

IN THE SUPREME COURT OF BELIZE, A.D. 2018

CLAIM NO. 575 of 2018

**OCTAVIO FLORES
AND**

CLAIMANT

ARMIN PATT

1st DEFENDANT

ALBERTO PATT

2nd DEFENDANT

BEFORE the Honourable Madam Justice Sonya Young

Hearings
2019

6th and 7th November

Written Submissions

22nd November - Claimant

21st November - 1st and 2nd Defendants

Oral Submissions

9th December

Decision

21st January, 2020

Mr. Kevin Arthurs for the Claimant.

Ms. Sheena Pitts for the 1st and 2nd Defendants

**Keywords: Property - Registered Land - Possession - Mesne Profits -
Overriding Interest - Proprietary Estoppel - Contract for Sale - Leasehold
Property**

JUDGMENT

1. Mr. Flores is the registered proprietor of land in Sarteneja (the Property) which he says he bought from Marcial Cantun in or around December, 2011. His land certificate is dated 4th June, 2014. At the purported time of the purchase the Defendants were living at the Property with Mr. Cantun.
2. Mr. Cantun subsequently moved away and eventually died on 28th June, 2012. The Defendants (whom I shall refer to by their first name for deferentiation only, no disrespect intended) continued living there until Alberto moved elsewhere, leaving only Armin and his family. The house is presently unoccupied, with Armin admitting that his only claim to a right of possession was through his father, Alberto. Mr. Flores now seeks vacant possession of the Property, mesne profits and damages for trespass.
3. Alberto, on the other hand, claims a proprietary estoppel against Mr. Cantun as he says he moved there with his family, in 2002, on the promise and assurance that the Property would be his if he lived with (witness statement) or took care of (Defence) Mr. Cantun and his wife. He claims to have acted to his detriment by not only moving in with the Cantuns but also maintaining and improving the Property at a cost of \$31,480.00. He, subsequently, entered into a contract with Mr. Cantun for the sale of the house (Defence) or the Property (witness statement).
4. Pursuant to that contract, he says he paid \$8,000.00, which was more than half of the purchase price, to Mr. Cantun. He has also exercised continuous

occupation and control of the Property from 2002 to present. Although he was in actual occupation of the Property when Mr. Flores purportedly purchased it, he was never questioned by him as to the nature of his interest in the Property. Accordingly, he seeks a declaration of his overriding interest and an order for its entry on the land register.

The Issues:

5. 1. Is the Claimant entitled to possession or any other remedy claimed:
 - a. Does the second Defendant have an overriding interest by virtue of a promissory estoppel
 - b. Does the second Defendant have an overriding interest by virtue of an agreement for sale

6. **Is the Claimant entitled to possession or any other remedy claimed:**

Mr. Flores relies on his registration, as proprietor of the Property, for his right to ownership. The Registered Land Act Cap. 194 (the Act) states in section 26: *“Subject to section 30, 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 whatsoever, 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:”

7. As the registered owner, Mr. Flores, therefore, has an absolute and indefeasible title subject only to any leases or encumbrances reflected in the register and any rights and interest which are declared to be overriding

interests. The second Defendant's only claimed chance to retaining possession is, therefore, through proof of an overriding interest.

8. From Alberto's statement of case he seems to rely in particular on section 31(1)g of the Act which provides: "*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 - ...*

(g) the rights of a person in actual occupation of land or in receipt of the rents and profits thereof except where inquiry is made of such person and the rights are not disclosed."

9. Alberto claims both a proprietary estoppel as well as a part performed contract for the purchase of the house or the Property. He urges that this ought to be sufficient to satisfy the requirements of an overriding interests since he was in actual occupation of the Property at the time of Mr. Flores' purchase but he was never asked by Mr. Flores about the nature of his occupation.

10. Mr. Flores certainly admits that Alberto was in occupation at the relevant time but he posits that he had no need to question him as he, Mr. Flores was conducting business directly with the owner. This admission takes us swiftly to a consideration of the rights which Alberto says he has acquired and a determination of whether he does in fact have an overriding interest.

A. Does the second Defendant have an overriding interest by virtue of a promissory estoppel

The Evidence:

11. Alberto says he has been in a common law relationship with Mr. Cantun's daughter, Julia, for almost thirty three years. Whether Julia is Mr. Cantun's biological daughter or not, it is undisputed that she grew up with him and his wife and was treated as such. It was she who subsequently went to take care of Mr. Cantun's wife when she fell ill. Alberto says that a few days later, her condition worsened and since Mr. Cantun was not there, he, Alberto, went to assist. When Mr. Cantun, eventually, returned home, he too was ill and had to be taken care of as well.
12. Mr. Cantun then asked Alberto and Julia to stay or live with them both. He also promised that if they did, they would be given the house (paragraph 8 and 9 of Alberto's witness statement). Mr. Cantun at that time was only a leasehold owner of the Property on which the house stood. The Property was national land.
13. In accordance with this arrangement, Alberto, Julia and their four children lived with the Cantuns. Alberto said he became the sole breadwinner for the Cantuns and his wife, Julia, was their sole caretaker. He alone bought all their necessary medication, maintained the household, the home and the grounds. He paid the land tax and he exhibited three receipts.
14. He said that he added a toilet and a room and made sundry repairs. He did some of the work himself, got help from Armin and employed other persons when necessary. He estimates that he has spent a total of \$31,480.00 on the house since 2002 to present. He said he had no receipts as he never expected to need any. However, he did exhibit some documents which he referred to

as “handwritten expenses and receipts.”

15. He continued, that in 2009, as Mr. Cantun was in need of money, he offered to transfer the lease of the Property (Alberto’s witness statement) or sell the house (Alberto’s pleadings) to him for \$15,000.00. Alberto admits that this was indeed a low sum for the Property. Understanding Mr. Cantun’s financial difficulties, Alberto agreed, but asked for time to pay.
16. Upon completing a contract in the Cayes (he exhibits a contract dated 29th January, 2009) he returned to Sarteneja and paid Mr. Cantun a down payment of \$8,000.00 by two installments of \$5,000.00 and \$3,000.00 respectively. Although he asked for a receipt, he was assured by Mr. Cantun that they were family and he, Mr. Cantun, was a man of his word.
17. In February, 2009 Alberto says that he went with Mr. Cantun to visit Mr. Samos “the UDP person” in his area. They hoped to get assistance in transferring the lease of the Property. They then went to the Lands Department in Corozal where Mr. Cantun filled out transfer forms. He exhibits a receipt for an application for lease transfer in Marcial Cantun’s name, dated 16th April, 2009. That receipt does not reflect what property was in fact the subject matter of that application.
18. He says some time later, in 2009 he went to see Mr. Cantun. He paid over \$1,500.00 to him to facilitate the transfer of the lease of the Property. He fully expected that the Property would be placed in his name. However, in late 2009 or early 2010 when he attempted to pay the outstanding balance, Mr. Cantun rejected it. Shockingly, Mr. Cantun told him that he would use the money, he had already given to him, as rent for the Property.

19. Alberto insists that there had never been any such arrangements between the two. Nonetheless, he continued to live on the Property and eventually, commenced suit in the Magistrates' Court against Mr. Cantun for return of his money which he had spent on improving the Property and paid over in part performance of the said purchase agreement. Mr. Cantun also brought suit against Alberto for arrears of rent. When that rent recovery suit was dismissed, Alberto withdrew his own claim.
20. He remained in possession of the Property until his enjoyment was disturbed by Mr. Flores bringing suit against him in the Magistrates Court for possession of the Property. No order for possession was made in Mr. Flores' favour. Alberto explained that during the period Mr. Flores says he purchased the Property from Mr. Cantun, he, Alberto resided there. He was never asked any questions as to his reason for being there by Mr. Flores. Even after he gave up occupation, he allowed his son, Armin, to continue to live on the Property.
21. Armin testified that they all went to live with Mr. Cantun when he was a boy because they were all family. Mr. Cantun asked if his mother could come to take care of her mother (Mr. Cantun's wife). As he got older he understood that Mr. Cantun's house would be theirs after Mr. Cantun died. He formed this belief from conversations he heard between his parents and grandparents. He also saw his father doing renovations and additions to the house (a bathroom and a bedroom).
22. When Armin was 22 years old, he was present when Mr. Cantun offered to

sell the Property to Alberto for \$15,000.00 and Alberto agreed. Also in his presence, Alberto, subsequently, paid Mr. Cantun \$5000.00 towards the purchase price. Armin said that his father paid other sums towards the purchased price but he doesn't know how much. Money gained by the sale of a pearl which he Armin dived up was also used to pay off for the Property.

23. In March or April, 2009 Mr. Cantun and his father went to the Lands Department to transfer the Property into his father's name. On their return they agreed that the balance of the purchase price would be paid when the Property was transferred into Alberto's name. To this day the transfer was never done.
24. Even after the Cantuns' and his parents moved out he, Armin and his own family, continue to live on the Property with Alberto's permission. He never abandoned the Property and his father still maintains it. He was, therefore, very surprised to learn that Mr. Flores had bought the Property.
25. Mr. Flores admits that when he purchased the Property in December, 2011, the Defendants were both living there but Mr. Cantun was in occupation and possession. He admits to making enquiries about the Defendants only of Mr. Cantun who assured him that they were either renters or licensees. This satisfied him that they had no claim to the Property which could affect his purchase.
26. He therefore made no inquiries of the Defendants. Rather, he paid for the Property and both he and Mr. Cantun executed the transfer forms which was

witnessed by a Justice of the Peace. They then sent it to the Lands Department in Belmopan to be processed. It was never processed and he is unsure why. He was eventually able to secure his registration as proprietor on June 4th 2014 after Mr. Cantun had died.

27. He says since he purchased the Property, he has allowed the Defendants to continue to reside there as licensees. In July, 2015 he sent them notices to quit. When they did not vacate the Property he filed suit in the Magistrates' Court. He maintains that the Defendants and their family have now ostensibly vacated the premises. Armin alone or with friends continue to trespass from time to time.

Consideration:

28. As explained in Megarry and Wade The Law of Real Property 6th ed, paragraph 13-001, the existence of a proprietary estoppel is proven where:

“(a) the owner of land (O) induces, encourages or allows the claimant (C) to believe that he has or will enjoy some right or benefit over O's property;
(b) in reliance upon this belief, C acts to his detriment to the knowledge of O;
and
(c) O then seeks to take unconscionable advantage of C by denying him the right or benefit which he expected to receive.”

29. Even where the existence of an equity is found, the Court has a wide discretion as to what effect it deems appropriate for it to be given. The court must consider all the circumstances and C would not have any property rights until the court so declares it. To satisfy the requirements of an overriding interest the court must be satisfied not only that the equity exists but that it ought to be given effect as a proprietary right or interest.

30. So what are the circumstances presented here. Alberto seems to claim that Mr. Cantun asked him to act in a certain manner with the assurance that he, Alberto, would benefit in the future. From what is before the Court, the terms of the agreement between Mr. Cantun and Alberto are in no way certain.
31. Alberto pleads at paragraph 10 of his Defence “At the request of Mr. Cantun the Second Defendant and his wife, moved from Chunox Village where they resided to Sarteneja Village to care for the Cantuns on the assurance and promise made by Mr. Cantun to the Second Defendant that the Property would become theirs.”
32. However, careful scrutiny of Alberto’s witness statement revealed, that he never refers to an agreement for the care of the Cantuns in return for the Property. Rather, he says at paragraph 8. “*Mr. Cantun cried to us and asked us not to abandon him and his wife. Mr. Cantun asked us to stay with him and his wife, Rojelio Cantun.*
- 9. Mr. Cantun asked my wife and I if we could live with him and his wife and if we do so the house would belong to my wife and I because of Mr. Cantun’s promise, my wife and I along with our four sons went to live with Mr. and Mrs. Cantun. My wife and I took responsibility for them. I was the primary breadwinner while my wife cared for the Cantuns.*” (Emphasis mine)
33. If Alberto is to be believed, then at best all that Mr. Cantun required was that the Patts live there and in return, he promised that Alberto and his wife would have been given the house. How that suddenly changed to the entire Property in exchange for care was never explained.

34. Armin the only other witness to testify to the promise made by Mr. Cantun, provided no useful evidence to support its existence. He could not even speak to the terms. He admitted to being very young when they moved in. He only became aware as he aged that “the house I grew up in with my parents and grandparents would be our after my grandparents died.”
35. It is quite striking that he offers no evidence, which formed the basis of his belief, beyond that he would hear his parents and grandparents speak. The precise contents of those conversations or the specific person who said what, remains unknown.
36. Furthermore, Alberto insists that he fulfilled his part of the agreement in its entirety. If he did, then it would make no good sense that having honestly relied on that promise and having acted to his detriment to the tune of more than \$30,000.00, he would then agree to pay the promisor an additional \$15,000.00 to keep that promise.
37. The mere fact that Alberto says he did this, makes his rendition of what transpired highly doubtful. This doubt becomes even more persistent when Alberto alleged to having made a part payment of \$8,000.00 only towards the purchase, but his own witness, Armin, contradicts this.
38. Armin said he saw his father pay Mr. Cantun \$5000.00 cash, under cross examination he could not remember where this had happened. He also said in examination-in-chief that he dived a pearl and it was decided that the proceeds of the sale of the pearl would go towards paying off for the

Property. What is odd is that he says his father sold the pearl but he never says how much the pearl was sold for or whether it was sufficient to pay off what was owed.

39. Under cross examination, however, he explained that Alberto got another contract and used the proceeds from that job to pay off the entire balance owed on the Property and that Alberto had paid this sum to Mr. Cantun in his (Armin's) presence. When he was referred to his witness statement he suddenly agreed that money from the pearl was also used to pay for the Property but that was not the balance.
40. Alberto himself said he tried to pay the balance but it was refused by Mr. Cantun. He never even testified to Armin being present when he made his attempt to pay off the balance. The Court can do no more than seriously question what both Alberto and Armin allege.
41. The Court is also perplexed by Alberto's testimony that, to his detriment, he maintained both the household and the house from 2002. Yet, Mr. Cantun's purported explanation for selling the Property to him in 2009 was because he could no longer work and had no money. What is more interesting is that Alberto never says for how long he maintained or took care of the Cantuns. Although he says he was the primary breadwinner he stops just short of saying he was the only breadwinner for the Cantuns.
42. All that is known is that the Cantuns left the Property sometime in 2009, supposedly to go visiting and never returned. If there was truly an agreement for care or companionship why could Alberto not speak to the full extent of

the care he or he and his wife rendered or even the sums he spent on that care.

43. To my mind, Alberto's evidence emphasized more of what he did to his 'detriment', rather than establishing the precise terms of the alleged promise and his fulfillment of same. This certainly causes much concern.
44. The Court also notes that most of what Alberto said he did to his own detriment seemed to have occurred in or around March, 2009, the date he said he agreed to purchase the Property. This would mean that Alberto's actions seemed less to be related to any promise made by Mr. Cantun and perhaps, more to his alleged purchase.
45. The Court is of this view because neither Alberto nor any of his witnesses ever specifically stated when any of the improvements were undertaken. At paragraph 11 of his witness statement Alberto says "Over time I began to renovate Mr. Cantun's property, as the need arose as well as pay the land tax/rent." However, even the handwritten 'receipts' exhibited for renovations and works seem to speak to March, 2009.
46. Although one of the 'receipts' is dated November 2002, on its face a line is marked and then there are other items which are dated 5th March, 2009. As to the revenue receipts, two are identical and they are dated 5th March, 2009. Another is dated 2nd March, 2009. There is only one which is dated 15th August, 2006. It really is quite suspicious that Alberto would have been paying the land tax faithfully since 2002 but could find only one receipt between 2002 and February, 2009. And he could produce two receipts for

March, 2009 but nothing later.

47. More importantly, under cross examination Alberto admitted that by 2010 he had spent \$4,000.00 on renovations which he said included windows, screens, zinc roof and bathroom. Those renovations he said he did with Mr. Everisto. The Court notes a receipt containing a payment to Reyes Everisto which is dated 8th to 14th May 2009 (AAP5).
48. Mr. Samos, another witness, also testified to seeing renovations being done to the house but he too is strangely silent as to when those actually materialized. Armin agrees that he assisted his father with the renovations but quite conveniently, he too omits to state any dates until probed under cross examination. He then offered the year 2009.
49. The Court also wondered why Alberto's wife, a supposed party to the promise, with a claim equal to Alberto's, never testified. Moreover, no explanation was even offered for her absence. Her testimony would have been such strong support, that its unexplained absence seems almost ridiculous.
50. For all these reasons this Court is not convinced on a balance of probabilities that such a promise was ever made by Mr. Cantun to Alberto.
51. This Court perceives instead a daughter and her family who went to live with her parents out of necessity. They lived rent free for many years, any room which was added on was clearly, to accommodate that family. Alberto himself said that the house originally had one bedroom which was the

Cantun's.

52. What is also quite revealing is that Alberto and his family moved with one bed on which Alberto, his wife and daughter slept. One son slept in a hammock while the other slept on the floor. If they had really only moved at the behest of the Cantun's why did they not bring another bed at the very least or another mattress if space was that limited.
53. Alberto continued to work as a fisherman just as he had before moving to live on the Property. Sarteneja is a well-known fishing village in Belize. Alberto could be expected to be the primary breadwinner since he, his wife and his family of four young children had to be maintained. That he also maintained the house and kept the yard clean also makes sense since he lived there with his entire family.
54. This Court is simply unable to find sufficient on which to ground a promissory estoppel. The counterclaim in that regard is dismissed.

B. Does the second Defendant have an overriding interest by virtue of an agreement for sale:

55. Having carefully considered the evidence, this Court is of the similar view that no agreement for sale of the Property existed between Mr. Cantun and the second Defendant.
56. In examination in chief Alberto admitted that at the time the agreement was made for the sale, the Property was leasehold property and national land. It appears that Alberto sought to rely on the principle of part performance of

that agreement to establish his interest in the Property and ground his claim to an overriding interest.

57. Much of his evidence relates to his payment in part to Mr. Cantun pursuant to the terms of their oral agreement. The precise amount paid even now remains uncertain. However, the possible part performance is not really the issue here. The issue is what exactly were the terms of the agreement for sale made between the two.
58. Alberto seeks to find support from the testimony of Mr. Samos whom he refers to, in his submissions, as the only independent witness. Mr. Samos revealed under cross examination that he was not employed by the Lands Department but maintained an office there on behalf of his political party (the ruling party). He would often issue letters of recommendation to those seeking to purchase or transfer national lands in Sarteneja Village.
59. He admits that when Mr. Cantun and Alberto visited him Mr. Cantun owned only a lease of the Property. He says he was requested (by both Mr. Cantun and Alberto) to assist in having that lease transferred by executing a letter of recommendation.
60. It is quite instructive that Mr Samos' understanding of the arrangement between Mr. Cantun and Alberto was that Alberto had already paid \$5000.00 towards the 'purchase' of the lease and would pay no more until the lease was actually transferred. Even Armin had that same understanding of the agreement. It is only Alberto who testified that before the transfer was effected, he attempted to pay the entire purchase price but Mr. Cantun

refused to accept the remainder.

61. The Court is of the view that Alberto is being less than frank and that the agreement was as stated by Armin and Mr. Samos. This is because the Court is well aware that a lease of National Land is not transferable without the written permission of the Minister who may withhold such permission or specify certain conditions to the transfer (see section 8 of the National Lands Act Cap 191).
62. Therefore, Mr. Cantun could not have agreed to sell the lease to Alberto. He could at that time, at best, have agreed to make every effort to have the lease transferred to Alberto. The agreement to transfer was contingent on the happening of an event (Minister's approval) over which Mr. Cantun had no control. Until that event occurred neither party could be certain whether there would be a lease in Alberto's favor. This agreement could therefore create no immediate interest in land even where there may have been some part performance by the 'purchaser'.
63. For this reason Alberto would not now have any proprietary interest in the Property whatsoever. That being the case, he has no interest capable of founding an overriding interest and his claim in this regard must likewise fail. He nor his son Armin have any right to the Property and their occupation constitutes a trespass. An order for possession will, accordingly, be made in favour of Mr. Flores.

Mesne profits/ Damages:

64. The Claimant did not make any submissions on this issue. Perhaps

he realized that he had offered no evidence on which the Court could make an assessment. The Court assumes that this claim has been abandoned and will treat it as such.

Costs:

65. It is usual for the successful party to have costs. The second Defendant has proposed that each party ought to bear their own costs. He submits that all parties are poor fisher folk and a cost order would be onerous. The Court considers that this is not a good reason to deprive a party of its costs. The Claimant did not only have to prosecute a claim against both Defendants but was made to defend the second Defendant's counter claim as well. The Claimant alone saw any success. While they were, admittedly, interrelated and I see no need to order separate cost on each, the Claimant will not be denied his costs.

Determination:

It is therefore ordered:

1. Judgment for the Claimant.
2. The Defendants must deliver up possession of the Property within fifteen (15) days of this judgment.
3. Thereafter, the Defendants, their agents, heirs or assigns are permanently restrained from entering upon or remaining on the Property.
4. The Counter Claim is dismissed.
5. Costs to the Claimant on the Claim and Counter Claim in the sum of \$5,000.00.

**SONYA YOUNG
SUPREME COURT JUDGE**