

IN THE HIGH COURT OF BELIZE

CLAIM No. Civ 639 of 2019 (No. 2)

BETWEEN:

DOMINION RESOURCES INC.

Claimant

and

TRACEY GINDER BURGARDT

1st Defendant

DRAGONFLY HOLDINGS LTD.

2nd Defendant

Appearances:

Mr Allister Jenkins for the claimant

Ms Darlene Vernon and Mr Eduardo Aguilar for the 1st defendant

No appearances for the second defendant

25 November 2024

5 February 2025

RULING

Civil practice and Procedure – Case Management Orders – Rule 26.2(z) of the Civil Procedure Rules, 2025 – Determination of issues falling for resolution – Overriding objective – Attorney - Duty to cooperate in identifying issues falling for resolution

- [1] **HONDORA, J.:** This is a case management decision made pursuant to Rule 26.2(z) of the Civil Procedure Rules, 2025 (CPR) on the issues falling for resolution in the main dispute between the parties. This decision has been necessitated by the parties' lack of agreement on the interpretation to be given to two interlocutory decisions made in these proceedings in **July 2021** and **August 2023** and on whether those decisions resolved and made some of the issues redundant.
- [2] The main dispute between the parties pertains to the enforcement of a promissory note in which the defendant undertook to pay the claimant **US\$289,490.00** plus interest at 12.5% per annum.
- [3] In my decision I shall refer to the parties by their names. I do so for ease of reference and because this case involves a counterclaim. The claimant and counter defendant is Dominion Resources Inc. (Dominion) is a Seychelles registered corporation. The first defendant and counterclaimant, Tracy Ginger Burgardt (Ms Burgardt) is a resident of San Pedro, Belize. The second defendant is Dragonfly Holdings Ltd, which like the claimant, is a Seychelles registered corporation.

I. Context

- [4] Dominion issued a claim form and a statement of claim in **October 2019** in which it claimed **US\$289,490** plus interest and costs from Ms Burgardt and Dragonfly.
- [5] Dominion's case is that in or about **October 2017**, Ms Burgardt and Dragonfly agreed to purchase a villa in San Pedro, known as Parcel 10804 (H&) and H8) from Seascape Villas Ltd. It alleges that Ms Burgardt and Dragonfly sought and obtained finance from Dominion in the sum of \$289,490.00, which they used to purchase the villa.
- [6] Dominion bases its claim on a promissory note dated **5 October 2017** signed by Ms Burgardt in her personal capacity and in her capacity as a director of Dragonfly. It is also alleges that as security for the loan Ms Burgardt and her husband, Trevor Burgardt, signed (a) blank transfer of shares documents for their shareholdings in Dragonfly; and (b) letters of resignation as directors of Dragonfly both of which were to be registered in the event of default of payment by Ms Burgardt and Dragonfly.
- [7] Dominion further alleges that Ms Burgardt and Dragonfly defaulted on the loan following which Dominion completed and registered the transfer of shares and the letters of resignation. Dominion

also says that Dragonfly was the designated company to take title of Parcels 10804 (H7) and (H8).

[8] When Dominion filed its claim form and statement of claim, Dragonfly did not file an acknowledgement of service or a defence. As a result, judgment in default of appearance was entered against Dragonfly on **23 December 2019**. Consequently, in these proceedings, Dragonfly is only nominally cited. Following an application by Dominion, Dragonfly is said to have been placed into receivership.

[9] Ms Burgardt filed a defence on **14 November 2019** in which she disclaimed the promissory note and claimed that if she did agree to the same, it was induced by undue influence on the part of Mr Maxwell either as the principal or agent of the Dominion. Like HHJ Chabot, I pause here to note that Ms Burgardt's defence was most peculiar.¹ In her amended defence and counterclaim dated **20 March 2020**, Ms Burgardt (as counterclaimant) sued Dominion and added Mr Maxwell as a defendant and claimed the following:

- (1) A declaration that Doug Maxwell as Counter Defendant is in fact the principal of both the Claimant and the 2nd Defendant or at a minimum a duly certified agent of the said claimant and the second defendant;
- (2) A declaration that the counter defendant whether as principal or agent of the claimant/second defendant acted fraudulently in inducing the counter-claimant /first defendant to purportedly enter into a money lending agreement with the claimant;
- (3) A declaration that the counter-defendant as principal or agent of the claimant exerted undue influence and misrepresented pertinent facts and issues to the 1st defendant with the intention of defrauding the 1st defendant;
- (4) A declaration that the counter-defendant and the claimant colluded or acted in concert and unlawfully and/or fraudulently acquired the blank transfer of shares and letters of resignation...from the first defendant;
- (5) A declaration that the counter-defendant colluded with the claimant to strip the assets of the first defendant and to denude the first defendant of her assets which were purportedly held by the second defendant;
- (6) An order of specific disclosure relating to certified company formation documents inclusive of information of the date of incorporation, directors and shareholders for both the claimant and

¹ Rule 10.5(8) of the Civil Procedure Rules, 2005, require a party to verify the facts set out in a defence by a certificate of truth. In this case it was inconceivable that Ms Burgardt's defence complied with this Rule. Either Ms Burgardt signed the promissory note or she did not.

- the second defendant, executed copies of the transfer of share forms and letter of resignation;
- (7) A declaration that the first defendant at no time entered into any agreement whether oral or in writing with the claimant, its agents or assigns as alleged;
 - (8) A declaration that the counter defendant and claimant whether individually or collective caused the first defendant to purportedly breach any agreement or repayment;
 - (9) A declaration that the purported transfer of shares of the second defendant to the claimant and the purported registration of resignation of directors of the second defendant is null and void as the claimant had no authority or legal basis whether in writing or otherwise to execute and register such documentation;
 - (10) An order of accounting of all monies received by the claimant and counter defendant whether as principal and/or agent of the claimant;
 - (11) An injunction restraining the counter defendant and the claimant, their agents or assigns or otherwise from transferring, entering upon, disposing or otherwise alienating the property known as Unit H7 and H8 of the counter claimant;
 - (12) An order that the purported agreement entered into between the claimant and first defendant is null and void as a result of fraud;
 - (13) Damages
 - (14) Interest
 - (15) Costs
 - (16) Such further orders as the court may deem fit.

[10] In response, Dominion filed a Notice of Application dated **23 March 2020** seeking the striking out of the counterclaim against Mr Maxwell on the grounds that Ms Burgardt had neither sought nor been granted permission to add a new party to the proceedings. By order dated **7 July 2021**, the court struck out the claim against Mr Maxwell pursuant, it is said, to rule 26.3(1)(a) and rule 18.4 of the 2005 Civil Procedure Rules. No written reasons were given for that decision. I am surprised at the decision taken to strike out Ms Burgardt's claim against Mr Maxwell given (a) his alleged central role in the purchase of the villa and the structuring of the contested loan agreement and the promissory note; (b) the fact that he was at the very least a nominal defendant; and (c) the rules on the strike out remedy, which make it an option of last resort (see *Anderson v Michael*, Action No. Civ 320 of 2024 (No. 1) at paras. 17-23). However, Ms Burgardt did not appeal against that ruling nor did she seek its reconsideration.

[11] Regrettably, the 7 July 2021 order did not spell out which of Ms Burgardt's counterclaims were

struck out. There was also no order directing Ms Burgardt to amend her pleaded counterclaim considering the court's 7 July 2021 order.

[12] Thereafter, on **19 August 2021**, Dominion applied for judgment on admission pursuant to CPR 14.4.(1) and for summary judgment pursuant to CPR 15.2(b).

[13] On **28 August 2023** Chabot J issued an order on the following terms, that:

- (a) Judgment on Admission is entered as to the existence of a loan in the amount of US\$289,490 from Dominion Resources Inc. in favour of Tracey Ginger Burgardt and Dragonfly Ltd.
- (b) The claimant is awarded costs in an amount to be agreed or assessed.

[14] On reflection, the use of the phrase "judgment on admission" may have muddied the waters. The net effect of HHJ Chabot's decision was not to grant summary judgment or judgment on admission. Judgment on admission could only have been made with respect to Dominion's substantive claim for payment of \$289,490.00. Properly assessed, HHJ Chabot's decision merely confirmed the existence of a loan as between Dominion and Ms Burgardt. Dominion's application for judgment on admission for the sum of \$289,490 was in essence denied.

II. The parties' respective positions on the issues remaining for resolution

[15] Dominion submits that the issues which remain to be addressed at trial are:

- (a) What are the terms of the loan agreement between the claimant and the first defendant; and
- (b) What quantum is owing by the first defendant to the claimant under the promissory note.

[16] Ms Burgardt submits that the issues remaining for consideration at trial are:

- (a) Whether Maxwell acted fraudulently in inducing Tracey Burgardt to enter into the agreement;
- (b) Whether Maxwell as agent exerted undue influence and misrepresented pertinent facts and issues with the intent to defraud;
- (c) Whether Maxwell colluded or acted in concert and unlawfully and or fraudulently in acquiring blank transfer of share forms;
- (d) Whether Maxwell acted in concert with the Claimant to strip the assets of Tracey Burgardt and to denude her assets which were held by the second defendant (Dragonfly Holdings Ltd);
- (e) Whether the first defendant entered into any agreement with the Claimant or agents;
- (f) Whether Maxwell and [the] claimant individually or collectively caused the first defendant to breach the agreement to repay;

- (g) Whether the transfer of shares of the second defendant to the claimant and registration of resignation of Directors is null and void as the claimant had no legal basis to execute the transfer of shares;
- (h) An accounting of all monies received by the claimant and Douglas Maxwell.

III. Discussion

[17] Regarding HHJ Chabot's **28 August 2023** ruling, it is my view, as stated above, that that decision only affirmed the existence of a loan agreement. The honourable judge did not pronounce on the validity or enforceability of the loan agreement and/or the promissory note. Notably, the honourable judge reiterated that she did not consider it appropriate to dismiss Ms Burgardt's defences of misrepresentation and/or undue influence through a judgment on addition/summary judgment procedure. HHJ Chabot noted that she could not at that stage of the proceedings rule that the claimed defences had no prospects of success (see **para. 19 of the 28 April 2023 decision**). This was eminently sensible because, if proved, these defences may render the parties' contract voidable. HHJ Chabot also noted in the same paragraph that:

"In her Amended Defence and Counterclaim, Mrs Burgardt pleads that the terms of the Loan were not those laid out in the Promissory Note, but terms that she and Mr Maxwell verbally agreed to."

[18] It is clear to me that the promissory note needs to be read together with, and considered in the context of, the terms of the parties' underlying verbal loan agreement. Relatedly, Ms Burgardt's defences as regards the terms and validity of the underlying loan agreement remain to be considered.

[19] In addition, although Ms Burgardt's claims against Mr Maxwell were struck out, the court did not strike out those claims made against Dominion specifically or those claims made against Dominion and implicating Mr Maxwell. Relatedly, the declaration that there exists a loan as between the parties did not take matters far since the issue of the validity and enforcement of the loan and the promissory note were not (and could not have been) resolved in favour of Dominion through the summary judgment procedure.

[20] Consequently, in my view and drawing on Dominion's pleaded case and Ms Burgardt's pleaded case the following key issues remain live as between the parties and should be ventilated at trial, i.e.:

1. What are/were the terms of the parties' loan agreement? *(To determine this question, the court will need to consider, as necessary, whether the parties agreed to change the terms of either the promissory note and/or the underlying loan agreement and if so, when and in what manner and whether any of claimed changes altered the parties' rights and obligations to each other, and if so in what manner and to what legal effect?)*
2. Whether the underlying loan agreement and/or the promissory note are valid and enforceable / whether the underlying loan agreement and/or the promissory note are void or voidable (on account of alleged misrepresentation, undue influence and/or fraud or some other properly pleaded ground?)
3. If the parties' loan agreement and/or the promissory note are valid and enforceable:
 - (a) what, if any, are Dominion's contractual and/or equitable remedies and how much, if any, is due to Dominion from Ms Burgardt; and
 - (b) what, if any, are Ms Burgardt's contractual and/or equitable remedies?
(the answer to both interrelated questions depends on how the parties' respective cases have been pleaded and evidenced).
4. If the parties' loan agreement and/or promissory note are void or voidable, what are Ms Burgardt's remedies?
5. Whether the transfer of Ms Burgardt's shares in Dragonfly Holdings Inc. by and to Dominion was lawful and if not, what is the appropriate remedy?
6. Whether, as alleged by Ms Burgardt, Dominion transferred Ms Burgardt's shares into its name or a third party and whether it had authority to do so?
7. Whether, as alleged by Ms Burgardt, Dominion unlawfully stripped Dragonfly's assets, and if so, what is the appropriate remedy?
8. Whether Ms Burgardt is entitled to an order of accounting as against Dominion (and its receiver)? (in relation to the receiver, the answer depends in part on whether the transfer of Ms Burgardt's shares was lawful)
9. Whether the parties are entitled to consequential orders, and if so, which orders?

[21] Mr Jenkins is undoubtedly correct to indicate as he did in his written submissions that a key issue

that ought to be addressed via trial is the question on “*the terms of the loan agreement between the Claimant and the Defendant*”. I am confident that he identified this as a relevant question because underlying and additional to the promissory note is/must be a “loan agreement”. This tends to support Ms Burgardt’s contention that the promissory note did not contain all the terms of the parties’ loan agreement. Also remaining to be addressed is the question of the amount, if any, due to Dominion from Ms Burgardt under the said “*loan agreement*.” These two question are covered by **para. 20.1 and 20.3** above.

[22] However, contrary to Mr Jenkins oral submissions, the **7 July 2021** order striking out the claims levied by Ms Burgardt against Mr Maxwell did not preclude her from maintaining the claims she levied against Dominion both in her defence to Dominion’s claim and in her counterclaim against Dominion. Those claims and defences survive the strike out order since it appears (although I make no firm determination) that it is common cause between the parties that Mr Maxwell was at the very least Dominion’s authorised agent in relation (it would appear) to the purchase of the villa, the structuring of the loan agreement, and the promissory note.

[23] For completeness and for ease of reference, I shall address in the table below Ms Burgardt’s views on the issues that should be addressed at trial.

1.	Whether Maxwell acted fraudulently in inducing Tracey Burgardt to enter into the agreement.	Since the addition of Mr Maxwell was struck out, this cannot be a standalone issue for determination at trial. It appears, as noted by HHJ Chabot that Dominion accepts that Mr Maxwell was its authorised agent. Consequently, the allegations of fraud, misrepresentation or undue influence perpetrated, it is alleged, by Mr Maxwell <u>may be</u> imputed to Dominion (if the facts support such a conclusion. Whether this be the case will be ventilated through the question/issue raised in para. 20.2 and 20.4 above . Subject to the parties’ decisions on how they intend to prosecute their respective cases, Mr Maxwell may very well be called as a witness.
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2.	Whether Maxwell as agent exerted undue influence and misrepresented pertinent facts and issues with the intent to defraud.	As above.
3.	Whether Maxwell colluded or acted in concert and unlawfully and or fraudulently in acquiring blank transfer of share forms.	As above. This question will be ventilated through the questions raised in para. 20.2 and 20.6 above.
4.	Whether Maxwell acted in concert with the Claimant to strip the assets of Tracey Burgardt and to denude her assets which were held by the second defendant (Dragonfly Holdings Ltd).	In so far as it relates strictly to Dominion, this issue is covered by the question raised in para. 20.7 above.
5.	Whether the first defendant entered into any agreement with the Claimant or agents.	As articulated, this is too vague an issue. It does not indicate what the defendants request be addressed by the parties during trial.
6.	Whether Maxwell and [the] claimant individually or collectively caused the first defendant to breach the agreement to repay.	Claims against Mr Maxwell were struck out. Depending on how this is pleaded, the ground will most likely be covered by the question raised in para. 20.2 above.
7.	Whether the transfer of shares of the second defendant to the claimant and registration of resignation of Directors is null and void as the claimant had no legal basis to execute the transfer of shares.	This is covered by para. 20.6 above.
8.	An accounting of all monies received by the claimant and Douglas Maxwell.	This is covered by paras. 20.3; 20.4; and 20.8 above.

[24] Having set out the issues which in my view ought to be addressed by the parties during the trial, I hasten to add that the parties are at liberty to seek a variation of these issues at a Case Management Conference. Notice of the same will be issued to the parties after the handing down of my decision.

[25] I note that in her list of issues for trial, Ms Burgardt did not include the issue of an injunction, which

appears in **ground 11** of her statement of claim. It may be the case that Ms Burgardt has abandoned this ground. If that be the case, Ms Burgardt should, without delay, inform the court (and Dominion) if this be the fact.

[26] I would also encourage the parties to review and consider the impact on the merits of their respective cases of the views expressed by HHJ Chabot in her 28 April 2023 decision. Parties to litigation should, of course, continuously consider the merits of their claims at all stages of legal proceedings, including at trial. This promotes the overriding objective by assisting to narrow down issues, which ultimately reduces litigation costs. It also promotes the amicable resolution of some or all issues in a matter.

IV. Costs

[27] I am of the view that the issues arising for resolution in this matter could have been easily resolved with the assistance of the parties' attorneys. This is particularly important in this case which has been long drawn due to several factors. Some, like the delays caused by the pandemic and changes to the bench have little to do with the parties. However, the numerous interlocutory applications that have characterised this case and the inexplicable failure to settle the issues arising for trial have also added to the delay in the final resolution of this matter.

[28] The dispute over the issues falling for trial appears to be the result, in part, of tactical litigation. This may explain Dominion's submissions that the only issues remaining for resolution relate to the interpretation of the terms of the parties' loan agreement and the amount said to be due thereunder. It may also explain why Ms Burgardt focuses mainly on the issues raised in her counterclaim, which appear to not take into consideration the fact that HHJ Abel struck out claims against Mr Maxwell and the fact that HHJ Chabot ruled that there exists a loan agreement as between the parties.

[29] On balance, this is a matter in which the interests of justice require that each party bears its own costs.

V. Summary

[30] Drawing on the above, I order that:

- (a) The issues to be determined at trial are those set out in para. 19 above.
- (b) Any party that wishes to vary or add to the issues identified in para. 19 above shall first reach

out to the other party to seek agreement. Failing agreement, the party may make an application giving cogent reasons pursuant to **CPR 11**, which application shall be heard during the Case Management Conference to be scheduled.

- (c) There will be no order as to costs.

**HHJ Hondora
Judge
High Court
Civil Division**