IN THE SUPREME COURT OF BELIZE, A.D. 2022

CLAIM No. 28 of 2022

BETWEEN

BELINA FRANCISCO YOUNG	**CLAIMANT/RESPONDENT**

AND

DINESH ADVANI	**1ST DEFENDANT/APPLICANT**
REGISTRAR OF LANDS	**2ND DEFENDANT/APPLICANT**
COMMISSIONER OF LANDS	**3RD DEFENDANT/APPLICANT**
ATTORNEY GENERAL OF BELIZE	**4TH DEFENDANT/APPLICANT**

BEFORE The Honourable Madam Justice Patricia Farnese

HEARING DATE: June 30, 2022

APPEARANCES

Rene A. Montero for the Claimant/Respondent
Jaraad Ysaguirre for the 1st Defendant/Applicant
Alea Gomez and Lavinia Cuello for the 2nd, 3rd, and 4th Defendants/Applicants

DECISION ON APPLICATION FOR STRIKE-OUT

Introduction

[1] Ms. Young acquired deed for Lot 362 in Dangriga Town, Stann Creek in 1994. Lot 362 was subsequently purchased by Mr. Advani in 2006 from a third party who either fraudulently or mistakenly acquired a deed to that property. As a result, Mr. Advani has been recognized as the registered owner in the Land Register since 2013. Since purchasing the land, Mr. Advani evicted Ms. Young's tenant who was in possession of Lot 362, demolished the existing wood structures, removed landscape features, and constructed a large, 3-story concrete building.

[2] Ms. Young filed a fixed date claim in 2022 to rectify the Register, restore and keep possession of Lot 362, and obtain damages. Mr. Advani brought a Strike-out Application and the 2nd, 3rd, and 4th Applicants (the Government Applicants) filed another. Both Strike-out Applications rely on the operation of subsection 12(2) of the *Limitation Act*,[1] which bars actions to recover land after 12 years. The Government Applicants also assert that Ms. Young's request for a constitutional remedy for an unlawful expropriation is an abuse of process. Ms. Young argues against these Applications because she asserts that she has not exceeded the limitation period. While she knew of Mr. Advani's presence on Lot 362, she was not aware of the particulars of the alleged mistake or fraud that allowed him to claim an interest until 2017. She also argues that the Registrar of Lands' ongoing wrongful listing of Mr. Advani in the Register as the owner of Lot 362 is a continuous breach.

[3] I find that the claims against the Applicants are statute-barred and are, therefore, struck-out. Ms. Young ought to have discovered that Mr. Advani obtained a deed of conveyance to Lot 362 as early as 2007 because of his actions in relation to the land. Section 145 of the *Registered Land Act* (*RLA*),[2] which limits appeals of decisions of the Registrar to 30 days, governs the claim against the Government Applicants and not the *Limitation Act.* Ms. Young's claim against the Government Applicants arose in 2013 when the Registrar issued the first registration of Lot 362 under the *RLA*. I also find that the claim against the Government Applicants is an abuse of process that has been brought after an inordinate and inexcusable delay.

Issues

[4] This claim raises five issues:

1. Are the Strike-out Applications premature?
2. Can Mr. Advani rely on a letter marked as "without prejudice"?

[1] Cap. 170, Rev. Ed. 2020.
[2] Cap. 194, Rev. Ed. 2020.

3. Did the claims against Mr. Advani arise in 2007 when Ms. Young first became aware that Mr. Advani was asserting a right to possess the Lot 362 or when she discovered in 2017 the particulars of how Mr. Advani acquired an interest in the Lot 362?
4. Did the claim against the Government Applicants arise when Mr. Advani was granted a deed to the Lot 362 or is this a continuous breach that remains ongoing to this day?
5. Is the Claimant's request for a constitutional remedy an abuse of process?

Analysis

[5] In Ms. Young's first affidavit in support of her fixed date claim, she alleges that the Government Applicants fraudulently and/or mistakenly registered a conveyance of a parcel of land (Lot 362) she owned between two third parties. The affidavit also alleges that Mr. Advani subsequently procured his title by fraud because he purchased Lot 362 in 2006 from the fraudster while knowing that the lot's ownership was disputed. Ms. Young further alleges that the Government Applicants fraudulently or mistakenly issued the first registration of title to Lot 362 to Mr. Advani in 2013 after this area was brought within the compulsory land registration system. Ms. Young asserts that the Government Applicants issued title even though they were aware that she was the rightful owner of Lot 362 because she applied for first registration prior to Mr. Advani.

[6] In addition to denying any wrongdoing, the Applicants argue that the cause of action arose in 2006 when the Deed of Conveyance between the alleged fraudsters was recorded in the Deed Book and Mr. Advani initially purchased the land. In her response to the Applications, Ms. Young accepts that the action arose more than 12 years ago. She argues that because there has been fraud and/or mistake, the limitation period did not begin until 2017 when she learned of the circumstances of the mistaken and or fraudulent transactions.

[7] Rule 26.3(1)(b) and (c) grants discretion to strike out all or part of a statement of case if the claim appears to be "an abuse of process of the court" or "discloses no reasonable grounds for bringing or defending a claim." Judges are frequently cautioned to sparingly exercise this "nuclear" option and only in the clearest of cases.[3] Striking out is not appropriate where an arguable case is presented or where complex facts or legal issues are raised by the case. The burden of proof is on the Applicants to establish on a balance of probabilities that the claim ought to be struck.

[8] Both Applications principally rely on subsection 12(2) of the *Limitation Act* which provides:

[3] *Thompson v Flowers et al.*, Supreme Court Claim No. 631 of 2020 at para 2.

> 12(2) no action shall be brought by any other person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person,

Ms. Young relies on subsection 32 of the *Limitation Act* in response:

> 32 Where, in the case of any action for which a period of limitation is prescribed by this Act, either,
>
> (a) the action is based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent;
> (b) the right of action is concealed by the fraud of any such person as aforesaid; or
> (c) the action is for relief from the consequences of a mistake,
>
> the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it,
>
> Provided that nothing in this section shall enable any action to be brought to recover, or enforce any charge against, or set aside any transaction affecting, any property which,
>
> > (i) in the case of fraud, has been purchased for valuable consideration by a person who is not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed; or
> > (ii) in the case of a mistake, has been purchased for valuable consideration, subsequently to the transaction in which the mistake was made, by a person who did not know or have reason to believe that the mistake had been made.

With respect to the Government's Application, Ms. Young also asserts that her claim is not statute barred because the 2nd Applicant's failure to correct the Register and list her as having the superior interest to Lot 362 is an ongoing and continuous breach.

Are the Strike-out Applications premature?

[9] No. The *Supreme Court (Civil Procedure) Rules*, 2005 (CPR) do not require a strike-out application based on a statutory limitation defence to follow the filing of a defence. Allowing the Applications aligns with the CPR's objective of early and expeditious resolution of disputes especially in cases with no real prospect of success.

[10] Ms. Young asserts that the Applications are pre-mature because the Applicants have not filed statements of defence. As explained by Young J. in *Rochez v. Williams*:[4]

[4] Claim No. 179 of 2009 at para 17.

> Limitation, once pleaded, is a complete defence, but it must be specifically pleaded. The Claimant is under no duty to prove that his claim is not statute barred…Although it is a complete defence it will not be taken by a court of its own motion but must be specifically set out in the defence.

Ms. Young's reliance on the words "must be specifically set out in the defence" in these circumstances is misguided. Young J. explained that after a defence is filed, a defendant may not raise a limitation period. CPR Rule 10.7 outlines that a defendant is restricted to the allegations and factual arguments that are set out in their defense unless they obtain the court's permission.

[11] Interpreting Young J.'s comments as precluding strike-out applications during the time between when the claim is initiated and when a defence must be filed is not aligned with the CPR's overriding objective to justly deal with cases. As Young J correctly states, a limitation is a complete defence. Unlike raising the defence too late, nothing in the CPR prohibits a strike-out application from being filed before a defence. If successful, an early strike-out application will avoid wasting the resources of the court and the parties. Parties may also settle sooner. A defendant who is solely relying on a limitation defence has an incentive to resolve the dispute when their strike-out application is denied.

[12] A claimant is not prejudiced when a defendant files an application to strike-out a claim based on a statutory limitation period before the expiry of the time to file a defence. The court treats the content of the pleadings and the supporting affidavits as true when deciding whether to strike-out a claim. Although one of the likely consequences following a decision not to strike-out a claim will be to extend the time to file a defence, a claimant can apply for an interim remedy to address any issues arising from the delay. A claimant also retains the right to a judgment on a valid claim in the event a defence is not filed. If a defence is filed, the defendant will only be able to rely on those allegations or factual arguments raised in the unsuccessful strike-out application if they are subsequently included in the defence pleadings.

Can Mr. Advani rely on letter marked as "without prejudice"?

13] Ms. Young objects to Mr. Advani's inclusion of a letter written by a lawyer on her behalf because it is marked "without prejudice". Ms. Young sent the letter to the Dangriga Town Council (the Council) in 2008 to prevent the Council from issuing Mr. Advani a building permit for Lot 362 under threat of litigation if her demand was not met.

[14] The case law is clear. The content of communications and not the "without prejudice" label determines whether the communications is admissible:[5]

[5] *Ramdehol v. Ramdehol*, [2017] CCJ 14 (AJ), CCJ Appeal No GYCV2017/004, GY Civil No 45 2012 at para 33.

> It is trite law that letters exchanged between parties in hopes of arriving at an agreement, even before a party initiates litigation, are privileged because they are "without prejudice" communication. Indeed, once the communication is made bona fide in the course of arriving at a settlement, the document is privileged whether or not the words "without prejudice" are expressly used in the document.

To be privileged, the statements must be made within the context of a genuine attempt to reach a settlement. As noted by Walker L.J in *Unilever Plc v Proctor & Gamble Co*: [6]

> Without prejudice is not a label which can be used indiscriminately so as to immunise an act from its normal legal consequences where there is no genuine dispute or negotiation.

[15] I find the letter is admissible because it does not contain settlement communications. This letter, drafted as a demand letter, is a pre-emptory strike designed to thwart Mr. Advani's development plans on Lot 362. It is an attempt, through the threat of litigation, to influence the behaviour of a public body and prevent Mr. Advani for acquiring a permit.

[16] While privilege can be extended to settlement communications before litigation has been initiated, privilege does not shield communications where there is no genuine dispute. The letter is not aimed at settlement of a dispute with the recipient. Instead, it merely gives notice of the potential for a dispute based on the recipient's future conduct. At the time the letter was sent, not only had no cause of action between the Council and Ms. Young arisen, but whether a cause of action would ever arise was uncertain.

Did the claims against Mr. Advani arise in 2006 when Mr. Advani purchased the Lot 362 or when Ms. Young discovered in 2017 the particulars of how Mr. Advani acquired an interest in the Lot 362?

[17] Ms. Young has no reasonable grounds to bring a claim against Mr. Advani because her claim is statute-barred. She has exceeded the 12-year period to bring a claim to recover land required by subsection 12(2) of the *Limitation Act.* Alternatively, her equitable interest in Lot 362 is unenforceable against Mr. Advani because he was a *bona fide* purchaser for value.

[18] Ms. Young asserts that by virtue of a Deed of Gift dated April 8, 1994, she is the rightful legal owner of Lot 362. She is mistaken. What she means to assert is that she has the right to have legal title restored to her because she has been stripped of legal title through the fraudulent actions of Mr. Advani and others. By operation of the *Law of Property Act* (*LPA*)[7] and the *RLA,* Mr. Advani is the rightful legal owner by virtue of the Certificate of Title to Lot 362. Ms.

[6] [2001] 1 All ER 783; [2000] FSR 344 at 356.
[7] Cap. 190, Rev. Ed. 2020.

Young's confused pleadings are reflective of a general misunderstanding of the operation of Property Law in Belize because the operation of two distinct land registration systems. This confusion has led Ms. Young to plead two inconsistent propositions. Although I am to treat pleadings as the truth when assessing the merits of a strike-out application, this case provides me with the opportunity to offer some clarification on the legal regime regulating property in Belize.

[19] Belize's Property law regime divides land subject to private ownership into 2 categories based on whether they are located within a compulsory registration area (CRA). Lands within a CRA are regulated under the *RLA* and other lands fall under the *LPA.* Lot 362 was outside of a CRA when the Deeds of Conveyance between the alleged fraudsters, Ms. Leopoldina Obado de Arana to Ms. Jane Arana, and between Ms. Jane Arana and Mr. Advani, were recorded. As a result, the *LPA* would have applied to those conveyances.

[20] Under the *LPA*, Ms. Young lost her legal title when the first Deed of Conveyance was registered in 1987 because there can only be one legal title holder unless they are co-owners. Ms. Young and Ms. Jane Arana did not become co-owners. If the Court accepts the truth of the assertion that this conveyance was by mistake or fraud, Ms. Young would have held an equitable interest in Lot 362 until legal title could be restored to her.

[21] Until legal title was restored, Ms. Young's equitable title could be defeated by a *bona fide* purchaser for value without notice of her equitable interest. Subsection 7(a) of the *LPA* incorporates the *Settled Land Act, 1925*,[8] which provides that a legal owner is only bound to give priority to those equitable interests of which they had notice.[9] If I accept Ms. Young's affidavit evidence that Mr. Advani had notice that ownership was in dispute "at all material times" because of her communications with him, her cause of action against Mr. Advani must have arose when the Deed of Conveyance was issued in 2006. If I find otherwise, Ms. Young's equitable interest is unenforceable because Mr. Advani lacked notice when he purchased the land.

[22] Nonetheless, Ms. Young argues that the limitation period should not begin until 2017 because she was not aware that Ms. Arana was listed in the Register as the owner of Lot 362 in 2006 when Mr. Advani purchased the Lot. Despite just explaining why Ms. Young's interest would be unenforceable against Mr. Advani if this assertion were true, I will proceed with this analysis of this pleading for the sake of completion.

[23] Section 32 of the *Limitation Act* does not delay the operation of the limitation period until a claimant has actual knowledge of fraud or mistake. The limitation period will begin to run when a claimant has "reason to believe" fraud or mistake has occurred. Ms. Young's evidence

[8] C.18, (Regnal. 15 and 16 Geo 5).
[9] *Ibid.* at section 16(1)(i).

states that Mr. Advani evicted her tenant in possession of Lot 362 as early as 2007 and has had possession of the property ever since. He also sought approval from the Council to demolish existing structures in 2008 and soon after began construction of a substantial, permanent structure. He also subdivided and sold part of Lot 362 in 2009. Even if were to exclude the statement in the letter marked "without prejudice" where she references the fact that ownership of Lot 362 is in dispute, Mr. Advani's actions are not reflective of those of a trespasser as Ms. Young says she believed he was prior to 2017. Mr. Advani's investment in the property and his assertion of the right to possess are the actions of someone who believes they are an owner. I find Mr. Advani's actions gave Ms. Young reason to believe that he had obtained title by some mistaken or fraudulent means.

[24] In addition, I find no evidence that the Applicant actively concealed the mistake or fraud, which would justify delaying the commencement of the limitation period as permitted by subsection 32(b) of the *Limitation Act*. Mr. Advani initiated legal proceedings and sought development permits. In 2013, he applied for and received title to Lot 362, which placed his name in the Register as owner for anyone to discover. Had he intended to conceal his interest in Lot 362, he would not have used lawful means to evict the tenant or registered his title.

Did the claim against the Government Applicantss arise when Mr. Advani was granted a deed to the Lot 362 or is this a continuous breach that remains ongoing to this day?

[25] Ms. Young also has no reasonable grounds to bring a claim against the Government Defendants because her claim is statute-barred. The dispute between Ms. Young and the Government Applicants is regulated by the *RLA* because the land is now found in a CRA. The *RLA* unequivocally limits her opportunity to have her legal title to Lot 362 restored and to seek damages from the Government Applicants to 30 days after first registration.

[26] Section 145 specifies that "any person aggrieved by a decision, direction, order, determination or award of the Registrar" may appeal to the Supreme Court if notice is given to the Registrar within 30 days of the "decision, direction, order, determination or award." Ms. Young's pleadings indicate that she applied for first registration and her application was either denied or rejected by the Registrar. That decision was appealable. Alternately, Ms. Young could have appealed the decision to grant Mr. Advani first registration on the grounds that she was a person aggrieved by that decision. The effect of first registration was to render her interest in Lot 362 unenforceable. By failing to apply within the 30-day appeal period after these decisions, Ms. Young's claim is statute-barred. The *RLA's* deliberate choice to adopt a title by registration system explains the short timeframe to appeal. The system requires the Register to reflect all interests in land as soon as possible after land is brought within a CRA.

[27] The *RLA* is a title by registration system, which means that one does not have title until it is registered. One obtains their title in land through the registration process. On the other hand, the *LPA* creates a deed registration system which merely records titles or interests in the Register after they have been transferred. The significance of this distinction relates to the enforceability of interests against subsequent titleholders. Unlike the *LPA*, only registered interests are typically enforceable against subsequent title holders under the *RLA.*

[28] Section 26 of the *RLA* draws a curtain upon registration of title that prevents most unregistered legal or equitable interests from having priority to the registered title. Section 31 defines a limited list of over-riding interests that have priority without being registered. Unregistered equitable interests, like Ms. Young's interest, are not on that list. A successor on title is bound by previous registered interests even if they did not know the interests existed when they acquired their title because section 33 outlines that registration is deemed notice. Section 41 implements what is commonly referred to as the mirror principle. One does not need to look beyond what is registered on the title for a complete reflection of the enforceable interests. There is also no need to investigate the circumstances under which a person obtained their interest. A *bona fide* purchaser for value can trust that they have received an indefeasible title even if they later discover a defect in the title of a previous title holder.

[29] By adopting the *RLA,* the Legislature has chosen to favor certainty of title over the protection of the interests of unregistered titleholders who fail to act to protect their interests during the first registration process. Consequently, the *RLA* is designed to move land quickly into the new system so that the certificate of title alone can be relied upon to identify all interests in land. When land is brought within a CRA, the Registrar prepares a Register of interests in land to facilitate the first registration of certificates of title.[10] Persons with interests in land that were registered under the *General Registry Act*[11] are to be surrendered within 30 days to the Registrar upon notice from the Registrar; non-compliance is an offence.[12] Unregistered interests can also be voluntarily surrendered and considered by the Registrar. If the Registrar does not accept an unregistered interest as entitled to inclusion in the register, subsection 13(8) also gives 30 days to appeal that decision.

[30] Ms. Young ought to have utilised the appeal mechanism provided for in the *RLA* to challenge the Registrar's decision not to issue first registration of the certificate of title to her. Section 3 of the *RLA* prohibits any law, practice or procedure relating to land that is within a CRA that is inconsistent with the *RLA.* Any right to initiate proceedings against the Registrar that would have existed under the *LPA* is inconsistent with the *RLA* if the action is appealable under section 145 because the action may threaten the certainty of title. Through the First Registration

[10] *RLA*, section 10.
[11] Cap. 327, Rev. Ed. 2020.
[12] *RLA*, section 12.

process all enforceable interests are to be identified and included on the certificate of title. From that point forward, the title is a complete and accurate mirror of the interests in land. Nothing in the *RLA* indicates that this 30-day rule does not apply in circumstances where fraud or mistake are alleged to have occurred prior to first registration. The certainty of title that is essential to the proper operation of the *RLA's* will be eroded if the court allows claims that pre-date first registration after the 30-day appeal period.

[31] Moreover, I find that the failure of the Registrar to rectify the register is not a continuous breach. Ms. Young relies on the decision in *Placencia Land & Development Co. v. The Attorney General* (*Placencia Land*)[13] in support of a continuous breach. In *Placencia Land*, the court held that the government defendants were in continuous breach after not rectifying titles where restrictive covenants were mistakenly omitted from a title during first registration. I find no precedential authority in *Placencia Land*, however, because section 145 was not pleaded and the court did not consider its impact in the decision. Ms. Young no longer has an enforceable interest in Lot 362 that can be breached. Without an interest, there are no grounds to call for the Registrar to rectify the title.

Is the Claimant's request for a constitutional remedy an abuse of process?

[32] The Government Applicants argue that I should strike out the Ms. Young's claim because it is an abuse of process. Ms. Young has improperly framed the action as a constitutional claim to avoid the 12-year limitation period outlined in the *Limitations Act.* As explained in the previous section, it is the limitation found in section 145 of the *RLA* and not the *Limitation Act* that applies. The action has also been brought after an inordinate and inexcusable delay.

> The Caribbean Court of Justice (CCJ) has held that the: [14]
>
> …determining factor in deciding whether there has been an abuse of process is not merely the existence of a parallel remedy but also, the assessment that the allegations grounding constitutional relief are being brought "for the sole purpose of avoiding the normal judicial remedy for unlawful administrative action".

In this case, a finding that the Ms. Young's claim is an abuse of process designed to avoid a deliberately strict limitation period is supported by the delay between the time the cause of action arose and the initiation of legal action.

[33] I have already found that Ms. Young ought to have discovered as early as 2007 that Mr. Advani had obtained title to Lot 362. In addition, she was denied first registration when the Lot

[13] Claim No. 212 of 2017.
[14] Lucas v. The Chief Education Officer, [2015] CCJ 6 (AJ) at para 134, quoting Quoting Sharma CJ in *Belfonte v AG* (2005) 68 WIR 413 at para 18.

was brought into a CRA in 2013. Ms. Young, however, has not provided a satisfactory explanation for why she did not commence legal action against the Government Applicants until 2017. The denial of first registration did not require knowledge of the specific circumstances of Mr. Advani's acquisition of title to give Ms. Young cause to seek a remedy against the Government Applicants.

[34] Likewise, that her 2017 claim against the same Applicants was allegedly discontinued without her knowledge does not overcome the substantial risk that a fair trial of the issues is no longer possible as a result of the delay. Ms. Young's remedy, if the matter was discontinued without her consent, should be sought from her counsel at the time.

Disposition

[35] It is ordered that:

1. The claim against Mr. Advani is struck out in its entirety.
2. The claim against the Government Applicants is struck out in its entirety.
3. Ms. Young shall pay costs of the applications to the Applicants as agreed or assessed.

Thursday, October 13, 2022

Patricia Farnese
Justice of the Supreme Court of Belize