

**IN THE SUPREME COURT OF BELIZE, A.D. 2018**

**CLAIM NO. 547 of 2017**

**GALACTIC BUTTERFLY BZ LIMITED**

**CLAIMANT**

**AND**

**TAMMY LEMUS PETERSON**

**DEFENDANT**

**BEFORE the Honourable Madam Justice Sonya Young**

Hearings

2018

23.1.2018

Written Submissions

Defendant/Applicant – 16.1.2018

Claimant/Respondent – 22..1.2018

Decision

23.1.2018

Mrs. Deshawn Arzu-Torres for the Claimant.

Mrs. Magali Marin-Young, SC for the Defendant.

**Keywords: Civil Procedure – Default Judgment - Term Determined by the Court - Setting Aside – Inherent Jurisdiction of the Court - Relief Granted Contrary to Law – Leave to Appeal – Application for Stay of Execution Supreme Court (Civil Procedure) Rules 2005 – CPR 12.10, 42.10**

**DECISION**

1. This decision concerns an application by the Defendant to set aside a default judgment and in the alternative, to grant him leave to appeal and a stay of execution of the default judgment.
2. The terms of the default judgment were determined by the court pursuant to Rule 12.10(5). The Defendant had already failed to have the order, entering the default judgment, set aside pursuant to Part 13 of the CPR. Having changed counsel, she urges that the court has an inherent jurisdiction to set aside a default judgment which grants a relief that is contrary to law. She invites the court to use his power now.

The order of the court under review states:

3.
  1. *The contract dated 1<sup>st</sup> May, 2017 entered into between the Claimant and the Defendant for the purchase of a license to 5,574 square feet of seabed for an existing pier with one restaurant and one rental building situate been Parcels 922 and 4049, San Pedro Registration Section with certain UTM Coordinates and being 398079E, 1981195N (“the property”) is declared null and void.*
  2. *The Defendant and/or her servants and agents are to vacate and deliver up possession of the property with immediate effect.*
  3. *Costs to the Claimant in sum of \$3,100.00.*

**The Issues:**

4.
  1. Did the court grant relief which, on the Statement of Case, is contrary to law.
  2. Does the court have an inherent jurisdiction to set aside its own judgment if it gives relief which is contrary to law.
  3. Should leave to appeal be granted.
  4. Should a stay of execution be granted.
5. The court intends to deal with each term separately in order to first determine whether they are in any way contrary to law. If, indeed, they are,

the court will then consider whether it has an inherent jurisdiction to set aside the order as the defendant asserts.

**Has the court granted relief which, on the Statement of Case, is contrary to law:**

6. **Relief 1:** *“The contract dated 1<sup>st</sup> May, 2017 entered into between the Claimant and the Defendant for the purchase of a license to 5,574 square feet of seabed for an existing pier with one restaurant and one rental building situate between Parcels 922 and 4049, San Pedro Registration Section with certain UTM Coordinates and being 398079E, 1981195N (“the property”) is declared null and void.”*
7. Counsel for the Defendant seems to postulate that a declaration that a contract is null and void may only be made when particulars of illegality are pleaded. Since no illegality was pleaded and no declaration of illegality was sought this order ought not to have been made. This court entirely agrees that no illegality was pleaded but equally so no declaration of illegality was made. In fact, the use of the word *“declared”* may be the cause of confusion. Before we address that let us consider the pleadings.
8. According to Rule 12.10(4) the court on determining the terms of a default judgment is confined to only what the Claimant is entitled to on the Statement of Claim. The court must also consider the affidavit evidence presented pursuant to Rule 12.10(5).
9. The Claimant sought the following relief in his Statement of Claim:

*A declaration that the Defendant breached the contract made in writing on the 1<sup>st</sup> May, 2017 between the Claimant and the Defendant for the purchase of the property and being a license to 5,574 square feet of seabed for the purpose of managing an existing pier with one rental building situate between Parcels 922 and 4049, ... and that the said contract is null and void.”*

10. Paragraph 5 of the Statement of Claim informed:

*“It was a term of the said agreement of May, 2017, that the Claimant would sell and the Defendant would purchase all of the Claimant’s interest and shares in Second Time Limited and by extension the Claimant’s interest in the property.”*

11. The parties stated in their signed contract at paragraph 3 and 5:

*“3. The Purchase Price shall be paid by the Purchaser to the Vendor in the manner hereinafter appearing that is to say:*

- (a) The sum of **THREE HUNDERED (sic) THOUSAND DOLLAR (sic)** in the currency of the **United States of American (US\$300,000.00)** shall be paid by the Purchaser to the Vendor on or before June 1<sup>st</sup>, 2017 in a manner as directed by the Vendor.*
- (b) Pre-payment of the Purchase Price or any part thereof due under this Agreement for sale shall not result in any penalties.”*

*“5. In the event the purchaser defaults in her obligation hereunder by failing to make any payment, the parties agree that:*

- (a) The vendor has the right to declare this Agreement null and void.*
- (b) ...*
- (c) ...*

12. Paragraph 8 of the Statement of Claim adds: *“The Claimant did not extend the completion date for the contract and declared the agreement null and void by sending written communication to the Defendant on the 5<sup>th</sup> day of June, 2017.”*

13. That letter was attached to the supporting affidavit. It reproduced Clause 5 and 5(a) of the contract then outlined:

*“As of June 3, 2017 payment in the sum of Three Hundred Thousand Dollars and Zero Cents in the currency of the United States of America (US 300,000.00) has not been made by the Purchaser and no extension has been given by the Vendor.*

*Therefore, Galactic Butterfly hereby exercises its rights and terminates the agreement of May 1<sup>st</sup>, 2017 under Clause 5 and 5a.”*

14. Having considered the Statement of Claim and the affidavit evidence provided pursuant to Rule 12.10(5) the court found that:

- (1) The Defendant had not made the payment of US\$300,000 by June 3<sup>rd</sup>, 2017 as agreed.
  - (2) The Claimant had declared the agreement null and void by sending written communication to the Defendant on the 5<sup>th</sup> day of June, 2017.
  - (3) The contract had thereby been rendered null and void.
15. Persons entering into contractual arrangements should be aware of the language they use. It may in fact have an effect which they did not envisage or intend. The term null and void was specifically used. Although the parties may simply have intended that the contract be terminated it is no function of the court to assume and amend a contract the terms of which are clearly expressed and certain. This would, indeed, undermine the principle of freedom of contract. Therefore, for the Defendant's undisputed failure to fulfil, that is, to make payment as agreed, the Claimant could and did declare the contract null and void. That declaration rendered the contract null and void. This was not by operation of law and issues of illegality do not arise. This is as specified by the contract itself. The case of **Bannum Inc v Mees No. 07-12-00458 – CV 2014 Tex. App Texas 68041 June 24<sup>th</sup> 2014**) was very helpful.
16. The terms of the contract govern the parties' contractual relationship and it is presumed that they displace any rights and remedies provided by law which are not specified in the contract. The result is that the contract is void ab initio – it never existed. Ergo, there could be no successful claim for breach or for damages or enforcement following any breach. Hence, the court made no order relating to breach or damages although claims for same had been made by the Claimant. It was not, in the court's estimation,

entitled to any of this, because an enforceable contract never existed. The order of the court sought to make a definitive statement on the court's interpretation of the contract itself to avoid any further contention between the parties.

17. The court, for clarity, therefore, will amend its order pursuant to Rule 42.10 to read it is **DECLARED THAT:**

*“The contract dated 1<sup>st</sup> May, 2017 entered into between the Claimant and the Defendant for the purchase of a license to 5,574 square feet of seabed for an existing pier with one restaurant and one rental building situate been Parcels 922 and 4049, San Pedro Registration Section with certain UTM Coordinates and being 398079E, 1981195N (“the property”) **has been rendered** null and void.”*

18. The court is satisfied that this amendment could be made as an omission under the Slip Rule as it gives effect to the true intention of the court at the relevant time. This court can find no reason to hold that based on the Statement of Case, this term of the order is in any way contrary to law and ought to be set aside.

**RELIEF: 2:** *“The Defendant and/or her servants and agents are to vacate and deliver up possession of the property with immediate effect.”*

19. Counsel for the Defendant urged that the subject property is owned by a company, Second Time Limited, of which the Claimant is only a shareholder. That, at all times, Second Time Limited was the owner of the license to the seabed for the purpose of managing the pier and restaurant. Indeed this is admitted by the Claimant in their pleadings.

20. However, at paragraphs 10, 11, 16 and 17 of the Statement of Claim it states:  
*“9. Furthermore, the Claimant and the Defendant entered into an oral agreement in or about March of 2016 for the lease of a portion of the property [being the western half of*

*the office building] for the sum of US\$900.00 monthly and which lease continued in operation after the entering of the sale and purchase agreement...*

*10. In or about June 15<sup>th</sup> of 2016, the Claimant and the Defendant entered into a further oral agreement for the lease of the old tackle box restaurant which sits on the said pier for the sum of US\$1500.00 monthly.*

*11. The Defendant has made monthly rental payments for the lease of the building in the sum of US\$2400.00*

*13. On the 1<sup>st</sup> day of June, 2017, the Defendant paid an additional sum of US\$3500.00 for rent.*

*15. That the oral lease agreement was terminated by the Claimant on the 5<sup>th</sup> June, 2017 and the Defendant was given notice to vacate the premises.*

*16. The Claimant's attorneys wrote to the Defendant on the 27<sup>th</sup> July, 2017 demanding the Defendant remove herself and her belongings from the property but that she has since failed to do so."*

21. The Statement of Claim never asserted that the claim was brought by Galactic Butterfly BZ Limited as shareholder of Second Time Limited. The Claimant claimed in its personal capacity. That it is a shareholder of Second Time Limited is incidental to the claim only.
22. If the Defendant disputes that the Claimant was its landlord that should form part of its defence. A landlord need not have title to lease property and it is no duty of the court to make any such enquiries on a default judgment application where service has been properly effected on the Defendant. If the Defendant disputes that his lease agreement was not with the Claimant but was in fact with the legal owner of the property, again that ought to form part of his defence. These are not considerations with which the court ought to concern itself. It is not required to enquire further that what is stated in that Statement of Claim.
23. In fact, **Blackstone's Civil Practice 2013 at paragraph 20.9** explained the United Kingdom's comparable r. 12.11(1): *"There will be a hearing, and judgment will be entered for what it appears to the court that the Claimant is entitled to on the Statement of Case ..."* *"The meaning of r.12.11(1) was considered in Football*

*Dataco Ltd. v Smoot Enterprises Ltd [2011] EWHC 973 (Ch) [2011] 1 WLR 1978. “It was held that the rule does not require the court to consider the legal foundation of the cause of action. Rather, the purpose of the requirement is to enable the court to consider ... what the precise terms of a non-monetary remedy should be.”*

24. Having considered the Statement of Claim the court was satisfied:
  1. There had been an oral lease agreement between the Claimant and the Defendant.
  2. The Claimant had duly served the Defendant with notice to vacate the premises.
  3. The Claimant was entitled to possession.
25. The court therefore made the order as prayed and again can find no reason to consider this relief to be contrary to law.

**Does the court have an inherent jurisdiction to set aside its own default judgment if it gives relief which is contrary to law:**

26. For completion sake the court will consider whether it indeed would have had the inherent jurisdiction to set aside a default judgment which granted reliefs that were contrary to law.
27. The Defendant says the court is duty bound to do this. They placed reliance on *Elvis Wyre (Personal Representative of the Estate of Arnold Wyre) v Alvin Edwards et al ANUH CVAP 2014/0018* a decision of the full Court of Appeal of the Eastern Caribbean Supreme Court (ECSC). Here the court considered a default judgment where shareholders were granted relief on claims which only the company were entitled to bring, as a matter of law. I state early that a claim for possession is not by law the entitlement of the



owner of property only. (In some instances the tenant is estopped from denying his landlord's title).

28. Counsel for the Claimant in presenting this case to the court accepted that our CPR makes no provision for the setting aside of a default judgment which is contrary to law. Similarly, so does the CPR of the ECSC. However, the ECSC has an amendment to their Rules which Belize does not have. This amendment allows them to set aside a default judgment in exceptional circumstances. This court notes that **Wyre** was noticeably silent on the issue of the court's inherent jurisdiction to set aside such a default judgment. It gave no endorsement whatsoever of the decision of the single Court of Appeal judge in *George Piggot v Viola Buntin Antigua and Barbados High Court Appeal 2008/2011 unreported* on which counsel then relied when making his submissions. Instead, the court found the circumstances of granting such relief to shareholders to be exceptional because they went "*to the bases of the claim and if correct will result in dismissal of the claim.*" - **Paragraph 43**. The distinction is significant.
29. I am, therefore, not of the view that the court relied on its inherent jurisdiction in setting aside the judgment. Nor is this court satisfied that it has an inherent jurisdiction to set aside a default judgment which gives relief which is not available as a matter of law. Instead, it is bound by the decision in **Clyde Brown v Michelle Moore Griffith Caribbean Court of Justice Application No. AL8 of 2012** where the court was asked to set aside its previous order on the ground of a breach of natural justice.

30. At paragraph 6 it stated:

*“The concept of an inherent power by a Superior Court to control its own procedure so as to prevent it being used to achieve injustice is an underlying common law principle.”. This has been described, by Lord Diplock (in **Bremer Vulkan Schiffbau und Maschinenfabrik v South Indian Shipping Corp**) “as the doing by the court of acts which it must have power to do in order to maintain its character as a court of justice. The exercise of this jurisdiction is necessary to ensure justice between litigants and public confidence in the administration of justice. The power, however, will only be used in exceptional circumstances for the important principle of finality in litigation must be fully respected (**Taylor v Lawrence**). This power must be contrasted with a power to set aside an order just because it is thought to be wrong. That can be no part of the exercise of this jurisdiction.”*

31. It seems, to me that setting aside a perfected default judgment which is thought to be wrong would be akin to the court having second thoughts on a matter of substance of “a re-opening of the matter” as counsel for the Claimant submitted. The appropriate avenue for this is an appeal. The court, to my mind, would be well functus to attempt to do as counsel for the Defendant has asked. It is clear for all that has been said that the court will not set aside either term of the default judgment.

**Determination:**

**It is hereby Ordered:**

1. The Application to set aside the terms of the default judgment is dismissed.
2. The Order dated the 12<sup>th</sup> December, 2017 is corrected pursuant to Rule 42.10 to read:

**It is Declared:**

*“The contract dated 1<sup>st</sup> May, 2017 entered into between the Claimant and the Defendant for the purchase of a license to 5,574 square feet of seabed for an existing pier with one restaurant and one rental building situate been Parcels 922 and 4049, San Pedro Registration Section with certain UTM Coordinates and being 398079E, 1981195N (“the property”) **has been rendered** null and void.”*

3. Determination of the application for leave to appeal and a stay of execution of the Order dated 12<sup>th</sup> December, 2017 is adjourned to 25<sup>th</sup> January, 2018.
4. Costs shall be considered on the adjourned date.

**SONYA YOUNG**  
**JUDGE OF THE SUPREME COURT**