

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

Claim No. 639 of 2019

BETWEEN

DOMINION RESOURCES INC.

CLAIMANT

AND

**TRACY GINGER BURGARDT
DRAGONFLY HOLDINGS LTD.**

**1st DEFENDANT
2nd DEFENDANT**

AND

DOMINION RESOURCES INC.

COUNTER DEFENDANT

Before the Honourable Madam Justice Geneviève Chabot

Date: April 28th, 2023

Appearances

E. Andrew Marshalleck, SC, for the Claimant and Counter Defendant

Darlene M. Vernon, for the 1st Defendant

No appearance for the 2nd Defendant

**RULING ON APPLICATION FOR JUDGMENT ON ADMISSION
OR SUMMARY JUDGMENT**

Background

1. The Claimant, Dominion Resources Inc. (“Dominion”), filed a Claim against Tracy Ginger Burgardt (“Mrs. Burgardt”) and Dragonfly Holdings Ltd. (“Dragonfly”) seeking an amount of US\$356,551.08 representing the principal and interest allegedly owed by the Defendants for sums loaned by Dominion (the “Loan”). The sums were allegedly loaned by Dominion

to the Defendants to finance the purchase of Parcels 10804 (H7) and 10804 (H8), Block 7 San Pedro Registration Section (the “Villa”).

2. Dominion claims that, in exchange for the financing, the Defendants made and delivered a Promissory Note of US\$289,490.00 payable with interest at the rate of 12.75% per annum dated October 5th, 2017. Since March 2019, the Defendants have failed to honour the payments due on the Promissory Note despite receiving the benefit of monies from the Loan.
3. As security for the Promissory Note, Mrs. Burgardt and her husband, Trevor Burgardt, executed blank transfers of shares and letters of resignation as directors of Dragonfly to be registered upon a default of payment on the Promissory Note. Upon the default, Dominion registered the blank transfers of shares and letters of resignation of directors of Dragonfly. Dragonfly was the designated company to take title to Parcels 10804 (H7) and 10804 (H8), but has not done so yet.
4. Dragonfly did not file a defence to this Claim. Mrs. Burgardt filed a Defence and Counterclaim. Mrs. Burgardt alleges that she initially communicated with one Doug Maxwell and one Kim Ray, the latter a director of Dominion, to express her interest in buying property on Ambergris Caye in Belize. She informed Mr. Maxwell and Ms. Ray that her husband and she had limited financing. Mr. Maxwell and Ms. Ray allegedly made numerous representations which persuaded Mrs. Burgardt and her husband to purchase the Villa for US\$575,000.00.
5. In response to the allegation that Dragonfly and she sought and obtained financing from Dominion, Mrs. Burgardt states that she agreed, via Mr. Maxwell, to get financial assistance to fund the purchase of the Villa from a private lender. She however alleges that Mr. Maxwell never informed them that either he or Ms. Ray had anything to do with Dominion. She further states that she does not remember signing the Promissory Note, but if she did in fact sign the Promissory Note, her signature was procured by the misrepresentations and/or undue influence of Mr. Maxwell.
6. Mrs. Burgardt alleges that despite several requests, she was never provided with a loan statement, or any official paperwork from Dominion. She neither admits nor denies that she executed blank transfers of shares and letters of resignation as directors of Dragonfly. Mrs. Burgardt asserts that her husband and she made a total payment of US\$53,386.25 towards the Loan, and that they were always prepared to bring the loan up-to-date but were unable to do so since no total was ever provided by Mr. Maxwell as agent for Dominion.
7. In her Counterclaim, Mrs. Burgardt repeats her allegations of misrepresentation and undue influence against Mr. Maxwell as agent for Dominion. She seeks the rescission of the

alleged Promissory Note or, in the alternative, a declaration that the Promissory Note is unenforceable against Mrs. Burgardt, damages, and costs.

The Application

8. Dominion applies for an order granting judgment on admission pursuant to Rule 14.4(1) of the *Supreme Court (Civil Procedure) Rules, 2005* (“CPR”), or for summary judgment pursuant to Rule 15.2(b) of the CPR.
9. Dominion’s position is that Mrs. Burgardt admitted in her Defence and Counterclaim to having received the benefit of the monies loaned under the Promissory Note, being willing to repay the monies, and having repaid monies thereunder. Dominion also alleges that Mrs. Burgardt has admitted to the Claim on several occasions by email correspondence between herself and third parties between 2016 and 2019, specifically acknowledging the debt, the benefit thereof, and payments made as per the terms of the Promissory Note. Dominion is therefore of the view that Mrs. Burgardt has no real prospect of defending the Claim and/or has admitted to the Claim by notice in writing.
10. Mrs. Burgardt resists the Application on the ground that she never admitted that she received the sum of US\$289,490.00 from Dominion. Her position is that she was never informed of who the Lender was. She insists that all of her and her husband’s interactions, including discussions surrounding the sums to be borrowed and the terms of repayment, were held with Dominion’s agent, Mr. Maxwell. She never communicated with, agreed, or otherwise exchanged any information or documentation with Dominion. Mrs. Burgardt maintains that she has never entered into the Promissory Note with Dominion because she did not know its existence or its role in the financing being obtained.
11. In her Affidavit in response to the Application, Mrs. Burgardt specifies that she never denied that monies were paid to the seller of the Villa, but she states that she was never informed that the Lender was Dominion, and therefore cannot confirm that this is who she was to repay for the Loan. Similarly, she cannot state for a fact that it is Dominion who paid the monies to the seller of the Villa. Mrs. Burgardt states that at all times she relied on the instructions of Mr. Maxwell, who acted as agent of the Lender. Mr. Maxwell failed to provide her with any information about the Lender or the terms of repayment.
12. According to Mrs. Burgardt, there are many inconsistencies surrounding the Promissory Note that need to be fully ventilated at trial. She also notes that her husband and she repaid the sum of US\$53,386.25 to the Lender, a sum which Dominion has refused to factor into the debt allegedly owed to Dominion. She also points out that Dominion currently holds all the shares in Dragonfly, making Dominion the owner of the Villa which is worth US\$650,000.00. This sum exceeds the amount being claimed by Dominion, and amounts to unjust enrichment on the part of Dominion.

Analysis

13. Pursuant to Rule 14.1(1) of the CPR, read together with Rule 14.1(2), a party may admit the truth of a claim, in whole or in part, if the admission is made in writing. An admission in writing can be contained in a statement of case, such as a defence. As noted by Abel J. in *Samuel Kim v M.E.L. Investment Ltd and anor*,¹ “the law is well established that an admission may be expressed or implied but must be clear”. The admission must also be unconditional and unequivocal. In *Reynold Rose v Clare Powell*,² the learned judge held that if a defendant provides an explanation which affords him a viable defence, the admission is conditional and cannot be relied on to ground an application for judgment on admission.

14. I find that Mrs. Burgardt clearly admitted to the Loan. The admission that Dominion loaned Mrs. Burgardt and her husband monies to purchase the Villa and that Mrs. Burgardt considered herself bound to repay the Loan can be implied from the following statements in the Amended Defence:
 - a. Paragraph 2: Mrs. Burgardt and her husband “did not have a lot of financing” and their budget was US\$350,000; Mr. Maxwell and Ms. Ray made representations to Mrs. Burgardt and her husband that they could secure a bank loan or private lender for them; and as a consequence of these representations, Mrs. Burgardt and her husband decided to proceed with the purchase of the Villa for US\$575,000.
 - b. Paragraph 3e: Mrs. Burgardt and her husband agreed to get financial assistance to purchase the Villa.
 - c. Paragraph 3f: Mrs. Burgardt and her husband paid US\$300,000 directly to the seller’s director; there was a difference of US\$275,000 between what Mrs. and Mr. Burgardt paid the seller and the purchase price.
 - d. Paragraphs 3, 4, 5, 9, 12: Mr. Maxwell acted as an agent for Dominion. Of note, is that Dominion admits that Mr. Maxwell acted as an agent for them. There is therefore no dispute between the parties that Mr. Maxwell acted as an agent for Dominion when dealing with Mrs. Burgardt.³

¹ Claim No. 485 of 2013.

² *Reynold Rose v Clare Powell*, SVGHCV2004/0224 at para. 11.

³ I understand that an issue as to Mr. Maxwell’s status as agent for Dominion may have arisen before the Judge previously assigned to this matter. However, I note that at paragraph 2.1 of the Amended Defence to the 1st Defendant’s Counterclaim, Dominion states that “Douglas Maxwell is not an officer of the Claimant; he is an agent thereof”.

- e. Paragraphs 4d and 11c: upon agreement with Mr. Maxwell as agent for Dominion, Mrs. Burgardt and her husband agreed to pay US\$3,000 per month.
 - f. Paragraph 5d: Mrs. Burgardt made a payment of US\$9,000 which represented the payments for January, February, and March 2017.
 - g. Paragraphs 4d and 5e: the Villa was rented in 2018. Payments were made directly to Dominion at an average rate of US\$3,000 per month from February 2018 to October 2018. A total of US\$18,037.50 was paid to Dominion from the rental of the Villa.
 - h. Paragraph 11b: Mrs. and Mr. Burgardt made a total payment of US\$53,386.25 towards the Loan.
 - i. Paragraphs 5f, 5n, and 11d: Mrs. Burgardt and her husband were always prepared to bring the payments on the Loan up to date.
15. Based on the above, I agree with Dominion that Mrs. Burgardt admitted to receiving the benefits of the Loan. The Loan was used to pay the balance of the Villa's purchase price, which Mrs. Burgardt and her husband were unable to finance on their own. It is implicit from the Amended Defence that Mrs. Burgardt and her husband purchased and entered into possession of the Villa because they were able to rent it in 2018 and use the proceeds of the rental to repay the Loan. In her Amended Defence, Mrs. Burgardt clearly admits to having made payments towards the Loan and to having the intention to bring it "up to date". That a debt exists could hardly be clearer from the pleadings.
16. I have not been persuaded that judgment on admission cannot be granted on the basis that Mrs. Burgardt allegedly never knew who the Lender was. First, there is no dispute between the parties that Mr. Maxwell acted as an agent for Dominion. There is nothing in Mrs. Burgardt's pleadings which puts into question Mr. Maxwell's authority to handle Dominion's business on its behalf. Second, Mrs. Burgardt admits to making payments to Dominion. For example, paragraph 4d states that rental payments were made "to the Claimant"; paragraph 4e states that "it was never agreed that the Claimant was to be paid within one year"; paragraph 5e states that rental payments would be paid "to the Claimant"; paragraph 5h states that Mrs. Burgardt and her husband lacked the trust to make "further payments to the Claimant"; and paragraph 5l states that Mrs. Burgardt and her husband were taking steps to sell the Villa "to satisfy the Claimant". I find it quite contradictory for Mrs. Burgardt to argue, on the one hand, that there is no evidence that Dominion was the Lender, while admitting, on the other hand, that she made payments to Dominion and that she sought to "satisfy" Dominion. Mrs. Burgardt advanced no explanation, other than the existence of the Loan, to explain why she would make payments to Dominion. On the whole, I find that the statements contained in the Amended Defence constitute an admission that Dominion provided Mrs. Burgardt with a Loan.

17. I, however, do not find that Mrs. Burgardt made a clear, unconditional, and unequivocal admission as to the terms and the balance due on the Loan.
18. Dominion relies on the Promissory Note signed by Mrs. Burgardt as evidence of the terms of the Loan. While Mrs. Burgardt disputes that she signed the Promissory Note, I am not persuaded that this argument will take her very far. Mrs. Burgardt's signature appears on the Promissory Note and her signature was witnessed by a Justice of the Peace. She does not plead forgery, but rather alleges that she does not remember signing the Promissory Note. Based on her pleadings, I find that there is little to no prospect of success in Mrs. Burgardt's argument that she never signed the Promissory Note.
19. However, Mrs. Burgardt also asserts that, if she signed the Promissory Note, it was done under the misrepresentations and/or undue influence of Mr. Maxwell. While I take note of the shifting explanation, I cannot at this stage and without hearing the evidence find that these allegations have no prospect of success. In her Amended Defence and Counterclaim, Mrs. Burgardt pleads that the terms of the Loan were not those laid out in the Promissory Note, but terms that she and Mr. Maxwell verbally agreed to. She also asserts that she and her husband completely relied on the advice of Mr. Maxwell and Ms. Ray in deciding how to proceed with the financing of the purchase of the Villa. While I refrain at this stage from opining on the strength of these allegations, that the terms of the Loan and how they were arrived at are contested by Mrs. Burgardt prevents me from entering judgment on admission. I am also unable to grant summary judgment as a consideration of the evidence is needed to resolve the issue.
20. Similarly, Mrs. Burgardt's Amended Defence and Counterclaim does not contain a clear admission as to the amount due on the Loan. Mrs. Burgardt asserts that she was never provided with any evidence of the amount paid by Dominion to the seller of the Villa, or any statement or evidence showing the balance due after payments were made. The Court has not been presented with any evidence, other than the Promissory Note, to support the amount sought by Dominion. Dominion claims the full amount shown on the Promissory Note, US\$289,490.00, plus interest and costs, without discounting any payments made by the Defendants. Of note, is that Dominion relies on Mrs. Burgardt's admission that she made payments towards the Loan to support its Application. The corollary of accepting those admissions is to accept that payments have been made towards the Loan, and therefore that the balance due is not the full amount as shown on the Promissory Note.
21. It is clear that there are outstanding issues in this Claim which are not suited for judgment on admission or summary judgment. These issues include the terms and the balance due on the Loan. Therefore, I enter judgment on admission in favour of Dominion as to the existence of a Loan in the amount of US\$289,490.00 only. I decline to enter judgment on admission or summary judgment as to the balance due and terms of the Loan. A

consideration of the evidence is necessary for this Court to determine Mrs. Burgardt's liability towards Dominion.

IT IS HEREBY ORDERED THAT

- (1) Judgment on Admission is entered as to the existence of a loan in the amount of US\$289,490.00 from Dominion Resources Inc. in favour of Tracy Ginger Burgardt and Dragonfly Holdings Ltd.
- (2) The Claimant is awarded costs in an amount to be agreed or assessed.

Dated August 28th, 2023

Geneviève Chabot
Justice of the High Court