

**IN THE SUPREME COURT OF BELIZE, A.D. 2022**

**Claim No. 282 of 2021**

**BETWEEN**

**ETHEL E. THOMPSON**

**CLAIMANT/RESPONDENT**

**AND**

**KENYON FLOWERS**

**1<sup>st</sup> DEFENDANT**

**TIFFANY CADLE**

**2<sup>nd</sup> DEFENDANT**

**BELIZE CITY COUNCIL**

**3<sup>rd</sup> DEFENDANT/APPLICANT**

**BEFORE** The Honourable Madam Justice Geneviève Chabot

**Date of Hearing:** June 6<sup>th</sup>, 2022

**Appearances:**

E. Andrew Marshalleck, SC and Allister T. Jenkins, Counsel for the Claimant/Respondent

Andrew A. Bennett and David S. Morales, Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants

William A. Lindo, Counsel for the 3<sup>rd</sup> Defendant/Applicant

**RULING ON THE 3<sup>rd</sup> DEFENDANT’S APPLICATION FOR SUMMARY JUDGMENT AND TO STRIKE OUT CLAIM**

**Introduction**

1. This is an Application by the Belize City Council, the 3<sup>rd</sup> Defendant in the Claim (the “Applicant”) for summary judgment on parts of the Claim, and to strike out the remaining parts of the Claim against the Applicant. The Respondent to the Application, Ethel E. Thompson (the “Respondent”), claims damages in nuisance arising from the erection of a

building operated as a restaurant on the shoulder of Coney Drive adjacent to her property, as well as a permanent injunction restraining the Defendants from unlawfully interfering with the Respondent's access to, and enjoyment of, her property.

2. The Applicant asks this Court to enter summary judgment because the issue whether the Applicant could have lawfully let a portion of the Coney Drive road reserve has been rendered academic by the grant of freehold title to the parcel. The Applicant also contends that it is the wrong Defendant to this Claim because the authority to issue trade licences lies with the Belize City Trade Licensing Board, a separate and distinct legal entity.
3. The Applicant further asks this Court to strike out the Claim because the issue of whether the Respondent can access her property through the Coney Drive gate is *res judicata*. The Applicant also argues that the Respondent failed to provide notice of this suit in accordance with section 3 of the *Public Authorities Protection Act*,<sup>1</sup> and that in any event the Claim should be struck out because it has been brought outside of the one-year limitation period.
4. The Application for summary judgment is dismissed. The issue of whether the Applicant could have lawfully let a portion of the Coney Drive road reserve does not arise in this Claim. Whether the issuance of any authorisation, permits, and/or trade licences by the Belize City Council amounts to an authorisation to cause a nuisance is one that cannot be determined on a summary basis. There is no support for the contention that the Belize City Council is the wrong Defendant.
5. The Application to strike out is also dismissed. The issue of nuisance in accessing the Respondent's property through the Coney Drive gate is not *res judicata*. The Respondent has provided sufficient notice under section 3 of the *Public Authorities Protection Act*, and the Claim was not filed out of time.

### **The Claim**

6. The Respondent to this Application, Ethel E. Thompson, is the registered proprietor of Parcel 259 Block 16 Caribbean Shores Belize Registration ("Parcel 259"). Parcel 259 is adjacent to Parcel 5116 Block 16 Caribbean Shores Registration Section ("Parcel 5116"). The 1<sup>st</sup> and 2<sup>nd</sup> Defendants operate a restaurant known as "Gwen's Kitchen #2" on Parcel 5116.
7. The Respondent claims that the Belize City Council has unlawfully authorised the erection of a building and toilet facilities on the shoulder of Coney Drive, and has unlawfully licensed the carrying on of the business of Gwen's Kitchen #2 in those premises. She

---

<sup>1</sup> Cap. 31, Rev. Ed. 2020.

asserts that the building and toilet facilities obstruct her access to, and view of, Coney Drive, make it hazardous for the Respondent and her tenants and licensees to safely enter and exit Parcel 259, and limit the future development and commercial exploitation of Parcel 259. She also claims that the toilet facilities emit a foul smell which causes offence to the Respondent and her tenants and licensees. The Respondent argues that this conduct constitutes private nuisance and is unlawful, and is being carried on with the complicity and assistance of the Belize City Council.

8. The Respondent seeks the following relief in the Claim:

- (1) Damages in nuisance arising from the erection and use of a building and toilet facilities on the shoulder of Coney Drive abutting Parcel 259 Block 16 Caribbean Shores Belize Registration Section for the purpose of conducting the business of “Gwen’s Kitchen #2”;
- (2) A permanent injunction restraining the Defendants, their servants or agents from in any way unlawfully interfering with the Claimant’s access to, vista of, and lawful use and enjoyment of Coney Drive where it abuts Parcel 259 including restraining specifically the continued presence and use of the building and toilet facilities on the shoulder of Coney Drive now used for the purpose of conducting the business of “Gwen’s Kitchen #2”; and
- (3) Costs.

### **The Application**

9. The Belize City Council applies to the Court pursuant to Rules 15.2(a), 26.3(1)(b), and 1.1 of the *Supreme Court (Civil Procedure) Rules, 2005* (the “*Rules*”) for the following orders:
1. That summary judgment be granted in the Applicant’s favour in respect of the claims brought against it for unlawfully letting a portion of the Coney Drive road reserve and the claims in respect of the purported nuisance caused by the issuance of a trade licence to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants;
  2. That the Claimant’s claim against the Applicant in respect of her (in)ability to egress and ingress Parcel 259 through her western gate be struck out as an abuse of process of the Court;
  3. The Claimant’s claims against the Applicant be struck out as an abuse of the Court for failure to comply with the *Public Authorities Protection Act*. Alternatively, that the Claimant’s claim against the Applicant be struck out, the same being brought outside the one-year limitation period;

4. Costs; and
5. Such further and/or other relief as the Court deems just.

## **Analysis**

### *Application for Summary Judgment*

#### Applicant's Submissions

10. The Applicant argues that the issue whether the Applicant could have lawfully let a portion of the Coney Drive road reserve is academic because this issue has been superseded by the grant of freehold title to Parcel 5116 by the Government of Belize to Mary Flowers on July 7<sup>th</sup>, 2020. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants' occupation of the road reserve has been superseded by a superior grant of title, and while this is challenged by the Respondent in Supreme Court Claim No. 279 of 2021, the title issued to Mary Flowers is indefeasible by virtue of the *Registered Land Act*.<sup>2</sup> The present Claim dealing with an issue that is now academic and which is being dealt with in a separate claim is an abhorrence to the overriding objectives of the *Rules*.
11. With respect to the issue of nuisance, the Applicant contends that it is the wrong Defendant because it is not vested with any authority to issue a trade licence and did not issue a trade licence to either the 1<sup>st</sup> or 2<sup>nd</sup> Defendant, trading as Gwen's Kitchen #2. The authority to issue trade licences rests solely with the Belize City Trade Licensing Board, a creature of statute created by the *Trade Licensing Act*.<sup>3</sup> The Belize City Trade Licensing Board is separate and distinct from the Belize City Council. The Belize City Council only acts as a secretariat for the Belize City Trade Licensing Board.

#### Respondent's Submissions

12. The Respondent argues that the Application for Summary Judgment must fail because it is misconceived. According to the Respondent, the Claim does not seek a determination of whether or not the Applicant lawfully or unlawfully leased a portion of the Coney Drive road reserve to either the Defendants or Mary Flowers. The Claim does not challenge the transfer of Parcel 5116 to Mary Flowers. Rather, the Claim is that the Applicant has authorised and permitted the use of the Coney Drive road reserve and the operation of Gwen's Kitchen #2 in such a way that has amounted to a nuisance and, as such, is also liable for the nuisance.

---

<sup>2</sup> Cap. 194, Rev. Ed. 2020.

<sup>3</sup> Cap. 66, Rev. Ed. 2020.

13. It is clear from the evidence that the Applicant issued a lease and permitted the erection and operation of the structure housing Gwen's Kitchen #2 as a commercial restaurant. By doing so, the Applicant impliedly consented to any nuisance which is the natural and probable consequence of the location and operation of the restaurant within the road reserve. The Respondent disputes that the Belize City Trade Licensing Board is a distinct legal entity, as under section 3(1) of the *Trade Licensing Act* the Mayor or the Chairperson of the Local Authority administering the town is a member of the Trade Licensing Board. In addition, there is no section in the *Trade Licensing Act* indicating that the Trade Licensing Board is a separate entity capable of being sued. The issue of whether the 3<sup>rd</sup> Defendant has authorised and permitted the nuisance is a mixed question of law and fact which this Court cannot properly resolve on an application for summary judgment.
14. Further, Coney Drive, including its shoulders, is a public road within the meaning of the *Public Roads Act*.<sup>4</sup> The Applicant has a statutory duty to ensure that access to public roads by all members of the public, including the Respondent, is not obstructed. The Applicant would therefore be acting in breach of its statutory duty and outside its legal authority by purporting to authorise the infringement of the public easement over the road reserve.

#### 1<sup>st</sup> and 2<sup>nd</sup> Defendants' Submissions

15. Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants made brief submissions at the hearing of the Application. Counsel contends that the tort of private nuisance is based on the ownership or occupation of land. The question in this matter is whether the Applicant has made use of Parcel 5116 in so unreasonable a manner as to cause inconvenience to the Claimant. It cannot be so, as the Applicant is not the registered owner of Parcel 5116 and is not using the Parcel. Counsel also argues that the Applicant has not authorised parking in front of the Coney Drive gate, but has in fact put up no parking signs to resolve the issue. As a result, the Applicant is not a necessary or proper party to this Claim.

#### Discussion

16. Rule 15.1 of the *Rules* empowers this Court to give summary judgment on the claim or on a particular issue if it considers that the claimant has no real prospect of succeeding on the claim or the issue. The Applicant is asking this Court to find that the Respondent has no real prospect of succeeding on her Claim against the Belize City Council. I cannot reach such a conclusion at this time.
17. Firstly, I agree with the Respondent that the issue of whether the Applicant could have lawfully let a portion of the Coney Drive road reserve does not arise in this Claim. This Claim is one in nuisance arising from the allegedly unlawful authorisation by the Belize

---

<sup>4</sup> Cap. 232, Rev. Ed. 2020.

City Council of the erection and operation of a building and toilet facilities on the shoulder of Coney Drive, and the licensing of the business in those premises. The issuance of the permits and licences necessary for the erection and operation of Gwen's Kitchen #2 is distinct from the issuance of the lease on the land on which Gwen's Kitchen #2 sits.

18. Further, according to the Applicant the grant of freehold title to Parcel 5116 by the Government of Belize to Mary Flowers was effected on July 7<sup>th</sup>, 2020. The Respondent's allegation is that the offending building was built on or around January 2019, some 18 months earlier. Without deciding the issue, it cannot be excluded at this time that the Applicant may be found liable for any nuisance caused during those 18 months, which liability, if any, may not have been remedied by the transfer of ownership of Parcel 5116.
19. Secondly, the issue of whether the issuance of any authorisation, permits, and/or licences by the Belize City Council amounts to an authorisation to cause a nuisance is one that cannot be determined on a summary basis. The Respondent has provided case law supporting that nuisance can be found to have been authorised, and liability can ensue, as a result of the issuance of a permission to use land by a city council.<sup>5</sup> No argument in rebuttal of this point has been advanced by the Applicant. There is therefore enough before this Court to suggest that the Respondent's Claim may have a reasonable prospect of success.
20. Finally, I find that the Belize City Council is a proper Defendant to these proceedings. As noted by the Respondent, there is nothing in the *Trade Licensing Act* to indicate that the trade licensing boards established in each town in Belize are constituted as separate corporate entities capable of suing and of being sued. This is in contrast with other Acts such as the *Belize Tourism Board Act*,<sup>6</sup> the *Sugar Industry Act*,<sup>7</sup> or the *Social Security Act*,<sup>8</sup> for example, which expressly create boards as separate corporate entities capable of suing and being sued in their own corporate names.
21. Rather, the Belize City Trade Licensing Board appears to be a department or a subdivision of the Belize City Council. Under section 3(2) of the *Trade Licensing Act*, the Belize City Trade Licensing Board is chaired by the Mayor and is comprised of four other members nominated and appointed by the Belize City Council. Under section 5(3) of the *Trade Licensing Act*, it is the Belize City Council that is empowered to make rules prescribing the procedures to be followed by the Board. Under section 33 of the *Trade Licensing Act*, all fees and penalties collected under the *Trade Licensing Act* are to be placed to the credit of the funds of the Belize City Council. Appended as Exhibit RB1-2 to the Affidavit of Roxannie Bowman in support of the Application is a letter from a Ms. Bradley of the

---

<sup>5</sup> *Tetley and others v Chitty and others*, [1986] 1 ALL ER 663.

<sup>6</sup> Cap 275, Rev. Ed. 2020, s. 7(1).

<sup>7</sup> Cap. 283, Rev. Ed. 2020, s. 4(2).

<sup>8</sup> Cap. 44, Rev. Ed. 2020, s. 28(4).

Belize City Trade Licensing Board, which is headed by the Belize City Council logo and refers to the Belize City Council website. From all of this I conclude that the Belize City Trade Licensing Board is not separate and distinct from the Belize City Council.

22. The parties made submissions with respect to alleged violations of the *Public Roads Act* resulting from obstructions along Coney Drive and the erection of no parking signage in the area. The Applicant's duties under the *Public Roads Act*, and any violation of those duties in the case at bar, is a mixed question of law and fact which cannot be resolved in the context of an application for summary judgment.

23. I therefore decline to enter a summary judgment as requested by the Applicant.

#### *Application to Strike Out*

#### Applicant's Submissions

24. The Applicant submits that the issue of whether the Respondent is prevented from accessing Parcel 259 through the Coney Drive gate is *res judicata*, having been decided by James J. in Supreme Court Claim No. 631 of 2020. The Respondent is therefore estopped from raising that cause of action.

25. The Applicant also argues that the Respondent has failed or refused to comply with the requirements of section 3 of the *Public Authorities Protection Act*, which mandates that notice of any suit be given at least 31 days before the institution of the suit. The only cause of action raised in the Respondent's letter dated June 22<sup>nd</sup>, 2020 detailing her complaints to the Mayor of Belize City is the Applicant's ability to let a portion of the road reserve. This, the Applicant argues, contradicts paragraphs 18 to 20 of the Respondent's Skeleton Arguments in which the Respondent states that "in this case, there is no claim at all in relation to the unlawful letting of the portion of the Coney Drive road reserve", and amounts to a concession that the June 22<sup>nd</sup>, 2020 letter to the Mayor does not conform to the *Public Authorities Protection Act*. The June 22<sup>nd</sup>, 2020 letter makes no mention of any cause of action in respect of nuisance, which is the central feature of this Claim. In addition, the letter does not state that it is a notice issued pursuant to section 3 of the *Public Authorities Protection Act*.

26. Finally, the Applicant contends that the Respondent lacks any *locus standi* to bring any claim against the Belize City Council with respect to the supposed complaints by her purported tenants. The Respondent has produced no evidence to show that she has tenants in her own right. The tenants are tenants of HD Thompson Ltd., which is a separate and distinct legal entity from the Respondent. Further, there is no evidence that the tenants have authorised the Respondent to institute any claim on their behalf.

27. Alternatively, the Applicant asks that the Claim be struck out because it has been brought outside of the one-year limitation period as provided for by section 27 of the *Limitation Act*.<sup>9</sup> The lease that forms the subject of this complaint was entered into on January 1<sup>st</sup>, 2019. The Claim was filed on April 21<sup>st</sup>, 2021, more than a year outside the limitation period. Although the issue of limitation period was not raised in the Applicant's defence to the Claim, the Applicant argues that it did not have to plead a limitation defence prior to raising it in a strike out application.
28. Further, the Applicant contends that the Respondent would be caught by the equitable doctrine of laches, as she admits at paragraph 15 of her witness statement that she became aware in June 2019 of the kiosks that purportedly offend her, and immediately set about making inquiries. Inquiries do not amount to the institution of a claim.

### Respondent's Submissions

29. The Respondent submits that the Application to Strike Out must also fail. The Claim is not *res judicata* as the Court in Claim No. 631 of 2020 did not determine whether a nuisance had been committed by either of the Defendants and whether they were liable in damages for the same. The Respondent's Claim is for damages in nuisance and a permanent injunction to abate the continuation of that nuisance. There are factual matters which are in dispute. In addition, this Court will be required to determine as an issue of law whether the local authority can be liable in nuisance for the acts of third parties. This Claim is not an appropriate one to strike out as it cannot be said to amount to an abuse of process.
30. The Respondent contends that no notice of intention to sue pursuant to the *Public Authorities Protection Act* was required to be served on the Applicant for the institution of these proceedings. In any event, a letter was written to the Belize City Council detailing the Respondent's complaints and the allegations contained in the Claim. That letter constitutes sufficient notice of her intention to institute proceedings against the Applicant in relation to the nuisance complained of in the Claim. Citing *Dalmon Ritchie v Belize City Council*,<sup>10</sup> the Respondent adds that even if it does not, this argument goes to formalities and not substance and should not be accepted by this Court. In the alternative, the decision of James J. in Claim No. 631 of 2020 constitutes sufficient notice of the Claim and provides ample details of the nature of, and events giving rise to the Claim. In any event, section 3 of the *Public Authorities Protection Act* does not apply to this claim in nuisance since the actions complained of were not done pursuant to the exercise of any known statutory power or in the exercise of the office of the Belize City Council.

---

<sup>9</sup> Cap. 170, Rev. Ed. 2020.

<sup>10</sup> Action No. 153 of 1978.



31. Finally, the Respondent contends that the limitation defence was not pleaded as required. The Respondent relies on the decision of this Court in *Marva Rochez v Clifford Williams*<sup>11</sup> in support of her contention on this point. In the alternative, the limitation period prescribed by section 27 of the *Limitation Act* does not apply since the nuisance complained of and the actions or inaction of the Applicant do not arise out of the exercise of its office. In addition, the limitation period in relation to a cause of action in nuisance, a claim in tort, is six years from the date the cause of action accrued. In any event, the nuisance alleged is a continuing one and continues to date.

### Discussion

32. I have not been persuaded that this Claim should be struck out. As noted by James J. in *Michael Bogaert v The Commissioner of Lands & Surveys et al.*,<sup>12</sup> “this is considered a nuclear option and the rule ought not to be used except in the clearest of cases where a claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the court”.
33. The issue of whether the Defendants are causing nuisance with respect to the access to Parcel 259 through the Coney Drive gate is not *res judicata*. Claim No. 631 of 2020 was a constitutional claim in which the Respondent alleged that she has been arbitrarily deprived of her fundamental right to use and enjoy her property. It is in that context that James J. declared that the Respondent was not prevented from accessing Parcel 259 through Coney Drive:

The Claimant/Respondent currently has three rights of ingress and egress from Parcel 259 and 260 two on the Highway and one on Coney Drive. None of those are being taken away from the Claimant/Respondent by the 3<sup>rd</sup> Defendant/Applicant nor is she being deprived of same and so there can be no reasonable cause of action here. The Claimant/Respondent also does not own the Road Reserve and any development of the Road Reserve which abuts the Claimant/Respondent’s property is not in itself a deprivation of the property as the Claimant/Respondent has full use of her property.<sup>13</sup>

34. In the present matter, the Respondent is not claiming that she is being deprived of her property, but that “the customers of Gwen’s Kitchen #2 with the approval of the Third Defendant regularly park alongside the Claimant’s gate and near its entrance making it difficult and hazardous for the Claimant and her tenants and licencees to safely enter and

---

<sup>11</sup> Claim No. 179 of 2009.

<sup>12</sup> Claim No. 317 of 2019 at para. 4, citing *Brian Ali v The Attorney General of Trinidad and Tobago*, CV 2014 02843 at para. 13 and *Baldwin Spencer v The Attorney General of Antigua and Barbuda et al*, Civil Appeal No. 20A of 1997.

<sup>13</sup> *Ethel E Thompson v Kenyon Flowers et al.*, Claim No. 631 of 2020 at para. 8.

exit Parcel 259 and drive unto Coney Drive”. The issue of whether the Respondent’s access to Parcel 259 through the Coney Drive gate, while not being taken away, is being made more difficult and hazardous by the actions of the Defendants has not been decided by James J.

35. I find that the Respondent complied with the notice requirement in section 3 of the *Public Authorities Protection Act*. This provision reads 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 contain 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.

36. The Respondent had to give notice under section 3 of the *Public Authorities Protection Act*. First, this is an action in private law. While it is well established that the *Public Authorities Protection Act* does not apply to constitutional or judicial review proceedings,<sup>14</sup> private law actions are subject to the *Public Authorities Protection Act*. Second, this is not an action for breach of contract. Actions for breach of contract may be exempt from section 3 of the *Public Authorities Protection Act* because the public authority has notice of the claim by virtue of being a part of the contract.<sup>15</sup>
37. The purpose of section 3 of the *Public Authorities Protection Act* is to protect the public interest by ensuring that the public authority has early notice that legal action is contemplated by reason of the action of an employee.<sup>16</sup> In *Glen Tillett v Lois Young Barrow et al.*,<sup>17</sup> Acting Chief Justice Awich, as he then was, stated that:

---

<sup>14</sup> Claim No. 778 of 2010 *Glen Tillett v Lois Young Barrow et al.* at para. 24; Civil Appeal No. 32 of 2011 *Froyland Gilharry v Transport Board et al.*, cited in Claim No. 810 of 2011 *Oceana in Belize et al. v Minister of Natural Resources and the Environment* at paras. 5 and 6.

<sup>15</sup> Claim No. 436 of 2010 *Gilbert Blair v Attorney General* at para.10.

<sup>16</sup> *Belize City Council v Gordon*, Belize Law Reports, Volume 3, p. 363, cited in Claim No. 436 of 2010 *Gilbert Blair v Attorney General* at para. 10.

<sup>17</sup> Claim No. 778 of 2010.

The deciding factor as to whether prior notice of a claim is required is whether the wrongful act or omission alleged in the intended claim has been done or carried out ‘in the exercise of [the] office’ of the public authority. In my view, the wrongful act or omission must arise or be connected to the exercise of office, that is, to the functions or duties of the office of the public authority.<sup>18</sup>

38. The Respondent contends that no notice of intention to sue pursuant to the *Public Authorities Protection Act* was required to be served on the Applicant for the institution of these proceedings because the permission or authorisation to erect a building and operate a restaurant from within a road reserve, which has resulted in the nuisance, was not done pursuant to any known statutory power or in the exercise of the office of the Belize City Council under the *Public Roads Act*, the *National Lands Act*,<sup>19</sup> the *Belize City Council Act*,<sup>20</sup> or any other law of Belize.
39. The Belize City Council is involved in this matter precisely because of its powers as a creature of statute. Unlike Mr. Duplessis, Québec’s Prime Minister and Attorney General, whose case is cited by the Court of Appeal of the Eastern Caribbean Supreme Court in *Fire Service Association v Public Service Commission et al.*,<sup>21</sup> the Belize City Council is not a person with a distinct public and private life. The Belize City Council exists and can only operate by virtue of its creation under section 3(1) of the *Belize City Council Act*. The Belize City Council can only act “in the exercise of his office” pursuant to section 3(1) of the *Public Authorities Protection Act*. There is no other “private” status under which it could operate. While the lawfulness of the Belize City Council’s exercise of its powers is disputed, even the unlawful exercise of its powers under any act of Belize would not remove the public nature of the Belize City Council’s actions. Finding otherwise would remove any purpose to section 3 of the *Public Authorities Protection Act*, as by their nature claims against a public authority involve allegations of unlawful actions.
40. It makes sense to require notice in the circumstances of this case, given that the nuisance the Respondent is complaining of is allegedly caused by the actions of third parties. It would be unfair for the Belize City Council not to be given notice that the actions of third parties, which it is alleged the Belize City Council has authorised and permitted, are creating a legal risk to which the Belize City Council may want to respond before a suit is launched against it. The purpose of the one-month notice under the *Public Authorities Protection Act* is to give the public authority the opportunity to right a wrong.
41. I find that the notice given in this case complied with section 3 of the *Public Authorities Protection Act*. Section 3 requires that the notice “clearly and explicitly contain the cause

---

<sup>18</sup> *Ibid* at para. 24.

<sup>19</sup> Cap. 191, Rev. Ed. 2020.

<sup>20</sup> Cap. 85, Rev. Ed. 2020.

<sup>21</sup> SLUHCVAP 2010/0013.

of the action”. In her Statement of Claim, the Respondent claims for damages “arising from the erection and use of a building and toilet facilities on the shoulder of Coney Drive abutting Parcel 259 Block 16 Caribbean Shores Belize Registration Section for the purpose of conducting the business of “Gwen’s Kitchen #2””. The Claim against the Applicant specifically is detailed at paragraph 3 of the Statement of Claim, which states as follows:

3. The Third Defendant has unlawfully authorised the erection of a building and toilet facilities on the shoulder of Coney Drive which are used for the purpose of carrying on the business of “Gwen’s Kitchen #2” and has unlawfully licenced the conduct of the said business at the said premises.

42. While it does not use the term “nuisance”, the June 22<sup>nd</sup>, 2020 letter from Respondent’s counsel to the Mayor of Belize City does refer to the hazard and the depreciation in property value allegedly resulting from the unlawful permits granted by the Belize City Council for the erection and operation of Gwen’s Kitchen #2. The letter also advises the Belize City Council that it had 30 days to withdraw the permits before further action is taken:

We have perused both the *Belize City Council Act*, Chapter 85 of the Laws of Belize, and also the *Public Roads Act*, Chapter 232 of the Laws of Belize. We have found no statutory or other authority given to your Council to give any permits to any third party to build structures and operate and (*sic*) food business on a road reserve. We found a limited power under the *Public Roads Act*, section 15 and 26, that allows the erection of temporary fence where a land owner wishes to cordon off any construction on his private property.

We are therefore instructed to write to you to request that you immediately, and no later than 30 days from this letter, withdraw any permits given to these food vendors to build any kiosk or any structure and to operate any business on a road reserve. The operation of these businesses poses a hazard to our client and has caused a depreciation of her property value, to which our client intends to hold you fully liable.

43. I find that the June 22<sup>nd</sup>, 2020 letter constituted proper notice under section 3 of the *Public Authorities Protection Act* because it sets out the elements of the cause of action against the Belize City Council and puts the Belize City Council on notice of the Respondent’s intended action.
44. The limitation period for the initiation of this Claim has not expired. Pursuant to section 27(2) of the *Limitation Act*, the *Limitation Act* applies to this Claim because the *Public Authorities Protection Act* applies. Section 27(1) of the *Limitation Act* provides as follows:

27.-(1) 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, 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.

45. The Claim was filed on time regardless of any determination on the question of whether the nuisance is continuing. The Respondent contends that the nuisance continues with the permission and approval of the Applicant. Since it is alleged that the nuisance has not ceased, the cause of action is not deemed to have accrued yet under section 27(1) of the *Limitation Act*. If, as alleged by the Applicant, the Belize City Council's involvement in this matter ended with the grant of freehold title to Parcel 5116 by the Government of Belize to Mary Flowers on July 7<sup>th</sup>, 2020, the Claim was filed within one year of the cause of action accruing. The Claim Form was filed on April 21<sup>st</sup>, 2021.
46. Finally, I decline to rule on the issue of *locus standi* at this time. The issue of whether the Respondent has tenants in her own right, and whether those tenants have authorised the Respondent to institute any claim on their behalf is an issue of fact that cannot and should not be decided on an application to strike out.

**IT IS HEREBY ORDERED**

- (1) The Application is dismissed;
- (2) Costs are awarded to the Claimant/Respondent and shall be agreed upon by the parties. Should the parties be unable to agree, they may apply to this Court for a ruling on costs.

Dated September 26<sup>th</sup>, 2022

Geneviève Chabot  
Justice of the Supreme Court