

IN THE SUPREME COURT OF BELIZE A.D. 2002

ACTION NO. 505 of 2002

BETWEEN

**SUNSET ENTERPRISES LTD
ELIZABETH ROSS
BOB ROSS**

PLAINTIFFS

AND

**MARIA VEGA
BELIZE TOURIST INDUSTRY
ASSOCIATION**

FIRST DEFENDANT

SECOND DEFENDANT

CORAM: HON JUSTICE SIR JOHN MURIA

Advocates:

M Peyrefitte for the Plaintiffs

Ms Lois Young S.C. for First Defendant

Mrs. Magali Marin Young for the Second Defendant

RULING

Delivered the day of 2007

MURIA J: This matter came before the Court on Tuesday 17 April 2007. In view of the letter of request for an adjournment from the Attorney for the plaintiffs, I felt that the question of adjournment could be dealt with adequately in Chambers. I had asked the Court Marshall, Mr. Ferguson, to check for Counsel for both parties, to ensure that both parties were represented before the Court in Chambers. The Court Marshall made checks for both Counsel. The Court was then advised that only Mr. Peyrefitte, Counsel for the plaintiffs was available and waiting to come into chambers.

The case was called and Counsel for the plaintiffs being present, addressed the Court. Shortly after that, Ms Magali Marin Young of Counsel for the second defendant entered the Court.

The submission of Counsel for the plaintiff was that his client had gone to the US following the indication at the last hearing before Awich J that His Lordship's diary was fully committed and that he would not be able to hear the matter until September 2007. Counsel stated that in view of his client's absence in the U.S, he wrote to the Court requesting an adjournment to a date in September. Counsel further indicated to the Court that he had tried unsuccessfully to contact Ms Lois Young, Counsel for the first defendant regarding his impending request for an adjournment.

Mr. Peyrefitte also told the Court that his clients would not be pursuing the matter against the second defendant. Ms. Marin Young endorsed the suggestion that the plaintiffs would not be pursuing against her clients.

Having heard Counsel for the plaintiffs and second defendant, the Court made an order adjourning the case to a date to be fixed by the Registrar, in September 2007.

Shortly after that, Ms. Lois Young of Counsel for first defendant, together with her client the first defendant and her witness came into my chambers. I then advised Counsel that the Court had made an order adjourning the case to September, after hearing Mr.

Peyrefitte and Ms. Marin Young. I had briefly recounted to Counsel what Mr. Peyrefitte submitted to the Court as the basis for the requested adjournment.

In reply Ms. Lois Young stated that she, with her client and witness, was waiting in Court in the other building and did not know that the matter was proceeding in chambers. Counsel also stated that she has not seen any letter of request for adjournment from the plaintiffs' Attorneys.

In the light of the fact that the first defendant and her Counsel were in Court waiting while the matter was dealt with in chambers, I felt that it would only be right and proper that Counsel for the plaintiffs be recalled and have the application for adjournment reheard. The Court Marshall, upon direction by the Court, attempted to locate Mr. Peyrefitte who was by then had gone up to Belmopan.

Counsel for the first defendant was recalled into my chambers and advised her that the Registrar would be directed to re-list the matter for Friday 20 April 2007. Counsel for the plaintiffs was also advised of the re-listing date when he later appeared in my chambers.

The above scenario was not of the type that should be encouraged, both on the part of the Court and Attorneys, to occur. Be that as it may, the Court is to determine now whether or not the case should be adjourned to September or whether it should be struck out or not.

The basis for the plaintiffs' application for adjournment is simply that in view of the indication by the Court (Awich J) at the last Pre-Trial Hearing that His Lordship's "calendar is full up to September 2007" His Lordship may not be able to deal with the case before then. The plaintiff had left for the U.S and would not return until August or September this year. The letter from plaintiffs Attorney dated 12 April 2007 addressed to the Registrar requesting adjournment was written based on that indication from the Court. However, the Court's intimation went further and suggested that if possible the matter to be dealt with before September, before another Judge. I feel this is the reason for listing it before September 2007.

The Court was not told nor was it stated in the letter of 12 April 2007 as to when the plaintiff left for the U.S. However, had the Registrar been aware of the fact that the plaintiffs or one of them, had gone abroad based on what the Pre-Trial Judge had indicated, I am sure the Registrar would not have issued the Notice of Trial dated 11 April 2007. Based on the suggestion by the Pre-Trial Judge that the case can be placed before another Judge if it was to be dealt with earlier than September, coupled with the fact that there was no indication that any of the parties would not be available, the matter was fixed for 17 April 2007.

To add to the complication, the letter requesting the adjournment was not copied to the Attorneys for the defendants. Had the letter been copied to all Attorneys involved in the matter, the respective positions of the parties would have been made clear to the Court

with better understandings among Attorneys on their respective positions in the case. In a case which is contested or likely to be contested and the parties are represented by Attorneys or Counsel communication with the Court by letters on the case must be copied to all Attorneys or Counsel, especially where an adjournment is sought following a notice of trial already issued to the parties. This is not only a matter of courtesy to Attorneys or Counsel on the other side, but a good Court practice. Unfortunately, this is not one of such case.

Adjournment practice

Adjournments can sometimes seriously affect cases that are before the Court. In some jurisdictions, practice directions or adjournment policies have been put in place to address this issue of adjournment. However, in the absence of practice directions, I feel three considerations need to be pointed out when seeking an adjournment in a case which is already fixed for trial. First, when a hearing list has been fixed, any request for adjournment sent to the Court must be copied to the other party or parties. This will assist the Court in setting a new date which is mutually consented to by the parties for trial. In some instances, a party after receiving the request may object to the adjournment, in which case the Court will fix a date for the formal hearing of the application for adjournment. Second, the Court must be mindful that a refusal of an adjournment will not cause prejudice to a party in the case. Third, the judge has discretion as to the manner and time of disposing the case, taking into account the overriding interest of justice. This factor entails, among other things, a consideration of the history of the case.

The present case was commenced under the old procedure in 2002. Trial was fixed for 5 and 6 July 2004 and again for 4 October 2004. On both occasions the plaintiffs wrote letters to the Court, copied to the Attorneys for the defendants, seeking adjournments because of the absence of the second defendant overseas. Adjournments were granted.

With the introduction of the new Civil Procedure Rules in 2005, the case was brought under the new Rules. Consequently, the plaintiffs applied for Case Management Conference on 3 June 2005 pursuant to CPR 72.3(3). The Case Management Conference was held on 30 March 2006 at which time Case Management Orders were made by the Registrar. The Pre-Trial Review before Awich J, was fixed for 29 November 2006 at which hearing only Counsel for the plaintiffs was present. Counsel for both defendants were absent. The Pre-Trial hearing was adjourned to 13 March 2007. The Court record shows that when the case was called, Counsel for both the plaintiffs and defendants were not present. His Lordship, the Pre-Trial Judge, recorded that his calendar up to September was full and that the matter could be placed before another judge if it was to be dealt with earlier than September. However, a short time later after attending to a criminal trial and appearing before His Lordship the Chief Justice, Counsel for the plaintiffs appeared before the Pre-Trial Judge who advised Counsel that the order was that the Registrar fixed the case before another judge if it was to be heard earlier than September 2007. The case was then fixed for Pre-Trial on 17 April 2007 before me.

Since the case came under the new Rules procedure, no trial date had yet been fixed. It was anticipated that the trial date would be fixed at the Pre-Trial hearing had the adjournment not been sought by the plaintiffs.

Two Affidavits filed on behalf of first defendant.

In the light of the plaintiffs' reasons for requesting the adjournment, Counsel for the first defendant took steps to ascertain that the plaintiffs or at least one of them was not out of the country. Two affidavits were filed in this regard. One was filed by Ms Lois Young and the other was filed by Ms Shirley Young. The affidavit of Lois Young, as to her telephone conversation with one Ms. Elizabeth Ross (second plaintiff), taken at its highest, is evidence of the fact of her telephone conversation with a "Ms. Elizabeth Ross" and nothing more. It is not evidence of the fact that it was Ms. Elizabeth Ross, the second defendant, whom she had the telephone conversation with. The affidavit of Ms. Shirley Young, however, goes to establish that Ms. Elizabeth Ross, the second plaintiff, was at Caye Caulker, in Belize, on 17 April 2007. It lent support to Ms Lois Young's evidence, though. In her affidavit, Ms. Shirley Young deposed to the fact that she even spoke to the second defendant on that date. She also deposed that Bob Ross, the third defendant, was not in Caye Caulker and has not been there for several months. Taken in their totality, the two affidavits demonstrate to this Court that one of the plaintiffs, namely, the second plaintiff, was on 17 April 2007 still in Belize.

Whether Counsel for plaintiff telling truth.

Ms. Lois Young of Counsel for the first defendant, suggested or impliedly suggested that Mr. Peyrefitte was not telling the truth when he stated that the plaintiff had gone to the U.S following the last hearing on 13 March 2007. Whether Mr. Peyrefitte is telling the truth or lying, is something I need not decide in this application. If I were to do so, I would need to be satisfied that Counsel's actions were something more than a behaviour of an Attorney who was not serious of conducting his client's case with diligence.

What I need to decide is whether or not an adjournment should be granted to the plaintiffs in the circumstances of the case, taking into account the indication from the Court at the 13 March 2007 hearing, the letter of request for adjournment and the subsequent discovery by the defendant that one of the plaintiffs was in Belize on 17 April 2007.

Should the case be struck out?

Let me deal briefly with the submission on behalf of the first defendant that the case should be struck out. If I understand Ms. Lois Young correctly, her submission on this point was based on the suggestion that the reason stated in the letter asking for adjournment was not entirely correct. Secondly, the case had been going on since 2002 and that the case has been fraught with adjournments. In effect, Counsel is saying that the plaintiffs are not serious with their case, while the defendants have been putting up with these adjournments at their financial expenses. While that may be so, the record shows that since the case had been dealt with under the new Rules, no trial date has yet been fixed for the case. The case is very much at its final stage of the pre-trial

preparation. It would therefore not quite accurate to say that the case is laden with delays.

The Court has power to strike out actions that are fraught with delays. The power is discretionary and must be exercised with caution. Each case must be treated under its own circumstances. It will, however, be noted that the suggestion by Counsel for the first defendant for striking out the claim is based on what is said to be a repeated course of conduct to have the case adjourned one more time, thereby delaying the case further. While the Court appreciates the concern raised on behalf of the defendant, the decision to strike out the present case would require more than an alleged delay to justify a striking out. There must be some evidence pointing to a suggestion that the plaintiffs do not intend to pursue the case so as to justify discontinuing the examination of the case any further. Nothing of the sort has been shown here apart from what the Court has already been told. The request for the adjournment was made because (now it is clear) one of the plaintiffs had gone abroad and would not return until September this year. In those circumstances, it would not be right to accede to the application to strike out the plaintiffs' case and I decline to do so.

Should adjournment be granted?

The application for adjournment is strenuously opposed by Counsel for the first defendant in this case and I feel Counsel for the plaintiffs can hardly complain about that. On the Court record there is some basis (although limited) for the plaintiffs' decision to go abroad until September this year. I said "although limited" because the Court record

goes on to show that the case could well be placed before another judge to deal with even before September. It is here that prudent advice is called for on the part of Counsel for the parties, especially on the part of Counsel for the plaintiffs. It is obvious that the plaintiffs were “caught out” by the second part of the order on the record made by His Lordship Mr. Justice Awich. The Registrar was perfectly entitled to list the matter down for Pre-trial before another judge before September this year.

As I have stated earlier, no trial date has been set yet in this matter after it has gone through the new Rules procedure. Thus in the interest of justice and despite Ms Lois strenuous objection, the Court feels that an adjournment is unavoidable in the circumstances of this case. One of the plaintiffs had already gone abroad and is not likely to be back in the country until September. At the same time, it must be said that this hearing would not have come about had the plaintiffs’ and their Attorneys exercised prudence and diligence in the conduct of their case, paying heed to what the Pre-trial Judge had said on 13 March 2007.

In view of the situations of this case, the granting of this adjournment must be on conditions, namely (1) that upon the plaintiff’s arrival back into Belize in or before September 2007, the Attorneys for the plaintiffs must immediately notify the Court and the Attorneys for the first defendant; (2) thereafter, the Attorneys for both parties must agree to a new date for trial and advise the Registrar of that new date; (3) failure to agree to a new date for trial, the Registrar to fix a date and inform the parties; (4) the costs of this adjournment must be paid by the plaintiffs, to be taxed if not agreed.

Order: Adjournment granted on the conditions stated to a date to be fixed by the Registrar in September 2007.

Hon Justice Sir John Muria