

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV687 of 2023

BETWEEN:

[1] MAYAN LAGOON ESTATES LIMITED

Applicant

and

[1] JAMES PARKER

[2] MACKINNON BELIZE LAND & DEVELOPMENT LIMITED

Respondents

Appearances:

Mr. John Nembhard for the Applicant
Mr. Wayne Piper for the Respondents

2023: November 22;
 November 27;
2024: January 22.

DECISION

[1] **ALEXANDER, J.:** By application filed on 8th November 2023, the applicant (“Mayan Lagoon Estates”) sought an injunction against the respondents. Mayan Lagoon Estates initially sought the injunction only against the first respondent, James Parker, but was granted permission at the oral hearing on 22nd November 2023 to amend to add MacKinnon Belize Land & Development Limited (“Mackinnon Belize Ltd.”) as a respondent.

[2] By its application, Mayan Lagoon Estates seeks to restrain the respondents from trespassing on and/or continuing activities or alterations on lands described as Parcels

168 and 1493. Parcels 168 and 1493 are located in the Placencia North Registration Section, Stann Creek District Belize.

- [3] Mayan Lagoon Estates also asks for two declarations. The first is that Mayan Lagoon Estates be declared as having an overriding interest in Parcel 168 for a period of 99 years, which is still subsisting. They rely on a Memorandum of Sale dated 17th July 2004 (“the Agreement”) and a Caution that Mayan Lagoon Estates placed on Parcel 168 in 2006 (“the Caution”). The Agreement granted full management authority over Parcel 168 to Mayan Lagoon Estates.
- [4] Secondly, Mayan Lagoon Estates asks that it be declared as the legal owner of Parcel 1493. The declaration is sought on the basis that Mayan Lagoon Estates holds a title to Parcel 1493 derived from the Agreement.
- [5] I refuse to grant the interim injunction. I make no declarations that are sought. My reasons are detailed below.

Background

- [6] Mayan Lagoon Estates is a company incorporated under the laws of Belize with its registered office situated in Placencia Village, Stann Creek District, Belize. Mackinnon Belize Ltd. is also a company incorporated in Belize, which does business solely in Belize. James Parker is a director and shareholder of Mackinnon Belize Ltd.
- [7] In 1998, by virtue of survey plan No. 3697, Mackinnon Belize Ltd. received approval for the subdivision of approximately 3,300 acres of land on the Placencia Peninsula. On 2nd February 2004, Mackinnon Belize Ltd was issued a Land Certificate and became the legal owner of Parcel 168 et al. On 17th July 2004, Mackinnon Belize Ltd. entered into the Agreement to sell Mayan Lagoon Estates a number of parcels of land within the subdivision, including Parcel 1493 that is the subject of the present proceedings.

[8] As part of the Agreement, Mayan Lagoon Estates was to transfer a Waterfront Lagoon Lot to Mackinnon Belize Ltd. The term in the Agreement reads:

The purchaser shall, or at his earliest convenience, transfer title of a Waterfront Lagoon Lot in the general area of the lands west of Zeboz Resort (Parcel 127). The Purchase Price of the said lot shall be BZ\$1.00.

[9] Although the purchased parcels were transferred to Mayan Lagoon Estates, no Waterfront parcel was ever transferred to Mackinnon Belize Ltd. in accordance with the term at paragraph 8 above, and all the lots have been disposed of.

[10] In the Agreement also, Mayan Lagoon Estates was given full management authority for 99 years over Parcel 168. At the material time, Parcel 168 was an open parcel adjacent to designated commercial areas. On the subdivision survey plan, Parcel 168 was designated as a park. It is this park on which the Caution was placed and which is the centre of the present dispute. I shall, therefore, refer to Parcel 168 as “a park” or as “Parcel 168”.

[11] The relevant term regarding Parcel 168 comes under a subheading titled “Future Developments” in the Agreement. It reads:

Vendor has no objection to the purchaser’s **excavation of a Canal**, should the purchaser obtain GOB approval, across lands dedicated by the vendor as a park on authenticated plan of survey at reg. 21 Entry No. 3697, at no cost to purchaser. Vendor agrees to grant purchaser **full management authority** on same park for a period of 99 years. Furthermore, Vendor authorizes purchaser **to erect a fence** along the area designated as a park provided adequate access and parking to existing church. [My emphasis]

[12] Mayan Lagoon Estates developed the acquired commercial spaces into a hotel (“The Placencia Hotel”), with a final investment in excess of twenty five million dollars (BZ\$25,000,000). The Placencia Hotel is, therefore, owned by and/or shares common shareholders and/or directors as Mayan Lagoon Estates. Mayan Lagoon Estates also created The Placencia Residences, which are lagoon side properties that cater for in excess of 700 individual property owners. The contracts for these properties guarantee owners access to the park and access to the beach through the park. Mayan Lagoon

Estates has since excavated the canal and erected the fence, purportedly in accordance with the Agreement.

The Dispute

- [13] Sometime in October 2023, Mackinnon Belize Ltd. entered onto Parcel 168 and started clearing it. It claims that it is the legal title holder of and was given the approval to develop Parcel 168. The approval to develop Parcel 168 was not provided, so its conditions are unknown. Mayan Lagoon Estates now asserts its rights as a licensee over Parcel 168. It claims that Parcel 168 is burdened by its designated status of a park and by the Caution.
- [14] Mr. Piper, counsel for Mackinnon Belize Ltd., disputes the status of licensee being claimed by Mayan Lagoon Estates. Mr. Piper argues that this grant was never formalized and that Mayan Lagoon Estates does not hold a lease, licence, easement or any other legal right to use or occupy Parcel 168. Mackinnon Belize Ltd. is the legal owner of Parcel 168, a fact not disputed by Mayan Lagoon Estates. At the time of the Agreement, the Lagoon lot canals were not yet constructed and it was unclear if any of the lands on the beachside of the main road would be needed for the development.
- [15] Mr. Piper states also that both parties have not complied with the terms of the Agreement. Whilst Mackinnon Belize Ltd. had transferred the parcels that were purchased to Mayan Lagoon Estates, there was no transfer of a Waterfront Lagoon Lot to Mackinnon Belize Ltd. Also, it had never granted full management authority to Mayan Lagoon Estates despite the term in the Agreement. It is inappropriate for Mayan Lagoon Estates to seek a declaration from the court that it has an overriding interest in Parcel 168 as the interest is not defined in the Agreement and the evidence untested. Also, whilst the Caution was placed on Parcel 168 on/about 20th July 2005 (registered in March 2006), Mackinnon Belize Ltd. only became aware of this in November 2023 when it received a demand letter from the attorney of Mayan Lagoon Estates.
- [16] Mackinnon Belize Ltd.'s case is that the only access to Parcel 168 is through Parcel 1493, which at all material times consisted of roads or pathways for accessing Parcel 168. The

declaration being sought by Mayan Lagoon Estates regarding Parcel 1493, without testing the evidence, is improper. Further, upon receiving approval to develop Parcel 168, James Parker did a site visit. He discovered that Parcel 168 was being used by the adjacent Placencia Hotel for drainage ponds and that the walls of The Placencia Hotel have been extended along half of Parcel 168, cutting off direct access to the main road. A guard house is placed on the middle of the property. Access to the walled off portion is restricted on the basis that it is the private property of Mayan Lagoon Estates.

[17] Mayan Lagoon Estates does not dispute that the title to Parcel 168 is held by Mackinnon Belize Ltd. The case of Mayan Lagoon Estates is that on realizing that Parcel 168 was given a parcel number, it lodged the Caution to ensure it remains as a park. It concedes that the Caution was registered as Instrument No. 2718/2006 dated 8th March 2006. Mayan Lagoon Estates claims that it is a licensee of Parcel 168, having been given full management authority over that Parcel and entitled to the injunction.

[18] Mr. Nembhard, counsel for Mayan Lagoon Estates, states that the Caution complies with the strict statutory requirements of Section 130 of the Registered Land Act, Chapter 194 of the Laws of Belize, Revised Edition 2020 ("RLA"). The Caution is in the prescribed form (Form R.L.18) and provides an absolute interest, until withdrawn by Mayan Lagoon Estates or removed by order of the court or the Registrar: see Section 132(1). The Caution is without fault and is being properly maintained. There is no limitation on the Caution, as its intent is to forbid under Section 130(2)(a) RLA.

[19] Mr. Nembhard also points to Clauses 9.03 and 9.04 of the Environmental Clearance Plan dated 27th September 2002 where Mackinnon Belize Ltd. gave an undertaking that open spaces would be provided and remain in perpetuity for parks and playgrounds. These Clauses read as follows:

9.03: Open spaces will be made available for parks and playgrounds ...

9.04: No land that has been designated for public purpose will be sold. This includes land allocated for parks, schools, playgrounds, customs, fire services among others.

[20] The designation of Parcel 168 as a park was a pre-requirement for obtaining approval and environmental clearance. Its nature or user cannot be altered without the approval of the Land Utilization Authority (“LUA”). Mackinnon Belize Ltd. has provided no evidence of change of the “land use” of the open space allotted as a park and checks with the LUA showed there was no such application.

[21] Parcel 168 remains a park as detailed in the original Survey Plan. Mayan Lagoon Estates has the management authority for 99 years over the park and has properly lodged the Caution. The legal requirements to remove the Caution cannot be flouted by the respondents.

Issues

[22] The issues to be resolved at the hearing of an application for an interim injunction are well-settled and include:

1. Whether there is a serious issue to be tried.
2. Whether damages are an adequate remedy.
3. Whether the balance of convenience lies in favour of granting or refusing the interim relief.

Discussion

The Law

[23] This court’s jurisdiction to hear and determine an application for injunction is found in the Senior Courts Act¹ and the Civil Procedure Rules 2005 (‘CPR’). The discretion to grant or refuse an interim injunction will be exercised where it appears to be just and convenient to do so on all the facts of the case and upon such terms and conditions that the court thinks just. This power is not in dispute.

¹ Act No. 27 of 2022.

[24] The case of **American Cyanamid v Ethicon**² laid down the threshold test to be satisfied to get an injunction. **American Cyanamid** establishes that the discretion will be exercised after looking at the whole facts of each case. The order will only be granted to protect an applicant against injury from violation of its rights, for which damages after trial would not be an adequate remedy, while also balancing the rights of the respondents.

The court no doubt must be satisfied that the claim is not frivolous or vexatious, in other words, that there is a serious question to be tried. It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial. ... So unless the material available to the court at the hearing of the application for an interlocutory injunction **fails to disclose that the plaintiff has any real prospect of succeeding in his claim** for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought. (My emphasis).

[25] I will now discuss whether there is a serious issue to be tried.

Serious Question to be Tried

[26] I must consider if there is a serious issue to be ventilated between the parties or the claim is frivolous. This will depend on the materials before me at this stage. Mr. Piper, submits that the available materials must show that Mayan Lagoon Estates' case has some merits. This involves more than just having a serious claim. Mayan Lagoon Estates needs to show it has a likelihood of succeeding on its case for a permanent injunction: see **American Cyanamid**.

[27] At the centre of the dispute is the Agreement and the term granting "full management authority" over Parcel 168. Of importance also is the Caution and its implications. On these bases, Mayan Lagoon Estates has claimed half of Parcel 168 for its private use and excluded the title holder from accessing that portion of its property.

² [1975] 1 All E.R. page 504.

[28] At this stage, I am not required to resolve conflicts of evidence or answer difficult questions of law or to identify areas of evidentiary weaknesses or strengths in each party's case. There are, however, disputes of facts and evidence involved in this matter. Both parties rely on the Agreement with which both are not in full compliance. There is also a disagreement as to whether Mayan Lagoon Estates was ever given full management authority over Parcel 168. I will now consider the management authority and the Caution.

Full Management Authority

[29] Management authority allows for the use and/or control of the land. It is not land rights. It is incumbent on any applicant who relies on this to show clearly what rights or interests it has under this authority that is legally enforceable to get the interim injunction.

[30] Mayan Lagoon Estates claims that by the Agreement, it was granted full management authority over Parcel 168. The Agreement did not specify whether the management right is granted as a lease, licence or any other type of legal or registrable interest in the land. There is no evidence, whether at the time of the Agreement or afterwards, of the type of interest passed to Mayan Lagoon Estates or that the land was legally transferred to it. There was no argument raised that claims the right to use the property as it pleases, exclusive of the title holder, and then restore it at the end of the 99 year period. On the other hand, the respondents produced a land certificate showing that the second respondent is the owner of Parcel 168. The question arises as to what interest, if any, does Mayan Lagoon Estates have in Parcel 168?

[31] The Agreement is silent as to the interest that is given. It states simply that the, "Vendor agrees to grant purchaser **full management authority** on same park for a period of 99 years. Furthermore, Vendor authorizes purchaser **to erect a fence** along the area designated as a park **provided adequate access and parking to existing church.**" (My emphasis).

[32] The Agreement does not transfer any legal title and certainly nothing that excludes the legal title holder from accessing or using its own property. It also does not specify the

interest given to Mayan Lagoon Estates. I agree with Mr. Piper, therefore, that at the highest what was passed to Mayan Lagoon Estates was a licence. This does not exclude the lawful title holder from accessing or using its land. In my judgment, the giving of permission “to erect a fence” in the Agreement cannot be read as authorizing the taking of half of Parcel 168 for private use.

[33] I must now consider the effect, if any, of the parties’ failure to observe certain terms of the agreement. Mayan Lagoon Estates does not deny that it has been in non-compliance with the Agreement, specifically its failure to transfer a Waterfront Lagoon Lot to Mackinnon Belize Ltd. It concedes also that all lots have been disposed of in the development. Mr. Piper submits that the transfer of the Lot is no longer capable of performance, leaving only Parcel 168 for use by its owner. On the other hand, Mr. Nembhard fails to address this issue of non-compliance, maintaining only that Parcel 168 must be preserved as a park. He asserts that Mayan Lagoon Estates has not acted contrary to the stated objective for use of that land space or the Agreement. I disagree. Both parties have acted outside the clear terms of the agreement.

[34] In October 2023, Mackinnon Belize Ltd. obtained approval to develop Parcel 168 and moved heavy equipment onto it. By so doing, it too demonstrated that it did not intend to honour the green space commitment of having a park on Parcel 168. Mackinnon Belize Ltd. blames Mayan Lagoon Estates for having developed the area and failing to leave green open spaces. Mr. Piper argues that Parcel 168 was not designated as a park on the title document and it was for Mayan Lagoon Estates who was doing the development to provide for the park or green spaces. While ingenious, I do not accept that this argument justifies the actions taken by Mackinnon Belize Ltd. Mr. Piper conveniently ignored the fact that the original survey subdivision made provision for a park on what later became Parcel 168.

[35] On the other hand, Mr. Nembhard asserted that the existence of a park had nothing to do with the Agreement between the parties nor is it necessary to be shown on the title documents. It existed in the original subdivision survey and was a necessity to get the initial approvals from the Lands Department. The move by the respondents to construct a hotel on Parcel 168, without showing any approval for change in the use of the land

was wrong. He points to the evidence of Michela Bardini, one of the owners/directors of Mayan Lagoon Estates. She states that the approval for the development of Parcel 168 by constructing a hotel or resort would be a detriment to the existence of a park and their business model. She relies on the full management authority over Parcel 168 and the Caution to keep it as a park. I must now consider if the Caution suffices, on its own, to get the interim order.

The Caution

[36] Mayan Lagoon Estates claims that it placed the Caution to protect its interest as a licensee over Parcel 168. The threat to the existence of the park is a serious question to be tried. Mr. Piper counters that the Caution does not vest any legal interest in Mayan Lagoon Estates and does not elevate the dispute to a serious issue to be tried. To resolve the issue, I turned to the Caution itself.

[37] The Caution was placed on Parcel 168 on 20th July 2005, but registered in March 2006, approximately one year after purchasing parcels from the subdivision. The Caution states that the cautioner –

“forbids the registration of dealings and the making of entries in the register ... without its consent, until this caution has been withdrawn by the company or removed by order of the court or of the registrar.”

[38] A caution under section 130(1)(a) RLA serves to protect property rights that exist in equity. On lodgement, a caution should state the interest claimed by the cautioner. For example, a cautioner must state if it is claiming an unregistrable interest, a licence or that a bankruptcy petition was filed. Section 130(3) RLA states that “A caution should be in the prescribed form and **shall state the interest claimed by the cautioner** and the Registrar may require the cautioner to support it by a statutory declaration.” [My emphasis]. In the present matter, no such interest was stated in the Caution itself. Mr. Nembhard argues, however, that the Caution is in compliance with Section 130(1)(b) of the RLA and this speaks to the interest as a licensee. I assume, by his argument that the unstated interest can be inferred or read into the Caution.

[39] It is convenient to set out Section 130(1)(b) RLA.

Section 130(1)(b) any person who ... is entitled to a licence ... may lodge a caution with the Registrar forbidding the registration of dispositions of the land, lease or charge concerned and the making of entries affecting the same.

[40] Mr. Nembhard states that Section 130(1)(b) is absolute in its dictates. By this, it is clear that the interest being claimed by Mayan Lagoon Estates is that of a licensee of Parcel 168. The Caution was never withdrawn or removed, by court order or the registrar. He seems to be inviting the court to conclude that the Caution that is subsisting since 2005/2006 also entitles Mayan Lagoon Estates to use Parcel 168 as its private property. I do not accept this argument.

[41] A reading of the Caution at paragraph 37 above shows it is silent as to the legal interest of Mayan Lagoon Estates in Parcel 168. I disagree with Mr. Nembhard's argument that Section 130(1)(b) of the RLA can be used to read in an interest that is not clearly stated in the Caution or to ignore the clear words of the statute. Moreover, by failing to state the interest, it means that the Caution is not in compliance with the mandatory words of the section. It is unclear how this Caution that does not specify the cautioner's interest in Parcel 168 can be used to block the owner's access to it.

[42] Another issue is the use of half of Parcel 168 as private property. In his first affidavit, James Parker states that Parcel 168 has been cut in half and walled off as the "private property" of Mayan Lagoon Estates. This affiant also gave evidence that on 4th November 2023, Michela Bardini and her son prevented him from accessing the walled off half of Parcel 168. The Bardinis and Marco Caruso are the owners/directors of The Placencia Hotel and its controlling entities. They have also prevented the employees or agents of Mackinnon Belize Ltd. on several other occasions, from conducting a full boundary survey of Parcel 168. I am unsure how the Caution or the permission to construct a fence around the park entitles Mayan Lagoon Estates to take half for its private use.

[43] The Caution itself has been in place for over 17 years. In **David Gaynair v Registrar of Lands et al**³ Young J states that the main purpose of a caution is to maintain the status

³ Civ. Appeal No. 1 of 2017

quo to protect the cautioner's rights until he can seek the court's assistance. Until removed, a caution "acts like a statutory injunction preventing any dealing with the land which is inconsistent with, or not made subject to, it." A caution is, however, "not an injunction and it is not intended to be permanent."⁴

[44] In the present matter, Mayan Lagoon Estates seems to be using the Caution as a permanent injunction to block the title owner from accessing and using its property. Mayan Lagoon Estates has not denied that half of the park has been walled off from public use. It has also placed a drainage pond and guard house in the middle of the park. Mayan Lagoon Estates argues that it is entitled under the Agreement to use Parcel 168 as it does and to have placed the Caution on the property, restricting the dealings with the parcel. It states further that since all sellable properties have been disposed of since around 2006, the respondents are not allowed to deal with the remaining open spaces "without the prior approval of especially the Land Utilization Authority". Mayan Lagoon Estates provides no explanation as to why half of Parcel 168 is being used as its private property save its alleged licensee status under the Agreement. Mr. Nembhard submits also that the Agreement allows for a fence, canal and drainage. The Caution protects such use and restricts the respondents' access to and use of the land. In my view, this is not the purpose of the Caution on Parcel 168.

[45] The Caution at paragraph 37 above forbids the registration of dealings and the making of entries in the register. Those are its stated purposes. It means that entries are prevented from being made in the register without the cautioner's consent, until it is "withdrawn by the company or removed by order of the court or registrar." The Caution does not remove the rights of the title holder to access, enter upon or use its land. The Caution does not give Mayan Lagoon Estates any right to claim or use Parcel 168 as its private property. After placing the Caution, Mayan Lagoon Estates took no steps to gain legal rights over Parcel 168, but simply operated as if it were the owner of Parcel 168. I have no material before me showing its authority for aggressively confronting or blocking access to Parcel 168 or for treating half of it as private property. I also have no explanation as to why Mackinnon Belize Ltd. would have allowed the inclosing of half of the park for Mayan

⁴ Ibid page 10

Lagoon Estates' private use. With the materials available to me, I am not satisfied that either the Caution or the full management authority entitles Mayan Lagoon Estates to utilize the land designated for a park in the manner in which it does at present.

[46] I appreciate, however, that the evidence before me is incomplete, untested affidavit evidence. I, therefore, make no conclusion on the issues raised. I note that after claiming half of Parcel 168 for its private use, Mayan Lagoon Estates has now approached the court to preserve the other half as a public park. In so doing, it has not clearly established how the rights that it claims via the "full management authority" give it an actionable or legally enforceable right or interest in Parcel 168. Whilst I was not convinced on the materials before me, I did consider that Mayan Lagoon Estates has invested millions in its development and entered contracts with at least 700 property owners, promising among other things access to Parcel 168. Utility lines are also buried underground on Parcel 168. Now, the existence of the park on Parcel 168 stands in jeopardy. There is also the issue of the threat to the business model of Mayan Lagoon Estates if the injunction is refused.

[47] At this stage, I am to determine only if the issues are serious or frivolous. I concluded that the issues are serious enough to be ventilated at trial.

Damages as a Sufficient Remedy

[48] Mr. Nembhard did not address the issue of damages as a sufficient remedy in his submissions at the oral hearing. Subsequently, in a second affidavit of Michela Bardini, she asserts at paragraphs 16 to 18 that:

16. ... damages would not be an appropriate remedy as damages cannot replace the value of the use of Park (sic), Parcel 168 for all the owners within Phase 1.

17. Similarly, damages would not suffice if the utilities that are placed on parcel 168 would be removed, these include water, electricity, fibre optic cables and internet. The water lines as mentioned extend for over 7 miles.

18. Finally, damages would likewise not be appropriate if the residents of The Placencia Residences lose the ability to access the beach through the park. Loss of this

convenience would affect even the business model of the Applicant and its affiliate businesses.

[49] The evidence of Michela Bardini is that Parcel 168 is needed for beach access, utility lines and to support the business model of Mayan Lagoon Estates. The business model is unknown as no evidence was given of it. The affiant also speaks to inconvenience to property owners in being deprived of using the park to walk to the beach. The affiant has given no evidence of other access points to the beach. Other than inconvenience to other property owners and the existence of utility lines on the property, it is unclear as to why Mayan Lagoon Estates moved so swiftly to put a Caution on Parcel 168. In any event, the utility lines and drainage ponds ought not to be interfered with by the respondents as these form part of the Agreement.

[50] On the materials before me, I am not satisfied that damages would be an inappropriate remedy for any losses suffered. If damages would suffice to compensate the applicant for any losses it might suffer, an injunction will not be granted. In my judgment, damages will suffice to compensate for any inconvenience likely to be suffered by Mayan Lagoon Estates.

Balance of Convenience

[51] I turn to the balance of convenience argument. In my judgment, it lies in favour of Mackinnon Belize Ltd.

[52] The question here is if the injunction is granted or refused who will suffer the greater risk of injustice? Courts will usually take a practical approach when considering the consequences of granting or refusing the injunction.⁵ The basic principles of this approach were set out in **National Commercial Bank Jamaica Ltd v Olint Corpn Ltd**⁶ as that of prejudice to be caused if the injunction is refused or granted and the likelihood of the prejudice occurring. It was stated that the overarching consideration would be to take a course that appears to carry the lower risk of injustice or 'the least irremediable

⁵ National Commercial Bank Jamaica Ltd v Olint Corpn Ltd [2009] UKPC 16.

⁶ Ibid.

prejudice.⁷ Other **Olint** principles include consideration of the relative strength of the parties' cases; the extent to which a party may be compensated by an award of damages or enforcement of the cross-undertaking; and the likelihood of either party being able to satisfy such an award.

[53] Michela Bardini states that it is more convenient for Mayan Lagoon Estates to continue to manage Parcel 168 rather than for the respondents to have use of it. Its entire development was done because of the guarantee that Parcel 168 would be designated as a park. Having made a million dollar investment in the development, it has sold lands to more than 700 individual owners in Phase 1 of the subdivision. All the properties "were bought based on the conveniences and amenities that are provided." These conveniences included use of Parcel 168 as a park and the church on it, for ease of egress to the beach, for a drainage area and for utilities to facilitate Phase 1 of the subdivision. In particular, the utilities on Parcel 168 are for the service of the surrounding parcels both north and south of the park including The Placencia Hotel, residences and affiliated properties would be negatively affected if the development activities of Mackinnon Belize Ltd. would be allowed to proceed. One such negative impact is that the drainage pond is likely to be covered up and so cause flooding. She states that flooding has already happened since the activities started. Further, Mackinnon Belize Ltd. has not applied to alter or vary the use of this space. With these arguments, Mr. Nembhard states that the balance of convenience lies with granting the injunction and preventing Mackinnon Belize Ltd. from using Parcel 168 for its new proposed development.

[54] I have considered the evidence and arguments of Mayan Lagoon Estates. I noted its silence on the purpose for walling off half of Parcel 168 for its private use. I accept that it would have made guarantees to owners of other lots that Parcel 168 would remain as a park. Michela Bardini's evidence, therefore, conflicts with her assertion now that Parcel 168 should be kept as open, green space, and ought not to have any alteration or variation in its use. Half of the park has allegedly already been converted to private use. Michela Bardini also did not provide any application for permission to use half of the park

⁷ Ibid.

space as their private property nor was there any approval for change of land use by her. She provided no explanation for this default by Mayan Lagoon Estates.

[55] I have also considered why Mackinnon Belize Ltd. failed to take steps to prevent the building of the wall on half of its land. This no doubt would have been done at considerable expense to Mayan Lagoon Estates. If the wall was not in accordance with the fence allowed under the Agreement then why was its construction not halted? Further, there is no evidence provided as to change of use of the land (by either party) or even about who granted the development approval of Parcel 168 to Mackinnon Belize Ltd.

[56] Regarding the declarations sought in the application as to an overriding interest in Parcel 168 and on the title of Parcel 1493, CPR 17.1(b) does allow for the grant of interim declarations. However, I make no final declarations at this interim stage on the untested evidence. The overriding interest is not defined in the Agreement so this is clearly an issue that can benefit from tested evidence at trial. An interim application is not the best route for getting the final declarations sought.

[57] I have looked at the whole case of each party, and its strengths and weaknesses. After 17 years of the Caution being in existence, the use of Parcel 168 is mainly for beach access, drainage ponds, the housing of utilities and for the private benefit of Mayan Lagoon Estates. There is no evidence of alternative beach access points. I find it hard to believe that in such a huge development there would be only one access point to the beach. There is also a claim of third party purchasers of properties from the subdivision being negatively affected. There is a claim also that the business model of Mayan Lagoon will be impacted but no evidence as to this model. I assume that any development by Mackinnon Belize Ltd. would likely bring competition, especially as the proposed development is a hotel or resort. The resistance to the development of Parcel 168 seems to be against commercial competition more than an issue of access.

[58] Finally, there is the issue of the blocking or restricting of access to the main road by Mayan Lagoon Estates from the park. Mr. Nembhard did not reveal or address the blocking of access to the main road, though he complained about the use of Parcel 1493. Counsel's focus was mainly on the loss of Parcel 168 as a park. He even failed to address

or explain why half of the said park was taken for private use. Mackinnon Belize Ltd. claims its use of 1493 is for access to Parcel 168 and the church on it, which they have built, maintained and managed since 2001.

[59] I noted that there was a failure to disclose certain information to the court. A party seeking interim relief should not demonstrate a lack of candour, as material non-disclosure of facts can result in an injunctive order being set aside.⁸

[60] In conclusion, it was for Mayan Lagoon Estates to establish that the rights being claimed under the management authority would result in irremediable prejudice if the interim injunction is not granted. It did not. It did not satisfy me that it has a legally enforceable right or interest that gives it the right to get the injunction.⁹ On the materials before me, also, I am not satisfied that the proposed development of Mackinnon Belize Ltd. will cause irreversible loss and damage to Mayan Lagoon Estates. The balance of convenience lies with Mackinnon Belize Ltd. and I will refuse the injunction.

Disposition

[61] It is ordered that:

1. The application for an interim injunction is refused.
2. The applicant is to pay the respondents their costs of the application to be agreed or taxed in default.

Martha Lynette Alexander
High Court Judge

⁸ McDonagh v Ulster Bank Ireland Ltd (2014) IEHC 476 by Keane J

⁹ CPR 17.8 provides that directions can be given and an early trial facilitated where a claim is filed but there was none filed with this application.