

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 671 of 2022

BETWEEN:

**[1] ERIC GREGORIA VASQUEZ
[2] CARLOTTA GUADALUPE VASQUEZ**

Claimants

and

**[1] JAMES RAM LOGAN
[2] ZHIKE WU**

Defendants

**[1] ATTORNEY GENERAL OF BELIZE
[2] MINISTER OF NATURAL RESOURCES
[3] COMMISSIONER OF LANDS
[4] REGISTRAR OF LANDS**

Interested Parties

Appearances:

Mr. Hubert Elrington SC and Mr. Norman C. Rodriguez for the Claimants
Mr. Ian Gray for the First Defendant
Mr. Rene Montero for the Second Defendant
Mr. Israel Alpuche for the Interested Parties

2023: September 20;
October 26.

DECISION

[1] **ALEXANDER, J.:** The second defendant in this matter filed a notice of application on 10th July 2023 seeking an order that the claim against him be struck out and that the claim itself be dismissed in its entirety. The second defendant states that though he has been sued as Jason Wa, his legal name is Zhike Wu ('Mr. Wu'). Mr. Wu claims that the present proceedings are not properly brought before the court, contain

deficient pleadings, show no cause of action against him and ought to be struck out. In his application, he sets out several grounds that would justify an order being made against the claimants (together 'the Vasquez') to strike out their claim, including that they have failed to comply with the rules for bringing their claim under the Civil Procedure Rules, 2005 ('CPR'). The main thrusts of Mr. Wu's application are that the non-compliances with the rules were untenable and ought not to be overlooked or sanctioned by the court but, also, that the claim in its present state is unsustainable.

[2] Mr. Ram Logan did not join with Mr. Wu in the application to strike out but filed a defence on 15th December 2022, in which he disputed the Vasquez's claim to prescriptive title to the disputed lands.

[3] For multiple reasons, I am compelled to grant the application to the extent as ordered below. This matter presents a muddle of procedural errors and poor pleadings, with the Vasquez being unable to show a viable cause of action against Mr. Wu or to even properly set out the reliefs being sought against him. Erroneous filings of claims and applications against various parties saw the Vasquez having to withdraw their claim against the interested parties (sued initially as defendants). The Vasquez also withdrew an urgent injunction¹ against all parties, including the interested parties, but re-filed an amended notice for urgent interim injunction on 14th September 2023 against the defendants. By this amended notice of injunction, the name Jason Wa was replaced with that of Zhike Wu, without first seeking permission from the court or obtaining any order for amendment, given that the matter was already before the court for case management. I have since issued the order to amend to reflect the correct name of Mr. Wu, as stated in his acknowledgement of service. The Vasquez also filed an application on 20th September 2023 to take up judgment in default of defence against Mr. Wu, whose defence was filed late on 28th January 2023² but not recognized as properly filed by the Vasquez. Only the application to strike out was fully ventilated before me, as its disposition could determine the other two applications.

¹ Notice of withdrawal filed on 27th April 2023.

² Mr. Wu was served on 20th November 2023 so the defence was filed late.

[4] I have set out below the reasons for granting the application.

Background

(a) The Claim

[5] The property in dispute is Block 207 HA and 207 HB on the Stann Creek Valley Road near Mile 11, Stann Creek District shown on Plan No. 97 of 1960 (together 'Block 207'). Block 207 contains some 20 acres of land, and is at times referred to, for purpose of distinction, as the front portion and the back portion. Because of the conflicting claims and the poor pleadings, it is necessary to give a full and proper account of the events that transpired leading up to the present proceedings as well as of the pleadings.

[6] The Vasquez claim that they are the owners of the whole of Block 207, having been in open, peaceful, and uninterrupted possession in excess of 12 years, without the permission of any person lawfully entitled to such possession. They claim that they were initially gifted a piece or portion of Block 207 by the deceased Charles Card by Deed of Gift dated 6th October 1998 and had built their matrimonial home on it (allegedly since 1986, a date that clearly precedes the gift).³ The second claimant, Mrs. Carlotta Guadalupe Vasquez, was the goddaughter of Mrs. Rosilla Albertha Card and the primary caregiver for the Cards during their lifetimes. After the demise of the Cards, the Vasquez looked after the deceased Charles Card's estate by paying for the annual rent, maintenance and general upkeep of the remainder of Block 207. They have entered into occupation and been in open and uninterrupted possession of the whole of Block 207 since the demise of the deceased Charles Card on 31st July 2002. Sometime in **2003**, Mr. Ram Logan entered into occupation of a portion of Block 207.⁴ The Vasquez also pleaded that Mr. Ram Logan entered on the land in **2006**,⁵ claiming that the deceased Charles Card had sold him a portion of Block 207 but no Deed of

³ Statement of Claim, paragraphs 4 and 6

⁴ Statement of Claim, paragraph 14.

⁵ Statement of Claim, paragraph 19

Conveyance exists between the deceased Charles Card and Mr. Ram Logan. No action was taken against Mr. Ram Logan at that time or I am not made aware of any until these present proceedings.

- [7] The Vasquez claim further that Mr. Ram Logan fraudulently and dishonestly obtained a Grant in the estate of the deceased Charles Card by accretion. The proper applicant for the Grant was Mrs. Card, who died a year and seven months after the deceased Charles Card on 13th March 2004. Mrs. Card did not apply for administration of the estate of the deceased Charles Card so her interest sounded in equity and not in law. There is no clear pleading on what transpired thereafter save that Mr. Ram Logan fraudulently and dishonestly acquired title and had applied for the Grant.
- [8] In their pleadings, the Vasquez claimed that, in fact, they were in simultaneous occupation and possession of their piece of land given to them by Deed of Gift and the remainder of Block 207 during the lifetime of the Cards, and continuing to the present time. Mr. Ram Logan has never been the lawful holder of a legal title to or a beneficial interest of the whole or any portion of Block 207. They were the only ones lawfully entitled to the whole of Block 207.
- [9] Mr. Ram Logan's defence is that at all material times, he was the trustee and administrator of the estate of the deceased Charles Card who died intestate on 31st July 2002, survived by his late wife, and without leaving any issues. He had the permission of the deceased Charles Card to assist with the day to day operations of the property including its maintenance and management. Mr. Ram Logan claims that the Vasquez are vexatious litigants, without locus standi to bring the claim or obtain the reliefs. The Vasquez always had constructive knowledge that they were not entitled to prescriptive title and, therefore, the claim was vexatious and an abuse of process. Despite this defence, Mr. Ram Logan did not file an application to strike out the claim and did not join in the application of Mr. Wu.

(b) Reliefs

[10] The Vasquez seek a declaration of prescriptive title to the whole land, based on their uninterrupted possession for over 12 years, and orders for recovery of possession of the land. They also seek revocation of a Grant of Administration dated 2nd May 2012 in the estate of Charles Card ('the Grant'), rectification of the Land Register to remove Mr. Ram Logan's name and replace it with the names of the Vasquez, and general and special damages for trespass as against Mr. Ram Logan. In their submissions, they sought to extend their claim for relief for trespass also to Mr. Wu (despite its absence in their prayer).

[11] The Vasquez also ask for an order restraining Mr. Ram Logan, as administrator, from selling, leasing, or in any other way, alienating the properties in the estate. The Vasquez also seek an order for Mr. Ram Logan to provide a list of all persons to whom he has alienated the properties belonging to the estate of the deceased Charles Card, the amount of monies obtained from the proceeds of sale, lease or other alienation and the location of the monies. They also ask for Mr. Ram Logan to be restrained from operating any financial accounts (bank or credit union) in which he deposited all or any part of the proceeds obtained from his alienation of assets in the estate of Charles Card. The Vasquez ask for a declaration that all actions done by Mr. Ram Logan, as administrator, be deemed null and void and of no effect. Therefore, the reliefs being sought against Mr. Ram Logan are clearly set out or discernible from the pleadings.

(c) Mr. Wu

[12] Regarding Mr. Wu, the pleadings are somewhat murky and/or not clearly set out. The prayer in the claim did not identify what reliefs were being sought against Mr. Wu. I, therefore, had to painstakingly comb through the originating documents to gain an understating of the case, if any, that was advanced against Mr. Wu. The requirement that pleadings be clear is not only for the benefit of a defendant who must know the case he has to answer but for the benefit of the court, to know the issues before it and to enable it to effectively and efficiently manage the case. There was no mention of Mr. Wu, as the named second defendant, in the statement of claim filed in these

proceedings, which is usually where the claim against a defendant is set out for him to answer.

- [13] The claim form states, however, that Mr. Wu entered, remained upon and attempted to take possession of the front portion of Block 207, without any legal authority. Mr. Wu has subdivided the property, denying the Vasquez their lawful peaceful enjoyment and occupation of their property. Mr. Wu is a trespasser in law. In the claim, the Vasquez seem to be making a case out against Mr. Wu for trespass by *'interfering with and denying their right to enjoyment, having unlawfully restricted their right to movement on and across the front portion of Block 207 ... by placing workmen, survey pegs, and ordering the First and Second Claimants to remove their personal possession off the said property.'* There is no indication in the pleadings as to when the alleged trespass occurred and if Mr. Wu has taken exclusive possession of the front of Block 207 or was still in the process of subdivision of lots or if the claimants had removed their personal possession off the property. Despite the poorly drafted pleadings, I garnered that the Vasquez were alleging trespass against Mr. Wu.
- [14] In their prayer for reliefs in both the claim form and statement of claim, however, no direct mention is made of Mr. Wu or of the actual reliefs being sought against him. The failure to mention Mr. Wu or make a specific prayer for any relief against Mr. Wu in the statement of claim created uncertainty. There is a loose reference in the claim form to 'the defendant' (without identifying if it is the first or second defendant), his servants and/or agents being restrained from interfering with the rights of the Vasquez to use and enjoyment of Block 207. There is a claim made for damages, interest and costs in the prayer, without specifying which defendant or if the reliefs are sought against both defendants. Mr. Wu is sued as an individual, separate from the first defendant, and is entitled to know the case against him so he can answer it. The pleadings against Mr. Wu are unclear and poorly drafted.
- [15] Ultimately, this is an application to strike out and I must be guided by the law and the jurisprudence in the area in my disposition of it.

Issues

[16] The broad issue for determination is whether Mr. Wu could satisfy the court that he has met the test to get the claim struck out on the pleadings. A subsidiary issue is whether, if Mr. Wu has so satisfied me, I should dismiss the claim in its entirety.

The Law

[17] Rules 26.3 (1) (a) (c) and (d) of the CPR empower the court to strike out a claim where there is a failure to comply with a rule or a statement of case discloses no reasonable grounds for bringing it or it is prolix or does not comply with Part 8 or 10. This power to strike out weak cases, though drastic, operates to realize the overriding objective of the rules in managing litigation expenses, in ways that avoid wastage of judicial resources and time. Where there is no reasonable grounds for bringing or defending a claim, this 'nuclear option' can bring an immediate halt to it.

[18] I set out below the relevant portions of rule 26:

[26.3] (1) In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court -

- (a) that there has been a failure to comply with a Rule or practice direction or with an order or direction given by the court in the proceedings;*
- (b) ...*
- (c) that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim; or*
- (d) that the statement of case or the part to be struck out is prolix or does not comply with the requirements of Parts 8 or 10.*

Analysis

Issue No. 1: Whether Mr. Wu could satisfy the test to get the claim struck out on the pleadings.

[19] Mr. Wu must show that the claim against him is in non-compliance with the rules or discloses no reasonable grounds for bringing or defending it. The present claim

focuses on acquiring possession of the whole of Block 207 and seeks a revocation of the Grant dated 2nd May 2012 issued to Mr. Ram Logan, the first defendant. Mr. Wu, as the second defendant, seeks to have the claim struck out against himself.

[20] The first thing of note is that a strike out application is decided solely on the parties' pleaded case,⁶ and requires no additional evidence in order to dispose of it. A mini-trial is not necessary. The facts pleaded in the claim are assumed to be true. Generally, the jurisdiction to strike out deprives a party of its right to a fair trial so should be used sparingly and in the clearest of cases. Before striking out a matter, it ought to be borne in mind that a case can be strengthened or its complexion changed by disclosure, requests for more information, further investigation or through cross-examination of witnesses: see **Didier v Royal Caribbean Cruise Ltd.**⁷

[21] It is trite that a party can rightly apply to strike out a defective statement of claim where allegations, even if proved, still will not succeed or where a correct statement of claim will fail as a matter of law.⁸ Counsel for Mr. Wu, Mr. Rene Montero, takes issue with the Vasquez's failure to comply with the rules in presenting their claim to the court.

(a) Non-Compliance with rules

[22] Mr. Rene Montero states that both claims for possession of land and probate must start by fixed date claim form. The present claim came by way of an ordinary claim form. It is not in dispute that the Vasquez seek an order for revocation of the Grant issued to Mr. Ram Logan and an order for delivery of possession of the whole of Block 207 based on adverse possession.

[23] The relevant CPR rules are as follows:

*[8.1] (5) Form 2 (fixed date claim form)⁸ must be used –
(a) in proceedings for possession of land; ...'*

⁶ Dr. Martin G.G. Didier et al v Royal Caribbean Cruise Ltd et al SLUHCVP2014/0024

⁷ Ibid

⁸ Channel Overseas Investment Limited et al v Belize Telemedia Ltd et al and Keith Arnold et al v Belize Telemedia Ltd et al Civil Appeal Nos. 14 & 15 of 2012

[67.2] (1) *Probate proceedings must be begun by issuing a fixed date claim form in Form 2.*

(2) *The claim form must state the nature of the interest of the claimant and of the defendant in the estate of the dead person to which the action relates.*

(3) *The claimant must file a statement of claim with the claim form.*

[67.3] *Every person who is entitled or claims to be entitled to administer the estate of a dead person under or by virtue of an unrevoked grant ... must be made a party to any proceedings for revocation of the grant.*

[24] In my judgment, the claim was brought using the wrong claim form. It is a claim in probate and for possession of land so ought to have come by way of a fixed date claim form. No request has been made by counsel for the Vasquez to cure this defect and it is assumed that no attempt will be made to do so without first seeking the court's permission.

[25] Secondly, Mr. Rene Montero argues that the claim must state the nature of the interest of all parties in the estate of a dead person: see rule 67.2(2) of the CPR above. The Vasquez's claim is silent as to this requirement so they lack standing. I agree with the arguments put forward by Mr. Rene Montero. The Vasquez do not state the basis on which they have instituted this claim regarding the Cards' estate. The rules in bringing a contentious probate claim are clear. '*The claim form must state the nature of the interest of the claimant and of the defendant in the estate of the dead person to which the action relates.*'⁹ The present proceedings are silent about what interest the Vasquez have in the estate of the deceased Charles Card or in Mrs. Card's estate. The Vasquez state simply that the second claimant is a goddaughter and primary caregiver of the Cards, without saying if or how those facts give them an interest in the Cards' estate. I assume that the caregiving services were paid for and I am unsure if the Cards, who died without issue, may have had other relatives with a claim to their estate. The claim did not disclose Mr. Ram Logan's interest in the estate of the deceased Charles Card since he was issued the Grant. It claims fraud and dishonesty or misrepresentation of the truth by Mr. Ram Logan in securing the Grant. No plea of fraud is made against Mr. Wu.

⁹ Rule 67.2(2) CPR, Belize

[26] Where there is an absence in the pleadings of the nature of the interest of parties in an estate, the court will use this as one of the basis to strike the claim: **Maureen Hortence McKenzie et al v Dennis McKenzie**.¹⁰

[27] In my judgment, the failure to satisfy the rules in not providing the nature of the interest of the parties or capacity in which they claim creates uncertainty in the mind of the court as to whether the claim for revocation of the Grant is being made in their capacities as beneficiaries or administrators of the estate of the deceased Charles Card. I find that this failure to comply with rule 67.2(2) brings into issue whether the Vasquez have any standing to bring a claim for revocation of the Grant. I note, however, that the estate claim is one made only against Mr. Ram Logan and whilst fraud is alleged, which is a serious issue, fraud is not alleged against Mr. Wu. In the circumstances, I am not satisfied that they have any right to seek a revocation of the Grant since their interest in the estate remains unspecified. I am satisfied only that there is no claim made against Mr. Wu in probate.

(b) Abuse of Process

[28] There is no assertion of abuse of process by Mr. Wu, although he states in his affidavit that there is no cause of action pleaded against him. Mr. Ram Logan alleges in his defence that the claim is an abuse of process but he has not joined in the present application. Generally, it is an abuse of process to bring a claim without a clear cause of action against a defendant. If the claim has a clear and valid cause of action then it is not an abuse of process to have brought the claim. The cause of action in probate against Mr. Ram Logan shows a lack of standing by the Vasquez. However, the Vasquez have pleaded a cause of action in trespass against both defendants. Trespass is a legally recognizable cause of action, so such a claim will not constitute an abuse of process.¹¹ In my judgment, however, whilst trespass was pleaded in the claim form against the defendants, no relief was prayed for as against Mr. Wu nor was Mr. Wu even mentioned in the statement of claim. A claim can appropriately be struck

¹⁰ Claim No. CV 283 of 2017 delivered by Shoman J on 16th March 2022

¹¹ Citco Global NV v Y2K Finance Inc. BVI HCV AP 2008/022

out if it is an abuse of process or is defective in law. As against Mr. Ram Logan, the claim in trespass is not defective and Mr. Wu does not seek to strike out the claim under this limb of abuse of process.

(c) No Reasonable Grounds Disclosed for Bringing or Defending the Claim

[29] I now turn to discuss if there was no reasonable grounds disclosed for bringing or defending the claim. I have already found above that the claim in trespass against Mr. Wu is indistinguishable from the pleaded case as against Mr. Ram Logan but whilst reliefs were sought of Mr. Ram Logan, none was claimed against Mr. Wu. I also found that there is no claim against Mr. Wu in probate and, in any event, there is a lack of clarity as to the Vasquez's standing or an absence of the nature of their interest in the estate claim. In the latter regard, the Vasquez are in non-compliance with the rules.

[30] The Vasquez have also made a claim for adverse possession. Mr. Rene Montero submits that the Vasquez cannot succeed in their claim for adverse possession of the whole or part of Block 207 against Mr. Wu.

[31] Regarding Mr. Wu, he is a bona fide purchaser for value of the property and has attached to his defence and first affidavit a copy of his Deed of Conveyance dated 15th September 2020 bearing instrument No. LTU-202001091. Mr. Wu states that when he purchased the land from Mr. Ram Logan, it was unoccupied, overgrown with trees and dense bushes and that he cleared it and has been maintaining it since 2020. The Vasquez claim adverse possession of the land bought by Mr. Wu.

[32] Mr. Rene Montero states that the land in dispute is in an undeclared area and so governed by the Law of Property Act¹² ('The Act'). The Act requires a claimant to demonstrate 30 years of continuous adverse possession and not 12 years as pleaded in paragraph 11 of the Vasquez's claim form. In answer, counsel for the Vasquez state

¹² Cap 190, Revised Edition 2011

that under the Limitation Act,¹³ after 12 years in possession, no action can be brought by anyone to disturb the person in possession.

- [33] I will for convenience set out section 42 (1) of the Act that Mr. Rene Montero relies upon to show that 12 years in adverse possession are insufficient to ground a claim in adverse possession. The Act states as follows:

'Title to the fee simple in any land, or to an easement, right or privilege in or over any land, including land belonging to the Government, may be acquired by continuous and undisturbed possession of that land for thirty years if such possession is established to the satisfaction of the Supreme Court which may issue a declaration of title in respect of the said land, easement, right or privilege in favour of the person who has had such possession.'

- [34] Additionally, the Vasquez have pleaded that piece or part of Block 207 was gifted to them by the deceased Charles Card and they have been in adverse possession of the remainder of Block 207 since his death on 31st July 2002. Impliedly, they are claiming adverse possession even before Mrs. Card's demise in 2004. They also simultaneously seem to be making a case that they have always been in possession of and/or held the remainder of Block 207 adverse to the interest of the Cards, during the Cards' lifetime. I do not accept this claim.

- [35] At paragraphs 2 and 14 of their statement of claim, the Vasquez stated:

'[2] The First Claimant and Second Claimant was (sic), during the lifetime of Charles Card, deceased who died on the 31st day of July, 2002 and Rose Albertha Card, deceased, who died on the 13th day of March, 2004, and continuing thereafter to the present at all material times in possession of the remainder of Block 207HA and 207HB, Block No 207H containing 20 acres bound and described as shown in Plan No. 97 of 1970.

...

[14] The First Claimant and Second Claimant, in addition to taking up possession and entering into occupation of that portion of Block 207H in entry No 3284, have been in possession and the occupiers of the whole of the remainder of Blocks 207H since the death of the late Charles Card on the 31st July, 2002 and has been in open, peaceful, and uninterrupted possession of both Blocks 207HA and

¹³ Cap 170, Revised Edition 2011

Block 207HB until 2003 when the First Defendant entered into occupation of a portion of that portion of Block 207H. [Emphasis added.]

[36] The Vasquez's claim in paragraph 2 above is that they have always been in possession of the whole of Block 207 (i.e. the piece gifted to them and the remainder), during the Cards' lifetime, until the trespass in 2003 when Mr. Ram Logan entered into occupation of part of Block 207. There is no clear pleading that the Vasquez occupied the remainder of Block 207 adverse to the interest of Charles Card save that lone claim, at paragraph 2 of the statement of claim, of continuous possession of the remainder of lands that were not gifted to them. There is no date specified as to when they assumed possession of the remainder of lands not gifted to them. They claim to have taken possession of the piece or part of Block 207 that was gifted to them on a date in 1986 unknown to them and which preceded the actual Deed of Gift made by the deceased Charles Card, sometime in 1998. The Vasquez also state in their pleadings that the disputed lands were owned by Charles Card, deceased, prior to his death. How were they then in possession of all the lands during the lifetime of the Cards? The conflicts in the pleadings do not inspire any confidence in the court with the account of the Vasquez.

[37] The conflicts continued. In their submissions, counsel for the Vasquez state that the present matter *'is not a claim for possession of land. It is for a declaration that a court order was obtained by fraud and a consequential order that the fraudulent order be delivered up to the Registrar of the high court (sic) for cancellation.'* Further, counsel state that a consequential order of the claim will be to nullify or render void any act done by Mr. Ram Logan in conveying or transferring lands to Mr. Wu. As it is not a claim for possession, there was no need to use a fixed date claim form. Counsel for the Vasquez submit further that, alternatively, Mr. Wu derives his lands through Mr. Ram Logan, so he did so through a fraudulent Grant. Mr. Ram Logan has, at the highest, a limited Grant or one that extended only to the lands he claimed he had bought from the deceased Charles Card. Therefore, Mr. Wu is at best in possession as a trespasser, a contention that the Vasquez do not accept.

- [38] The submission of counsel for the Vasquez that their claim is not for possession of land is answered by their claim for an order for delivery of possession. Consequently, their submission is ignored. Further, counsel's submission that they are seeking to call up or cancel a 'court order' is, in my judgment, mere sophistry. The court order is a Grant in an estate. It is not an ordinary court order that they seek to cancel. A claim in probate proceedings (crafted as 'a declaration that the letters of administration ... obtained by fraud') must accord strictly with rule 67.2(1) so requires the use of a fixed date claim form. In any event, the failure to state the nature of their interest in a contentious probate claim is contrary to the rules and a basis for dismissal for lack of standing (already discussed). Moreover, there are no pleadings of fraud against Mr. Wu who is a bona fide purchaser in possession of lands conveyed to him by Deed of Conveyance.
- [39] A claim shows "no reasonable grounds" for bringing it if *'the claim sets out **no facts indicating what the claim is about or it is incoherent and makes no sense or if the facts it states, even if true, do not disclose a legally recognizable claim then striking out is appropriate.***': see *Citco Global NV v Y2K Finance Inc.*¹⁴ The party seeking the striking out order bears the responsibility to show that there is no viable cause of action or that the pleaded facts are incapable of establishing the main ingredients of a cause of action.
- [40] Given the claim, their pleadings and admissions, I do not believe that the Vasquez can maintain any claim in adverse possession against Mr. Wu. They have also not shown any standing to revoke the Grant in the estate of Charles Card nor have they connected this prayer to cancel 'a court order' to Mr. Wu. The claim against Mr. Wu is ill-defined, incoherent and unsustainable. It must fail. The Vasquez have not disclosed any reasonable basis for bringing the claim against Mr. Wu in adverse possession or otherwise. They have also not advanced any arguable case against him that require an answer or a trial. In my judgment, this is an ideal case for early disposal of the claim against Mr. Wu by striking out.

¹⁴ BVI HCV AP 2008/022

Issue No. 2: Whether the claim should be dismissed in its entirety.

[41] Having found that there is no proper claim and/or reliefs sought against Mr. Wu, the matter stands dismissed against him. However, Mr. Wu seeks an order for the dismissal of the claim in its entirety, assumedly against both defendants, on the basis that the Vasquez have no standing to have their claim or any of the applications determined in their favour. As stated above, the claim shows a clear cause of action in trespass against Mr. Ram Logan and clear reliefs sought. I will allow the Vasquez to have their day in court against Mr. Ram Logan.

Costs

[42] Costs should follow the event. Mr. Wu seeks costs of BZ\$2000 for the application and costs of BZ\$5625 for having to defend the claim. Costs must be reasonable and proportional to the claim and work done in it. The application is made at an early stage of the proceedings at the case management conference, and before directions are issued for filing of requisite documents in preparation for trial. In my judgment the costs claimed are exorbitant and unreasonable. I considered the work done by counsel, Mr. Rene Montero, in this matter, including *inter alia* documents drafted, research done and appearances on the application. In all the circumstances, I find a reasonable sum to award as costs in this matter is BZ\$3500 and so award.

Disposition

[43] It is ordered that:

- a) The application to strike out dated 10th July 2023 is granted with costs to be paid by the claimants to the second defendant.
- b) The second defendant's costs are assessed in the global sum of BZ\$3500.

Martha Lynette Alexander
High Court Judge