

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

CLAIM No. 433 of 2021

BETWEEN

**TARPON COVE ESTATE OWNERS
ASSOCIATION LIMITED**

CLAIMANT/RESPONDENT

AND

LATAYNA SCOTT ALDANA

DEFENDANT/APPLICANT

DECISION OF THE HONOURABLE MADAM JUSTICE PATRICIA FARNESE

Hearing Date: April 26, 2023

APPEARANCES:

Kia Marie Diaz-Tillett, Counsel for the Claimant/Respondent

Robertha Magnus-Usher, SC, Counsel for the Defendant/Applicant

DECISION RE LEAVE TO APPEAL

[1] Ms. Aldana seeks leave to appeal my 10 February 2023 decision dismissing her application to strike out the claim. I have declined to hear the leave application on the basis that I do not have jurisdiction to do so. The newly promulgated *Senior Courts Act, 2022*,¹ vests exclusive authority to decide applications for leave to appeal with the Court of Appeal. Because the decision under appeal was rendered after the *SCA* came into force, I have no jurisdiction to decide this application.

¹ Act No. 27 of 2022 [*SCA*].

[2] At a case management conference, I informed the parties of the oral decision I rendered in *Best Buy Limited vs. Flowers*.² I explained that having just ruled that I do not have jurisdiction to decide leave applications, it would be improper for me to set a hearing date to hear Ms. Aldana's application. The matter ought to go directly to the Court of Appeal. I am not aware, however, of the Court of Appeal having ruled on the impact of the changes to the SCA to the High Court's jurisdiction to decide the question of leave on appeals of its own decisions in civil matters. To assist Ms. Aldana with having her leave application promptly addressed, I explained I would prepare a written decision declining jurisdiction from which she could appeal if necessary.

[3] My reasons for declining jurisdiction are thoroughly outlined in *Flowers*. A comparison of the SCA with the legislation that previously governed the Court of Appeal and the High Court reveal that legislators have intentionally decided that the High Court will only have a role in hearing leave applications of its decisions in civil matters when the question under appeal relates to *habeas corpus*. The claim in the present matter does not fall within the High Court's jurisdiction to decide the leave application because it is centered on the enforceability of a restrictive covenant.

Disposition

[4] For the reasons explained above, I have declined to hear the application for leave to appeal my previous decision not to strike out the claim because I lack the jurisdiction. Ms. Aldana must bring her application to the Court of Appeal. I have made no order as to costs.

Dated April 27, 2023



Patricia Farnese
Justice of the High Court of Belize

² HC Claim No. 480 of 2020 [*Flowers*]