IN THE SUPREME COURT OF BELIZE, A.D. 2022

CLAIM No. 569 of 2021

BETWEEN

CURTIS ARNOLD	**CLAIMANT/RESPONDENT**

AND

MINISTER OF NATURAL RESOURCES	**1ST DEFENDANT/APPLICANT**
ATTORNEY GENERAL OF BELIZE	**2ND DEFENDANT/APPLICANT**

ORDER OF The Honourable Madam Justice Patricia Farnese

HEARING DATE: May 17, 2022

APPEARANCES

Mr. Jaraad Ysaguirre for the Claimant/Respondent
Ms. Lavina Cuello and Ms. Alea Gomez for the Defendants/Applicants

DECISION ON APPLICATION FOR STRIKE OUT

Introduction

[1] Mr. Arnold has filed an application for declaration under a public body and relief under the constitution by way of an originating motion. He alleges declarations are appropriate and damages are owing, in the alternative, for fraud, mistake, breach of contract, and the arbitrary deprivation and/or compulsory acquisition of his property contrary to subsection 3(d) and section

17 of *The Constitution of Belize.* He further seeks specific performance and rectification of the title to land.

[2] Mr. Arnold and Mr. Vargas each received approval to purchase a parcel of land from the Minister of Natural Resources. On January 23, 2008, they completed the Land Transfer Form and paid the purchase price in full for the parcels shortly thereafter. Mr. Arnold immediately purchased Mr. Vargas' parcel. The Minister of Natural Resources never completed the land transfer by issuing titles in Mr. Arnold's name. On August 6, 2009, certificates of title to those same parcels of land were issued to two others. Mr. Arnold learned of the subsequent titles in 2019 when he decided to search the Land Register after he discovered a fence had been constructed on the land.

[3] The defendants admit the facts as described and explain that issuing titles to others was a mistake. The mistake was caused by a change in the database program used to document pending land transactions. Mr. Arnold's interest was inadvertently not transferred to the new system. Despite admitting the mistake caused them to wrongfully breach their contract with Mr. Arnold, they have applied to have the application struck out.

Discussion

[4] Rule 26.3(1)(b) gives discretion to this court to strike out all or part of a statement of case if it appears "that the statement of case or the part to be struck out is an abuse of process of the

court or is likely to obstruct the just disposal of the proceedings." Often described as the "nuclear" option, courts are frequently cautioned to sparingly exercise this discretion and only in the clearest of cases.[1] Striking out is not appropriate where an arguable case is presented or where complex facts or legal issues are raised by the case. The burden of proof is on the applicant to show that granting the application to strike out all or part of the case is warranted.[2]

[5] Because the defendants have admitted that they breached the contract for a land transfer, the issue to be decided is not whether there is an arguable case *per se*. The question for the application is whether there are any reasons which bar Mr. Arnold from obtaining a remedy for that breach. If Mr. Arnold is barred from obtaining a remedy, striking out all or part of the case is appropriate.

[6] The outcome of the strike-out application largely depends on a determination of when Mr. Arnold ought reasonably to have discovered the land was transferred to others thereby frustrating his contract with the defendants. The defendants argue that I should strike out Mr. Arnold's claim because it is an abuse of process as the private law remedy for breach of contract is available to him. The defendants allege that Mr. Arnold has improperly framed the action as a constitutional claim to avoid the 6-year limitation period outlined in the *Limitations Act* for disputes involving property claims and breach of contract. The defendants further argue that if I

[1] *Thompson v Flowers et al.*, Supreme Court Claim No. 631 of 2020 at para 2.
[2] *Thompson, ibid.*

were to accept that Mr. Arnold has a valid claim for unlawful expropriation, the claim should nonetheless be struck out due to unreasonable delay.

[7] When Mr. Arnold ought to have learned of the defendants' mistake is in dispute. The test for determining when a mistake ought to have been discovered is well established:[3]

> The question is not whether the claimant *should* have discovered the mistake sooner, but whether he *could* with reasonable diligence have done so. The burden of proof is on the claimant. He must establish on the balance of probabilities that he *could not* have discovered the mistake without exceptional measures which he could not reasonably have been expected to take.

The answer to this question is not readily apparent on the evidence before me.

[8] The defendants argue that with reasonable diligence, Mr. Arnold ought to have discovered the transfers within 6 years of the mistake. The subsequent title transfers were published in the Land Register in 2009, a little more than 1.5 years after Mr. Arnold's agreement to purchase the lands. Section 33 of *The Registered Lands Act* provides:

> Every proprietor acquiring any land, lease or charge shall be deemed to have had notice of every entry in the register related to the land, lease or charge.

When read in conjunction with section 26, which grants absolute title upon registration save for prior registered interests, the purpose of this section is to protect the rights of the prior interest holders when land is transferred. The effect of section 33 is that the registered interests are readily discoverable by searching the Land Register. The defendants argue that not searching the

[3] *Franked Investment Income Group Test Claimants. v. HRMC* [2020] 3 WLR 1369 at para 209(2).

Land Register until 2019 is unreasonable. The inordinate delay in obtaining title would have caused a reasonable person in a similar position to Mr. Arnold to conduct a search of the Land Register sooner.

[9] Mr. Arnold disagrees and says that he had no reason to investigate the Land Register. He periodically visited the Lands Office to inquire as to the status of his title and was given no indication that the issuance of his titles was no longer being processed. It was only after one of his regular visits to the parcels that the appearance of a fence caused him to become concerned. The fence 'triggered' his investigation.

[10] The question of whether Mr. Arnold has an alternative remedy is only relevant if I determine that Mr. Arnold's application is not out of time. The Caribbean Court of Justice (CCJ) has held that the: [4]

> …determining factor in deciding whether there has been an abuse of process is not merely the existence of a parallel remedy but also, the assessment that the allegations grounding constitutional relief are being brought "for the sole purpose of avoiding the normal judicial remedy for unlawful administrative action".

While the CCJ was considering judicial review in the alternative, there is no obvious reason why the same does not hold true for a private law remedy.

[4] Lucas v. The Chief Education Officer, [2015] CCJ 6 (AJ) at para 134, quoting Quoting Sharma CJ in *Belfonte v AG* (2005) 68 WIR 413 at para 18.

[11] Likewise, whether Mr. Arnold still has a private remedy depends on the same finding of fact that this court has yet to determine. The burden of proof lies with the claimant. As such, I find that to strike out this claim before Mr. Arnold can present his case to meet this burden of proof is not in keeping with the court's overriding objective to deal with matters justly.

[12] It is, therefore, ordered that:

- The application for strike out is dismissed.
- The applicants/defendants shall pay costs of the application to the claimant/ respondent as agreed or taxed.

DATED the 5th day of July, 2022.

Justice Patricia Farnese