

IN THE SUPREME COURT OF BELIZE, A.D. 2013

CLAIM NO. 113 OF 2013

BETWEEN:

BELIZE ELECTRICITY LIMITED

Claimant

AND

BELIZE CITY COUNCIL

Defendant

In Chambers.

BEFORE: Hon. Chief Justice Kenneth Benjamin.

March 12 & 22, 2013.

Appearances: Ms. Natoya Boyd for the Claimant.
Mr. Darrell Bradley and Ms. Alifa Elrington for the Defendant.

JUDGMENT

[1] Upon a Notice of Application filed by the Claimant, an application for an interim injunction was heard without notice on February 20, 2013. An order was made restraining the Defendant, whether by itself, its servants and/or agents or howsoever otherwise from entering upon or otherwise disturbing the Claimant's quiet possession of Parcel ID 16-13-3877 Registration Section Caribbean Shores comprised of 694.405 square metres ("the property") until the 12th day of March 2013 or further order of the Court. The Claimant gave the usual undertaking as to damages. Such order was stated to terminate on March 20, 2013 unless a further order was made upon further consideration of the matter. In addition, the Claimant was granted leave to issue and serve a Claim Form and Statement of Claim on or

before February 25, 2013. Pursuant to the latter order, a Claim Form and Statement of Claim were filed and issued on February 25, 2013.

[2] By a Notice of Application filed on March 7, 2013, the Claimant sought an extension of the interim injunction order. Upon the inter partes hearing of this application, the Defendant opposed the continuation of the interim injunction order. The Court is now required to determine whether the order ought to continue until the hearing and determination of the substantive matter.

[3] The evidence relied upon by the Claimant at the ex parte stage was the same as at the present hearing. The following was set out in the affidavit of Dawn Sampson Nunez in support of the application:

- (a) The Claimant is a public utility provider and has been in occupation of the property since 2000, utilising same as a fenced parking area.
- (b) The Defendant entered into a lease dated June 21, 2000 with the Claimant in respect of the property for a term of 25 years at a yearly rental of \$3,340.00. Rental payments of \$3,340.00 and \$3,600.00 were paid for the years 2000 and 2001 respectively.
- (c) The Claimant subsequently caused a title search to be made at the Land Registry and the results revealed that the proprietor of the property is the Government of Belize.
- (d) In the year 2002, the Defendant sought permission to survey the property with a view to creating an access road between the Northern Highway and Coney Drive, but permission was refused by the Government.
- (e) By letter dated February 18, 2013, the Defendant wrote to the Claimant informing that on the basis of the outstanding arrears

on the lease, the Defendant would be reclaiming the property on February 20, 2013 at 9:00 a.m. "by all means necessary".

- (f) The Claimant was informed that the Government had refused to grant the Defendant permission to use the property as a public access way.
- (g) A letter from the Claimant to the Defendant seeking documentary evidence of the ownership of the property was not responded to.

On the basis of the foregoing, the Court deemed the matter to be urgent and granted the application for an interim injunction.

[4] The Claimant has complied with Rule 17.4 (7) of the Supreme Court (Civil Procedure) Rules 2005 by making an application to extend the interim order on notice to the Defendant. Learned Counsel for the Claimant pointed out, by reference to Rule 17.4(8) of CPR, that the Defendant had not applied for the variation or discharge of the interim order and hence there was no evidence laid before the Court.

[5] The purport of Rule 17.4(8) is to confer on the Respondent affected by an interim order the ability, if he, she or it so elects, to apply for the discharge of the order or for the variation of any of its terms. In such circumstances, it would be expected that, the Respondent would provide evidence in support of variation or discharge. However, the right to so apply is at the option of the Respondent, as learned Counsel for the Respondent accurately countered in the course of his submissions. I would further add that the existence of this Rule does not preclude the Respondent from opposing the continuation of the injunction order where the submissions were being made on the basis of the very evidence relied upon by the Applicant or where the discharge or variation is being sought as a matter of law.

[6] The Defendant's opposition to the extending of the interim order was made on the following grounds:

- (a) The Claimant has failed to give the requisite notice pursuant to section 3 of the Public Authorities Protection Act, Chapter 31 as to its intention to seek injunctive relief and bring a claim against the Defendant.
- (b) The Claimant seeks to fetter the jurisdiction of the Defendant in its capacity as a regulatory body charged with the control and management of the streets in Belize City pursuant to section 24 of the Belize City Council Act, Chapter 85.
- (c) Insofar as the Claim seeks to recover moneys paid in the years 2000 and 2001, such a claim is statute-barred under section 4 of the Limitation Act, Chapter 170. Alternatively, the Claim ought to have been made within one year pursuant to the Public Authorities Protection Act.
- (d) The statutory power of the defendant to construct a road is separate and distinguishable from the lease between the parties.

NOTICE UNDER THE PUBLIC AUTHORITIES PROTECTION ACT

[7] The Defendant submitted that since the Claimant did not serve a notice pursuant to section 3(1) of the Public Authorities Act, the application for extension of the interim order ought to be dismissed. Further, the burden to plead such notice rests upon the Claimant which has failed to discharge this obligation in its pleadings.

[8] Section 3 of the Public Authorities Protection Act provides for the requirement of notice and the consequence of non-compliance as follows:

- 3.(1) No writ shall be sued out against, nor a copy of any process be served upon any public authority for anything done in the exercise of his office, until one month after notice in writing has

been delivered to him, or left at his usual place of abode by the party who intends to sue out such writ or process or by his attorney or agent, in which notice shall be clearly and explicitly contained the cause of the action, the name and place of abode of the person who is to bring the action, and the name and place of abode of the attorney or agent.”

- (2) No evidence of any cause of action shall be produced except of such as is contained in such notice, and no verdict shall be given for the plaintiff unless he proves on the trial that such notice was given, and in default of such proof the defendant shall receive in such action a verdict and costs.”

Of section 3 aforesaid, Sir John Summerfield, P had this to say in **Castillo v Corozal Town Board & Acosta 1 BZLR 365** at p 368:

“That is not a limitation of action provision in the sense of section 27 of the Limitation Ordinance. It does not place a time bar in the way of the remedy. It makes provision for two important matters. Section 3(1) makes provision for a mandatory condition precedent to the institution of a suit against a public authority (as defined), namely, the delivery of the notice in writing in the terms stipulated. Compliance with that condition precedent is wholly within the control of the would-be plaintiff. This measure is obviously designed to protect the public interest. Section 3(2) gives teeth to section 3(1). It provides for proof at the trial that such notice was given in the terms required, in default whereof judgment is to be entered for the defendant with costs. That provision is also mandatory. It would not matter that section 3(1) had been complied with if proof thereof is not given as required by section 3(2).”

This dictum was embraced by a differently constituted Court of Appeal in **Belize City Council v Gordon 3 BZLR 363** at pp 365 – 366.

[9] It behoves the Claimant to produce evidence of the issuance of notice in the terms detailed in section 3(1). A perusal of the Statement of case of the Claimant did not turn up such proof. Learned Counsel tacitly acknowledged this omission when she contended that given the reclamation date stipulated in the Defendant's letter, it would have been impossible to have given one month's notice.

[10] In the case of **Football Federation of Belize vs The National Sports Council et al – Claim No. 435 of 2011**, Hafiz, J (as she then was) accepted the Respondents' submission that since no notice had been served in compliance with section 3(1) of the Public Authorities Protection Act, the court did not have jurisdiction to hear the application for judicial review. In so holding, Her Ladyship adopted the decision of Conteh, CJ in **National Transport et al v The Transport Board and Chief Transport Officer - Claim No. 728 of 2008**.

[11] For the purposes of the Public Authorities Protection Act, the Belize City Council qualifies as a public authority. The Court proceeded on this basis and so held in **Belize City Council v Gordon** (supra) (at p 367). I too wholly accept that the Defendant is a public authority within the meaning of the Act.

[12] The statutory requirement of notice does not allow for an exception based on the expediency of the situation. The Claimant is required to give one month's notice ahead of the issuing of the Claim Form and has failed to do so. Accordingly, the Claim must be struck out and by extension the interim order discharged. This brings an end to the proceedings. However, out of courtesy to Counsel on both sides and for completeness, I will briefly address the other three grounds put forward by the Defendant.

POWER TO MAKE A NEW STREET

[13] The Defendant pointed to its power under section 24 of the Belize City Council Act with respect to the control and management of streets within the boundaries of Belize City. It was contended that there ought not to be the granting of an injunction to restrain the Defendant from constructing any street or taking steps

towards fulfilling its statutory power to construct a street, although it was conceded that the law set out in section 24(3) and (6) of the Act certain procedures to be followed before the power could be exercised.

[14] In response, learned Counsel for the Claimant relied upon the affidavit evidence to the effect that the Government had refused permission for the property to be used as a public access road. It was also emphasized that there are steps to be taken under the law before the Defendant could exercise its power to establish a new street.

[15] There is no evidence of the Defendant having taken formal steps to make the property a new street. The letter of February 18, 2013 to the Claimant simply asserts the Defendant's perceived entitlement to enter upon and take possession of the property on the basis of non-payment of rental pursuant to the lease. To my mind, this is as high as the matter can be placed and no higher. Accordingly, any reference to the power to restrain the statutory power of the Belize City Council is premature and misconceived.

WHETHER RENTAL PAYMENTS ARE STATUTE BARRED

[16] The Defendant relied upon section 4 of the Limitation Act to support its argument that the Claimant is barred from seeking to recover the total sum of \$6,940.00 paid to the Defendant as rental payments for the years 2000 and 2001.

[17] Learned Counsel for the Claimant appeared to have conceded the point as her response was that the Claimant was prepared to forgo that aspect of its claim, as it is clearly entitled to do. Accordingly, the point need not be adjudicated upon.

THE LEASE IS DISTINCT FROM THE ISSUE OF THE CONSTRUCTION OF THE ROAD

[18] The issue of the lease is plainly separate and distinct from that of the construction of a new street, although Learned Counsel for the Claimant quite correctly pointed out that from a factual perspective they are interrelated.

[19] Notwithstanding, the matters being distinguishable it cannot be disputed that the Defendant purports to exercise a right referable to the lease, the validity of which is being asserted by the Claimant. In this regard, the Claimant, upon giving the requisite notice, is free to pursue its remedy. However, it cannot be gainsaid that in seeking interim relief, the Claimant is duty bound to make full disclosure of all relevant matters within its knowledge to the Court. Accordingly, there is nothing to the point raised by the Defendant.

CONCLUSION

[20] As earlier iterated, the absence of the requisite notice under the Public Authorities Protection Act is fatal to the Claimant's Claim and the application for the extension of the interim order. In the premises, it is ordered that the Claim be struck out and it is further ordered that the interim order made on February 20, 2013 be discharged. The Defendant is entitled to have its costs for the application which the Court awards in the sum of \$1,500.00.

KENNETH A. BENJAMIN
Chief Justice