

**IN THE SUPREME COURT OF BELIZE, A. D. 2017**

**CLAIM NO. 212 OF 2017**

**BETWEEN:**

<b>(PLACENCIA LAND &amp; DEVELOPMENT (CO. LTD. (MAYA RIO DEVELOPMENT LTD. (SUNRISE BELIZE LTD. (AND (R &amp; B CONSTRUCTION CO. LTD. (REGISTRAR OF LANDS (ATTORNEY GENERAL</b>	<b>FIRST CLAIMANT  SECOND CLAIMANT THIRD CLAIMANT  FIRST DEFENDANT SECOND DEFENDANT THIRD DEFENDANT</b>
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***BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA***

**Mr. Rodwell Williams, SC, and Ms. Stevanni Duncan of Barrow & Williams for  
the Claimants/Respondents**

**Mr. Nigel Hawke, Solicitor General, and Ms. Samantha Tucker, Crown Counsel,  
for the Second and Third Defendants/Applicants**

**D E C I S I O N**

1. This is an application by the Second and Third Defendants to strike out this Claim. The Claimants are registered proprietors of parcels of land all located in the Placentia North Registration Section. These properties are lots located in a development and building scheme known as “The

Plantation” established by Mackinnon Belize Land & Development Ltd. (“The Declarant”) in 1999. The substantive claim involves restrictive covenants which were registered against these properties by the Declarant as part of the Plantation project which delineated, *inter alia*, the distance at which each building erected on these lots must be from the sea, the type of structures to be erected on each lot and the height of each building per lot. The First Defendant purchased the land from the Declarant and the properties were subject to those restrictive covenants contained in a Deed of Incumbrance. Before the former owners Oceanview Properties Ltd. could transfer the properties to the First Defendant, the area was declared a compulsory registration area under the Registered Land Act. The Registrar of Lands, in breach of his statutory duty of care, failed to enter in the incumbrances section of the land register under the Registered Land Act a notation that the freehold title was subject to the restrictive covenants as contained in the Deed of Incumbrances. The First Defendant is no longer a party to these proceedings by order of this court that the claim against it for breaches of the restrictive covenants be struck out and adjudged summarily. The Claimants say that the breaches and violations of the restrictive covenants by the First Defendant were the direct result of the

failure and omission of the Registrar of Lands to perform his statutory duty imposed thereon by section 12 of the Registered Land Act. The failure of the Registrar of Lands to perform his statutory duty is as a result of his negligence and caused the Claimants to suffer loss and damage. The Applicants/Defendants in this application are the Registrar of Lands and the Attorney General respectively. They say that the claim against them should be struck out because the Claimants failed to serve a Notice of Intended Action on them as required by Section 3 of the Public Authorities Act Chapter 31 of the Laws of Belize. The Second and Third Defendants also say that the claim is statute barred since the Claimants failed to bring the claim before the expiration of one year from the date on which the cause of action accrued. The Claimants resist this application to strike out claim, saying that the Notice of Intended Action was in fact served on the Second and Third Defendants at least one month before the commencement of these proceedings. The Claimants also say the claim is not statute bared based on its interpretation of the provisions of the Limitation Act Chapter 170 of the Laws of Belize. The court now decides the application to strike out claim.

**Legal Submissions on behalf of the Applicants/Defendants in support of the Application to Strike Out Claim**

2. Mr. Nigel Hawke, Solicitor General, argues that this claim should be struck out for the Claimants' non-compliance with Section 3 of the Public Authorities Protection Act. He says that the Second and Third Defendants were never served as required under Section 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 contain the cause of 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 or 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.”*

Mr. Hawke submits that what can be garnered from this section is that no claim is to be initiated against a public authority or anything done in the exercise of his office, until one month after notice in writing has been delivered to him, and that proof is required that such notice was given. He relies on **Castillo v. Corozal Town Board & Acosta** 1BZLR 365 at 368 where Sir John Summerfield said in reference to Section 3:

*“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).”*

Mr. Hawke contends that the Claimants have failed to serve the Second and Third Defendants with this Notice of Intended Action, and have failed to satisfy the Court that this has been done.

3. The Learned Solicitor General also urges this Court to strike out the claim on the ground that the Claim is statute-barred. He cites Section 27 of the Limitation Act Chapter 170 of the Laws of Belize as follows:

*(1) No action shall be brought against any person for any act done in pursuance, or execution, or intended execution of and Act or other law, or of any public duty or authority, or in respect of any neglect or default in the execution of any such Act or other law, duty or authority, unless it is commenced before the expiration of one year from the date on which the cause of action accrued.*

*Provided that where the act, neglect or default is a continuing one, no cause of action in respect thereof shall be deemed to have accrued, for the purposes of this subsection, until the act, neglect or default has ceased.*

*(2) This section shall not apply to any action to which the Public Authorities Protection Act Cap 31 does not apply, or to any criminal proceeding.”*

Mr. Hawke argues that the Claim is statute-barred in that the Claimants have failed to bring this Claim before the expiration of one year from the date on which the cause of action accrued, that is within one year from on or around 26<sup>th</sup> April, 2006, when the registered proprietor of the Properties applied for first registration under the Registered Land Act, without disclosing the Deed of Incumbrance and Restrictive Covenants which applied to the Properties.

**Legal Submissions on behalf of the Claimant/Respondent opposing the Application to Strike Out Claim**

4. Mr. Rodwell Williams, SC, on behalf of the Claimant/Respondent contends that this application is misconceived and should be dismissed. He says that the issue as to whether Notice of Intended Proceedings were served on the Defendants/Applicants as required by Section 3 of the Public Authorities Act CAP 31 of the Laws of Belize is a factual one. He refers to the Affidavit of Kareem Elrington Process Server dated July 19<sup>th</sup>, 2017 exhibiting the Notice of Intended Proceedings which details the cause of action, the

names and addresses of the Claimants and the name and address of the Claimants' Attorneys-at-law. The Cause of action as against the Registrar of Lands is therein stated thus:

*"... the Registrar of Lands in breach of its statutory duty failed to enter the Restrictive Covenants in the Incumbrances Section of the Land register and on the titles to the resulting parcels of land, to wit: Parcel 185, 186, 187 and 188, Block 36, Placentia North Registration Section."*

The Attorney General was added as a party to the proceedings by virtue of section 42(5) of the Belize Constitution which mandates that civil proceedings for or against the State shall be taken in the name of the Attorney General. Mr. Williams, SC, says that this ground is without merit and should fail.

5. In relation to the second ground advanced by the Learned Solicitor General on behalf of the Respondents/Defendants, Mr. Williams, SC, argues that this ground requires a careful interpretative analysis of the provisions of the Limitation Act Section 27 which reads as follows:



*“No action shall be brought against any person for any act done in pursuance, or execution, or intended execution of any Act or other law, or of any public duty or authority, or in respect of any neglect or default in the execution of any such Act or other law, duty or authority, or in respect of any neglect or default in the execution of any such Act or other law, duty, or authority unless it is commenced before the expiration of one year from the date on which the cause of action accrued*

*Provided that where the act, neglect or default is a continuing one, no cause of action in respect thereof shall be deemed to have accrued for the purposes of this subsection, until the act, neglect or default has ceased.”*

Mr. Williams, SC, argues that the word “*person*” as used in section 27 is not defined in the Limitation Act. However it is defined in the Interpretation Act to mean a “*natural person*” or a “*legal person*” and includes any “*public body*”.

The Claimant’s case is that the Registrar of Lands as a public authority had a statutory duty of public duty which the Registrar failed to exercise or,

stated differently, the Registrar neglected to exercise or defaulted in the exercise thereof. Section 27 requires that any action or claim must be commenced within one year from when the cause of action accrued, except in cases where the neglect or default is a continuing one. In such cases, the cause of action accrues until the neglect or default ceases. Mr. Williams, SC, cites *Julia T. Carroll v. The County Council of the County of Kildare* [1950] IR 258 as authority to assist in the interpretation of English and Irish statutory provision section 1(a) of the Public Authorities Protection Act 1893 which are similar to Belize's section 27:

*“Where after the commencement of this Act any action, prosecution, or other proceeding is commenced in the United Kingdom against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty, or authority, the following provisions shall have effect:*

*(a) The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect or default complained of, or, in case of a continuance of*

*injury or damage, within six months next after the ceasing thereof.”*

Mr. Williams, SC, submits that the majority decision of the court supported that which was established by the earlier decision of Lord Halsbury whereby the phrase “*continuance of injury and damage*” was interpreted to mean “*continuance of the act which caused the damage*”. He further argues that in Belize the literal interpretation of section 27 yields the very meaning that was re-affirmed in the Carroll case which is that if the “*act, neglect or default*” is a continuing one, then the limitation period does not begin to run until the cessation thereof. In the instant case there has been (1) a neglect or default of the statutory duty of the Registrar occasioning this Claim by the Claimants; (2) the neglect or default is a continuing one; and (3) time continues to run to date because the neglect or default has not yet ceased so that the relevant limitation period of one year will not commence until the neglect or default ceases. The particular duty of the Registrar is contained in section 12 of the Registered Land Act:

*“12-(1) On the declaration by the Minister of a compulsory registration area under section 4 of this Act, the Registrar shall, in relation to every parcel of land situated in that area the title to*

*which is already registered under the General Registry Act Cap. 327, prepare a register in the prescribed form showing all the subsisting particulars registered under that Act.”*

The Claimants contend that the statutory duty of the Registrar was an automatic one arising upon the declaration of the area, including “*The Plantation*” as a compulsory registration area. It is not disputed that the subject parcels of land owned by the First Defendant were registered under the General Registry Act subject to a duly recorded and registered Deed of Incumbrance. Once the area comprising “*The Plantation*” was declared a compulsory registration area the Registrar ought to have prepared a register under the Registered Land Act in respect of the subject parcels, showing all subsisting particulars registered under the General Registry Act, which was in this case the Deed of Incumbrances containing the restrictive covenants. The Registrar prepared the register in respect of the subject parcels of land but failed to show thereon all the subsisting particulars. The failure of the Registrar caused the First Defendant to purchase the subject parcels without statutory notice of the covenants which directly resulted in the First Defendant commencing construction of buildings in violation of the restrictive covenants of “*The Plantation*” development, thereby causing

injury and damage to the Claimants who were beneficiaries of the covenants.

Mr. Williams, SC, concludes that the neglect or default of the Registrar is a continuing one and a check of the land register in 2017 reveals that there is no notation of the particulars of the restrictive covenants affecting the subject parcels which can only mean that the neglect or default still continues.

### **Decision**

6. I am grateful to all Counsel for their comprehensive and helpful submissions on this application. I must state that having considered the submissions made and the supporting authorities, I am fully in agreement with the arguments advanced on behalf of the Claimants. In relation to the first ground, having reviewed the Affidavit of Kareem Elrington dated July 11<sup>th</sup>, 2017 and the Notice of Intended Proceedings dated February 10<sup>th</sup>, 2017 attached as Exhibit "KE1" thereto, filed on behalf of the Claimants in response to this Application, I am satisfied that the requisite Notice of Intended Proceedings was served on the Second and Third Defendants as mandated by section 3(1) of the Public Authorities Act. On the issue of

whether the claim is statute barred, I am also in agreement with Mr. Williams, SC, on his interpretation of section 27 of the Limitation Act. I agree that the proviso in that section applies to the facts of this case in that the act, neglect or default of the Registrar of Lands (to execute his duty and register the restrictive covenants in the register as required under the Registered Land Act) is a continuing one which has not been remedied to date. I agree with the submission that it is the failure by the Registrar of Lands to show on the register "*all the subsisting particulars*" registered under the Act that has resulted in the violation of the restrictive covenants and injury and damage caused to the Claimants. The claim is therefore not statute barred. Both grounds argued on behalf of the Applicants/Defendants fail. The Application to Strike out Claim is dismissed with costs awarded to the Respondents/Claimants to be assessed or agreed.

***Dated this 18<sup>th</sup> day of January, 2018***

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**Michelle Arana**  
**Supreme Court Judge**