

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

CLAIM No. 514 of 2021

BETWEEN

MYRON MARIN

CLAIMANT/RESPONDENT

AND

LOPEZ EQUIPMENT CO. LTD.

DEFENDANT/ APPLICANT

DECISION OF THE HONOURABLE MADAM JUSTICE PATRICIA FARNESE

HEARING DATE: 21st March 2023

APPEARANCES

Mr. Rene Montero, for the Claimant/Respondent

Ms. Naima Barrow, for the Defendant/Applicant

DECISION ON APPLICATION TO STRIKE OUT

[1] Mr. Myron Marin has filed a claim against Lopez Equipment Co. Ltd. (Lopez Equipment) for breach of contract. Lopez Equipment has applied to strike out the claim on the basis that the claim is an abuse of process. Lopez Equipment argues that the claim is based upon an illegal contract. After reviewing the written submissions and hearing the oral submissions of the Parties, I am dismissing the application to strike out the claim. It is trite law that the authority given to this Court to strike-out a claim by Rule 26.3 of *Supreme Court (Civil) Procedure Rules*, is to be used sparingly and only in the clearest of cases.¹ This is not one of those cases. Mr. Marin has presented an arguable case and has raised complex factual or legal issues.

¹ *Thompson v Flowers et al.*, Supreme Court Claim No. 631 of 2020 at para 2.

[2] Lopez Equipment argued that the parties entered into a contract to dredge and fill certain lands owned by Mr. Marin. *The Mines and Minerals Act*,² among others, requires these kinds of works to be licensed and there is no evidence that a license was obtained. Moreover, the contract obliged Mr. Marin to obtain the license. Lopez Equipment cited *Belize International Services Ltd. v. AG (Belize)*³ to argue that the contract is unenforceable because it is illegal.

[2] Mr. Marin argues that although he may not have had a license, he was nonetheless authorized or reasonably believed he was authorized to undertake the work. He and the Defendant attended a meeting with the Department of Mining/ Environment Unit where he was given the “green light” for the proposed work. Moreover, citing *Prophecy Group LC v. Seabreeze Company Limited*,⁴ Mr. Marin asserts that only contracts that are *ipso facto* illegal are unenforceable. A contract for dredging and filling land is not *ipso facto* illegal, therefore, it is not an abuse of process to ask this Court to enforce the contract in the face of Lopez Equipment’s breach. Finally, illegality was not pled and should not be considered by the Court.

[3] In reply to the issue of pleadings, Lopez Equipment asserts that they had no way of knowing whether the contract was illegal because Mr. Marin refused to confirm or deny whether the project was appropriately licensed. It was only after they obtained an order for specific disclosure that they were able to confirm the illegality.

[4] The existence of apparent conflicting case law within Belize on the enforceability of illegal contracts illustrates that there is a complex legal issue to be tried. The disputed contract was not illegal *per se*, such as in a contract to commit murder or for the purchase of illegal drugs, where the performance of the contract *requires* illegality. The public interest justifies not rewarding willing participants who engage in this kind of illegal activity. It is not clear to this Court that the same justification exists in denying, as a strict rule, the enforceability of a contract that only becomes unlawful by the breach of one of its terms. Questions relating to the relevance of intent and knowledge of the Parties about the legality of their actions on enforceability cannot be resolved without a trial and full submissions. Furthermore, striking out the claim requires this Court to endorse a strict rule of enforceability without considering the impact of that decision on the ability of the non-breaching party to enforce a contract that subsequently becomes illegal.

[5] I agree with the Defendant that the evidence establishes that Mr. Marin did not have a license pursuant to *The Mines and Minerals Act* for the dredging and filling activities. I am required, however, to accept all the evidence as if it were true when deciding whether to strike-out a claim. In his witness statement, Mr. Marin claims that he was authorized and points to both the meeting to ‘green light’ the project and the lack of any enforcement for his dredging and filling of

² Cap. 226 of the Laws of Belize 2020.

³ BZ 2019 CA 11, 15 March 2019.

⁴ S.C. Claim No. 185 of 2001.

these lands as proof of this authorization. Lopez Equipment concedes the meeting occurred and has provided no evidence of enforcement activities.

[5] If Mr. Marin can prove to this Court that either he was acting with government authorization that negated the need for a permit or that his reasonable belief of authorization is sufficient to enforce the contract, he may very well succeed with his claim. To conclude that Mr. Marin does not have an arguable case before he has fully presented his evidence in support of his contentions is premature.

Disposition

[6] The Parties' witness statements and pleadings reveal live factual and legal issues in dispute that are not so clearly decided in the Defendant's favor to warrant the 'nuclear' remedy they request. The application to strike out the claim is dismissed. Costs will be awarded in the cause.

Dated April 27, 2023



Patricia Farnese
Justice of the Supreme Court of Belize