IN THE SUPREME COURT OF BELIZE A.D. 2008

CLAIM NO. 201 OF 2008

BETWEEN	(JOHN LOSKOT	CLAIMANT/APPLICANT
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	(AND	
	(	
	(JULIAN BARAHONA	DEFENDANT/RESPONDENT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

William Lindo of Glen Godfrey and Co for the Claimant/ Applicant

Audrey Matura for the Defendant/Respondent

1. **FACTS**

The Claimant, John Loskot, is a Businessman and owner of a Parcel of land located in Blackman Eddy Village in the Cayo District. The Defendant, Julian Barahona, is a farmer who has been residing on this property for the past 26 years. The Claimant and the Defendant prior to this Claim had been friends, and the Claimant had granted

the Defendant permission to reside on this property as it was close and convenient to where the Defendant was working at that time. The substantive claim is a Claim where the Claimant is seeking a declaration that the Defendant occupies the Claimant's property illegally and an order that the Defendant vacates the said land without delay, mesne profits and costs. The Defendant claims that he has earned/developed an equitable interest in the Claimant's property and that the Claimant is now estopped from asserting his legal title against him. The Claimant instituted this Claim on 1st April 2008 and unfortunately languished in the system until it was assigned to this court on 12th September 2018. This is an Application by the Claimant to Strike Out the Defence and for Summary Judgment to be ordered in favor of the Claimant. Pursuant to an Order of the Court dated 19th July 2019, both parties were ordered to file written submissions. Legal Submissions were filed by the Claimant and by the Defendant. The Court now determines this application.

1. **Legal Submissions on behalf of the Claimant**

These written submissions are filed on behalf of the Claimant pursuant to an Order of the Honourable Court made on the 1st July 2019. The Order was made upon the Claimant's Application that the Defence be struck out as it discloses no reasonable grounds for defending the instant claim and is an abuse of process of the Court, pursuant to Rules 26.3(1) (b) and (c) of the Supreme Court (Civil Procedure) Rules 2005 (the "CPR"), and for summary judgment to be awarded in the Claimant's favour, pursuant to Rule 15.2(b) and Rule 1.1 of the CPR.

EVIDENCE

2. In support of the Claimant's Application to strike out the defence and the grant of summary judgment, the Applicant will refer to the following documents:

    a. The Amended Statement of Claim dated 18th June 2008 [**TAB 1**];

b. The Defence dated 15th April 2008 [**TAB 2**];

c. The Claimant's Witness Statement dated 28th July 2008 [**TAB 3**];

d. The Defendant's Witness Statement dated 14th August 2008 [**TAB 4**]; and

e. The Claimant's Application for Striking Out of the Defence and grant of Summary Judgment dated 14th January 2019 [**TAB 5**].

INTRODUCTION

3. On 2nd June 1992, the Claimant acquired title absolute to Parcel No. 30, Block 24, Society Hall Registration Section, Cayo District by virtue of Land Certificate No. 2994/1992 dated the 2nd June, 1992.

4. Parcel No. 30, which comprised 9.005 acres of land, has been mutated, as a result of a portion being compulsorily acquired by the Government of Belize, into Parcel No. 4659 consisting of approximately 8.024 acres of land. The Claimant remains vested with title absolute to Parcel No. 4659 by virtue of Land Certificate

bearing instrument no. LRS-201800767 dated 30th January 2018. (Parcel No. 30 and Parcel No. 4659 are hereinafter referred to as the "Land").

5. In or around 1996, the Claimant gave the Defendant permission to occupy, for residential purposes, his (the Claimant's) house on the Land. The Claimant gave the Defendant permission to occupy the house as a tenant at will on the condition that the Defendant does not plant trees on the land.

6. In 2007, the Claimant gave the Defendant verbal and written notices to quit, vacate the house and the Land and surrender possession thereof. The Defendant has refused to comply with the Claimant's notices and remained, and continues to remain, in occupation of the house and the land.

7. In 2008, the Claimant instituted the instant claim for recovery of possession of the Land and other relief.

ISSUES FOR DETERMINATION

8. The Claimant submits that the following issues are to be determined by the Court:

    a. Whether the Defence discloses any reasonable grounds for defending the claim and amounts to an abuse of process and ought to be struck out pursuant to Rules 26.3(1)(b) and (c) of the CPR; and

    b. Whether the Defendant has a real prospect of successfully defending the claim and the Court should grant summary judgment in favour of the Claimant pursuant to Rule 15.2 and Rule 1.1 of the CPR.

CLAIMANT'S SUBMISSIONS

Whether the Defence discloses any reasonable grounds for defending the claim and amounts to an abuse of process and ought to be struck out pursuant to Rules 26.3(1)(b) and (c) of the CPR

9. Rules 26.3(1)(b) and (c) of the CPR reads as follows:

"26.3 (1) In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court –

… (b) that the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;

(c) that the statement of case or the part to be struck out discloses no reasonable

grounds for bringing or defending a claim;…"

(emphasis mine)

10. The Claimant submits that the Defendant's Defence (the 'Defence') does not disclose any reasonable ground for defending the instant Claim. The essence of the Defence is two-fold, first, that the Claimant promised to give him the land[1], or a portion thereof, and, secondly, that the he has acquired title to the Land by prescription[2].

11. The Claimant submits that there was never any gift of the Land to Defendant. The Defence is wholly deficient in this regard and makes a bald assertion at paragraph 1 thereof with no supporting particulars of this purported promise. Paragraph 2 of the Defence states that the Claimant did not make good on his promise and paragraph 11 is along similar vein.

[1] Paragraph 2 of the Defence – Tab 2
[2] Paragraphs 1, 4, 6, and 7 of the Defence

12. Paragraph 9 of the Defendant's Witness Statement states unequivocally that the Claimant, if he in fact made the promise, which is denied, reneged on the same in 2007.

13. In order for the Defendant to successfully seek the help of a court of equity to perfect the gift, which has not been raised in any counterclaim, he ought to show that the Claimant, the alleged donor, took every step to get rid of the gift and pass title to the donee. The Claimant relies on Maitland's *Lectures on Equity* as cited by Arden LJ in the case of ***Pennington v Waine***[3] where it is said that:

> *'53. The principle that equity will not assist a volunteer has been lucidly explained in Maitland's Lectures on Equity (1932) at page 73:*
>
> > *'I have a son called Thomas. I write a letter to him saying 'I give you my Blackacre estate, my leasehold*

[3] ***Pennington v Waine*** [2002] EWCA Civ 227, [**TAB 6**]

house in the High Street, the sum of £1000 Consols standing in my name, the wine in my cellar.' ***This is ineffectual – I have given nothing – a letter will not convey freehold or leasehold land****, it will not transfer Government stock,* ***it will not pass the ownership in goods****. Even if, instead of writing a letter, I had executed a deed of covenant – saying not I do convey Blackacre, I do assign the leasehold house and the wine, but I covenant to convey and assign – even this would not have been a perfect gift. It would be an imperfect gift, and being an imperfect gift the Court will not regard it as a declaration of trust. I have made quite clear that I do not intend to make myself a trustee, I meant to give. The two intentions are very different –* ***the giver means to get rid of his rights****, the man who is intending to make himself a trustee intends to retain his rights but to come under an*

onerous obligation. The latter intention is far rarer than the former. Men often mean to give things to their kinsfolk, they do not often mean to constitute themselves trustees. An imperfect gift is no declaration of trust. This is well illustrated by the case of Richards v Delbridge, L.R. Eq.11 and Heartley v Nicholson, L.R. 19 Eq.233.' (emphasis mine)

14. To further illustrate the principle the Claimant also relies on the dicta of Arden LJ where she stated that:

'30. In Mascall v Mascall, above, the question was whether a gift of land was completely constituted by delivery of the land certificate and a form of transfer. Browne-Wilkinson LJ held:

*'**The basic principle underlying all the cases is that equity will not come to the aid of a volunteer.** Therefore, if a donee needs to get an order from a*

court of equity in order to complete his title, he will not get it. ***If, on the other hand, the donee has under his control everything necessary to constitute his title completely without any further assistance from the donor, the donee needs no assistance from equity and the gift is complete.*** *It is on that principle, which is laid down in Re Rose, that in equity it is held that a gift is complete as soon as the settlor or donor has done everything that the donor has to do, that is to say, as soon as the donee has within his control all those things necessary to enable him, the donee to complete his title.'* (emphasis mine).

15. In the case at bar, the Defendant is unable to say that the Claimant (as donor) had given the Defendant everything that he would have needed to perfect the purported gift.

16. The Land in question comprises approximately 9 acres in area and is registered land as evinced on the Land Register and the Land Tax Statement annexed to the Claimant's witness statement.

17. The Defendant has admitted in his witness statement that:

> '*6.* ***<u>It is not the entire nine acre parcel that the Claimant gave me but rather a house spot</u>*** *which comprises one of the four lots along the Western Highway as shown on a subdivision which the Claimant did.'* (emphasis mine)

18. Section 89 of the Registered Land Act expressly provides:

'89. No part of the land comprised in a register shall be transferred unless the proprietor has first subdivided the land and new registers have been opened in respect of each subdivision.'

19. The Registered Land Act makes it a condition precedent that in order to transfer a portion or 'part' of a parcel of land one must first obtain a new land register in this regard. There is no

evidence before this Court to suggest that the Land was in fact subdivided.

20. In view of the foregoing it is submitted that the Defendant is a volunteer who has not provided any consideration in any form. In fact, the Defendant has admitted that the Claimant had purportedly made a gratuitous promise (see paragraph 11 of the Defence) to transfer a portion of the Land to him.

Acquisition by prescription

21. The law regarding acquisition by prescription has recently been re-stated by the Caribbean Court of Justice in ***Rajpattie Thakur***[4] where the Honourable Mister Justice Wit held that:

> *'41 Determining whether a possessor is holding property animo domini, or animo possidendi, is largely dependent on surrounding circumstances and evidence. The difference between these two concepts*

[4] ***Rajpattie Thakur, in her capacity as Executrix of the Will of Dolarie Thahkur, a.k.a. Dolarie Takur v Deodat Ori***, [2018] CCJ 16 (AJ), [**TAB 7**]

is largely one of degree: those who hold land with an animus domini must of necessity have the animus possidendi but ***not every occupier who has the intention to possess the land also has the intention to own it****. The animus possidendi is the broader concept, while the animus domini is the stricter requirement.* ***For example, if a possessor recognizes the rights of the owner, possession will not be or will cease to be animo domini****.*

42 *This maybe so even in circumstances where the prescription period has expired. In Sapphire Dawn Trading 42 BK v De Klerk and Others, the third respondent claimed to have acquired certain prescriptive rights, but the plaintiff objected by stating that the third respondent had acknowledged the rights of the owner. In response, the third respondent replied that he only recognised the owner's rights*

after the 30-year period had already expired, since he was unaware of the fact that he already acquired the property through prescription. The Court rejected this argument stating that the acknowledgment illustrated the mental attitude with which he possessed the property up until that time:

> *'**The problem with this is that the third respondent's actions, after the expiration of the prescription period, undeniably illustrate the mental attitude with which he possessed the property up until that stage. His actions simply boil down to an acknowledgment of the ownership of the deceased [owner] over the property and that alone is fatal for his allegation of acquisitive prescription**.'*
>
> *(emphasis mine)*

22. In summary, the Defendant would need to satisfy the Court that he has:

a. An intention to occupy the land; and

b. An intention to assert ownership

in order to meet the requirements of acquisitive prescription.

23. Unfortunately, the Defendant's case does not meet the conjunctive requirements of the intention to occupy and the intention to assert ownership as he has, at least 6 times in his witness statement, acknowledged the Claimant's ownership of the Land where he stated that he obtained permission from his '*old time friend*.'

24. The Defendant's case therefore falls short of the fundamental requirements to acquire title by prescription for the very fact that he has acknowledged the Claimant's title.

25. In view of the foregoing the Claimant humbly submits that the Defence is an abuse of the process of the Court and that it discloses no reasonable ground for defending the instant claim

as the Defendant's case, taken to its highest, cannot seek the aid of equity as a volunteer and does not meet the fundamental requirements to acquire acquisitive title to the Land.

Whether the Defendant has a real prospect of successfully defending the claim and the Court should grant summary judgment in favour of the Claimant pursuant to Rule 15.2 and Rule 1.1 of the CPR

26. Rule 15.2 (b) of the CPR provides:

"The court may give summary judgment on the claim or on a particular issue if it considers that –

…b) the defendant has no real prospect of successfully defending the claim or the issue."

27. The Claimant submits that the Defendant does not have a real prospect of successfully defending this claim for recovery of possession of land. The Defence does not:

a. Disclose any facts or particulars of the alleged gift, promise, agreement, or sale the Claimant made to transfer the land to the Defendant;

b. Disclose on what basis the Claimant is statute barred from bringing this Claim; or

c. Disclose on what basis he has equitable ownership of the land.

28. In ***Mercury Marketing Ltd***[5], Kokaram J opined on the law relating to summary judgment and held that:

'7 *The utility of summary judgment applications is that it is both in the interests of the parties to sooner than later*

[5] ***Mercury Marketing Limited v VB Enterprises Limited***,, CV 2014-02694 [**TAB 8**]

deal with the case substantially rather than allow it to linger unnecessarily. The discretion however that is exercised must always seek to give effect to the overriding objective. See the observations of Lord Woolf in Swain v. Hillman [2001] 1 All ER 91. By adopting a robust approach it means that naturally the Court's approach in a summary judgment application is more inquisitorial than in an application to strike out a claim under CPR r 26.3. In a summary judgment application the Court is now engaged in a thorough examination of the facts as presented in the defence (or claim), where difficult questions of law may be engaged and the interpretation of documents or determination of factual discrepancies may not need the expense and resources of a trial to resolve. ***To determine whether the defendant's prospect of success is real, the Court must be satisfied that the defence advances grounds which***

<u>are more than arguable and the chances of succeeding on the propositions advanced are not speculative nor fanciful but deserves fuller investigation</u>. (emphasis mine)

29. The Claimant submits that the Defence does not disclose in law or in fact any reasonable ground for resisting the Claimant's claim for possession of the Land.

30. The instant claim has been progressed through the Court to the point where witness statements have been filed and the pleadings of both parties have now been closed.

31. The Defence makes bald assertions of a purported promise by the Claimant to the Defendant that the Land would have been transferred to him or, alternatively, that the Defendant has acquired title to the Land by prescription.

32. However, the Defendant's own witness statement does not assist his pleaded case as it fails to set out any particulars of the supposed promise by the Claimant to the Defendant.

33. *A fortiori*, the mere fact that the Defendant has admitted that he asked the Claimant for permission to enter the land – an acknowledgment of the Claimant's ownership, strips him completely of the *animus domini* necessary to assert acquisitive title.

34. The Defence is not one that carries any conviction which would move the Court to have the issues ventilated at trial. The Defendant's case is unmeritorious and would amount to pointless and wasteful litigation as there is no support for the contention that the Land was gifted to the Defendant, or, that the Defendant has acquired acquisitive title.

CONCLUSION

35. It is respectfully submitted that this Honourable Court grant the Claimant's application to strike out the Defence and enter summary judgment in favour of the Claimant as this would give effect to the overriding objective and allowing the instant claim to

proceed to trial would be a waste of the Court's resources and the parties' resources in view of the Defendant's pleaded case.

36. Legal Submissions on Behalf of the Defendant

1. The Defendant/Respondent Mr. Fido Julian Barahona of Iguana Creek Road and George Price Highway in Blackman Eddy Village namely property Parcel #30, Block #24, Registration Section Society Hall has been residing on the property over 26 years since 1994.

2. That he gained possession of this piece of parcel along with a run-down wooden structure from his friend, Mr. John Loskot, Claimant/ Applicant (herein) and land owner at the time to occupy the property. The Defendant/Respondent had asked the Claimant/ Applicant permission to reside on the property because it was a great deal closer and a convenient location nearer to his work site. Since at the time he was required to travel from afar, the Claimant/ Applicant not only allowed him permission to situate on the land but also promised and gave him authorization of the section of the

property on which he resided, being very satisfied and showing great appreciation on how the Defendant /Respondent maintained and overlooked the remaining acres of the property in his absence and promised to give him the land and that he would transfer it to him.

THE ISSUE

3. The Claimant/Applicant seeks a determination from the court on whether the Defence "discloses any reasonable grounds for defending the claim and amounts to an abuse of process" and ought to be struck out

AND

4. Whether the Defendant has a real prospect of successfully defending the claim otherwise the court should grant summary judgement in favour of the claim.

5. The Claimant now seeks to say that there is basically no reasonable defence, yet at paragraphs 10 of his written submissions says that that the "essence of the Defence is two-fold, first that the Claimant promised to give him the land or a portion thereof, and second that he has acquired title to the land by prescription."

Proprietary Estoppel

6. The claimant is mistaken about there being need for a counter-claim in order for the court to perfect a gift under the promise and fails to address the law that in equity a proprietary estoppel is a defence, not the basis for a cause of action as was stated in ***Combe v Combe*** [1951] 2 KB 215 **[TAB-1]** by Lord Denning. He clearly states in his decision that estoppel cannot be used as a cause of

action, but only as a defence when someone is trying to claim that a promise they made did not have any consideration and is therefore not binding. He states estoppel is a "shield", not a "sword".

7. It is therefore submitted, that the Claimant has erred in law in seeking to convince the court that the only way it can consider the defence of the Defendant, is if he had sought a counter-claim.

8. The Claimant seeks to make much ado about the fact that the Defendant has not produced any document to prove his promise, but fails to realize that it is the very fact that there is no documents that has us before the court and that equity is called upon, not to look at the hard documents available but the conduct of the parties.

9. The evidence which is before the court and speaks for itself, comes from the Claimant, who is saying at paragraph 2 of his statement of claim that since 1996 the Defendant has been on the land and the Defendant is saying that it is since January 1995 he has been on the land after approaching the Claimants since 1994.

10. It could never be an abuse of process for the Defendant to assert his defence and in this case the lapse of time of twelve (12) years already shows that by conduct alone the Claimant did acquiesce to the Defendant being on the property and further he has brought no evidence showing he ever tried to notify the defendant to leave the property.

11. It is only now in 2008 that he brought a cause of action, with no proof of any attempt prior to remove the Claimant, despite stating at paragraph 11 of his witness statement that he did so in writing, yet produced no such written notice for the court.

12. As a matter of fact the Claimants states in his witness statement that in the “late 1990 up to the year 2002 I rented a portion of the said land for mechanized farming to a Mennonite farmer, Aron Reimer” but even then he did not disturb the portion occupied by the Claimant.

13. Then at paragraph 10, he states that “in the year 2002 and again in 2007 I surveyed the said land and sub-divided it into smaller lots” yet he produced no such maps and neither does he says that the portion of the land occupied by the Claimant was partitioned or cut through. However, the Defendant is clear that he was promised the house lot his house sits upon and which he currently occupies.

14. On the contrary, the portion occupied by the Claimant remains as an intact portion after claiming to have done two sub-

divisions of the property and is the subject of this claim and the Claimant only exhibits a tax statement of the entire parcel 30.

15. The Defendant in his Defence explained that he took possession of a dilapidated wooden house and expended money to repair it and make it habitable and in his Witness Statement the Claimant did not deny that and neither did he say he stopped him from doing it.

16. Relying on the promise of the Claimant the Defendant even said he planted the land and was responsible for its upkeep since 1995, but nowhere in his witness statement the Claimant said he stopped the planting and the up keeping by the Defendant, but rather only states that he *"made it clear to the defendant that he was not to plant fruit trees"* and that he would reserve the right to destroy them, yet he stood by idly while the Defendant planted his trees.

17. The case law on what elements constitute Promissory Estoppel can be traced back through many cases and most recently used in **CF Partners (UK) LLP v Barclays Bank PLC [2014] EWHC 3049 (Ch) (24 September 2014) [TAB-2]** where at paragraphs 156 Lord Justice Hildyard refers to key case on the issue and sums up at paragraph 156 of his judgment, what needs to be proven by referring to Snell's on Equity:

> *156. As to this: (1) the form of **estoppel** relied on is **promissory estoppel**; (2) as to the doctrine of **promissory estoppel** (rediscovered by Lord Denning in Central London Property Trust Ltd v High Trees House Ltd [1947] KB 130, applied by him in Brikom Investments Ltd v Carr [1979] 1 QB 467 and affirmed by the Court of Appeal in Collier v P & MJ Wright (Holdings) Ltd [2007] EWCA Civ 1329), I can adopt the following passage from Snell 's Equity, 32nd ed. at 12-009: "Where by his words or conduct one party to a transaction freely [that is, without duress] makes to the other*

a clear and unequivocal promise or assurance which is intended to affect the legal relations between them (whether contractual or otherwise) or was reasonably understood by the other party to have that effect, and, before it is withdrawn, the other party relies upon it, altering his or her position so that it would be inequitable to permit the first party to withdraw the promise, the party making the promise or assurance will not be permitted to act inconsistently with it. "

18. In the instant case the Defendant is stating that a promise was made and relying on that promise he proceeded to repair the dilapidated house and plants his produce, none of which the Claimant denies he did. Now he suffers the detriment of having spent said investment and relying on said promise remaining to live at the premises for the past 24 years.

19. The conduct of the parties in and of itself speaks as to the promise made and acted upon by the Defendant and as Lord Denning said in **Central London Property Trust Ltd v High Trees House Ltd [1947]** KB 130 **[TAB-3]** at paragraph 18":

> " They are cases in which a promise was made which was intended to create legal relations and which, to the knowledge of the person making the promise, was going to be acted on by the person to whom it was made and which was in fact so acted on. In such cases the courts have said that the promise must be honoured. The cases to which I particularly desire to refer are: ***Fenner v. Blake [1900]*** 1 QB 426 , ***In re Wickham (1917)*** 34 TL R 158 , ***Re William Porter & Co., Ld. [1937]*** 2 All ER 361 and ***Buttery v. Pickard [1946]*** WN 25 . As I have said they are not cases of estoppel in the strict sense. They are really promises — promises intended to be binding, intended to be acted on, and in fact acted on."

20. A mere denial by the Claimant of having made those promises is not sufficient and his conduct since 1994 to 2008 speaks louder than anything now said.

Prescriptive rights

21. The Defendant in his defence asserts at paragraph 7 of his Defence that the "property was given to the Defendant in 1994" therefore "the Claimant is statute barred from bringing this claim", since in his belief that he owned it he has openly possessed it without need for permission from the Claimant and said possession has been open and undisturbed.

22. Under the **Registered Land Act**, CAP 194 section 138 **[TAB-4]** makes it clear that the procedure to follow for an application to own land by prescription is to make the relevant application to

the Registrar to be registered, and thus there is no need for the application to form any counter-claim or claim, until the first step is carried out at Land Registry.

23. The Claimants seeks summary judgment relying on Rule 15.2(b) and is asking the court to find that the Defendant has no real prospect of successfully the claim or the issues, yet admits that the defence is one of a promise, in this case a proprietary estoppel which is one form of a promissory estoppel.

24. It is pre-mature to ask the court to find that the Claim be decided without trusting the veracity of the witnesses, since in all honestly the case comes down to one of the court's determining:

    a) Whose version of events it believes

    b) Determining if the conduct of the parties lend itself to prove their version of events.

25. The power of the court to enter summary judgment is a discretionary one and one that is not taken lightly, as it must seek to give effect to the overriding object, which states:

> "Rule 1.1
>
> (2) Dealing justly with the case includes –
>
> (a) ensuring, so far as is practicable, that the parties are on an equal footing;
>
> (b) saving expense;
>
> (c) dealing with the case in ways which are proportionate to-
>
> (i) the amount of money involved;
>
> (ii) the importance of the case;
>
> (iii) the complexity of the issues; and
>
> (iv) the financial position of each party;

(d) ensuring that the case is dealt with expeditiously; and

(e) allotting to the case an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

1.2 The court must seek to give effect to the overriding objective when it –

(a) exercises any discretion given to it by the Rules; or

(b) interprets any rule.

26. The Defendant is not on the same footing as the Claimant, not only in that there was been inordinate delay when his first attorney died, but also that his means are far less to fight the

case and he is not in the best of health to travel to court each time and he now is very elderly.

27. The Defendant has everything to lose as he owns no other land, unlike the Claimant who is large landowner with the means. For the Defendant the case is important to be ventilated through the court system having been brought to court by the Claimant

28. The Defendant's ability to "successfully" defend the case is based on the need that his evidence be tested and that he gets to test the evidence of the Claimant and this cannot be done where per the case of **Mercury Marketing Ltd** (cited by the Claimant) the court is called upon to be "engaged in a thorough examination of the facts as presented in the Defence (or Claim), where difficult questions of law may be engaged and the interpretation of factual discrepancies may not need the

expense and resource of a trial to resolve". But this a discretion the judge would exercise to the point of being satisfied that the defence deserves fuller investigation and this can only be done after the Claimant is cross-examined, since the Defendant has states bald propositions and without evidence, when the burden of proving falls on the Claimants, who is asserting.

29. A promise is something said usually between two parties, to the exclusion of so many others, and it is the ensuring conduct that determines whether that promise was made.

30. The Claimant wants the court to believe that for 12 years he just left a person to live on and off his land and no rent is charged, yet he does not interrupts that occupation nor possession, until 12 years later, yet at no time in between he even produced a written eviction or notice.

30. The Defendant says the wife of the Claimant had sent him a letter, but she did not have such authority as she is not listed as the legal owner. But more importantly he says he tells the Claimant about the letter and he says not to worry about it, and thereafter nothing happens or is done by the Claimant in 2007 regarding the land.

31. A look at the claim itself, does not bring a claim for trespass, but rather a declaration that there is illegal occupation. Yet the Claimants states he allowed the occupation, and thus even if that was a tenancy per section 3 (4) and (5) of the Landlord and Tenant Act, CAP 189"

"(4) A tenancy at will is a holding of land under contract for the exclusive possession thereof at the will of the landlord.

(5) A tenancy on sufferance is a holding of land in exclusive possession by a person who, without the assent or dissent of

the person entitled to possession, wrongfully continued in possession of it after his right to the possession thereof expired."

The Claimant has failed to show he sought to first give notice to vacate and thereafter brought this claim.

CONCLUSION:

32. The Claimant has more than an arguable defence and is entitled to his hearing and judgment in his favour.

33. Therefore, if the court is minded to give summary judgment it should be in favour of the Defendant, as the Claimant has failed to prove its own case and is relying solely on bald statements made and no evidence to support those.

34. DECISION

I am grateful to both counsel for their helpful submissions on this Application to Strike Out Defence and Application for Summary Judgment. Having considered the legal submissions for and against these applications, I find myself in complete agreement with the legal submissions made on behalf of the Claimant/Applicant by Mr. Lindo. It is beyond dispute that Mr. John Loskot is the Legal Owner of this parcel of land with absolute title over this property. Mr. Loskot, in a generous act of friendship, as shown by the evidence acknowledged as true by the Defendant himself allowed Mr. Barahona to reside on his property in order to help Mr. Barahona out, since that parcel of land was closer to where the Defendant was working at that time. Mr. Barahona asserts that Mr. Loskot promised him that he would give him ownership over that piece of land on which he resided. However, Mr. Barahona has not provided this court with a scintilla of

evidence to substantiate the existence of this promise. There is no evidence e.g. of when this promise was made to Barahona, what were the terms, length of time he was to reside on the property, what portion of the property was included in this promise, was there anyone else present besides the immediate parties at the time this promise was allegedly made. I find that the absence of any and all details surrounding such an important event would suggest that this "promise" is a fabrication at worst, or at best 'wishful thinking' on the part of Mr. Barahona. I accept as true Mr. Lindo's submission that Mr. Loskot gave Mr. Barahona permission to reside on his property and at all times, and Mr. Barahona was and remains to date a mere tenant at will. I also agree with Mr. Lindo's submissions that Mr. Barahona lacked the requisite '*animus domini*" to own this land to the exclusion of all others including the legal owner, for at all times Mr. Barahona acknowledges and continues to

acknowledge that this land is owned by Mr. Loskot. The question of prescriptive title does not arise since all the evidence shows that Mr. Barahona has been living on this property with the consent of the legal owner, Mr. Loskot. Contrary to Ms. Matura's submissions, a bare promise without more cannot give rise to proprietary estoppel and in this case there is absolutely no evidence that such a promise was even made. In the circumstances, I find that the Defendant has failed to establish that his Defence has any prospect of success. The Defence is therefore struck out and Summary Judgment is granted in favor of the Claimant. The Court orders that the Defendant Julian Barahona is to vacate the Claimant John Loskot's property by 15th April 2021.

Each party to bear own costs.

Dated this day of March, 2021

Michelle Arana

Chief Justice (Acting)

Supreme Court of Belize