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

CLAIM NO. 97

JEROME MARTINEZ **Claimant/Defendant**

BETWEEN **AND**

VICTORIA ELIJIO **Defendant/Applicant**

—

BEFORE the Honourable Abdulai Conteh, Chief Justice.

Mr. Edwin Flowers S.C. for the defendant/applicant.
Mr. Philip Zuniga S.C. for the claimant/defendant.

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DECISION

The applicant, Victoria Elijio of Hopkins Village, Stann Creek District, Belize, applies to the court for an order that the judgment entered at Case Management by the Registrar in this action on the 11th day of January 2006 be set aside.

2. I will dismiss the application. This is not a case for striking out but to put it beyond doubt, I will first refer to the powers of the Registrar. If you look at Part 2.5 – *Who may exercise the powers of the court:*

> *"2.5(1) Except, where any enactment, rule or practice direction provides otherwise the functions of the Supreme Court may be exercised in accordance with these Rules and any direction made by the Chief Justice, by a single Judge of the court assigned or not assigned to the civil division of the court or the Registrar sitting as a*

Registrar or as the Master of the Court."

(emphasis added)

Clearly the Registrar is included expressly there, which vests her powers of case management; and the court's duty in case management is to further the overriding objective of the New Civil Procedure Rules by actively managing cases and this is expressly stated in rule 25.1(i) and (j) as to what the court can do:

> *"25.1 The court must further the overriding objective by actively managing cases…"*

And rule 25.1(j) states particularly of the objective of case management as -

> *(j) dealing with the case or any aspect of it, where it appears appropriate to do so, without requiring the parties to attend court."*

So the Registrar's decision was not premised on the absence or attendance of either or both parties as the application and its supporting affidavit imply. Those powers to give judgment or dismiss a case are available under rule 25.1(i):

> *"25.1(i) dismiss or give judgment on a claim after a decision on a preliminary issue."*

3. Again, the court may under **rule 15 on summary judgment**, in particular rule 15.2(a):

> *"Give summary judgment on the claim or on a particular issue if it considers that -*

(a) the claimant has no real prospect of succeeding on the claim or the issue; or

(b) the defendant has no real prospect of successfully defending the claim or the issue."

4. Further, under rule 26.3(c) the court has powers of case management to strike out a statement of case:

"26.3(1) In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court -

(a) …

(b) …

(c) that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim."

5. Under the New Civil Procedure Rules the court can decide whether the claim or the defence can be struck out as having no prospect of success or whether to consider a preliminary issue. That preliminary issue may well be as to liability. If the court comes to a conclusion on this it can enter judgment accordingly.

6. The judgment of the House of Lords in the **Three Rivers District Council and others v Bank of England (No. 3) [2001] 2 All E.R. 513** is particularly instructive as to the operation of the combined powers of the court to give a judgment or decide a case either by way of summary judgment or utilizing its case management powers to do so. I, in particular, advert to paragraphs

87, 88, 89, 90, 91, 92 and 93 of that judgment of Lord Hope of Craighead as to what the words in our own Civil Procedure Rules, rule 15.2(a) and (b) on summary judgment mean, which in a sense overlap with Civil Procedure Rule 26.3(c) relating to some of the powers of the Court at case management. I must point it out that the latter, 26.3(c) enables the court to strike out a statement of case at case management while the former enables the court to enter summary judgment. Lord Hope of Craighead said in this context

> *"87. …The parties are agreed that if the question whether the claim should be struck out is to be reconsidered it must now be determined under the Civil Procedure Rules 1998, SI 1998/3132: see the general principle stated in the Practice Direction supplementing CPR Pt 51, para. 11 (Practice Direction – Transitional Arrangements). The power which is given to the court to strike out under CPR Pt 3, which is concerned with the court's case management powers, is expressed in r 3.4(2) in these terms:*
>
> > *'The Court may strike out a statement of case if it appears to the court – (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim; (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or (c) that there has been a failure to comply with a rule, practice direction or court order.'*
>
> *88. The parties also agree that, if Clarke J were to be held to have applied the wrong test when he ordered the action to be struck*

out, the relevant rules under the CPR are not confined to the provisions for striking out in CPR 3.4. In Margulies v Margulies [2000] CA Transcript 444 the judge's decision to strike out was given pursuant to RSC Order 18, r 19 before the coming into effect of the CPR. Nourse LJ said (at para 63) that, if the judge wrongly applied the test, the Court of Appeal would have to determine the matter pursuant to CPR 24.2. I would not go so far as to say that your Lordships are obliged to treat the Bank's motion to strike out as an application for summary judgment under r 24.2. It would, I think, be more accurate to say that your Lordships have power to do so, and that the question is whether your Lordships should exercise that power. (See Taylor v Midland Bank Trust Co Ltd [1999] CA Transcript 1200, Civil Procedure (2000 edn) vol 1, para 3.4.6). CPR 24 sets out various procedural requirements which do not apply to r 3.4. But the claimants do not object to the application of r 24.2 on procedural grounds. So I would accept Mr. Stadlen's submission that it is appropriate for the Bank's application for the claim to be struck out to be treated as if it were an application for summary judgment.

89. *CPR 24.2 provides:*

'The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if – (a) it considers that –(i) that claimant has not real prospect of succeeding on the claim or issue; or (ii) that defendant has no real prospect of successfully defending the claim or issue; and

(b) there is no other reason why the case or issue should be disposed of at trial.'

90. *The test of which Clarke J applied, when he was considering whether the claim should be struck out under RSC Ord 18, r 19, was whether it was bound to fail (see the third judgment). Mr. Stadlen submitted that the court had a wider power to dispose summarily of issues under CPR Pt 24 than it did under RSC Ord 18 r 19, and that critical issue was now whether, in terms of CPR 24.2(a)(i), the claimants had a real prospect of succeeding on the claim. As to what these words mean, in Swain v Hillman [2001] 1 All ER 91 at 92, Lord Woolf MR said:*

> *'Under r 24.2, the court now has a very salutary power, both to be exercised in a claimant's favour or, where appropriate, in a defendant's favour. It enables the court to dispose summarily of both claims or defences which have no real prospect of being successful. The words "no real prospect of being successful or succeeding" do not need any amplification, they speak for themselves. The word "real" distinguishes fanciful prospect of success or, as Mr. Bidder QC [counsel for the defendant] submits, they direct the court to the need to see whether there is a "realistic" as opposed to a "fanciful" prospect of success.'*

91. *The difference between a test which asks the question 'is the claim bound to fail?' and one which asks 'does the claim have*

a real prospect of success?' is not easy to determine. In Swain's case Lord Woolf MR (at 92) explained that the reason for the contrast in language between r 3.4 and r 24.2 is that r 3.4, unlike r 24.2, the court generally is only concerned with the statement of case which it is alleged discloses no reasonable grounds for bringing or defending the claim. In Monsanto plc v Tilly (1999) Times, 30 November, Stuart Smith LJ said that r 24.2 gives somewhat wide scope for dismissing an action or defence. In Taylor's case he said that, particularly in the light of the CPR, the court should look to see what will happen at the trial and that, if the case is so weak that it had no reasonable prospect of success, it should be stopped before great expense is incurred.

92. *The overriding objective of the CPR is to enable the court to deal with cases justly (see r 1.1). … It must seek to give effect to the overriding objective when it exercises any power given to it by the rules or interprets any rule (see r 1.2). While the difference between the two tests is elusive, in many cases the practical effect will be the same.*

In more difficult and complex cases such as this one, attention to the overriding objective of dealing with the case justly is likely to be more important than a search for the precise meaning of the rule. As May LJ said in Purdy v Cambran [1999] CPLR 843 at 854:

> *'The court has to seek to give effect to the overriding objective when it exercises any powers given to it by the*

rules. This applies to applications to strike out a claim. When the court is considering, in a case to be decided under the Civil Procedure Rules, whether or not it is just in accordance with the overriding objective to strike out a claim, it is not necessary to appropriate to analyse that question by reference to the rigid and overloaded structure which a large body of decision under the former rules had constructed.'

93. *In Swain's case Lord Woolf MR gave this further guidance:*

'It is important that a judge in appropriate cases should make use of the powers contained in Pt 24. In doing so he or she gives effect to the overriding objectives contained in P 1. It saves expenses; it achieves expedition; it avoids the court's resources being used up on cases where this serves no purpose, and I would add, generally, that it is in the interests of justice. If a claimant has a case which is bound to fail, then it is in the claimant's interests to know as soon as possible that that is the position. Likewise, if a claim is bound to succeed, a claimant should know this as soon as possible…Useful though the power is under Pt 24, it is important that it is kept to its proper role. It is not meant to dispense with the need for a trial where there are issues which should be investigated at the trial. As Bidder put it in his submissions, the proper disposal of an issue under Pt 24 does not involve the

judge conducting a mini-trial, that is not the object of the provisions; it is to enable cases, where there is no real prospect of success either way, to be disposed of summarily.' (See [2001] 1 All ER at 94-95).
(emphasis added)

The sentiments expressed by Lord Woolf in **Swain v Hillman [2001] 1 All ER** p. 1 above, was referring to rule 4.2 of the English Rule which is re-echoed in the Belize Civil Procedure Rules, 2005 in rule 26.

7. In the instant case, the Registrar, having perused the statements of case for both the claimant and the defendant concluded in effect that the defendant, on her own admission, had no real prospect of successfully defending the claimant's case and accordingly entered judgment in the claimant's favour.

8. Without wishing to re-open the issues, as if this was an appeal, which should have been the correct procedure if there was dissatisfaction against the Registrar's judgment, it was evident that the claimant and the defendant, including their other siblings, were altogether beneficiaries of land left intestate by their deceased father. The defendant sold a portion of that land but first having entered into an agreement with the other siblings and obtaining a Power of Attorney to do so for the sum of $400,000.00 out of which she paid $10,000.00 to the claimant and refused to pay any further sum.

9. Elementary arithmetic and ordinary fair play would require that if $400,000.00 is obtained from a property equally owned by four persons their respective share would be $100,000.00 each, unless

there is a clear agreement to the contrary. As they are all beneficiaries they are all entitled to take equally.

10. I therefore do not think I can disturb the Registrar's function as she has, under the New Civil Procedure Rules, clear, undisputed authority to enter the judgment she did.

11. Mr. Flowers S.C. has rightly taken the point that at case management there could be a need to hold back a final decision regarding the disposal of the issues if the parties or one of them is absent; but clearly, as I have said, the objectives of case management are as stated in rule 25. And by rule 25.1(j) the court can deal with a case or any aspect of it, where it appears appropriate to do so, without requiring the presence of the party to attend court.

12. In the instant case, the Registrar perused the statement of case and on the strength of the respective cases before her, she came to the conclusion she did.

13. I therefore do not think I can disturb or even have the power to disturb her finding.

14. The application is accordingly therefore dismissed.

15. I will award costs in the sum of $1,000.00 to the respondent.

A. O. CONTEH
Chief Justice

DATED: 3rd February 2006.