IN THE HIGH COURT OF BELIZE, A.D. 2021

CLAIM NO. 453 OF 2021

BETWEEN

(VISTA PROPERTIES LIMITED	**1st CLAIMANT**
(TRIGGERFISH PROPERTIES LIMITED	**2nd CLAIMANT**
(BAY TRUST COMPANY LIMITED (as trustee	**3rd CLAIMANT**
(of the L'AVENIR TRUST	
(	
(AND	
(	
(JORDANA NICOLE FRUTOS	**DEFENDANT**

BEFORE THE HONOURABLE MADAM JUSTICE SONYA YOUNG

Decision Date:

27th January 2023

Appearances:

Mrs. Robertha Magnus-Usher, Counsel for Applicant/Defendant

Mrs. Ashanti Arthurs-Martin, Counsel for Respondent/Claimant

KEYWORDS: Civil Procedure - Application for Stay Pending Determination of Another Matter - Judicial Notice of all Court Records - Adducing Evidence in Submissions - Evidence Act

DECISION

1. This is an application for a stay of proceedings pending the Court's determination of another matter. These proceedings concern properties which the Claimant companies say the Defendant holds on trust for and on behalf of them. They seek orders compelling her to transfer these properties as directed by the Companies.

2. The Defendant says the Claimants in the instant case are owned and directed by her husband against whom she is currently seeking leave to begin divorce proceedings as they have not yet been married for three years. She says if she is successful at her application, she also intends to join proceedings for division of matrimonial property. She alleges that the properties now being claimed by the Claimants are part of the matrimonial acquest and ought properly to be dealt with there.

3. The Claimants, as separate legal entities and not the husband of the Defendant, have strongly objected to the stay. To compound matters, the man to whom the Claimant says she is legally married and who admits to owning the Claimant companies has also applied to have the marriage with the Defendant annulled.

There is but one Issue:

1. **Whether the Claim should be stayed pending the determination of proceedings for the Division of Matrimonial Property filed by the Respondent and dated 16th September 2021?**

Preliminary Issues:

4. The Court made orders for submissions to be filed and exchanged by both parties on or before the 30th November 2021 and for them both to have an opportunity to address the Court orally at a later date for no more than 15 minutes each. On the date set for oral submissions, Counsel for the Claimants/Respondents had filed a list titled *"OBJECTIONS BY THE CLAIMANT TO THE ADDUCING OF EVIDENCE IN THE DEFENDANT'S SUBMISSIONS".* It contained 15 objections to certain paragraphs which she asked the Court to disregard. She in fact relied only on 12.

5. The Court entertained those objections as was proper since this was the opportunity afforded by the Court for both parties to make any further submissions as they deemed necessary. That the Claimant put hers in writing (point form) and then made her oral address, could only assist. It was a brief document which in no way hindered the process and Counsel made it clear that she did not intend it to do so.

6. Senior Counsel for the Applicants informed that she had been taken by surprise not only by the procedure but the content as well, and she was in no position to properly respond. The Court, without hesitation, allowed her the opportunity to do so in writing in an effort to save time while attempting to keep all parties on an equal footing. In fact, what good would it have done to insist otherwise when the Court should have before it all that is necessary?

7. It was, therefore, most disturbing when Senior Counsel, in her written response, not only commented on Counsel's use of more than her originally allotted 15 minutes but sought to raise ignorance of any such procedure, particularly when it had been done to assist her.

8. Prior, Senior Counsel may have been called upon then and there to respond, such was the nature of oral submissions under the old system. However, the courts no longer seek to promote ambush in the process. Rather, it distinguishes fairness and the proper use of resources in accordance with its overriding objectives.

9. The Court is also given wide ambit to control its own process and to manage a case as it deems most appropriate in given circumstances. Practitioners would do well to remember this when situations of this and a similar nature arise. I commend Counsel for the Claimant for the initiative of placing her objections briefly in writing. Certainly, filing and serving them earlier may have been even more helpful but we are all pressed so no more need be said about that.

10. Senior Counsel also submitted that Counsel's objections were made with a view to striking out the offending paragraphs. This took the Court entirely by surprise. Unsurprisingly, however, a review of the recorded address revealed no such application having been made by Counsel. What I understood Counsel to be asking, was for the Court to disregard the submissions which had been objected to, and that is a perfectly acceptable and recognizable application to make.

11. So now, quickly through the objections and on to what ought to have been the meatier portion of the matter.

12. Most of the objections concerned references in the submissions to orders, documents filed, evidence produced, and statements made in other proceedings, but which had not been brought formally before the Court by affidavit. In short,

the Respondent/Claimant questioned the appropriateness of 'adducing evidence' in submissions.

Whether the Applicant's submission purported to give the court's power or ability to take judicial notice of these things?

13. In response, the Defendant relied primarily on ***Craven v Smith [1869] LR 4 Exch 146*** that was referred to at paragraph 609 of Halsbury's Laws, 3rd Ed Vol. 15 which reads, *"The court is entitled to look at its own records and proceedings in any matter and take notice of their contents although they may not be formally brought before the court by the parties."* Senior Counsel concluded that any matter meant any matter before any court and not the matter then before the Court.

14. Counsel for the Claimant was adamant that the interpretation given ***to Craven v Smith (ibid)*** was not as wide as the Halsbury Laws stated it to be. The decision was specific to looking at the record in a particular case and nothing more. It did not extend to other Courts and or before other judicial officers. She added that the Defendant had provided no authority to support this broad proposition.

15. Counsel stated at paragraph 10 and 11 of her submissions:

"10. On the contrary, the Editors of ***Phipson on Evidence*** *state at paragraph 80 [TAB 3] that,*

'A judge may not act on information gained in other cases. Although a judge is entitled to use the knowledge he has acquired in other cases in order to understand and test the evidence of the witnesses, he is not entitled to reject uncontradicted evidence because he prefers that given by other witnesses in other cases which he has tried.'

11. In ***Halsbury's Laws of England,*** *Volume 28 (2021) at paragraph 469* ***[TAB 4]****, the Editors state that,*

'It may be proper for judges, magistrates or jurors to make use of their personal knowledge, experience or expertise when hearing evidence, but they may not substitute

specialized knowledge of their own in contradiction of evidence they have heard when the time comes for the case to be determined...

Courts or judges may not use particular knowledge in one case to take judicial notice of facts that are also relevant or in issue in later cases. They may, however, take judicial notice of facts that have become notorious after being decided in reported cases; and magistrates and district judges may in appropriate cases make sue of their local knowledge.'"

16. When the matter resumed for determination of the application, the Court drew the parties' attention to a case from the ***Supreme Court of Zambia Shamwana and 7 others v The People (1985) Z.R. 41 (S.C.)*** and invited submissions.

17. In ***Shamwana***, ***Craven v Smith*** was applied to resolve an issue similar to that which confronts this Court. There the judge took judicial notice of an accused's acquittal learned through the daily press and which demonstrated that he then had a clean record. It was found that *"In an appropriate case therefore, particularly where as in this case facts may be judicially noticed after an enquiry has been made, a judge has power not only to look at its own records, but also at those of another judge and to take judicial notice of their contents. This applies to all courts of the Republic."*

18. Senior Counsel also presented an excerpt from **Evidence of Marcellus A. Ms. Rae, Michael M. Lee and Samuel A. Spears which outlined 'the Scope of Judicial Notice' [tab 3]** as follows:

"Specifically, the Courts have articulated the general rule that while the contents of court records are subject to judicial notice, the truth of any facts contained in those records generally is not. Under this rule, a court may take judicial notice that certain documents were filed in prior litigation or that certain factual findings were made, but generally may not take judicial notice of the contents of those filings, or of the factual findings themselves."

19. Senior Counsel added that there were various and distinct forms of judicial notice of which those statutory was but one. There was also, according to Blackstone's Civil Practice 2015 at paragraph 49.27, those from a judge's

general knowledge and those which he could enquire into from appropriate sources for his own information. She opined that the matters in issue in this case fell squarely into the latter. She concluded that it was, therefore, proper for a judge to take judicial notice of proceedings, documents filed, orders made as well as their contents.

Court's Consideration:

20. It is usually the parties' duty to formally provide or introduce the relevant facts to the Court within the context of the evidential rules. The function of judicial notice is to accept or establish a fact as true for purposes of proof without the usual formalities. It is a substitute for formal proof if you will.

21. At common law, judicial notice may be taken of facts, which a judge can be called upon to receive and to act upon, either from general knowledge of them, or from inquiries the judge makes for his own information from sources to which it is proper for him to refer: **See *Commonwealth Shipping Representative v P & O Branch Service [1923] AC 191, 212 (Sumner LJ)***.

22. **Section 6 of the Evidence Act Cap 95** codifies certain facts which the Court is allowed to take judicial notice of. The records and proceedings in other courts are not included. However, **Section 35** states how certain judicial documents are to be proved in legal proceedings. It reads:

"Any summons, rule, warrant, process, complaint, commitment, judgment, conviction, sentence, order or other written judicial act or document whatever, in any civil or criminal case, may be proved, in any legal proceeding whatever, against any person by producing a copy thereof certified by any judge or by the Registrar of the Supreme Court or, in the case of any other court, by any person performing functions analogous to those of a judge or the Registrar of the Supreme Court, without proof of the signature or official character of the person appearing to have certified the document."

23. This is as clear a statement as ever that the Court can not simply take judicial notice of these documents by making its own inquiries. A certified copy ought to be produced and the Court can then take judicial notice of the certifying signatory.

24. I am of the view that "its own record" as referred to in ***Craven v Smith*** is the record of the matter then before the Court. In the Supreme Court of Belize, it would be all documents filed and any orders and judgments made in a particular matter. I am strengthened in this view by the actual words stated in ***Craven v Smith*** and our very own CPR.

25. The ***Craven case*** makes it clear at pg 151 that *"The Court, it must remember, does not take judicial notice of its records in the same manner as of an Act of Parliament… According to the practice of this Court, therefore, even on a motion to arrest judgment, the record may be looked at, although not referred to in the rule or affidavits."*

26. **Rule 29.12** states clearly that a party may not use a witness statement in other proceedings without the witness's consent in writing which requires a party to have leave of the Court to use a witness statement in another matter. If indeed it was open to the Court to simply take judicial notice, why then would special leave be mandated?

27. In the Trinidadian case of ***Wendell Jeremy and others v The Attorney General of Trinidad and Tobago Claim No. CV2019-0007*** with reference to ***Craven v Smith (ibid)***, it was stated at paragraph 14: *"Despite the fact that the application is not before the court on the defendant's notice of application for relief, it is well established historically that the court is entitled to look at the record before it."*

28. This interpretation is in keeping with that expressed by Counsel for the Respondent.

29. Senior Counsel sought to rely on an excerpt from **Evidence by Marcellus A. Rae and others**, but that Article speaks specifically to the California situation and discusses **Section 452 of the California Evidence Code**, and which is not similar or identical to the Belizean position. This Court refrains from reliance.

30. In ***SHAMWANA AND 7 OTHERS v THE PEOPLE (1985) Z.R. 41 (S.C.)*** at pg 111 explained that *"The question whether a court is at liberty to look at its own records and to take judicial notice of them has previously been judicially considered and decided in the positive. In R v Chona (70), for example Conroy, C.J., said at page 350, letters G to H:*

> *"I myself heard Zongani Banda's appeal three months ago, and the course which the case followed is clearly in my mind. A court has power to look at its records and take judicial notice of their contents, even though not formerly brought before the court. See Craven v Smith (71). I have referred to the record which confirms my recollection that the District Commissioner heard the appeal five weeks after the conviction, and allowed the appeal in part. He reduced the sentence to a fine of 15 pounds or four months' imprisonment. To this extent the accused's recollection is, therefore, inaccurate."*

31. In ***Fatyela v The People (72)***, where a Magistrate's Court took judicial notice of a record of another Magistrate's Court, Ramsay, J., said at page 136 that:

> *"It is improper for a magistrate to look at the record of another court in order to determine what was said during the hearing of the case and that the correct procedure is to have the clerk of the other court produce the record."*

32. Both ***Chona (70)*** and ***Fatyela (72)*** are decisions of the High Court. The issue raised by the present case is whether a judge is at liberty to look, not only at his own records, but also at those of another judge, and to take judicial notice of their contents.

33. Cross On Evidence, 4th edition, sets out a useful guide: It illustrates, at pages 136 to 139, the application of the doctrine of judicial notice by reference to three main categories of facts, namely (i) facts which are judicially noticed without inquiry; (ii) facts which are judicially noticed after inquiry; and (iii) facts which are judicially noticed under various statutory provisions.

34. The issue before us would appear to fall under category, (ii) above. This category is vividly exemplified, by Lord Summer's observations in ***Commonwealth Shipping Representative v P & O Branch Services (69)***, supra, which we think are an accurate and explicit exposition of the law on the subject. A judge may thus receive and act upon facts either from his general knowledge of them, or from inquiries to be made by himself for his own information from sources to which it is proper for him to refer. As Lord Denning (as he then was) pointed out in ***Baldwin and Francis Ltd. v Patent Tribunal Ltd (73), at page 691***:

"All that happens is that the court is equipping itself for its task by taking judicial notice of all such things as it ought to know in order to do its work properly."

35. In an appropriate case, therefore, particularly where, as in this case, facts may be judicially noticed after an enquiry has been made, a judge has power, not only to look at his own records, but also at those of another judge, and to take judicial notice of their contents. This applies to all courts in the Republic. To this extent, ***Fatyela (72)*** stands overruled. This Court, for instance, does sometimes call for case records of lower courts to examine them and to take judicial notice of their contents, especially in connection with issues affecting sentence(s), such as where further offences were committed by the Appellant while on bail pending trial for earlier offences, in order to decide whether all

offences should be regarded as constituting one course of conduct. ***Alfred Mulenga v The People (74)***, is a case in point. Whether a court is at liberty to take judicial notice of another court's records, will depend upon the circumstances of the particular case before it.

36. In this particular case, the acquittal of PW5 was public knowledge but to put the matter beyond any shadow of doubt, the trial judge was entitled to make an inquiry by reference to the appropriate source of formation, which was the case record on appeal, in order to equip himself before he could take judicial notice of PW5's acquittal. For the reasons given, judicial notice of PW5's acquittal was properly taken, and the fact of acquittal was properly used.

37. Court therefore finds that Senior Counsel has offended against the rule which bars adducing evidence in submissions when she referred to an application, affidavit or order in other matters or stated the date or date of filing of a document. The Court is also allowed to adduce that one document was filed before another through taking judicial notice of the dates of filing.

38. The Court will disregard Senior Counsel's submission in paragraph 8 that in proceedings before the Family *Court "the husband made it clear he had already thought of a way to get out of paying maintenance i.e. he thought by having the marriage declared a Nullity."* Likewise, the assertion that the wife was forced to sign documents or has no recollection of signing certain documents as contained in an affidavit filed in another matter. Similarly, her assertion in paragraph 14 that she had indicated to the Court in another matter her intention *"to make certain claims and declarations regarding her interest in the properties."*

The Court is not allowed to take judicial notice of any facts contained in a transcript of another Court unless that transcript and the Maintenance order to which Senior Counsel refers certainly does not state anything other than a reservation of his right to apply to have the marriage declared a nullity.

39. While there is mention of the Maintenance order in the evidence before the Court, the attachment of that order to submissions, like an exhibit, is quite improper. Equally so is the attachment of a decree absolute. No evidence can be placed before the Court via submissions. There is no doubt that they were placed there as exhibits because they are tabulated quite differently from the authorities attached. Like exhibits, the Applicant's initials are used followed by a number.

40. Submissions are for analysis of the relevant evidence that arose throughout the trial or hearing and arguments on issues supported by authorities.

41. Senior Counsel's submission that the Court is able somehow to simply consider evidence presented in another matter where they have not been placed formally in evidence in the matter before the Court seems misconstrued. She relied on Halsbury's Laws 3rd ed Vol 15 para 609 which referred to ***Craven Smith [1869] LR4 Exch 146***. They both speak to the British Supreme Court of Judicature or the final Court of Appeal in the UK. Our own **Supreme Court of Judicature Act** states at **Section 18(1)** that "*There shall be vested in the Court, and it shall have and exercise within Belize, all the jurisdictions, powers and authorities whatever possessed powers and vested in the High Court of Justice in England,…"* Belize's Supreme Court is not the same as that of the UK and the practice of that court has not been accepted as that of our own of a similar name.

Whether the Claim should be stayed pending the determination of proceedings for the Division of Matrimonial Property filed by the Respondent and dated 16th September 2021?

42. The Applicant raised that the properties in this matter are the same properties involved in the action for division of matrimonial property. The properties are legally owned by the Applicant who is the wife of the Director of the Claimant. Ownership of the properties could more conveniently be dealt with in the division of property action where the Claimant companies could be joined as parties.

43. The matrimonial home which consists of two properties is vested in the wife's name. She has invested substantially in those properties. To require her to leave the matrimonial home or remove the building housing her business is unjust and abusive. Further, even if the Applicant fails in defending the nullity proceedings, she could still claim as a party to a common law union. She reminded that lack of consummation makes a marriage voidable not void.

44. It would, therefore, be a travesty to have this matter concluded without consideration of the provisions of matrimonial law which go beyond the declaration of interest and extend to altering such interests and rights. Dealing with this Claim in isolation may not only render her Application for division of matrimonial property nugatory but may also defeat any maintenance order already made and any which could be made during the divorce proceedings. This could stifle her access to justice.

45. Senior Counsel asked the Court to note that this Claim was commenced only after the Applicant initiated divorce proceedings. In the circumstances, it

seemed clear to her that this claim would not have been instituted unless the parties had separated and divorce and ancillary proceedings commenced.

46. No argument of prejudice has been advanced by the Claimant but there would be substantial prejudice to the Defendant if these proceedings were to go forward before the matrimonial and ancillary claims. She relied on ***Nazir Ali v Maureen Ali CV 2015-01751, High Court Trinidad and Tobago***. In any event, delay in hearing this Claim is no basis on which to deny the Applicant her right to access justice.

47. Rather, she says, Mr. Wilson's actions were oppressive and done in bad faith. There was no urgency but she was required to leave the matrimonial home only to renter months later. She was also told to leave the Triggerfish Property and take her house with her.

48. So while the power to stay is to be sparingly used, in exceptional circumstances only, the Court ought properly to exercise its discretion to stay these proceedings because the justice of the case demands it. The interest of justice is the prevailing consideration.

49. The Claimant advanced that in determining whether to grant a stay, the Court's primary consideration should be whether it is right to do so - ***Reichhold Norway ASA and another v Goldman Sachs International [2002] 2 All ER 679***. A Claimant seeks to have his matter expeditiously determined so it is only for some good reason that a Court would be inclined to grant a stay - ***R v Secretary of State for the Home Department [2017] UKUT 168***.

50. In urging the Court to dismiss the Application, Counsel for the Claimant informed at paragraph 12 of the Claimant's First submissions:

> *"The court should be slow to grant a stay, and should only do so where it is satisfied that the outcome of the Originating Summons for the Division of Matrimonial Property will have a "critical impact" on the current proceedings."*

51. She reasoned that the Application was premature and misconceived. The Application for division of assets was also premature as there was no current divorce proceedings. The issue of whether the marriage is a nullity had to be dealt with as well as granting the Defendant leave to bring divorce proceedings before three years of marriage.

52. No evidence has been adduced by the Applicant to enable the Court to determine that the properties are in fact matrimonial assets in which the Applicant has an interest whereas the Nominee Agreements show she holds them in a nominee capacity only. The properties were all acquired before the marriage and prior to any common law union.

53. The cause of action in this claim resounds in trust which is independent of any matrimonial rights and the claim is brought by companies which are legal entities separate from Glencoe Wilson. The Court must first find that the properties are held in trust for corporations which are his alter egos before any claim as matrimonial property could be made.

54. A stay would only cause unnecessary delay which is compounded by the Applicant's non-compliance with the Court's order in ***Action No. 9 of 2021***. No defence has even been filed to this Claim.

Court's Consideration:

55. There is no doubt that the Court has an inherent jurisdiction to grant a stay. It also has power to do so by virtue of **Rule 26.1(2) (e)** on which the Applicant relies. The Court ought only to exercise its discretion in the interest of justice (***Reichhold Norway ASA and another v Goldman Sachs International***).

56. The Court is aware of its duty to deal with cases expeditiously. So while the jurisdiction to grant a stay is said to be unfettered, there must be good reason to impose such a delay. Accordingly, it should be granted cautiously and used sparingly. The Court must consider all of the circumstances and the Court finds it necessary in the interest of justice.

57. The circumstances, as this Court finds them, are that this Claim was filed after the Respondent brought her action for division of matrimonial property. This is significant.

58. The Claimant says the subject properties of this Claim were all bought before the parties were in a common law union or a marriage. This does not appear to be so from the dates on the titles. In the affidavit which supports the Claim Form, Mr. Wilson attested that they were in a relationship and cohabited between 2014 and 2017. They were married on 21st July 2019. The gap is unaccounted for.

59. The Applicant in her affidavit agreed that they were married in July 2019 but says they were living together from 2012. This means that even when he entered into the earliest agreement to purchase, they may have already been living together but certainly when the titles were issued, there is no doubt that they

were cohabiting. That places the properties into the realm of matrimonial acquest if Mr. Wilson is found to be the alter ego for these companies.

60. He has already admitted to being a director of them all, as well as having controlled them between 2014 and 2017. He is strangely silent on what has happened since then. He is also strangely silent on when Bay Trust Company gained ownership of 99 shares in Mayan Beach Estates Ltd. However, the Court could certainly consider whatever evidence is put before it and make a determination in this regard. The Court can not do that in these proceedings.

61. It would seem to me that if the Court were to move ahead to determine this matter prior to any claim to matrimonial or union property, there may be a risk of dissipation of assets or a need for injunctions and other interim remedies to safeguard these properties until the other claim is then determined. This would be unnecessary if the stay were to be granted.

62. While I agree with the Claimant that these proceedings are independent, that cuts both ways. Even if I were to find that the Claimant holds the Property on trust for the Companies that still will not make them free game as they continue to form part of the division of property matter. A matter which with amendment (common law union) could proceed even if the Count found the marriage to be a nullity.

63. It seems to me much easier and a better use of resources to consider the properties in the division of property proceedings where the companies could easily be joined and put forth their case that she has no right to them for

whatever reason. The Respondent, on the other hand, would be unable to put forward her full case here because of the nature of these proceedings.

64. This was no guarantee that this Claim would have been heard any faster than the others. But certain findings in the matrimonial property matter may significantly impact this matter. Such as whether the properties are in fact matrimonial acquest and whether she holds the properties on trust for the Companies and nothing more. It makes no sense for the Court to duplicate the effort.

65. While I can not say that this Claim is an abuse of process in any way, I am mindful that a stay is, in these circumstances, the fair and just response.

DETERMINATION

It is ordered that:

1. All further proceedings in this matter are stayed pending the hearing of the originating summons for Division of Matrimonial Property filed by the Respondent and dated 16th September 2021.
2. Costs shall be in the cause.

SONYA YOUNG

HIGH COURT JUDGE