopez argued that the proposed amendments are necessary in order to determine the real issues in dispute between the parties. Counsel also stated that the proposed amendments satisfy the threshold test of having a reasonable prospect of success. The facts support their claim for a revocation of the Grant and for the setting aside of the conveyances. These claims formed part of the original pleaded case and would be maintained. However, they would remove the claim for a declaration as to prescriptive ownership of Block 207H and an order for delivery of possession of Block 207H. No new claims would be added.

[26] Ms. Lopez also submitted that the facts show a change in circumstances warranting permission to amend, including the claimants' appointment of new counsel after the date set for the CMC.

[27] Mr. Gray vociferously protested permission being given by this court for the amendment. Counsel submitted that there are several reasons for refusing the amendment including – (i) lateness or delay in seeking the amendment, (ii) the introduction of new claims/cause of actions via the amendment, (iii) prejudice and (iv) the failure to show some prospect of success. I will address each argument below.

(i) Lateness and Delay

[28] Mr. Gray submitted that the application to amend has come some twenty-two (22) months after the claim was issued so this is wholly unreasonable and amounts to an

abuse. The claimants had ample time to amend their claim but failed to do so until August 2024.

[29] Mr. Gray also asserted that the court must consider whether an amendment being pursued so close to the trial date ought to be granted. According to Mr. Gray, the present application is made very late in the process, therefore, lateness is an important factor for refusing the application. Mr. Gray stated that when permission to amend is sought so close to the trial date, granting an amendment will put the parties on an unequal footing or will place or add an excessive burden to the defendant's task of preparing for trial. He relies on **Wood v Chaleff**³ where permission for an amendment was refused.

[30] I absolutely and totally rejected this argument as valid or relevant and/or critical to the disposing of the current application before me. The argument is simply misconceived. This case is still being case managed and CMC directions have not been issued in preparation for trial. There is no issue of a trial date being in jeopardy of postponement. In fact, no trial date has been fixed.

(ii) New claims and/or change in causes of action

[31] Mr. Gray advanced that the proposed amendment has introduced new causes of action or new claims that the defendant now has to answer. Counsel argued that these changes are wholly disadvantageous of the defendant because he now has to answer new claims. I do not agree with Mr. Gray.

[32] The proposed amendment does not introduce new claims or causes of action from those in the original claim. In fact, the amendment proposes to remove a cause of action (i.e. the claim for prescriptive title) and seeks to cure the defective pleadings. The proposed amendment seeks to bring the existing claim form into conformity with

³ [1999] EWCA Civ. 1522.

CPR 67. It does not introduce new claims. I find no validity in this argument of Mr. Gray. It is ignored.

(iii) Prejudice

[33] According to Mr. Gray, the defendant is disadvantaged as he is now placed in an unjust and unfair position by the application to amend the claim form. He argued that the application ought to be refused because the defendant would undoubtedly be prejudiced by it.

[34] Mr. Gray submitted further that in order to bring the amended claim into conformity with CPR 67, the entire claim form would have to be reconsidered and redrafted. Counsel claimed that, consequently, the redrafted amended claim “would put the defendant in a position that would adversely affect him since he has already presented a defense (sic) and submitted an application to strike out the claim.”

[35] Mr. Gray invited the court to consider a dictum of Peter Gibson L.J. in **Cobbold v Greenwich LBC**⁴ a case involving an amendment to a defence where the court said that the judge had erred in, amongst other things, concluding that the defendants would suffer no prejudice by the amendment. In allowing the appeal Peter Gibson L.J. (with Sedley L.J. concurring) said:

“Amendments in general ought to be allowed so that the real dispute between the parties can be adjudicated upon provided that any prejudice to the other party or parties caused by the amendment can be compensated for in costs, and the public interest in the administration of justice is not significantly harmed.” [My Emphasis].

[36] Relying on the dictum in **Cobbold**, Mr. Gray then submitted that if this court were to allow the proposed amendment, the defendant would suffer significant prejudice, whether he is compensated for it in costs or not. Mr. Gray also argued that the public

⁴ August 9, 1999, unrep., CA.

interest in the administration of justice would be considerably harmed by the amendment.⁵

[37] I rejected the arguments of Mr. Gray as to prejudice to the defendant and “significant harm” to the administration of justice should I grant permission for the amendment. There is nothing on the materials presented before me that points to such consequences as highlighted by Mr. Gray. The court is mandated to deal with cases justly, which includes ensuring that each case is dealt with not only expeditiously but also fairly and that justice is not sacrificed on the altar of expediency. As noted by Millett LJ in **Gale v Superdrug Stores Plc.**:

“Litigation is slow, cumbersome, beset by technicalities, and expensive...the process is a difficult one which is often frustrated by the overriding need to ensure that justice is not sacrificed. **It is easy to dispense injustice quickly and cheaply, but it is better to do justice even if it takes a little longer and costs a little more.**” [My Emphasis].

[38] I am satisfied that the amendment is important to a fair disposition of the present dispute and causes no *significant* harm to the overall administration of justice.

(iv) Need to Show Some Prospects of Success

[39] Mr. Gray submitted that permission to amend a pleading will be refused if it is clear that the proposed amendment has no prospect of success. Counsel argued that since the claimants are proposing significant amendments, they would need to prove to the court that there is some prospect of success in the claim. Mr. Gray posited that a court may reject an amendment seeking to raise a version of facts of the case, which is inherently implausible, self-contradictory or is not supported by contemporaneous documentation. He relied on the case of **Oil and Minerals Development Corp v Sajjad**⁶ to advance this argument for refusing the application.

⁵ *Thurrock Bc v Secretary of State for the Environment, Transport and the Regions* (N0. 1), [2001] C.P. Rep. 55, CA.

⁶ [2001] ADR.L.R. 12/03.

[40] Mr. Gray asserted that the claimants' prospects of success in the present claim is marginal. They have now broadened their causes of action in challenging the authenticity of the defendant's Grant but have for twelve years been pursuing properties in the deceased's estate. These claimants are vexatious litigants who are abusing the process of the court to resolve personal issues.

Analysis

[41] In disposing of the question of an amendment, I noted the submissions of both counsel and thank them for their assistance. Both counsel agreed on the law on amendments and have smoothly advanced the cases of the parties.

[42] The learned authors of the Principles of Practice⁷ have adeptly and clearly outlined in their text the general approach to applications to amend under the CPR. I have liberally quoted the learning below:

At paragraph 7.47

"Under the overriding objective, an important consideration continues to be whether the proposed amendment is necessary in order to determine the real issues in dispute between the parties. But this is not the only consideration, as Peter Gibson LJ has stated:

"Amendments in general ought to be allowed so that the real dispute between the parties can be adjudicated upon **provided that any prejudice to the other party or parties caused by the amendment can be compensated for in costs, and the public interest in the efficient administration of justice is not significantly harmed**" [My Emphasis].

At paragraph 7.48

"It is important to ensure that the statements of case will assist the efficient and economic disposal of the claim both in terms of allowing the parties to establish their respective cases and in terms of providing the court with an intelligible account of the issues to be tried. **Neither the interests of justice nor the**

⁷ Ibid. note 2.

efficient disposal of claims would be advanced by amendments that are bound to fail on the merits. Therefore, the court will allow an amendment only if it has reasonable prospect of success... However, the court should be astute not to conduct a mini-trial in order to reach a conclusion on whether the proposed amendment has a real prospect of success." [My Emphasis].

At paragraph 7.49

"Provided a proposed amendment satisfies the threshold test of having a reasonable prospect of success, applications to allow the amendment must necessarily turn on the particular facts and no hard and fast rules are possible. The range of considerations that need to be taken into account is illustrated by the Court of Appeal's decision in *SX Holdings LTD v Synchronet*,⁸ where the court took into account the following matters: the opportunity that the claimant had to formulate his statements of case adequately at an earlier stage; the expense to which the defendant would be put as a result of an amendment; the waste of court time; the consequences of refusing an amendment to the continuation of the claim; the seriousness of the matters proposed to be added; and the possibility of making an order that would compensate the defendant for any costs or prejudice caused by the amendment so that the parties are treated on an equal footing. The outcome of an application will depend on a fact-based assessment of these considerations. Decided cases can only illustrate the way in which discretion is exercised."

[43] The practice is for a court to allow an amendment *only* if it has a reasonable prospect of success. Each case will turn on the particular facts. Mr. Gray maintains that the claimants have no reasonable prospect of success in the case even if the amendments were allowed. I have detailed his arguments at my paragraphs 39 and 40 above, where he postulated that the claimants' case is inherently implausible, self-contradictory and/or unsupported by contemporaneous documentation. Counsel then refers to the claimants as vexatious claimants who abuse the process of the court by pursuing this claim. I am not swayed by Mr. Gray's arguments that seem to invite a deep dive into the merits of the case at this stage of the proceedings.

[44] At this juncture, case management orders have not been issued and all the evidence is not before me to sustain any determination on the merits of the case. At this stage,

⁸ [2001] C.P. Rep. 43, CA.

all that I am required to be satisfied of is that the proposed amendments to the pleadings bear out the facts to support the claim being advanced. It is not a decision on the substance of the claim, and I am not required to conduct a mini trial.

[45] To this end, I have considered that all the amendments proposed by the claimants relate to the revocation of the Grant that is in issue in the proceedings. As a rule, the principal ground for revoking a grant is that it was obtained by a false or incorrect statement. This includes, but is not limited to, where an applicant secures a grant by failing to disclose material facts.⁹

[46] Further, before making any order on the application for an amendment, it is important to consider any person whose interest is likely to be affected and provide an opportunity for that person to be heard in the substantive claim. Thus, if any person has an interest or possible interest in the estate of the deceased, however marginally that interest might be, that person has a right to be heard once his interest is likely to be affected by any order made in the probate claim. The title of the proceedings ought to be amended to make that person a party to the claim. I do not find this facilitation to be vexatious or abusive in any way.

[47] The facts of the proposed amendment are that the claimants are the beneficial owners of Block 207H, which is beneficially owned by the estate of Rose Card (the wife of the deceased who survived him). The proposed amendment pleads that the defendant acted dishonestly in obtaining the Grant of the deceased's estate, by dishonestly misrepresenting that the deceased was a widower and was predeceased by his wife, Rose Card, at the time of his death. If it could be established that the estate of Rose Card is the beneficiary of Block 207H, and not the defendant, and the claimants could show that the conveyance to the defendant of the northern half of Block 207H (Block 207HB) was done by fraud, then any person with interest in the property ought to be given an opportunity to be heard. I considered that the proposed amendment aims to show that in or about 2020, when

⁹ Williams, Mortimer and Sunnucks on Executors, Administrators and Probate, Twenty-Second Edition (2023) Sweet & Maxwell, paragraphs 18-15 and 46-40.

the defendant purported to sell and convey Block 207HA to Mr. Wu he did so knowing that he was not entitled to Block 207HA, and he fraudulently sold and conveyed the same to Mr. Wu who at all times had actual and constructive notice that the claimants were in occupation and possession of the same.

[48] There is clearly a serious issue to be tried. The claimants allege that they were in possession of Block 207HB from 2003/2004 until in or about 2012 and were in possession of Block 207HA from 2003/2004 until in or about 2022 and that during that time they maintained and made certain improvements to the properties. All the evidence is not before me at this stage. Further, my order is not based on me being satisfied that the claimants have produced fool-proof evidence of their case before me. I am satisfied that the proposed amended claim will state that Mr. Wu is not a bona fide purchaser for value having had notice of the claimants' possession and occupation of Block 207HA at the time that he purportedly purchased the property. At this stage, I am not required to determine whether, in fact, the defendant acted dishonestly in obtaining the Grant and whether Mr. Wu is not a bona fide purchaser for value. I am to be satisfied only that the amended pleadings are capable of giving rise to a claim for revocation of the Grant and for the setting aside of any conveyances made pursuant to the Grant.

[49] The proposed amended claim does satisfy the threshold test of having a reasonable prospect of success. The amendment retains the original claim for the revocation of the Grant but seeks to correct the pleadings to satisfy the rules for bringing a probate claim. The amendments are necessary to bring all issues in dispute before the court to be adjudicated upon and I am satisfied that any issue or prejudice can be compensated in costs.

[50] The application for the amendment is granted.

C. Use of a Single Form for all Claims

[51] CPR 8.4(1) allows a claimant to use a single claim form to include all, or any, other claims, which can be conveniently disposed of in the same proceedings.¹⁰

[52] In my view, the claims for orders to set aside conveyances pursuant to the Grant are consequential claims. These align closely with the primary relief of revoking the Grant.

[53] I grant the application to use a single claim for all reliefs.

D. Addition/Removal of Parties and Claims

[54] Regarding the addition of a party, in this case Mr. Wu, CPR19.2(7) provides that the court may not add a defendant after the CMC, unless the party can satisfy the court that the addition is necessary because of some change in circumstances which became known after the CMC. The court's power to add or substitute a party is permissive, not restrictive, and the power is not limited to the situations mentioned in the rule.

[55] In the instant case, the matter is at the CMC stage. The court can exercise its discretion to add a new party where it is desirable to do so in order to resolve all the matters in dispute in the proceedings; or where there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings.¹¹

[56] In the instant case, the claimants seek to amend its claim to include a claim for an order to set aside the conveyance of property in the deceased's estate to Mr. Wu,

¹⁰ Gasoline Retailers of Jamaica Limited v Jamaica Gasoline Retailers Association [2015] JMCA Civ. 23.

¹¹ Principles of Practice at paragraph 13.5.

on the basis of fraud. It is necessary to add Mr. Wu in the interest of good case management and the efficient use of the court's resources.

[57] I will add Mr. Wu as a defendant so that the court can resolve all the matters in dispute in the proceedings.

E. Delay/Limitation Bar

[58] The defendant's counsel, Mr. Gray, submitted that the claimants are barred from amending their claim.

[59] In advancing the argument in opposition to that of Mr. Gray, Ms. Lopez relied on the case of **Dotsy Cain et al v Charles Alexander Dawson**¹² from Belize where the defendant raised the issue of limitation relying on Section 26 of the Limitation Act. Consequently, one of the issues the court had to determine was whether the claim was statute barred. In addressing this issue, that court held:

"The section referred to by the defence is clearly entitled 'Limitation of actions claiming personal estate of a deceased person'. The original claim before the court is neither a claim for the estate of a deceased person nor for that matter, a claim for the personal estate. **It is a claim for the revocation of a grant. Such a claim has no limitation period under the statute.**" [My Emphasis].

[60] Relying on **Dotsy Cain**, the claimants submit that there is, therefore, no bar to the claim for a revocation of the Grant in the present proceedings.

[61] I have considered the submission in opposition by Mr. Gray to wit that the proposed amendments seek to shift the claim from two claimants to a single claimant since the first claimant has no standing to bring a claim for revocation of the Grant. Mr. Gray energetically argued that if I were to allow the proposed amendments, the first claimant would have to be removed from the claim for absence of a nexus to the

¹² Claim No. 368 of 2014.

estate of Mrs. Card (i.e. the wife of the deceased). Mr. Gray stated that the second claimant would have to advance the claim alone as she is the only party who might have had the capacity (as the god daughter of Mr. and Mrs. Card, both deceased) at the commencement of the proceedings or has since acquired it. Mr Gray then acknowledged that the proposed amendments altering the capacity of the claiming parties were allowable under the rules. Nevertheless, he argued against allowing the amendment since it would further disadvantage the defendant. Counsel stated that it would be better for a new claim, and not an amended claim, to be made.

[62] While I understand the concerns about capacity that are raised by Mr. Gray, I do not consider it the responsibility of this court to police the pleadings of litigants and their counsel prior to those pleadings being placed before me. Litigants will always face the consequences of any flaws in their drafting, including in amended pleadings. In any event, CPR 20.2(4) clearly provides that the “court may allow an amendment to alter the capacity in which a party claims.” Mr. Gray’s arguments here would not be allowed to stymie the exercise of my discretion to grant the application.

[63] There is no limitation on a claim for a revocation of the Grant.

[64] The application before me is granted in its entirety.

Costs

[65] Mr. Gray seeks the costs of the amendment. He posited that the usual rule is that where an amendment is allowed, the party seeking to amend must pay the other side the costs of and occasioned by the amendment.¹³ Ms. Lopez stated that costs should be awarded in the cause.

[66] I will allow the defendant the costs of the application. Parties did not submit on an appropriate award for costs of the application, but I considered the work done by

¹³ Lidl UK GmbH v Davies [2008] EWCA Civ. 976.

counsel to defend the application, including *inter alia* documents drafted, research done and appearances on the application.

[67] In all the circumstances, I find a reasonable sum to award as costs in this matter is BZ\$2,000.00 and so award.

Disposition

[68] It is ordered that:

1. The application made on 12th July 2024 is granted with costs to be paid by the claimants to the defendant.
2. The defendant is granted permission to amend his defence and serve same on the claimants within 28 days of service of the amended pleadings on him.
3. The defendant's costs are assessed in the global sum of BZ\$2,000.00.

Martha Lynette Alexander
High Court Judge