

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

CLAIM NO. 656 OF 2022



PROPERTY OWNERS ASSOCIATION INC

CLAIMANT

AND

BETTER IN BELIZE LTD

1ST DEFENDANT

BETTER IN BELIZE HOMEOWNERS' ASSOCIATION INC

2ND DEFENDANT

DEFENCE

The Defendants dispute the claim on the following grounds:

1. The Defendants admit paragraph 1,2,3 & 4 of the Claimant's statement of claim.
2. The Defendants admit to paragraph 5 in so far that buyers who buy property from Better in Belize Limited are bound by the covenants in force at the time of purchasing.
3. The Defendants deny paragraph 6. The covenants do not apply to all Better in Belize land, the covenants which primarily have to do with construction only apply to buyers after they have purchased property and seek to start construction.
4. The Defendants admits to paragraph 7.
5. The Defendant denies paragraph 8.
6. The Defendant denies paragraph 9. The written Agreement constituted the entire Agreement between the parties except for in so far that it has to comply with the CCR for the community.
7. The Defendant denies paragraph 10. The claimant is not the duly elected HOA/EAB at Better in Belize.
8. The Defendant denies paragraph 11 in so far as Claimant purports that the permanently replaced the defendant as the HOA/EAB. The term of the EAB/HOA is strictly set out in the CCR at paragraph two (2) where it says *"The covenants herein set forth and do hereby establish the EAB which shall be composed of three to five community appointed*

by members in an annual election.” It goes on later to state that “The EAB will also implement the structure for the Home Ownership Association.”

9. The Defendant neither admits nor denies paragraph 12 and puts the Claimant strictly to prove.
10. The Defendant admits paragraph 13.
11. The Defendant denies paragraph 14 and 15. The terms of the agreement are strictly governed by the written agreement.
12. The Defendant denies paragraph 16 in so far as it purports that ownership of all property of the Home Owner Association was transferred to the claimant, it was only the right of management, use and enjoyment of property of the Home Owner Association and specific property which was transferred namely some tools and other equipment.
13. The Defendant neither admits nor denies paragraph 17, 18, 19, 20 and puts the Claimant to strictly prove.
14. The Defendant denies paragraphs 21, 22, 23, and 24
15. The Defendants agree with the claimants claim in paragraph 25 and 26 in so far that the Claimants had the authority to manage the community as HOA/EAB from the date of signature in 2016 until January 30th, 2020. The Claimants have therefore been unlawfully misrepresenting themselves as the duly authorized HOA/EAB from that date.
16. The Defendant denies paragraph 27. The annual maintenance fees only applies to persons whom have purchased lots from the 1st Defendant who is the developer and not he property developer itself.
17. The Defendant neither accepts nor denies paragraph 28 in so far that Mr. Tremblay as managing director of the 1st Defendant sent any letter to the claimant. However, the

Defendants deny that at any time the 1st Defendant was responsible to pay any maintenance fee.

18. The 1st Defendant denies paragraph 29.

19. The Defendant neither accepts nor denies paragraph 30 and puts the Claimant strictly to prove.

20. The Defendant denies paragraph 31 & 32.

21. The defendant denies paragraph 33 in so far that, Mr. Browning had all proper authority to rescind the agreement.

22. The Defendants deny paragraph 34 and 35.

23. The Defendants admits paragraph 36.

24. The Defendants denies paragraph 37. The community decides who is the EAB/HOA and the 2nd Defendant does not have shares only members of which Mr. Browning is only one of X members who are also lot owners.

25. The Defendant denies paragraph 38. The transfer of authority to act was lawfully done.

26. The Defendant neither accepts nor denies paragraph 39, it puts them strictly to prove.

27. The Defendants accept paragraph 40 in so far that the Claimant has received cease and desist letters from attorneys for the Defendants.

28. The Defendants deny paragraph 41.

29. The Defendant denies paragraph 42 in so far as it characterizes the criminal complaints filed by its director to be frivolous.

30. The Defendant denies paragraph 43. The civil claims have been filed against the claimants by lot owners are by the claimants in those matter own volition.

31. The Defendant denies paragraph 44. Only the duly appointed EAB/HOA has any such authority of which the claimant is not.
32. The defendant denies paragraphs 45-65.
33. Except that which is expressly admitted herein, each and every allegation and statement contained in the Claimant's Statement of Claim is denied.

COUNTERCLAIM

34. The Defendants repeats paragraphs 1-32 of its Defence.
35. The 1st Defendant is the legal owner of the subdivision more particularly described in the Deed of Conveyance 432 of 2011 In Deed Book Volume 6 of 2011, Folios 83 to 94, situate along the Benque Viejo/Mollejon Road, Water Hole Area, Cayo District. A copy of the Approved Subdivision is marked BB1.
36. On or around the beginning of 2016 the 1st Defendant gave permission for the Claimant to act as a Home Owners Association for their property. A copy of WRITTEN PERMISSION is attached marked BB2
37. The claimant on multiple occasions orally notified the 2nd defendant of the revocation of that license to act as the Home Owner Association.
38. The claimant notified the defendants that their refusal to vacate the premise constituted an act of trespass and demanded that they cease and desist from misrepresenting themselves as the duly authorized Home Owners Association. A copy of the "NOTICE OF TRESPASS" is attached hereto and marked "BB3".
39. Despite the repeated request to cease and desist in their trespass, misrepresentation, and harassment of residents of the subdivision, the Claimant has persisted in interrupting the 1st Defendants peaceful enjoyment of their property and the 2nd Defendants ability to properly manage the properties.
40. The 1st Defendant has lost buyers for it's properties as a result of the Claimant's pervasive harassment and interference.

41. By reason of the matters set out above, the Claimant has been deprived of the use and enjoyment of the Property and has suffered damage as a result.
42. Furthermore, Claimant along with X, X, X diverted an unknown sum of money from income generated as the duly appointed Home Owners Association and misrepresenting that they were the lawful Home Owners Association that was meant for the maintenance and upkeep of infrastructure on the Better in Belize Development.
43. The Claimant along with x, x, x wrongfully deprived the Defendants of the benefits of those funds and those funds by converting it into their own use.
44. By the reason of the above, the Defendants suffered loss and damage in the sum of money unlawfully diverted , the portion of which belonged to the Defendants.
45. Alternatively, the Defendant claims that the unknown sum of money referred above ought to be returned to the Defendant as money had and received by the Claimant for and to the use of the Defendants.
46. The Defendants asks the Court to order that the Claimant provide accounting of all the income generated when they acted and misrepresented that they were the lawful Home Owners Association from 2016 to the date of judgement including all revenue and expenses for that period.
47. The Defendant claims the payment of the money due to it by the Claimant plus interest thereon pursuant to sections 166 and 167 of the Supreme Court of Judicature Act.

AND the Defendant counterclaims

1. A declaration that the 1st Defendant is entitled to possession the subdivision more particularly described in the Deed of Conveyance 432 of 2011 In Deed Book Volume 6 of 2011, Folios 83 to 94, situate along the Benque Viejo/Mollejon Road, Water Hole Area, Cayo District.
2. An injunction prohibiting the Claimants and Ancillary Defendants whether, by

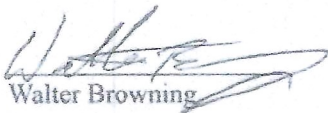
themselves, their servants or agents or others however from being upon or entering upon the 1st Defendant's property.

3. Further or alternatively, an Order that the Claimant and Ancillary Defendants pay the Defendants damages for trespass and for the damage done on its property. Such Damages to be assessed.
4. Damages for wrongful conversion in an amount to be determined by the Court. 5. Alternatively, the payment of an amount of money to be determined by the Court as money had and received by the Claimant to the Defendants' use.
6. Interest pursuant to sections 166 and 167 of the Supreme Court of Judicature Act.
7. Costs.

DATED this day of 2022 *Dec 30 / 2022*

Certificate of Truth

I certify and verily believe that the facts stated in this defence are true.


Walter Browning

Director of Better In Belize Limited & Better in Belize Home Owners Association

Our address for service is:

**Eirington and Company
Attorneys-at-Law
No. 7 Church Street
Belize City
Belize**

The court office is at the Supreme Court Registry on Regent Street, Belize City, Belize, telephone number 227-7377, fax 227-0085. The office is open from Monday to Friday between 8:00a.m and 4:30 p.m. except on public and bank holidays.