

IN THE SENIOR COURTS OF BELIZE

HIGH COURT OF JUSTICE

CLAIM No. 228 OF 2023

BETWEEN:

KELLY GREENE

Claimant

and

[1] LEGACY GLOBAL DEVELOPMENT LLC

[2] POINTE ALEGRE DEVELOPMENT LIMITED

[3] ORCHID BAY S.A.

Defendants

Appearances:

Mr. Rene Montero for the Claimant

Defendants absent and unrepresented

2023: September 20

September 30

**DEFAULT JUDGMENT ON AN AGREEMENT TO TRANSFER TITLE TO
LAND**

[1] **GOONETILLEKE, J.:** This is an application by the Claimant for a default judgment as prayed for by application dated 16th August, 2023 for the transfer of title to a parcel of real property in Orchid Bay, Corozal District, Belize. The application for default judgment is made by the Claimant consequent to a claim to enforce an agreement entered into between the Claimant and the 1st Defendant for the sale and purchase of the land in issue.

The Parties

[2] The Claimant, Kelly Greene, is resident in the United States of America (US). The 1st Defendant, Legacy Global Development LLC (Legacy), is a limited liability company formed under the laws of the State of California in the US. The 2nd Defendant, Pointe Alegre Development Limited (Pointe Alegre) is a company incorporated in Belize, while the 3rd Defendant, Orchid Bay S.A. (Orchid) is a company also incorporated under the laws of the State of California in the US.

Relevant Facts

[3] As stated by Ms. Green in the statement of claim, the 1st Defendant, Legacy, was engaged in marketing, developing and selling real property in Orchid Bay, Corozal District, Belize. The 2nd Defendant, Pointe Alegre, is the registered proprietor of the subdivision of real property known as Orchid Bay in the Corozal District Belize including parcel 1084, Block 3 Warree Bight/ Freshwater Creek. As stated by the Claimant, Pointe Alegre, is a special purpose vehicle created as a holding company for the sale of land. The 3rd Defendant, Orchid, is the sole shareholder of Pointe Alegre. The Claimant alleges that one Mr. Christopher Williams was a Director and/or owner of the 1st and 3rd Defendant companies and was the sole Director of the 2nd Defendant Company, Pointe Alegre and therefore had ostensible authority to bind Legacy, Pointe Alegre and Orchid, the Defendant companies. Mr. Williams, however, has not been made a party to this Application.

- [4] The Claimant, Kelly Greene, and the 1st Defendant, Legacy Global Development LLC, entered into an agreement for the sale of a parcel of land in Orchid Bay, Corozal District, Belize. The purchase price was US \$74,900.00. The contract is dated 16th July, 2016 and is drawn up on stationary having the insignia "*Orchid Bay, Discover your Belize*". There is no indication in the contract document (agreement) of any association with the 3rd Defendant, Orchid Bay S.A. The agreement states that Legacy Global Development LLC is the seller and that the seller is the owner of the parcel of land in Warree Bight/Freshwater Creek, Registration Section, Block 3, Parcel No 1084 commonly known as Orchid Bay Lot #10C. The signature on behalf of the seller is illegible and it is not clear who has signed the agreement on behalf of Legacy.
- [5] Ms. Greene paid in full the purchase price which was acknowledged by Legacy, the 1st Defendant. This is evident on the face of a letter produced to court marked "*KG 6*" dated September 22, 2017, and addressed by Legacy to Ms. Greene at Columbus, Ohio, in the US. In a statement of account attached to the said letter, the final payment by Ms. Greene had been made on 18th July 2017 and the statement shows that as at 21st July 2017, the balance due was zero.
- [6] Ms. Greene in her statement of claim states that the Defendants have refused to or failed to transfer the said lot of land she purchased. There is however, no correspondence attached to the claim indicating a refusal to transfer the title of the land.
- [7] On the 18th of April, 2023, which date is 6 years and nine months after the agreement for the sale of the land described above, Ms. Greene filed a Claim Form seeking orders for specific performance of the agreement dated 16th July, 2016 and for the Defendants to transfer the land for which the purchase price was paid in full. Ms. Greene has also sought damages in lieu of specific performance and in the alternative that the Defendants pay Ms. Greene the sum of US \$ 74,900.00 which is the price paid for the said land and interest thereon.
- [8] The Claimant has served notice of the claim on the Defendants. Notice on the 1st and 3rd Defendant companies, Legacy and Orchid, situated in the US. has been served through courier on 7th June 2023 pursuant to an order by the Registrar of this court. Notice on the 2nd Defendant Company, Pointe Alegre, situated in San Ignacio Town, Cayo District, Belize has been served on 27th April 2023 according to affidavits of service filed in court. The Defendants have not acknowledged notice of service nor filed their defence. In these circumstances, Ms. Greene moves Court for a default judgment for specific performance, transferring the title to the said land.

Issues to be determined

- [9] Four issues arise to be determined in this matter. First, this contract has been entered into by and between Ms. Greene who is resident in the US and Legacy, the 1st Defendant Company which is incorporated in the US. The agreement appears to have been finalized in the US. The subject of the contract however, is the transfer of a parcel of land in Belize and the governing law of the contract is the law of Belize. In these circumstances, could or should this court assume jurisdiction to determine the matters in this application?
- [10] The second issue is that the agreement sought to be enforced has a dispute resolution clause stating that disputes between the parties shall be submitted to arbitration pursuant to the American arbitration procedures. Arbitration is to be held in Belize (seat of arbitration). The parties have agreed that there is to be no appeal from the decision of the arbitration which shall be final and binding. As the parties have agreed to binding arbitration, should this court permit the application by the Claimant to enforce the agreement?
- [11] The third issue that needs to be considered by Court is whether this claim should be by way of a regular claim or by way of a fixed date claim as it involves the transfer of ownership of a parcel of land in Belize.
- [12] The fourth issue that needs to be resolved is whether, the Defendants are jointly and severally liable to the Claimant on this agreement.

Analysis

- [13] Even though the Claimant, Ms. Kelly Greene and Legacy, the 1st Defendant Company are resident and/or situated in the US, the parties intended that the agreement shall be governed by the laws of Belize and that the seat of dispute resolution as reflected in the arbitration clause in the agreement, is Belize. It may be convenient for a forum in the US to determine the contractual rights of parties as the parties except Orchid, the 2nd Defendant are resident/situated in the US. However, as the land is situated in Belize and the agreement is governed by the laws of Belize, the subject matter of the agreement has a close connection with Belize. In these circumstances, there is no bar to instituting this application in the Courts of Belize.

- [14] The second issue that needs to be determined by Court is whether the arbitration clause in the agreement between parties denies jurisdiction for this court to entertain the Claimant's application. The purpose of arbitration is for parties to select their arbitrators, the venue, the procedure, and to dispose of any disputes between them privately and in an expeditious manner. For these reasons parties by consent exclude the jurisdiction of courts. In this instance, the parties have gone a step further and indicated that there shall be no appeal from an arbitral award and that the award shall be final and binding. It is thus seen that the intention of parties was that any disputes between them should be resolved by arbitration.
- [15] The principle involved in excluding the jurisdiction of Courts when there is an arbitral clause is well settled around the world and is referred to as the principle in *Scott v. Avery*.¹
- [16] Sections 5 and 26(1) of the Arbitration Act of Belize² also recognizes the principle of excluding the jurisdiction of courts when there is an arbitration clause for the resolution of disputes. These sections in the Arbitration Act however, require a party to object to any application being taken up in court when there is an arbitration clause.
- [17] In this instance, the Defendants, two of them (Legacy and Orchid) being incorporated and situated in the US, have not responded to the Claim. It is not a legal impossibility for the Defendants to come to court and object to the matter being taken up. Pointe Alegre, the 2nd Defendant Company which is incorporated in Belize has also not filed a defence nor objected to this matter being litigated in court.
- [18] If the Defendants were to present themselves in court and take up the objection that the contract has an arbitration clause and therefore the court should not entertain the application, this court, in the circumstances of this case would have to consider that objection. In the absence of the Defendants taking up such an objection, the court cannot of its own motion take up such a position.³
- [19] For these reasons, in the absence of an objection by the Defendants to the jurisdiction of this court in respect of the arbitration clause in the contract, the Claimant is entitled to maintain this application.

¹ *Scott v Avery* [1843–1860] All E.R. Rep. 1 HL.

² Cap 125, Arbitration Act, Revised Edition 2020

³ *Hubert Mark v. Belize Electricity Limited*, Belize Court of Appeal Claim 11 of 2009

- [20] The substantive relief prayed for in the Claim is for Pointe Alegre, the 2nd Defendant Company to transfer the title of the relevant parcel of land, to Ms. Greene, the Claimant. While the claim sets out alternate relief of damages and the return of the purchase price, the application before court for default judgment is for specific performance and the transfer of the relevant portion of land to Ms. Greene.
- [21] The Claimant states that Pointe Alegre, the 2nd Defendant Company, is the proprietor of the relevant land. However, the agreement states that the owner of the land is Legacy, the 1st Defendant Company. There is no reference in the agreement to Pointe Alegre or Orchid, the 2nd and 3rd Defendants.
- [22] The Civil Procedure Rules 2005, Rule 8.1 [5] [a] indicates that a fixed date claim form must be used in proceedings for possession of land. This claim has been made not as a fixed date claim but as a regular claim. The question that arises therefore, is whether the transfer of land as prayed for by the Claimant could be construed to come within the meaning of Rule 8.1 [5] [a] of the Civil Procedure Rules.
- [23] What is meant by the words: “*proceedings for possession of land*”? The word ‘Proceedings’ is not defined in Rule 2.4 of the Civil Procedure Rules; however, its general meaning is; any action or application in court.
- [24] The term ‘Possession of land’ is also not defined in Rule 2.4 of the Civil Procedure Rules. ‘Possession of land’ could be construed to mean; to be put in physical possession of land in instances where a land owner or a person having a right to the land has been dispossessed of such right. It could also mean; to be put in possession through the transfer of title. Any action for declaration of title, transfer of title, or any other process by which a person gains rights over land could come within the meaning of possession of land. Therefore, an application for transfer of title could come within the meaning of, ‘proceedings for possession of land’, as referred to in Rule 8.1 [5] [a] of the Civil Procedure Rules. This view finds support in “Figure 2, Example of particulars of claim in action for breach of contract” in Chapter 2 of the Commonwealth Caribbean Civil Procedure, cited by counsel for the Claimant in written submissions tendered on 22nd September 2023.
- [25] The position is made clearer when the court examines Part 12 of the Civil Procedure Rules dealing with default judgments. Rule 12.10 sets out the relief that can be granted in a default judgment. The relief available for a default judgement is for payment of monies or the delivery of goods. There is no reference to the transfer of land or the transfer of title to land. Rule

12.10 (4) refers to 'some other remedy', however, there is no specific mention of the transfer of land.

- [26] Rule 12.10 must be read with Rule 12.2 which states that a Claimant may not obtain default judgment where the claim is a fixed date claim. As noted previously, Rule 8.1 [5] [a] requires proceedings for possession of land to be by a fixed date claim. In such proceedings, there can be no default judgment and this is confirmed by Rule 12.10.
- [27] Counsel for the Claimant in written submissions argues the point that fixed date claims are made in matters where facts are not in dispute. On the face of the documents before court, the purchase price for the land, a sum of US \$ 74,900.00 has been paid by Ms. Greene, the Claimant, as purchaser and payment in full has been acknowledged by Legacy, the 1st Defendant, seller. There is therefore, no reason why this matter could not have been filed as a fixed date claim.
- [28] The relief claimed by the Claimant in the Statement of Claim however, is broader than transfer of land by specific performance of the contract; it also includes the alternate reliefs of damages and/or return of the purchase price of US\$ 74,900.00 with interest. Therefore, the claim could be instituted as a regular claim instead of a fixed date claim, though it involves the subject matter of the transfer of the title of land.
- [29] The last issue that needs resolution is whether the Defendants are jointly and severally liable. The agreement is only between Ms. Greene, the Claimant and Legacy, the 1st Defendant Company, which is stated in the agreement to be the owner of the land. Nowhere in the agreement is there mention of Pointe Alegre or Orchid, the 2nd and 3rd Defendants. There is therefore no privity of contract between Ms. Greene and Pointe Alegre nor Orchid, the 2nd and the 3rd Defendants.
- [30] It is a basic principle in company law, that each incorporated body is independently liable for its obligations. The company is separate from its shareholders.⁴ Therefore, even in the absence of a defence filed by Ponte Alegre and Orchid, the 2nd and 3rd Defendants, on the material available to court, Pointe Alegre and Orchid are not liable to the Claimant.

⁴ Salomon v Salomon and Co. Ltd [1897] AC 22

Disposition

[31] I therefore hold that Ms. Greene, the Claimant is not entitled to a judgment for transfer of title to land held by Pointe Alegre, the 2nd Defendant Company as there is no contract between Ms. Green and Pointe Alegre.

[32] Ms. Greene, the Claimant is entitled to a return of the purchase price of US \$74,900.00 from Legacy, the 1st Defendant Company, and for interest thereon at a rate of 6% from 22nd September 2017 to date of judgement.

IT IS HEREBY ORDERED THAT

- (1)
 - a. The 1st Respondent shall pay to the Claimant, a sum of US \$ 74,900.
 - b. The 1st Respondent shall pay interest on US \$ 74,900, to the Claimant at a rate of 6% per annum, from 22nd September 2017 to the date of this judgment.
 - c. The 1st Respondent shall pay to the Claimant, interest in terms of Sections 175 and 176 of the Senior Courts Act, from the date of this judgment.
- (2) Cost are awarded to the Claimant in an amount to be agreed or assessed.

Rajiv Goonetilleke
High Court Judge