

IN THE HIGH COURT OF BELIZE, A.D. 2023

CLAIM No. 569 of 2021

BETWEEN

CURTIS ARNOLD

CLAIMANT/RESPONDENT

AND

**MINISTER OF NATURAL RESOURCES
ATTORNEY GENERAL OF BELIZE**

**1ST DEFENDANT/APPLICANT
2ND DEFENDANT/APPLICANT**

DECISION OF THE HONOURABLE MADAM JUSTICE PATRICIA FARNESE

HEARING DATE:

December 14, 2022

APPEARANCES

Mr. Jaarad Ysaguirre, Counsel for the Claimant/Respondent.

Mrs. Samantha Matute and Ms. Alea Gomez, Counsel for the Defendants/ Applicants.

DECISION ON APPLICATION FOR LEAVE TO APPEAL

Introduction:

[1] The Applicants are seeking leave to appeal a decision where I dismissed an application to strike out the Respondent's Claim and awarded costs to be paid by the Applicants. The request for leave is made pursuant to *section 13, 14(1) (h) and 14(3) (b) of the Court of Appeal Act¹* and

¹ Cap. 90. Rev. Ed. 2020.

*Rule II of the Court of Appeal Rules.*² I dismissed the Application for Strike Out after concluding that there were significant questions of fact that need to be decided that prevented a finding that the Claim was statute-barred as the Applicants alleged.

[2] The Applicants' request for permission to appeal is grounded in an assertion that I erred by not accepting that the Respondent's Claim is entirely a private law claim for breach of contract. They say this error led to additional errors in fact and law related to the question of whether the Claim was statute-barred. Finally, the Applicants also argue that I erred by concluding that there was insufficient evidence to determine when the Respondent ought to have discovered the mistake that led to the Claim.

[3] The Court of Appeal has identified the three categories of cases where leave will be granted:³

1. Where they see a *prima facie* case where an error has been made;
2. Where the question is one of general principle, decided for the first time; and
3. Where the question is one of importance on which further argument and a decision of the Court of Appeal would be to the public advantage.

In deciding to grant leave to appeal, I agree with the Applicants that their question is one of importance on which the Court of Appeal's guidance would be advantageous.

[4] This dispute centers on the Applicants' failure to issue Title to a parcel of land in the Respondent's name. In 2008, the Parties entered into an agreement for the land's purchase and the Respondent paid the full purchase price. The Applicants do not dispute that they had an obligation to transfer Title but argued that a mistake was made, and the land was subsequently sold to another person in 2009. The Respondent, therefore, is statute-barred from bringing the Claim as the limitation period for a private contract dispute has long passed. The Respondent, however, argues that he did not discover that Title had been transferred to another until 2019. I found that it would be unjust to strike out the Claim and not give him the opportunity to lead evidence to support his argument that not discovering the mistake sooner was reasonable.

² S.I. No. 31 of 2021.

³ *Karina Enterprises Limited v. China Tobacco Zhejiang Industrial Co. Ltd.* Civ. App. Dated November 7, 2014.

[5] Disputes, such as this one, where mistakes have been made in the registration and transfer of interests in land are not infrequent before the High Court. It is, therefore, of great public interest whether Constitutional and Declaratory remedies are available when the mistake is made by a government actor and results in the deprivation of a property interest.

[6] While I recognize an appeal inevitably adds more cost and delays to these proceedings, I do not find this Application is an abuse of process that conflicts with the Court's overriding objective to cases justly. Like the Respondent, I disagree that errors have been made. Nonetheless, I do not feel the Application was intended to obstruct the just disposal of the proceedings. This is not a case where the procedural consequences outweigh the determination of this issue. No trial date has been set. If this matter is limited to a private law claim for breach of contract, the case each Party must meet will be significantly narrowed. It is more convenient to determine that fact before the trial.

Disposition:

1. Leave to appeal is granted.

Dated February 10, 2023

Patricia Farnese
Justice of the Supreme Court of Belize