

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

CLAIM NO. 230 of 2022

BETWEEN

JAIME NOVELO

DEFENDANT/RESPONDENT

AND

ANNE HEREDIA

COUNTERCLAIMANT/APPLICANT

ORDER OF THE HONOURABLE MADAM JUSTICE PATRICIA FARNESE

HEARING DATE: 16th March 2023

APPEARANCES:

Mr. Mansel C. Turton, Counsel for the Claimant/Respondent.

Ms. Wendy Auxillou, Counsel for the Defendant/Applicant.

**REASONS FOLLOWING ORAL JUDGMENT STRIKING-OUT DEFENCE TO
COUNTERCLAIM**

Introduction:

[1] Mr. Novelo filed a Fixed Date Claim Form seeking prescriptive title to lands owned by Ms. Heredia after unsuccessfully applying to the Lands Department for prescriptive title to the same lands. This Claim was set for first hearing on 6 July 2022 and neither of the Parties appeared as the Claim had not been served on the Defendant. Ms. Heredia acknowledged service of the Fixed Date Claim Form on 7 August 2022, and she filed an Application to Strike Out the Claim and a Counterclaim in response. Ms. Heredia defended the Claim by arguing that it was an abuse

of process because the Claim ought to have been brought by way of judicial review or appeal. Ms. Heredia counterclaimed for moneys she alleges she lost when she was forced to renegotiate an agreement for the disputed land's sale when she could not meet the closing date because of Mr. Novelo's Claim.

[2] The Strike-out Application was set to be heard at the first hearing on 7 November 2022, but was adjourned to 5 December 2022 because of Hurricane Lisa, giving Mr. Novelo ample time to file a response to the Application and a Defence to the Counterclaim. None were filed on his behalf. Instead, Mr. Novelo's lawyer filed a document titled the "Claimant's Counterclaim" where he sought, among other things, compensation for improvements, Mr. Novelo alleges, he made to the disputed property. The Court attempted to explain that the rules do not permit a "Claimant's Counterclaim," but could entertain a request to amend the original Claim. Mr. Novelo's lawyer, however, was insistent that I had equitable jurisdiction to do what was fair given the pleadings and submissions before me. The Court, therefore, reluctantly proceeded with hearing the application to Strike-Out the Claim.

[3] I granted the Application to Strike Out the Claim after hearing oral submissions from both Parties. I explained that granting the Application was justified as the Claim showed no reasonable prospect of success because the matter had previously been decided by the Registrar of Lands. The Court further held that to proceed with the Claim would be an abuse of process. Belizean law permits applications for prescriptive title to be made to the Registrar of Lands. Mr. Novelo previously applied to the Registrar and his claim of prescriptive title to land was denied. He must bring an application for judicial review of that decision if he is not satisfied with the Registrar's decision. It is an abuse of process to try to re-litigate the matter by filing a new Fixed Date Claim Form.

[4] The Fixed Date Claim Form was also not accompanied by a Certificate of Truth as required by Rule 3.12 of the *Supreme Court (Civil) Procedure Rules (CPR)*. Mr. Novelo's lawyer believed that the Court ought to be able to rely on his word that the stated case truthfully captured the statement of case as understood by Mr. Novelo. He explained that there were good reasons why Mr. Novelo could not sign the certificate himself. Rule 3.12(8), however, does not permit me to accept Counsel's word because the rule specifies the form that certificate must be in when a legal

practitioner gives the certificate on behalf of a party. Mr. Novelo's lawyer did not comply with that form.

[5] I adjourned the hearing on the Counterclaim and extended the time for Mr. Novelo's Defence to the Counterclaim to be filed. I explained that the "Claimant's Counterclaim" appears to signal an intention to defend. I expressed to the Parties that I was concerned that my directions to Mr. Novelo's lawyer were not being understood and that it would be unfair to proceed in light of this confusion. I noted that Mr. Novelo was not present in the Court and order that he attend with his lawyer at the next hearing date.

[6] Mr. Novelo filed a Defence to the Counterclaim. Ms. Heredia filed an Application to Strike Out the Defence to the Counterclaim on the basis that the Defence disclosed no reasonable grounds for defending the Claim. The Defence merely disclosed a further attempt to relitigate the issue of prescriptive title. It also did not contain a Certificate of Truth as required by CPR Rule 3.12. The Case Management System indicates that Mr. Novelo's lawyer attempted to file a Response to the Strike-out Application, but the Defence was not accepted. No subsequent attempts to file the Defence were evident in the Case Management System.

[7] The Strike-out Application was heard on 16 March 2023. Mr. Novelo's lawyer appeared without his client. Counsel for the Counterclaimant did not object to me reviewing Mr. Novelo's unfiled Response to the Strike-out Application. After hearing oral submissions and reviewing the Counterclaimant's skeleton arguments, I granted the Application to Strike Out Mr. Novelo's Defence.

[8] In my oral decision, I explained that Mr. Novelo's Defence was non-compliant with the CPR Rule 3.12 and revealed no prospect of success. His Defence continued to rely on his Claim for prescriptive title. He argued that Ms. Heredia bore sole responsibility for her loss as she knew "true ownership" of the land was in dispute when she entered into the contract. For the same reasons I struck out the original Claim, I find that Ms. Heredia's ownership of the land is not in dispute. The Registrar of Lands adjudicated the issue and rejected Mr. Novelo's claim for prescriptive title.

[9] I also held that Mr. Novelo’s pleadings and submissions disclosed no legal or equitable basis to consider his request to be compensated for the alleged improvements he made to Ms. Heredia’s property. He provided no details as to the “great deal of improvement” he claimed to have made to the disputed parcel. While his original Fixed Date Claim Form asked for “any other relief at law or in equity this Honourable Court deems just,” this Claim had been struck and likely was not sufficient for the Court to grant a right to set-off the value of improvements.

[10] Judgment in the amount of \$150,000 plus interest at the rate of 6% per annum from the time of judgment until the same is satisfied pursuant to Section 176 of the *Senior Courts Act, 2022* and costs of \$10,000 were awarded to Ms. Heredia. I also ordered Ms. Heredia to personally serve Mr. Novelo with this decision to ensure that he was made aware of the outcome of his claim and the judgment against him.

DATED the 17th day of April, 2023.

Justice Patricia Farnese
HIGH COURT JUDGE