

IN THE SUPREME COURT OF BELIZE, A. D. 2013

CLAIM NO. 274 OF 2011

BETWEEN :

**(DALILA GUERRA
(EDITH GUERRA**

**FIRST CLAIMANT
SECOND CLAIMANT**

(AND

(HOWARD OLDHAM

**FIRST DEFENDANT/
ANCILLARY CLAIMANT
SECOND DEFENDANT/
ANCILLARY CLAIMANT**

(M & V FARMS LTD.

(ATTORNEY GENERAL OF BELIZE

**THIRD DEFENDANT/
ANCILLARY DEFENDANT**

BEFORE The Honourable Madam Justice Michelle Arana

**Mr. Said Musa, S. C., of Musa and Balderamos Law Firm for the
Claimants**

**Mr. Michael Young, S. C., along with Ms. Natoya Boyd of Young's Law
Firm for the First and Second Defendants**

Mr. Nigel Hawke for the Attorney General

J U D G M E N T

1. This is a Claim for declarations that the First and Second Claimants are the rightful owners of leasehold property Lot No. E 12784 and Lot No E 12784 comprising 88.001 acres and 28.037 acres of land respectively in Teakettle Agricultural Layout, Society Hall Registration Section, Cayo District. There is also a claim for an injunction to restrain the Defendant, his servants or agents from occupying, using, laying waste to, destroying or in any other way from interfering with the Claimants' use and enjoyment of their said property. The Claimants are also seeking damages for trespass as against the First and Second Defendants. The Second Defendant was joined as a party after the affidavit of the First Defendant revealed that this company had an interest in property in the vicinity of those lands claimed by the Claimants.
2. The Defence to this Claim is a complete denial of liability in that the First Defendant states that he has not committed any trespass to the property in question nor does he have any interest in those lands. He states that he is a businessman and real estate agent and that while he knows the principal owners of the Second Defendant Company, he has no shares, equity, legal or beneficial interest in that company.

The Facts

3. The evidence of the Second Claimant Edith Guerra as stated in her first affidavit dated May 3rd, 2011 is that she is the lawful owner of Lot No E12874 comprising of 28.037 acres of land situate in Teakettle Agricultural Layout Society Hall Registration Section Cayo District by virtue of Lease No CY 178/2010 dated February 24th, 2011(Exhibit “EG 1”). Her Mother Dalila Guerra is the lawful owner of Lot No E12874 comprising 88.001 acres of land situate in Teakettle Agricultural Society Hall Registration Section Cayo District by virtue of Lease No CY105/1990 dated February 24th, 2011 (Exhibit “EG 2”). There was also a Plan of Survey which showed the two parcels of land leased to the Claimants by the Ministry of Natural Resources prepared by Jose Depaz Licensed Land Surveyor (Exhibit “EG 3”).

4. Ms. Guerra deponed that her late father Tranquilino Guerra worked and developed this land since 1990 raising cattle and planting corn and fruit trees such as oranges, limes, bananas, plaintains and mango on it.

5. The Claimants had previously stated that Parcel 2593 which adjoined their property as shown on the Plan of Survey Exhibit "EG3" was owned by the First Defendant Howard Oldham. However when an injunction was granted against Mr. Oldham he presented evidence that he did not in fact own Parcel 2593. He stated that that parcel was owned by M & V Farms Ltd., a company located in Belize. He further stated that he has no interest in M & V Farms Ltd. but he knows the principals of that Company, and that in his capacity as a real estate agent he had called the First Claimant to inquire if she wished to sell any of the properties.
6. The Claimants state that sometime in the month of November 2010 the Defendant's workers or agents wrongfully entered their property, cut down fruit trees and lay waste to vast areas of property which they were conserving for a planned eco-tourist resort.
7. The Claimants also claim that the Defendant set fire to a substantial amount of trees and shrubs on their property as shown in photos in Exhibit "EG4".
8. The Claimant therefore brought this action seeking declaratory relief as to their ownership of the property and damages for trespass.

Ancillary Claim

On April 19th, 2012 the Defendants Howard Oldham and M & V Farms Ltd., filed an Ancillary Claim against the Third Defendant the Attorney General of Belize pursuant to Rule 18.1(b) and or (c) read along with Rule 18.3(1) of the Supreme Court Civil Procedure Rules for the following relief :

- (a)** A declaration that the Lands and Surveys Department, Ministry of Natural Resources erred in granting approval in respect of leases dated 24th February, 2011 regarding Lot No E12874 comprising 28.037 and 88.001 acres of land, or in respect of Permission to Survey dated 2nd February, 2011;
- (b)** An indemnity (including an indemnity against all legal costs) to cover any and all liability for damages recoverable by the Claimants against the Defendants and arising out of the Claim;
- (c)** Damages for negligence;
- (d)** Interest;
- (e)** Costs;
- (f)** Such further or other relief.

No defence was filed by the Attorney General to this ancillary claim at the date of trial on September 19th, 2012. Learned Counsel for the First and Second Defendants Mr. Michael Young, S. C., therefore asked the court for the ancillary claim to be treated as admitted. After hearing submissions from Mr. Hawke on behalf of the Third Defendant the Court granted Mr. Young his request and pronounced judgment on the ancillary claim in favour of the First and Second Defendants. As the ancillary claim has been admitted, there is now no need for the court to inquire or to make any findings as to technical issues raised regarding errors (if any) made by the Ministry of Natural Resources.

The Issues

9. **i)** Have the Claimants proven that they are entitled to the declarations which they seek in regards to their ownership of Lot No E 12874 comprising 88.001 acres and 28.037 acres in the Teakettle Agricultural Layout Society Hall Registration Section Cayo District?

- ii)** Have the Claimants proven that the Defendants have trespassed on their property and are they entitled to damages?

Issue 1

10. I find on the evidence presented that the Claimants have proven that they are the lawful owners of leasehold property comprising 88.001 acres and 28.037 acres respectively in the Teakettle Agricultural Layout Society Registration Section Cayo District. I agree fully with the written submission of Learned Counsel for the Claimants Mr. Said Musa, S. C., that undisputed proof of this ownership was tendered in evidence as per the Lease Approvals dated February 24th, 2011 together with the surveyed plans of Jose Depaz Licensed Land Surveyor duly registered and authenticated at the Lands Department Entry No 12874. I therefore find that the Claimants are entitled to the declarations which they seek.

Issue 2

11. Have the Claimants proven that the First and Second Defendants have trespassed on their property and if so are they entitled to damages?

The definition of trespass as cited in ***Clerk and Lindsell on Torts*** 18th Edition London Sweet and Maxwell 2000 at page 923 is as follows:

“Trespass to land consists in any unjustifiable intrusion by one person upon land in the possession of another. The slightest crossing of the boundary is sufficient. If the defendant places a part of his foot on the plaintiff’s land unlawfully, it is in law as much a trespass as if he had walked half a mile on it.”

I will state at the outset that I find no evidence that Howard Oldham, the First Defendant, has committed trespass on this property, or that he caused anyone to commit trespass.

I accept as true the evidence of Edith Guerra that not only did she and her mother own this land but her late father worked the land by raising cattle on it and planting corn and fruit trees since 1990. I find that this is evidence of possession sufficient to ground a claim of trespass. I also accept the evidence of Ms. Guerra that workmen entered their property from the adjoining land and burned and destroyed the land and trees on it. But the best evidence of trespass and, more importantly, the answer as to the identity of the person or persons who committed this trespass is found in the evidence of Mr. Oldham himself under cross examination:

“Q. Now do you also admit now that there was some trespassing done on the property on the Claimants’ properties? I think what you were saying all along that it wasn’t by you but it was by the company?”

A. Right.

Q. Company workers?

A. Yes.

Q. You admit that?

A. Yes.

Q. The Company being the Second Defendant?

A. Yes.”

At this point Mr. Young, S. C., Learned Counsel for the Defence objected that trespass was a legal term and the court noted the objection but allowed the question. Cross examination then continued as follows:

“Q. Are you aware, are you not, Mr. Oldham that workmen went on the Claimants’ property, burnt some of it and bulldozed some of it and destroyed trees and fruit trees and other material, vegetation, are you not aware of this?

A. Yes, I am.

Q. Is it also a fact that you are very familiar with this property of the Claimants in the sense that you have expressed an interest to Ms. Edith Guerra of wanting to purchase it from time to time?

A. Yes.

Q. Were you a party to the action taken by this company in carrying out this work on the Claimants property, bulldozing, cutting down trees?

A. No.

Q. The burning?

A. No.”

Under cross examination by Mr. Hawke for the Attorney General's Ministry, Mr. Oldham stated that he can say who gave the workmen of M & V Farms Ltd. permission to go on to the Claimants' land. He said it was the General Manager of the company, one James Stoddard.

Based on all the evidence I find that the Claimants have proven that the Second Defendant M & V Farms Ltd. have committed trespass on their property.

Damages

12. I therefore award damages in favour of the Claimants for the trespass to their property. I do not agree with the submission on behalf of the First and Second Defendants that damages (if any) should be nominal. As counsel for the Defence himself pointed out to the Claimant Edith Guerra when he was cross examining her, the lease she held was for agricultural purposes. It is clear from the evidence that many years were invested in this property in planting valuable fruit trees and cultivating the land only to have it damaged by the unlawful and destructive actions of the Second Defendant. Rodriguez and Company had prepared an assessment of damage to

the property which was attached to the Second Affidavit of Edith Guerra but since he was not called as a witness I did not think it fair for the court to rely upon that report. I will therefore award damages to the Claimants with the quantum to be assessed at a further hearing where the assessor can be present and cross examined as to his report.

13. Judgment is in favour of the Claimants. I therefore grant to the Claimants the following relief:

1) Declaration that Edith Guerra is the owner of Lot No E12874 comprising of 28.037 acres of land situate in Teakettle Agricultural Layout Society Hall Registration Section Cayo District by virtue of Lease No CY 178/2010 dated February 24th, 2011.

2) Declaration that Dalila Guerra is the owner of Lot No E12874 comprising 88.001 acres of land situate in Teakettle Agricultural Society Hall Registration Section Cayo District by virtue of Lease No CY105/1990 dated February 24th, 2011.

3) Injunction to restrain the Second Defendant M & V Farms Ltd., its servants or agents from occupying, using, laying waste to, destroying or in any other way from interfering with the Claimants' use and enjoyment of their said property.

4) Damages for trespass to be assessed.

5) Costs to be assessed or agreed.

6) Interest.

Dated this 20th day of May, 2013

Michelle Arana
Supreme Court Judge