IN THE SUPREME COURT OF BELIZE, A.D. 2005

CLAIM NO. 331 OF 2005

(TOMASA ALAMILLA	CLAIMANTS
(GREGORIA REYES	
(OYOLA JIMENEZ	
(GUILLERMO REYES	
(RAFAEL REYES	
(	
(AND	
(	
(IGNACIO REYES	DEFENDANT

Mr. Aldo Salazar, for the first, second, third and fifth claimants.
Mr. Ernest Staine for the fourth Claimant.
Mr. Oscar Sabido, S.C., for the Defendant.

AWICH J.

30.1.2006. DECISION

1. *Notes:* *An application to strike out a claim on the ground that it discloses no reasonable ground for bringing the claim; the threshold of untenable, unarguable claim or a claim that is frivolous and vexatious or otherwise an abuse of court process; rule 26.3(1) (c).*

2. This is decision in the interlocutory application filed on 10.11.2005, by the defendant, Ignacio Reyes, in the substantive claim, No. 331 of 2005. The defendant has applied for an order striking out the entire substantive claim and related orders on the ground that the claim does not disclose reasonable ground on which to bring a claim to court. The substantive claim itself has been made by Tomasa Allamilla, Gregoria Reyes, Oyola Jimenez, Guillermo Reyes and Rafael Reyes, the claimants, for an order revoking the title of the defendant to a certain 3.12 acres of land in Caye caulker, Belize, and to have his land certificate cancelled. The defendant, by Court Action No. 138 of 2003, had obtained title to the land on 21.7.2003, by an order of this Court, and the registration and issuance of land certificate by the Registrar of Lands under ***S: 42 of the Law of Property Act, Cap. 190 Laws of Belize***. The order of the Court on 21.7.2003, made the declaration of title in the defendant based on *"continuous undisturbed possession of that land for thirty years"*.

3. The application by the defendant to strike out the substantive claim was made under rule 26.3(1) (c) of the Supreme Court (Civil Procedure) Rules, 2005. Undoubtedly the Court has power to strike out a claim, under the rule cited. In order for the court to exercise the power, it must be satisfied that the claim is not tenable, that is, it does not raise an arguable question, or that the claim is frivolous and vexatious or oppressive or otherwise an abuse of court process. Moreover, the power is exercised only in plain and obvious cases when the claim is one which cannot succeed. The guide in the old case, ***Attorney General of Lancaster v L&N.W. Railways [1892] 3 Ch. 278,*** and the case of ***Nogle v Feilden [1966] 2 Q.B. 633***, is still good.

4. ***The Facts.***

In Action 138 of 2003, the action by which the defendant obtained declaration of title on the ground that he had been in continuous undisturbed possession of the land for thirty years, the defendant included and took the benefit of prior continuous and undisturbed possession by his father for 7 years. The law at ***S:42(2) of the Law of Property Act***, allows *"the possession of some other person through whom the applicant for a declaration of title lawfully derived his possession [to] be taken into account in computing the period of thirty years..."* The defendant deposed that his father, with whom the defendant lived, had been in continuous undisturbed possession for about 7 years before he died, and the defendant himself from 1977 to 2003, about 26 years. The father had acquired the land from his own father and sold it to a Mr. Stirling who never took possession of the land, the father remained on the land. The defendant deposed further in support of his petition, that all his brothers and sisters had left the land before his father died, and earlier than 30 years, the defendant remained with only his father and mother on the land until he died and after. The defendant also filed an affidavit on direction by the Court, deposing that he had informed all the brothers and sisters and that they did not raise any objection to his application for declaration of title to the land.

5. The claimants in this claim, No. 331 of 2005, have filed affidavits in which they claim that the defendant's affidavit in support of his petition for title

had been fraudulent in several aspects. Three examples are these: 1. The averments that Guillermo Reyes and Rafael Reyes were not informed at all about the petition by the defendant for title, the others who were informed were made, by the defendant, to understand that the defendant would obtain title for the benefit of all the brothers and sisters, the land would subsequently be divided among all of them. 2. The averment that the second claimant was the only child that lived on the land with the parents not the defendant. 3. The averment that the defendant did not live on the land, rather on a separate adjacent lot. The defendant, of course, vehemently challenged those averments.

6. ***Determination.***

If the averments by the claimants are true, then they have at least an arguable case of fraud against the title of the defendant. It is not the duty of the Court, at this stage, to appraise the evidence and make definite findings of facts. That is what trial is meant for. Because the averments by the claimants would establish an arguable case, I am inclined to refuse the application for an order to strike out the substantive claim, No. 331 of 2005 and the related orders and allow the claim to proceed in Court.

7. Besides the issues of facts in the case, a complex question of law has emerged. The defendant could claim the seven years continuous undisturbed possession by the father and add to his 26 years so as to demonstrate 30 years continuous undisturbed possession, and apply for a declaration of title,

could the other children, the claimants, do so if the facts should be proved that they left the land before or on the death of their father even if they were entitled to inherit the interest of the father, the 7 years continuous undisturbed possession? Put another way, could they claim the 7 years continuous undisturbed possession by their father and the 26 years continuous undisturbed possession by their brother, the defendant, so as to demonstrate 30 years continuous undisturbed possession by themselves? There is a view that even a complex question of law may be extensively argued by counsel at the hearing of an application for an order to strike out a claim - see the Australian case, ***Steel Industries Inc. v Commissioner for Railways (1964)112 C.L.R 125.*** I consider that the better view is that a complex question of law should be allowed to go to full trial instead of it being decided at the stage of determining an application for an order to strike out a claim - see ***Wenlock v Moloney [1965] 1 W.L.R. 1238 or [1965] 2 ALL. E.R. 871 C.A.***

8. The application filed on 10.11.2005, by the defendant, for an order striking out the substantive claim, No. 331/2005, is dismissed with costs to the claimants. The costs are to be agreed or taxed.

9. The substantive claim is to be listed by the Registrar on a date available in my calendar, for case management conference.

10. Dated this Monday the 30th day of January, 2006.
At the Supreme Court.

Belize City.

Sam Lungole Awich

Judge

Supreme Court of Belize.