

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

**Claim No. 262 of 2013**

**Between:**

**EUGENE LESLIE**

**Claimants**

**And**

**FLOYD PALACIO  
ATTORNEY GENERAL  
REGISTRAR OF LANDS**

**Defendant  
1<sup>st</sup> Ancillary Defendant  
2<sup>nd</sup> Ancillary Defendant**

**Before: Hon. Chief Justice Kenneth Benjamin**

**Appearances: Ms. Priscilla Banner for the Claimant  
Ms. Cynthia Pitts for the Defendant  
Ms. Trienia Young, Senior Crown Counsel, for  
The 1<sup>st</sup> and 2<sup>nd</sup> Ancillary Defendants.**

**JUDGMENT**

- [1] The Claimant is the registered proprietor of Parcel No. 1533, Block No. 36 in the Placencia North Registration Section. The said property (which shall hereafter be referred to as "Lot 1533") is comprised of 600.144 square metres of land and was transferred to the Claimant on March 14, 2013 by the Government of Belize. Lot 1533 is located in the coastal village of Seine Bight in Southern Belize.
- [2] The present proceedings were brought on November 25, 2013 against the Defendant, who occupies a house situated on Lot 1533, for an order to deliver up vacant possession to the Claimant and for a permanent injunction against the Defendant restraining him from trespassing and/or occupying Lot 1533.
- [3] Lot 1533 was originally national land owned by the Government of Belize. With the passage of Hurricane Iris on October 8, 2001, the village of Seine Bight was devastated. The Defendant's mother was the recipient of a new wooden bungalow house from the Government of Belize in 2003. She died on September

21, 2007. The Defendant occupies the house which stands on wooden pillars on Lot 1533.

- [4] After the death of his mother, the Defendant entered into an agreement with the Claimant on August 6, 2008 for the sale and purchase of the entire property for \$10,000.00 of which sum the Claimant paid the Defendant \$2,800.00. The agreement stated that: "This Land is presently in process for a Land Certificate." However, a title search revealed that in October, 2009, Lot 1533 was the property of the Government of Belize and that an application had been lodged by the Defendant at the Ministry of Natural Resources for Lot 1533. Thereupon, the Claimant filed suit in the Magistrate's Court to recover his deposit.
- [5] The Claimant took steps to obtain title to Lot 1533 by first obtaining the approval of the Lands Committee of Seine Bight Village Council before applying to the Lands Department for a lease. Approval for a lease was granted on March 30, 2010 for Lot 1533. He then applied for purchase approval which was granted on December 31, 2012. The Land Certificate was issued for Lot 1533 in the name of the Claimant on March 14, 2013.
- [6] In the meantime, the Defendant was served with a notice dated April 10, 2010 to vacate Lot 1533. He has to date refused to remove from Lot 1533. He acknowledged that his mother never became the registered proprietor of Lot 1533 and after her death in 2007 he began the process of applying to obtain a lease in the first instance. His position at first was that he had considered selling the property to the Claimant from whom he took a loan of \$2,000.00. In his Amended Defence he pleaded that the agreement for sale entered into with the Claimant was legally unenforceable as it was not registered and no stamp duty had been paid. However, he admitted receiving the sum of \$2,800.00.
- [7] The Defendant averred that the Claimant was fully aware that he had applied for a lease as was confirmed by the title search report, but that he had neglected to

disclose at the time he applied to the Lands Department for a lease that the Defendant occupied the property and had also applied for a lease. The Defendant asserted that he had lived on the property with his mother since 2003 and the Claimant well knew this since he lived two lots away.

[8] In his Amended Defence and Counterclaim, the Defendant said that Inspectors from the Lands Department had physically checked Lot 1533 and were therefore fully aware of his occupation. On that basis, he claimed that no cause of action lay against him, in that the title of the Claimant is subject to an overriding interest in his favour by virtue of him being a person in actual occupation of the land pursuant to section 31(1) (g) of the Registered Land Act, Chapter 194 ("The Act"). Further, the Defendant counterclaimed against the Claimant and the Ancillary Defendants, for: a declaration that his over-riding interest as a result of his actual possession of Lot 1533 entitled him to "fee simple ownership of the Parcel"; and for an order of rectification of the Land Register in respect of Lot 1533 by the cancellation of the first registration of the Claimant on the ground that the same was obtained by mistake or fraud.

[9] The Claimant and the Ancillary Defendants disputed the Ancillary claim and rejected the Defendant's claim of having a sufficient interest entitling him to legal or beneficial ownership of Lot 1533. The counterclaim for rectification of the Land Register was denied on the basis of the Defendant not being entitled to seek such an order. The Ancillary Defendants further pleaded that the Defendant had failed to furnish particulars to support the allegation of mistake or fraud in the obtaining by the Claimant of registration as proprietor of Lot 1533.

[10] The following issues emerged for the determination of the Court:-

- 1) Whether the Defendant has an overriding interest; and

- 2) Whether the Defendant is entitled to an Order that the Land Register be rectified by the removing of the name of the Claimant.

It follows that in the event the issues are resolved in the Claimant's favour, he would be entitled to an order for vacant possession of Lot 1533.

### **ISSUE 1 – Does the Defendant Have an Overriding Interest?**

[11] There is no demur that the Claimant is the registered proprietor of Lot 1533 by virtue of the Certificate of Title issued on March 14, 2013. Under the system of land registration, the effect of registration is prescribed by Section 26 of the Registered Land Act. It reads so far as relevant:

“26.....the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatever, but subject :-

- a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
- b) unless, the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by Section 31 not to require noting on the register...”

The reference in paragraph (b) of section 26 to section 31 of the Act is pertinent to this issue as it deals with overriding interests. The Defendant's written submissions cited section 31(1) (f) and (g). However, arguments were only directed to paragraph (g) as there could be no possibility that paragraph (f) was applicable. The said paragraphs of section 31 (1) states:

**“31 (1) Subject to subsection (2), unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect it, without their being noted on the register –**

- a) rights acquired or in the process of being acquired by virtue of any law relating to limitation or prescription;**
- b) the rights of a person in actual possession of land or in receipt of the rents or profits thereof except where inquiry is made of such person and the rights are not disclosed;**

The Defendant, from his own evidence, was not in possession and occupation of Lot 1533 for the requisite period of thirty (30) years stipulated in respect of Crown lands by section 12 (1) of the Limitation Act, Chapter 170.

[12] Learned Counsel for the Defendant contended that he was in occupation of Lot 1533 with the permission of his late mother. This was disputed by the Claimant who said that the Defendant only took up residence in the house subsequent to the death of his mother. Whether or not this is so, does nothing to resolve the issue. The factual position is that the Defendant’s mother had been promised title, which did not materialise in her lifetime, and the Defendant himself had only reached to the stage of making an application for a lease of the incorrect parcel of land. No proprietary interest of any kind has been established on the evidence.

[13] It is the law that mere occupation does not suffice to create an overriding interest as suggested in the wording of paragraph (g) of section 31 (1) of the Act. Such occupation must be clothed with an accompanying proprietary right. Learned Counsel for both the Claimant and the Ancillary Defendants emphasized that

occupation per se was not enough to establish an overriding interest. This was the construction adopted by Byron, CJ (ag)(as he then was) in Spiricor of Saint Lucia Ltd. v. The Attorney General of Saint Lucia and Another – Civil Appeal No. 3 of 1996 ( Saint Lucia) with regard to section 28 of the Land Registration Act 1984 of Saint Lucia which mirrors Section 31 (1) (g) of the Act. His Lordship stated (p. 10):-

*“A careful perusal of the words of section 28 (g) would indicate that the “actual occupation” is not the protected interest. What is protected are the “rights” of a person in actual occupation.”*

Further authority can be gleaned from the following dictum of Lord Oliver of Aylmerton in Abbey National Building Society v Cann and Another [1990] 1 AU E.R. 1058 at p. 1098:-

*“...it is not the actual occupation which gives rise to the right or determines its existence. Actual occupation merely operates as the trigger, as it were, for the treatment of the right as an overriding interest.”*

Reference was made by both Counsel to the case of Williams & Glyns Bank v Borland [1981] 2 All E.R. 408. Lord Wilberforce had this to say with regard to section 70 (1) (g) of the Land Registration Act, 1925 [UK] (which is equivalent to section 31 (1) (g) of the Act):-

*“The purpose, in each system, is the same, namely to safeguard the rights of persons in occupation... In the case of registered land, it is the fact of occupation that matters. If there is actual occupation, and the occupier has rights, the purchaser takes subject to them. If not he does not. No further element is material.”*

[14] It is accepted by all parties that the Defendant is in occupation. However, the Defendant has not established any right, legal or equitable, to occupy Lot 1533 over and above his physical presence on the property. The following statement by Lord Wilberforce provides clarification (at p. 4) :

*“The only solution which is consistent with the Act, (Section 70 (1) (g) and with common sense is to read the paragraph for what it says). Occupation, existing as a fact, may protect rights if the person in occupation has rights.”*

The Defendant has thus failed to prove that he has any right or interest in Lot 1533. An application for a lease creates a *mere spes* but certainly does not guarantee that it will result in an approval to lease far less in an approval to purchase.

[15] In the premises, the court holds that there is no overriding interest in existence in favour of the Defendant so as to defeat the absolute title of the Claimant.

**ISSUE 2 Is The Defendant Entitled to an Order Rectifying the Land Register by Removing the Name of the Claimant as Proprietor?**

[16] The Act makes provision for rectification of the Land Register in Section 143 (1) which provides:

*“143 (1). Subject to subsection (2), the court may order rectification of the register by directing that any registration be made, cancelled or amended where it is satisfied that any registration, including a first registration, has been obtained, made or omitted by fraud or mistake.”*

The Defendant seeks an order of rectification of the Land Register in respect of Lot 1533 by the cancellation of the first registration of the Claimant on the ground that the Claimant obtained the registration by fraud or mistake. Paragraphs 16 and following of the Amended Defence are preceded by the heading “Particulars of Mistake”. No particulars of fraud have been set out. This requirement is essential where fraud is alleged. Without more, the ground based on alleged fraud fails.

- [17] The Defendant's Amended Defence seemed to rely on the alleged factual events to establish mistake. To be fair to the Defendant, notwithstanding the prolixity and imprecision of his pleading, the facts surrounding Lot 1533 need to be examined.
- [18] The facts as they emerged from the documents disclosed and tendered revealed a veritable litany of errors. By an application dated July 17, 2007, one Alejandra Cacho applied to lease Lot 1533 from the Government of Belize. She was granted lease approval on August 3, 2007 for a period of seven (7) years in respect of Lot 1533. There was no doubt that this was granted in error. However, as the Commissioner of Lands, Mr. Wilbert Vallejos, pointed out, that the lease has now expired.
- [19] The application by the Defendant bears his signature above the date of October 30, 2007. However, the form recorded that the application was received on December 10, 2009 at 3:45 pm by someone who signed on behalf of the Commissioner of Lands and Surveys. Even more curious is the fact that the form contained an application for a lease of Parcel No. 1534. In cross-examination the Defendant did not accept that the form was submitted on December 10, 2009 nor that he had made a mistake in applying for Parcel 1534 instead of Lot 1533. It was obvious to the Court that he was being evasive because later on, Mr. Vallejos told the Court that he met the Defendant when he visited the National Estate Office to meet with the Commissioner. The purpose of the meeting was to discuss the Defendant's application being for Parcel 1534 when it ought to have been made for Parcel 1533. Mr. Vallejos said that, at the time, the Defendant told him that there was an error. The Defendant was advised to write a letter to that effect to the Commissioner. There was no evidence as to whether this was ever done.



[20] In relation to the application form submitted by the Defendant, he told the Court that he signed it and submitted it on October 10, 2007. Along with the application form, an information sheet was submitted. It is to be noted that the Information Sheet bears the signature of the Defendant but is recorded as having been recommended on December 10, 2009. The Court can countenance no other conclusion than that the application form and information sheet were received at the Office of the Lands Department on December 10, 2009. Be that as it may, the Defendant's application was never approved. There was tendered a letter from the Area Representative dated October 29, 2007 but, the said letter made no mention of any Parcel Number or of the Defendant by name. Even so, the latter recommendation did not fulfil the requirements of Section 47 (1) (b) of the Village Council Act, Chapter 88, that there be a recommendation from the Lots Committee or from the Village Council itself. The said Section reads:

*"47 (1) The Council shall have the following privileges, duties and responsibilities with respect to lands within the village:-*

*a) ...*

*b) The Council may constitute itself a Lots Committee or may appoint a Lots Committee under Section 14 hereof to make recommendations to the said Ministry with regard to the distribution of lots and lands within or affecting the boundaries of the village."*

[21] Testimony was received from Mr. Leonard Williams who stated that he wrote a recommendation for the Defendant to be given title to the parcel occupied by the Defendant's mother upon her death in 2007. At the time, by his own admission, he was not the Chairman of the Seine Bight Village Council having held that position from March 2001 to March 2004. Such recommendation would not have satisfied the requirements of section 47 (1) of the Village Councils Act. Thus, his evidence did nothing to assist the Defendant.

- [22] The order for rectification being sought specifically targets the cancellation of the first registration of the Claimant's title issued in respect of Lot 1533. The counterclaim does not seek to impugn the lease originally granted to the Claimant nor the lease granted to Alejandra Cacho, both in respect of Lot 1533. In any event, both leases would have been treated as existing in equity given the requirement of section 49 of the Act that a lease for a period of two years and over be registered and noted as an incumbrance on the register.
- [23] As to the Defendant's application being erroneously made for Parcel 1534, that is a mistake of his own doing for which he must bear full responsibility. Having said that, it must at once be observed that there is no evidence before the Court to show that the Defendant has made an application to the Lands Department in respect of Lot 1533 which he occupies.
- [24] It is palpable that the Lands Department did act in error by issuing leases to both the Claimant and Alejandra Cacho in respect of Lot 1533. However, that situation has been overtaken by events, namely, the expiration and non-renewal of the lease in the name of Alejandra Cacho, and the conferring of title on the Claimant. Lot 1533 was at the time national land of which the Government of Belize was authorized by law to alienate the reversion as it did. There can be no allegation of a mistake in that regard.
- [25] Learned Counsel for the Defendant has urged that it behoved the Registrar to investigate which would have led to the discovery of another application to lease Lot 1533. There is evidence of the Defendant's erroneous application being brought to the attention of the Commissioner. However, as earlier iterated, nothing was laid before the Court to establish that the Defendant had taken steps to correct the error. Therefore, as the evidence stands, there would have been no competing application for the lease of Lot 1533.

[26] For completeness, it must be pointed out that in the case of **Quinto & Quinto v Santiago Castillo Ltd.** Privy Council Appeal No. 27 of 2008, there was a mistake in the issuance of first title by the Registrar who was found to have omitted to search the record for any other deeds. Similarly, in **Jennifer Longsworth v Charlesworth Cleland** - Claim No. 796 of 2009, Awich, J found that there was a mistake of fact as to the Claimant's claim to possession of the entire lot of land and a mistake of law as to adverse possession. In the present case, there was no mistake on the part of the Registrar in the issuance of title and first registration to the Claimant.

[27] On the evidence as it stands, I hold that no mistake has been established to invoke the discretion of the Court to order rectification of the register on the basis of fraud or mistake.

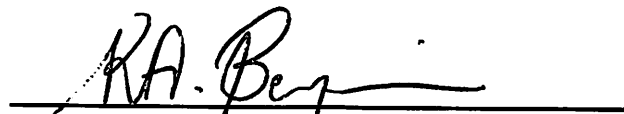
## **ORDERS**

[28] It is therefore ordered that judgment be entered for the Claimant and the following orders are made:

1. Possession of Parcel No. 1533, Block 36 situate in the Placencia North Registration Section and located in Seine Bight Village in the Stann Creek District is granted to the Claimant.
2. The Defendant shall deliver up possession of the said Parcel No. 1533 to the Claimant on or before the 1<sup>st</sup> day of February, 2018.
3. The Defendant shall remove the wooden house situate on the said Parcel 1533 on or before the 1<sup>st</sup> day of February, 2018.

4. Upon the delivery up of possession, the Defendant, whether by himself, his servants or agents or howsoever, is permanently restrained from occupying or entering upon the said Parcel No. 1533.
5. The Counterclaim stands dismissed.
6. The Defendant shall pay to the Claimant costs in the sum of \$12,500.00 and to the Ancillary Claimants costs in the sum of \$12,500.00 as ordered at pre-trial review.

**DATED this 24th day of November , 2017.**

  
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**KENNETH A. BENJAMIN**  
Chief Justice of Belize