

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

CLAIM NO. 60 OF 2018

BETWEEN:

(ELENA LETICIA ALONZO	CLAIMANTS
(
(ORALIA MELCHIADES BLANCO	
(Acting in their personal capacity and	
(as the Lawful Attorneys for	
(Elena Leticia Alonzo, Oralia Melchiades Blanco,	
(Carmen Gregorio Chan, Osbaldo Baldomar Alonzo, Olga Lydia	
(Magana, Leopoldo Constantino Zetina and Jose Luis Alonzo	
(
(AND	
(
(ELDO FIDENCIO GIDEON	DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mr. Marcel Cervantes Cardona on behalf of the Claimant

Ms. Darlene Vernon on behalf of the Defendant

J U D G M E N T

1. This is an Application for Judgment on Preliminary Issues. The substantive claim is a claim, *inter alia*, for a declaration for prescriptive title brought by

the Claimants pursuant to section 42 of the Law of Property Act Chapter 190 of the Laws of Belize read along with Sections 138 and/or 144 of the Registered Land Act Chapter 194 of the Substantive Laws of Belize by virtue of open, peaceful and undisturbed possession for more than twelve years of Parcel 1156, Tower Hill, Registration Section Orange Walk District Belize. A Fixed Date Claim was filed in this matter on January 26th, 2018. The Defendant then filed an Application pursuant to CPR 17.1(1)(b) and CPR 26.1(1)(g) and (j) seeking the determination of preliminary issues and summary judgment on the following issues:

- a) Whether the Claimants are entitled to a Declaration that as a result of open, peaceful and undisturbed possession of more than twelve (12) years they are entitled to the proprietary title of Parcel 1156, Block 1, Tower Hill Registration Area now in the name of the Defendant;**
- b) Whether the Claimants have proven a case of adverse possession against the Government of Belize for a period of thirty (30) years factoring that since 2002 the Defendant enjoyed possession of the property by way of Lease OW 396/2002 granted by the Ministry of Natural Resources;**

c) Whether the Claimants have proven a case of adverse possession by way of open, peaceful and undisturbed possession against the Defendant for a period of twelve (12) years factoring absolute title to the said Parcel 1156 was given to the Defendant in July 2017.

Written submissions on each of these issues have been filed by the Applicant and the Respondent. The court now examines these submissions and gives its decision.

Applicant's Legal Submissions on Preliminary Issues

2. Ms. Vernon on behalf of the Applicant/Defendant denies that any claim for adverse possession can be successful on the basis that:
 - i. Certificate of Title to the property was issued to the Defendant in July 2017;
 - ii. The Defendant has been the legal/true owner of the property for only five (5) months prior to lodgment of claim in January 2018;
 - iii. The Defendant obtained a lease for the property from the Government of Belize in 2002 for a period of 7 years;

- iv. That after obtaining the Lease the Defendant cleared the property and thereafter in late 2002-2003 learnt that the Claimants had removed their chattel home from another person's property to the Defendant's;
- v. That the Defendant advised the Claimant through her husband that the property was his and they had to remove themselves;
- vi. That in 2004 during the tenancy of the Lease, the true owners being the Government of Belize visited the Claimants advising them they were on land leased to the Defendant and they refused to give up vacant possession;
- vii. That the Claimants in their very claim admitted that they knew the Defendant was challenging their occupation of the property as early as 2003 and therefore dispels their own allegation that they were in open uninterrupted possession since 2002;
- viii. That the Claimants allege that they have been in occupation for a period of 15 years only commencing in 2002.

3. Ms. Vernon submits that Mr. Eldo Gideon previously enjoyed a Lease granted by the Government of Belize from 2002 for a period of 7 years. Mr. Gideon is incapable of giving and or divesting more than what he is entitled to as at

all times he enjoyed title through a lease agreement with the Government of Belize. Throughout this period, the true owner of the land remained the Government of Belize who had the option under the National Land Act to terminate or otherwise dispose of the property if the agreed terms and conditions were not complied with. The Claimants could therefore not claim any adverse possession or occupation for this period of time against the Defendant who was not the legal and beneficial owner of the property in question but a mere Lessee. The *“True Owner”* at all times remained the Government of Belize. The Defendant had lawful possession of the property through the Lease but the Claimants cannot assert this period of ownership against the Defendant so as to contribute to the requisite number of years to satisfy section 138 of the Registered Land Act. That section states that *“in the case of National Land, the period of possession shall be 30 years”*. As absolute title was only issued to Mr. Gideon in July 2017 rendering him the true and lawful owner, the Claimants are in no adverse possession against the Defendant for twelve years or more.

Ground A

- 4. Whether the Claimants are entitled to a Declaration that as a result of open, peaceful and undisturbed possession of more than twelve (12) years**

they are entitled to the proprietary title of Parcel 1156, Block 1, Tower Hill Registration Area now in the name of the Defendant.

Ms. Vernon submits that it cannot be disputed that up and until title was issued to the Defendant in July 2017, all Mr. Gideon held was a beneficial interest in the property after acceptance of his part payment to purchase the property from the Government of Belize in 2004. At no point in time until title was issued to the Defendant in 2017 was he the legal owner of the property. Under the National Lands Act there is provision as to how property belonging to the Government may be allocated to another party. The Act also quite clearly states the manner in which the land can be distributed and the penalty for persons trespassing or otherwise unlawfully taking possession (Sections 31 and 32 of the Act). By section 12 of the Act, there are implied terms and conditions of the lease which state where such conditions have been broken or otherwise not complied with, the Minister has the right to repossess the land inclusive of any improvement made thereon with compensation.

5. Ms. Vernon further submits that it is explicitly clear that when a lease is granted by the Minister under the National Lands Act, that such is given with the permission of the Minister/Government who at all times retains its

interest in same until the lease has otherwise expired, been cancelled or purchased by the Lessee. Permission is expressly needed by the Tenant to assign or otherwise seek to dispose of the property during the tenancy. This again effectively reinforces the point that ownership of the land is not vested in the Lessee. The Claimants therefore could not have had the requisite animus and factual possession against the Defendant as the Defendant was not the legal and beneficial owner of the land during the period which the Claimants are relying on.

6. In addition, Ms. Vernon states that the claim fails to meet the requirements of section 138 of the Registered Land Act which the Claimants have relied upon. There is no evidence that the Claimants have applied to the Registrar of Lands to be registered as the proprietors of the property. Ground A must fail as the Defendant was not the true owner of the property until July 2017 when both the legal and beneficial title to Parcel 1156 was vested in him. Since the Defendant obtained full title to the property in 2017, the Claimants cannot assert that they enjoyed open, peaceful and uninterrupted possession for a period of twelve years against the Defendant's title. After title was issued to Mr. Gideon in 2017, he presented the Claimants with a

notice to vacate, and after their failure to do so, the Defendant then initiated the eviction claim in the Orange Walk Magistrate Court.

Ground B

- 7. Whether the Claimants have proven a case of adverse possession against the Government of Belize for a period of thirty (30) years factoring that since 2002 the Defendant enjoyed possession of the property by way of Lease OW 396/2002 granted by the Ministry of Natural Resources.**

Ms. Vernon contends that this ground can be easily disposed of as the Claimants in their own pleadings stated at paragraph 4 of the Statement of Claim as follows:

“We the Claimants (except in the case of Carmen Gregorio Chan who joined the Claimants in 2003 following the death of Dionicio Guadalupe Alonzo) have in fact remained in open peaceful and uninterrupted possession of the property for the past 15 years going for 16 years, since on or about the year 2002 when the second Claimant her then common law husband Dionicio Guadalupe Alonzo (who is now deceased) and all of the Second Claimant’s children and grandchildren including the first Claimant first occupied the property.”

Ms. Vernon submits that it is clearly evident that the Claimant's assertion to being in possession for 15 years is significantly lower than the required 30 year statutory requirement. Learned Counsel for the Defendant cites the importance of Section 42 of the Law of Property Act Chapter 190 of the Laws of Belize emphasized by Awich J. (as he then was) in Claim No. 571 of 2004 **Harrison August v. Oswald Patten** as follows:

14. "Section 42 of the Law of Property Act has become an important law in Belize in the acquisition of title outside transfer transactions and in obtaining certainty in title. Many applications have been made and continue to be made for declaration by the Supreme Court, of title to fee simple, by people who have been in occupation of land or have control of it, in towns and countryside alike, or by people who have succeeded the original occupiers. A declaration by the court followed by the issuance of a certificate of a fee simple title converts the mere possession, the possessory title of the occupier into a legal estate, a legal title- see s. 42(4) of the Act. The declaration may be made in regard to any land occupied for 30 years, it is an important assurance of title. Whether the section is used to establish title in land that had not belonged to anyone, or to oust a previous title holder after 30

years, is of no practical importance. In my experience in this court, the aim of most applicants for a declaration of title under s.42 of the Law of Property Act have been to eliminate any uncertainty and to secure title in the applicants. ”

Ms. Vernon argues that in addition to the Claimants in their pleadings admitting that they do not satisfy the 30 period, there is also the fact that in 2004 an agent of the Minister visited the Claimants and informed them that the land in question was leased to the Defendant and that she should remove her house placed on the property, again displacing the allegation that the Claimants have been in possession peacefully and undisturbed since 2002. The Claimants stated possession is only 15 years, and the Defendant held only a beneficial interest in the property up to 2017 when he received legal title to the property from the Government of Belize. As the Claimants cannot show that they were in possession and occupation peacefully for a period of 30 years in order to trump the title obtained by the Defendant, Ms. Vernon submits that this ground must fail as well.

Ground C

8. **Whether the Claimants have proven a case of adverse possession by way of open, peaceful and undisturbed possession against the Defendant for a period of twelve (12) years factoring absolute title to the said parcel 1156 was given to the Defendant in July 2017.**

Ms. Vernon relies on Anderson J's decision in *Seaton Campbell et. al. v. Donna Rose Brown et. al.* Claim No. 2015 HCV 02137 where His Lordship set out the elements required to establish adverse possession:

"[34] For adverse possession to properly arise, there should be acts which are inconsistent with the enjoyment of the soil, by the person entitled to the land. See: West Bank Estate Ltd. v Arthur – [1966] 3 W.L.R. 150. The land should have been used in a way which altered or interfered in a permanent, or semi-permanent way, with the land... Such acts which are incompatible or inconsistent with the due recognition of the title of the owner, constitute adverse possession. They should effectively exclude the possession of the true owner. The concept does not impose any element of aggression, hostility or subterfuge, as the word, 'adverse' suggests. It is a word used to describe conveniently, a situation where the land falls into the

possession of some person other than the true owner under circumstances in which the true owner can treat that other person as a trespasser who is asserting a claim of right, or under circumstances which cannot be explained in a way which is consistent with the title of the paper owner. See: Commonwealth Caribbean Land Law (op. cit), at pp 279 and 280.

[35] Possession is single and exclusive. See: Pye v Graham [2003] 1 A.C. 419, at 445. It is therefore not possible in law, for an owner of land and an intruder, both to be in possession of a piece of land, at the same time. Possession cannot therefore be concurrent. There is a presumption of law, that the paper owner, is in possession. Accordingly, the person claiming title by adverse possession has the burden of rebutting the presumption that the paper owner is in possession. That burden is discharged by proving factual possession – factum possessionis and intention to possess – animus possidendi.

[36] The squatter must, in addition to factual possession, show an intention to possess the land to the exclusion of all other persons,

including the true owner. See: Powell v McFarlane – [1977] 38 P and C.R. 452, at 471, per Slade J.”

Ms. Vernon summarizes the necessary elements as follows:

- i. Factum possessionis - factual possession;*
- ii. Animus possidendi - intention to possess;*
- iii. Such intention to possess must be to the exclusion of all other persons, including the True Owner.*

Ms. Vernon also points out the following evidence which proves that the Contention by the Claimants that their occupation was peaceful and uninterrupted was not true:

- i. That the Defendant advised the Claimant through her husband that the property was his by way of lease granted by the Government and they had to remove themselves;
- ii. That the Husband sought permission from the Defendant to remain on the property until they found alternative living arrangement;

- iii. That in 2004 during the tenancy of the Lease, the true owners being the GOB visited the Claimants and informed them that they were on land leased to the Defendant
- iv. That the Claimants had orally agreed to purchase the land from the Defendants
- v. That the Claimants in their claim admitted they knew the Defendants were challenging their occupation of the property as early as 2003 and therefore dispels their own allegation that they were in uninterrupted possession since 2002.

9. Ms. Vernon points out the following evidence of the Claimants which clearly establishes that the occupation, possession and entry upon Parcel 1156 by the Claimants was done at all times with the consent and permission of parties who acknowledge that they were servants or agents of the Minister of Lands and by extension the Government of Belize as the land was National Land up to 2017.

In the affidavit of Mr. David Jaime Burgos dated 14th day of June, 2018, he stated as follows at paragraphs 3, 5 and 8:-

“3. During the Term(s) of my having served in office, as the duly elected Area Representative for Orange Walk East Constituency, I was tasked under the Law and as part of the clearly established practice at the Lands Department with the responsibility for recommending persons, especially those who did not previously own any land of their own and were in desperate or urgent need of a parcel of land of their own to establish their home for example, for the grant of a lease to a particular parcel of crown land or land forming part of the National Estates of the Country of Belize.”

“5. Section 47 of the Village Councils Act, Chapter 88 of the Substantive Laws of Belize... in fact gave the Tower Hill Village Council and/or Tower Hill Village Lots Committee the right to recommend together with the Area Representative for Orange Walk East Constituency (who at the time was myself) to the Minister of Lands that someone be issued with a lease over a particular parcel of land.”

“8. If my recollection serves me right, it was the Tower Hill Village Council and/or Tower Hill Village Lots Committee which then recommended to Ms. Oralia Melchiades Blanco... and her then

common law husband, Dionicio Guadalupe Alonzo, that they can relocate their house from the Cervantes property to the now disputed property being Parcel 1156, Block 4, Tower Hill Registration Section of the Orange Walk District of Belize.”

Further in the affidavit of Mr. Joel Armstrong dated 14th June, 2017, he states as follows at paragraph 4:-

“In the year 2002, Ms. Oralia Melchiades Blanco and her family relocated to Parcel 1156, Block 4, Tower Hill Registration Section of the Orange Walk District. Ms. Oralia Melchiades Blanco and her family were assigned this parcel of land by the Tower Hill Lots Committee.”

Ms. Vernon submits that this evidence the Claimants and their witnesses state unequivocally and unambiguously that at all times their entry onto Parcel 1156 was done with the consent of the Minister of Lands through his servants or agents. This being the position, it further displaces any allegation by the Claimants that they had open, peaceful and undisturbed possession of the property against the true title owner when said entry itself was consented to. Learned Counsel cites ***Pye (Oxford) Ltd. v. Graham*** [2003] 1 AC 419 at 435 where the House of Lords held that in order to be in adverse

possession there must be a sufficient degree of physical custody and control, or factual possession of the property, ***“an intention to exercise such custody, and control on one’s own behalf and for one’s own benefit”***. (Emphasis added). It is evident that having obtained the consent and permission of the village council the Claimants could never have intended to exercise control on their own behalf and benefit to the exclusion of the true owners, the Government of Belize. Ground C must also fail. The Claim for Adverse Possession therefore cannot succeed and should be struck out, with summary judgment granted to the Defendants.

Respondent’s Legal Submissions on Preliminary Issues

10. Mr. Cardona in response to the Applicant’s submissions on Ground A says that he relies on section 42(2) of the Law of Property Act which makes it clear that possession of a person through whom the Claimant is claiming may be taken into account in computing the requisite limitation period. He submits that the lawful owner of freehold interest is in a similar position to this and that of the owner of land which is the subject of an overriding interest of a right acquired in or in the process of being acquired by virtue of any law relating to limitation or prescription. Learned Counsel submits that section 31 of the Registered Land Act addresses the question why the Defendant is

facing a claim of adverse possession to land when he has only just become the absolute freehold title holder for 6 months.

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 of Way, Rights of Water and any Easement or Profit subsisting at the time of First Registration under this Act;

(b) Natural Rights of Light, Air, and Support;

(c) Rights of Compulsory Acquisition, Resumption, Entry, Search, User or Limitation of User;

(d) Leases or Agreements for Leases for a term less than Two years, and periodic tenancies within the meaning of Section 2;

(e) Any unpaid moneys which, without reference to registration under this Act, are expressly declared by any law to be charged upon land;

(f) Rights Acquired or in the process of being acquired by virtue of any law relating to Limitation or Prescription;

(g) The Rights of a Person in Actual Occupation of Land or in receipt of rents and profits thereof, except where inquiry is made of such person and the rights are not disclosed;

(h) Electricity Supply Lines, Telephone and Telegraph Lines or Poles, Pipeline, Aqueducts, Canals, Weirs, and Dams erected, constructed or laid in pursuance or by virtue of any power conferred by law.”

(Emphasis added)

Mr. Cardona submits that under section 31(f) and (g) of the Registered Land Act, rights acquired or in the process of being acquired by virtue of any law relating to limitation or prescription and rights of persons in actual occupation of land are overriding interests which survive the transition or transfer of title from the previous owner (the Government of Belize) to the new registered proprietor with title absolute (the Defendant Eldo Gideon). Under these sections these are overriding interests which must be respected, even though they are not registered as encumbrances or cautions on the disputed property. The Claimants are therefore persons who have acquired rights or rights that are in the process of being acquired by virtue of any law relating to limitation or prescription. Mr. Cardona submits that this case is worthy of being afforded a full hearing or trial and should not be

disposed of on these preliminary submissions. On the first preliminary issue, Mr. Cardona argues that the Claimants are entitled to a Declaration that as a result of open, peaceful and undisturbed possession of more than twelve years (actually fifteen years) the Claimants are entitled to the proprietary title of Parcel 1156 Block 1 Tower Hill Registration area now in the name of the Defendant.

11. On the second preliminary issue, Mr. Cardona argues that the question whether or not the Claimants have proven a case of adverse possession against the Government of Belize for a period of thirty years is irrelevant to the instant case. This is so because the burden placed upon the land by the adverse possession of the disputed property by the Claimants for a period of over 12 years runs with the land and is unaffected by the transfer of the legal estate of proprietorship from the Government of Belize to the current legal owner Eldo Gideon.

12. On the third preliminary issue, Mr. Cardona submits that this issue goes to the very heart of this case. This is an issue which needs to go to trial, where all witnesses would be allowed to give evidence and the proper venue should

be a full hearing of this matter, rather than a limited hearing of a preliminary issue alone.

13. In conclusion, Mr. Cardona submits that this matter is not suitable to determination on preliminary issues and should go to a full trial. There is ample evidence to show that the Claimants came into possession of the disputed property since 2002 and when they came into possession they did so thinking that it was theirs, or that they had the right to occupy it or possess it. The Defendant's intervention did nothing to dissuade them and even after the Defendant threatened them with legal action, they never left the property. The Defendant has been fully aware over the past twelve years of the Claimants' possession and presence on the property, yet he did not do anything to apply to the court to evict them until December 2017. In ***Thakur v. Ori*** CCJ App No. CYC V 2017/011 [2018] CCJ 16, the Caribbean Court of Justice (CCJ) dealt with a similar claim for prescriptive rights or squatter's rights over private property, where the previous owner had come into legal ownership of land, had found the Thakurs on his newly purchased property, but had not carried through with his threats to take them to court in order to evict them, before the passage of the requisite 12 years to prove squatters' rights, and then proceeded to sell the land to another person. The

CCJ held that the Claimants had sufficiently proven that they had been in actual possession of the land for the requisite 12 years, and accordingly were entitled to an order declaring them to be the lawful owner of the property by operation of the law of prescription. Mr. Cardona urges the court to dismiss this Application and allow the matter to proceed to full trial.

Ruling

14. I am grateful for the assistance provided by both counsel on this application for judgment on preliminary submissions. Having considered the submissions for the Claimant and the Defendant on this application, I must despite the highly persuasive arguments of Ms. Vernon, I agree with the submissions of Mr. Cardona. I have determined that this is not a matter that is suitable for decision on preliminary submissions as there are too many unanswered questions at this stage. I especially bear in mind the provisions of the Registered Land Act Section 31(f) and (g) which expressly provide that the owner of an overriding interest such as those averred by the Claimants in this case (rights of persons claiming adverse possession and rights of persons in actual occupation of the land) are specifically protected by the legislation, and the owner of such registered land takes his title subject to such interests, whether those interests are registered or not. I also found

that the case of *Thakur v Ori* (even bearing in mind the nuances in Guyanese land law discussed by Justice Wit which are specific to that case) cited by Mr. Cardona was particularly instructive, as the Claimants in that case succeeded even where they had initially demonstrated a willingness to acknowledge that someone else owned the disputed property. The evidence showed that that intention changed and the Claimants were able to prove that by the time the new owner received legal title, they had already occupied and possessed the property for the requisite number of years in order to establish adverse possession and defeat his legal title. I have seen photographs of the Claimants' homes built on the property in the case at bar, and I am mindful of the fact that the matter affects and can potentially displace the seven Claimants and their family members. There are too many issues of fact that need to be addressed before the court can make an informed decision on this matter such as: Did the Claimants at any time offer to purchase this property from the Defendant? If so, when was this? Why didn't the Defendant seek to evict the Claimants before 2017? Was it the Defendant or the Claimants who first cleared this property and readied the land for use? Did the Claimants ever apply to the Court for a Declaration of Title on the basis of adverse possession? If not, then why not? These are just

a few of the issues which must be properly ventilated and resolved by evidence at a full trial. The application is therefore dismissed.

Costs awarded to the Respondent to be paid by the Applicant to be agreed or assessed.

Dated this Thursday, 27th day of June, 2019

Michelle Arana
Supreme Court Judge