

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

(CLAIM NO 815 OF 2018

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(BETWEEN

(CLIFFORD R MOODY

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CLAIMANT

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(BUNTING ALSO CALLED BUNTIN MOODY

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DEFENDANT

Before: The Hon Justice Westmin R.A. James

Date: 30th March 2021

Appearances: Mr Darell Bradley together with Mr Estevan Perera for the Claimant
Mr Anthony Sylvestre for the Defendant

JUDGMENT

1. As stated in the Pre-Trial Memorandums the Claimant was a cattle herder and owned cattle duly registered with the CM brand. The Claimant says he engaged the Defendant, who is the Claimant's brother, as his agent, trustee, and employee, for the purpose of taking care of the Claimant's cattle and tending the pasture, and the Claimant left the Claimant's cattle in the Defendant's care and custody under the agreement that the Defendant was to tend to the cattle.
2. The Claimant says that the Defendant thereafter wrongfully and deceitfully appropriated the Claimant cattle for himself and wrongly appropriated the Claimant's CM brand to be registered in the Defendant's name, and the Defendant wrongfully sold off some cattle. The Claimant's claim certain declarations that he is the legal and beneficial owner of the cattle bearing the CM brand and all calves and cattle produced therefrom and for the delivery up of the Claimant's cattle, and for an account to be done, and for damages and an injunction restraining the Defendant from dealing with the Claimant's cattle.
3. The Claimant also claims certain declarations that he is the legal and beneficial owner of approximately twenty acres of land located in Maypen Village, Belize District, Belize, which was purchased from moneys paid by the Claimant to the Defendant as agent and trustee of the Claimant, and which land was wrongful and

deceitful appropriated by the Defendant and put in the Defendant's name in breach of trust.

4. The Defendant denies the claim and says that he is the registered owner of the CM brand but the Defendant admits that he is entered into a verbal agreement with the Claimant to manage and take care of the Claimant's herd of cattle. The Defendant says that the Claimant had thirty heads of cattle and the Defendant had twelve heads of cattle. The Defendant says he was paid \$200.00 BZ weekly for the first three years and thereafter there was an arrangement that the Defendant would be entitled to one calf for every three calves that were bred and it was on this basis that the Defendant agreed to continue to manage the herds over the many years. The Defendant denies entering into any agreement for the purchase of land, and for the Defendant to hold the same on behalf of the Claimant. The Defendant says that he purchased only 10 acres of land and whatever monies were given to him by the Claimant to purchase the land was a gift. The Defendant also contends that any purported cause of action is statute barred by operation of section 12(2) of the Limitation Act, the cause of action allegedly occurring in the 1980's.
5. The Claimant by Amended Claim Form and Statement of Claim dated 29th March 2019 for sought the following reliefs against the Defendant.
 - (1) A Declaration that at all material times the Claimant was and remains the legal and beneficial owner of at least 185 heads of cattle, which carry the brand CM and calves and cattle produced from those cattle, including certain calves purportedly branded with the Defendant's mark and certain other unbranded cattle.
 - (2) A Declaration that at all material times the Defendant acted as agent and trustee for the Claimant for the purpose of looking after the Claimant's cattle branded with the Claimant's CM brand, including seeing to their health and tending to the pasture.
 - (3) A Declaration that at all material times the Claimant was and remains the legal beneficial owner of the CM brand, which was registered with the Belize Livestock Producers Association
 - (4) A Declaration that the Defendant deceitfully and fraudulently obtained from the Belize Livestock Producers Association registration of the Claimant's brand in the Defendant's own name, as if the Defendant were the owner of that brand, and that thereafter the Defendant wrongfully purported to claim the Claimant's cattle as belonging to the Defendant

- (5) A Declaration that the Defendant deceitfully, fraudulently, and without the knowledge or consent or permission of the Claimant sold off some of the Claimant's cattle and dishonestly misappropriated the funds he obtained thereby with the intent to permanently deprive the Claimant of his cattle and the proceeds of the sale from the Claimant's cattle.
- (6) A Declaration that the Claimant is the legal and beneficial owner of approximately twenty acres of and located in Maypen Village, Belize District, Belize which was purchased in or around the 1980's from David Moody and purchased from moneies paid by the Claimant to the Defendant as agent and trustee of the Claimant, and which land was wrongfully and deceitfully appropriated by the Defendant and put in the Defendant's name in breach of trust.
- (7) An Order that the Defendant provide the Claimant with a full account of the cattle bearing the CM brand and any calves produced from that cattle, including all unbranded cattle and all cattle purportedly branded with the Defendant's mark and including all cattle sold off by the Defendant from those cattle originally branded with the CM mark.
- (8) An Order that the Defendant delivers up to the Claimant all cattle in the Defendant's possession or under his possession with the CM brand, and all calves and cattle produced from that cattle, including cattle which may have been branded or caused to be branded with another brand purportedly obtained by the Defendant.
- (9) An Order that the Defendant delivers up to the Claimant all sums found to be payable to the Claimant as proceeds of the sale by the Defendant of the Claimant's cattle.
- (10) An Injunction restraining the Defendant, whether by himself or his agents or employers or other acting under or through his authority or consent, from dealing in any way with cattle branded with the CM brand or any calves or cattle produced from that cattle, or from dealing with the CM brand itself or claiming that brand to belong to the Defendant, or from selling, agreeing to sell, transferring, agreeing to transfer, disposing or agreeing to dispose of, or dealing in any way whatsoever with cattle bearing the CM brand, or any unbranded cattle or any cattle bearing any other brand that was produced from those cattle bearing the CM brand.
- (11) An Order directing the Defendant to forthwith transfer to the Claimant approximately twenty acres of land held in the Defendant's name but held on trust for the Claimant, located in Maypen Village, Belize District, Belize, and which was purposed in or around the 1980's from

David Moody and purchased from moneies paid by the Claimant to the Defendant as agent and trustee of the Claimant.

- (12) Damages for tort of deceit and breach of trust and for breach of contract
- (13) Interest on the award of damages
- (14) Further and other relief
- (15) Costs

Evidence for the Claimant

6. The Claimant in his witness statement said at age 20 in November of 1977 he moved to the United States to work. In the early part of the 1980's he made a trip back to Belize he bought some fifteen heads of cattle which he said grew to over 200 heads of cattle over time.
7. He said that from 1977 to 2015 while he was living in the United States he entered into an agreement with his brother, the Defendant, where he engaged the services of the Defendant to manage and take care of the herd on his behalf and for his benefit, including to see to their health and security and to tend the pasture. He said he paid the Defendant to do this. His evidence was some Western Union transfers which showed a total of 33 transfers to the Defendant by the Claimant through Western Union from December 2012 to February 2014. The Claimant said at some point he realized that his brother was managing the cattle full time and because the cattle was generating funds, he authorized his brother to pay himself from the proceeds of the sale.
8. In his cross examination he denied that he and the Defendant had an oral agreement for the Defendant to manage the cattle and then said that all he said to the Defendant was look over the cattle for him. In answer to a question whether there was no arrangement made with his brother from mid 80's to 2015, he said no and that they did not have any oral agreement. He also denied that there was an arrangement that the Defendant would receive one calf for every three calves born.
9. The Claimant however later admitted in cross examination and again in reexamination that the Defendant would sell cattle he would pay himself and there was no set price for paying the Claimant.
10. The Claimant also said that he would send money when there was a hurricane, a storm or floods for damages to the cattle and pasture. He also said that he send money to the Defendant to wire the pasture.

11. He said that in about 1984 the cattle were moved from his mother in law's property in Scotland Halfmoon Village and Bermudian Landing Village to his father's property in Maypen Village, Belize District. At that time, he said there was 69 heads of cattle. He admitted in cross examination that there were no documents or ledgers that recorded the amount of cattle that were handed over to the Defendant.
12. He said that in 1980 he registered the brand CM which stood for Clifford Moody with the Belize Livestock Producers Association in 1980 and so was his brand.
13. The Claimant in his witness statement indicated he always had intention to acquire land so that the cattle could graze. He said he gave the Defendant \$1,500.00 to purchase approximately twenty acres of land in Maypen Village, Belize District. He said the land was purchased from his uncle David Moody to be used as land for grazing for the cattle. He then said that the Defendant wrongfully and deceitfully transferred the land in his own name rather than the Claimant's name.
14. The Claimant knew the Defendant built his home on the land, a two-storey wooden house that had one bedroom and a living room. In cross examination the Claimant admitted he never asked for title to the property. He said he didn't because he trusted his brother and families trust each other. He said that he was a nice guy and he gives and gives to all his siblings.
15. The Claimant testified that in 2015 he returned to Belize and he and the Defendant spoke and he took over the cattle from him which has remained in his possession since then.
16. In his witness statement the Claimant said he did not mind exactly how much the Defendant paid himself and overlooked the actions of the Defendant as long as the Defendant maintained a big herd for him. The Claimant said:

"I wanted to know that when I came home to live I would have a big herd for me. I wanted to know that when I came home to live I would have a large herd of cattle this was my goal and to get this goal, I was prepared to invest my savings and to overlook his bad behaviour."
17. The Claimant went on to say that over the years he has given the Defendant and his family all kinds of help. He said at paragraph 34 of the witness statement:

“Over the years I have extended all kinds of help and assistance to the Defendant and his family, besides the help he got by being manager of my herd. I helped him open two restaurants, I bought a five thousand dollar trailer for him, I bought him five thousand dollar land rover, and some good horse saddles among other things, but he has shown no gratitude.”

18. The Claimant also had two witnesses Alrick Moody and Leslie Moody brother of the Claimant and the Defendant. They testified that the Defendant was mainly responsible for taking care of the cattle but they would help out sometimes and not for pay. The Claimant’s witnesses were not quite sure about the arrangements in relation to the land. Alrick in his witness statement said that the uncle David Moody was selling his property in Maypen and called the Claimant to ask him if he would be interested in purchasing. Alrick however then said that the Defendant then called the Claimant about the land and he sent money for the Defendant to purchase the property. He said the property was for the Claimant not the Defendant. Leslie on the other hand said that the Claimant sent money for the Defendant to purchase the property from David Moody for the cattle. He said however that the Defendant claimed that the Claimant was buying the land for him, the Defendant. They both said that they were not privy to the conversation and arrangement between the Claimant and the Defendant in relation to the land.
19. The Claimant also produced an expert report from Fredrick Henry Hunter. His report indicated that there were no known records about the herd, no calving record for the individual cows, no records of births, deaths, and losses to predators or poachers, no record of movement to different feeding areas, vaccinations, worming nor supplemental records, nor treatment for injuries or diseases.
20. Without records, he said it was difficult to determine calving intervals in cattle, especially over a number of years, to determine their production ability. Also, he said there are no sales records, it is difficult to determine the level of production, meaning the size conformation, weight and overall quality and value of the animal produced.
21. Under these conditions, he used averages and knowledge based on experience of the types of cattle, the area where they are being pastured, and the type of management under which they are being raised. He used 6 scenarios and projected that the cattle would yield an 80% calf crop.

Evidence for the Defendant

22. The Defendant was the sole witness for the Defence. The Defendant in his witness statement said that he entered into an oral agreement with the Claimant to manage and take care of his herd of cattle. At the time, the Claimant had 30 heads of cattle and he had 12 heads of cattle.
23. He said in the initial stages (for the first three years) the Claimant paid him \$200.00 BZ weekly but thereafter he stopped receiving payment. He said he took care of the cattle over the years and not received anything from the Claimant. He said that after 1986 the Claimant and he made a further arrangement which he described as standard practice in the River Valley Area that he would get one cow for every three cows that was bred. He said that he acted in good faith and reliance on that agreement and so continued to manage the herds of cattle of the Claimant over the years without being paid. The Defendant said he used his own resources and that of his wife to pay for expenses in ensuring that the cattle was taken care of.
24. In his witness statement he said he registered the brand CM with the Belize Livestock Producers Association in or around 1987 and has been the registered owner of the brand for many years.
25. In cross examination the Defendant admitted that the Claimant's cattle were being branded with the CM brand and when he had the arrangement with the Claimant the cattle would have been branded with CM. He admitted that there was no other cattle outside the CM brand.
26. He admitted that he knew the importance of the brand and that he branded his own heads of cattle with the same brand since he managed the whole herd. He admitted that he went into the office of the Belize Livestock Producers Association and asked if the brand was updated and they said no so he updated it. He then registered the brand in his, the Defendant's name.
27. The Defendant said that the land he purchased from David Moody in the 1980's consists of ten acres not 20 acres as the Claimant has indicated. He said whatever monies was given to him was a gift. He said he had told the Claimant that David Moody, their uncle was selling a portion of the land which he held as a leasehold interest in and that he was occupying. The Defendant said that the Claimant agreed to give him \$1,500.00 as a good will gesture since he was managing and taking care of his herd of cattle and he was not adequately compensating him. He said that the Claimant gave him the money as a gift and since acquiring the ten acres, he constructed his two-storey home in or around 1988 and planted out on the property with coconut trees, sugar and several varieties of grass which he used

as grazing field. He testified that the Defendant has known about the house since he constructed it.

28. In relation to the land the Defendant said that he would not have put his house on the piece of land if he did not trust his brother that the land was his. He said that the cattle grazed on the land because it was, he, the Defendant, who would take care of the cattle so it grazed on the land.

Analysis of the Evidence & Determination

29. There was a very loose business arrangements between the Claimant and the Defendant so loose the parties are not properly able to put same into words. There was no documentary evidence as it relates to the relationship between the Claimant and the Defendant. It is one of the reasons why in contract law, there is a presumption against the intention to create legal relations between family members.

30. There are two major issues for the Court to decide in the present case.

- (i) who is the rightful owner of the CM brand; and
- (ii) does the land in Maypen upon which the Defendant resides is held on trust for the Claimant?

31. The Claimant first registered the CM brand with the Belize Livestock Producers Association in the early 1980's. That fact is not contested by the Defendant. That registration expired in 1987 and the Defendant in his cross examination indicated that he went into the office of the Belize Livestock Producers Association and asked if the brand was updated and they said no so he updated it. He then registered the brand in his name.

32. The Defendant acknowledged in cross examination that he had no brand of his own at the time he took over the Claimant's cattle and he branded his cattle with that of the Claimant's brand before the issue of renewal.

33. The Claimant was in the United States, the Defendant was the manager of the Claimant's cattle and responsible for the day to day running of the cattle business and so it would make sense that the Defendant registered the brand in this name. There is no evidence that the Defendant informed the Claimant of the expiration and sought direction of what to do. The loose arrangement between the Claimant and the Defendant could reasonably leave the Defendant believing that he was in

charge and made all the decisions in relation to the cattle. The Defendant knew that once the Claimant returned to Belize to live, he would take control of the cattle which would include the brand. In those circumstances I hold that the Defendant held the brand of CM for the Claimant. I would give the Defendant 3 months to do all that is necessary to effect the changeover of the CM brand to the Claimant and register his own brand.

34. Having resolved this issue in favour of the Claimant, the Court must then consider the consequential order of who owns all the cattle branded with CM.
35. The Claimant indicates that if the Court holds that the Claimant owns the brand CM then all cattle with that brand is the property of the Claimant. I do not agree with that at all. The Defendant himself agreed at trial that he allowed the Claimant to have cattle from the herd. There was therefore a co-mingling of the cattle.
36. The Defendant's evidence was that he had a number of cattle when he took over the cattle for the Defendant. I do not have any reason to doubt that fact and the Claimant not being in Belize cannot deny that. The Claimant's witnesses do not deny that fact either. There was absolutely no inventory or sign over of cattle at the beginning, the Claimant doesn't even know how much cattle he gave the Defendant initially. Nowhere in his witness statement did he indicate how much he gave his brother. In paragraph 6 of the witness statement, he said he grew the herd to over 200 heads of cattle again still not knowing how much cattle he possessed.
37. When the Claimant returned to Belize, he took over the herd of cattle. He said in paragraph 29 of his witness statement the herd was between 100 to 115 head when he came to reside in December 2015. There was no evidence of the inventory of how much cattle was actually given to the Defendant. He said that he grew that number to over 165 to 185. The Claimant doesn't even know the precise number of cattle in his own possession.
38. It was accepted by the Claimant that the Defendant would was selling cattle and paying himself. Therefore, I cannot hold that all the cattle with the brand CM is that of the Claimant.
39. The Claimant's evidence is that he took over the cattle when he returned and moved them. By that action the Claimant brought an end to whatever type of relationship between him and the Defendant with respect to the cattle. Both parties have gone their separate ways and in those circumstances the Claimant would

keep what cattle is in his possession and the Defendant will keep whatever is in his possession now. The Defendant is to make the necessary rebranding within the 3 months and so no further order is necessary with respect to the cattle.

40. Further, the Claimant sought consequential relief that the Defendant be made to account for the cattle for the last 30 plus years.
41. Neither of the parties have or are in a position to itemize the number of cattle which are the subject of the dispute. The Claimant's own expert said he could not determine this information. I agree with the Defendant's submission that the arrangement was so loose between the Claimant and the Defendant and as admitted by the Claimant the Defendant was allowed to do whatever he wanted. The Defendant said all he wanted was a big herd when he returned to Belize to live and so overlooked all the Defendant's actions. The Claimant did not request an account of the cattle for some 30 years and do so now would be impossible for the Defendant to be able to comply with. The Court will not make an order that will be futile and knows that the Defendant would not be able to comply with. I therefore will not grant any such order.

Maypen Land

42. The Claimant submits that the Defendant holds 20 acres of land in Maypen on an implied constructive trust for the Claimant.
43. Where land is acquired in the sole name of an acquiring party, a constructive trust can arise whenever Y has so conducted himself so that it would be inequitable to allow Y to deny X his beneficial interest in the property. The burden of proof rests on a non-acquiring party or parties to show that there was some agreement between the acquiring party and the non-acquiring party or parties, express, or to be inferred from their conduct at the time of the acquisition, that the beneficial ownership of the property acquired was to be shared between them: per Lord Hope in *Stack v Dowden* [2007] UKHL 17.
44. In resolving this issue, I was mindful that the issue was raised by the Claimant, in order to contend that the Defendant acted surreptitiously by putting the land in the Defendant's name and not the Claimant. The burden is carried by the Claimant to support this contention.

45. The onus is on the Claimant to demonstrate that at the time of the purchase by the Defendant, there was an express agreement that the beneficial ownership of the said property was to be placed his name.
46. Based on the pleadings before this Court and evidence given there are competing versions of the events relative to the way in which the property came into the name of the Defendant. The determination as to the nature of the ownership of the Maypen property is essentially fact dependent. According to the learning in *Horace Reid v Dowling Charles and Percival Bain* [1989] UKPC 24 when determining questions of fact the Court must weigh the versions of the events, on a balance of probabilities, in light of the evidence and in doing so the Court is obliged to check the impression of the evidence of the witnesses against: (1) contemporaneous documents; (2) the pleaded case; and (3) the inherent probability or improbability of the rival contentions.
47. There was no documentary evidence to support either the versions of the parties. There is no land title produced for the Court to identify the land, the type of interest in the land being held, whose name(s) the land is in.
48. There were also inconsistencies in the documents that was in fact produced by the Claimant. The evidence of Western Union receipts did not show a \$200.00 a week payment to the Defendant and in fact it was acknowledged that by the time for which the receipts were produced the Claimant was not paying the Defendant and the Defendant was paying himself from the sale of the cattle. The receipts that the Claimant produced to show he bought additional heads of cattle from Alrick Moody and Mene Reiner the receipt doesn't seem to match. While Receipt No 0468180 dated 30th May 2014, the next receipt, Receipt No 0468181 is dated 4th September 2016 two years later; but the next chronological Receipt No 0468182 is dated 30th May 2016 which is a dated before 0468181 which is not consistent.
49. The Court was therefore presented with a direct conflict of the Claimant's word against the Defendant's.
50. The pleadings stated at paragraph 6 that the Claimant gave the Defendant either \$1,500.00 or \$1,800.00 to purchase approximately 20 acres of land to be purchased from the Claimant's uncle. The Claimant specifically alleges that the Defendant was instructed to put the land in the name of the Claimant and that it was wrongfully and deceitfully placed in the Defendant's name. The Claimant is alleging fraud on the part of the Defendant and so in relation to same have a higher standard.

51. I have found the evidence of the Claimant seriously wanting in this regard. The Claimant did not know how much money he actually gave the Defendant for the purchase of this land (\$1,500.00/\$1,800.00) nor is he sure about the size of the land (20 acres/10 acres) and so no certainty of the subject matter. The Claimant has not produced his uncle, if alive, to give evidence that he agreed to sell the property to the Claimant and not the Defendant. The Claimant did not send the money to his uncle who he knew and could pay directly but sent it to the Defendant. While the Defendant was in control of the day to day running of the business, there was no reason to go through the Defendant to buy property from his own uncle. The Claimant also presented no evidence that he ever followed up with the Defendant about the title to the land or even asked for the title for the land on one of his trips to Belize. The Claimant's witnesses in cross examination said they were not privy to the arrangement between the Claimant and the Defendant with respect to the land.

52. The Claimant in his witness statement stated:

"I wanted to know that when I came home to live I would have a big herd for me. I wanted to know that when I came home to live I would have a large herd of cattle this was my goal and to get this goal, I was prepared to invest my savings and to overlook his bad behaviour."

53. The Claimant's answer under cross examination was, in my view, critical. The Claimant said that he gives and gives to his siblings and that even the Defendant's wife says he is the best brother-in-law. The Claimant never asked about the title to the property for all these years. The Defendant built a house on the property and the Claimant who knew about it said nothing to the Defendant. In cross examination he said that's because families trust each other. The fact that the Claimant's cattle was grazing on the land is not definitive since the Claimant has used other persons land for the grazing of the cattle before.

54. I am therefore not satisfied on the evidence that the Claimant has established the oral arrangement upon which he seeks to rely. I am of the belief having looked at all the evidence and the witnesses and their demeanor that the balance of probabilities was that the Claimant did not give the money to the Defendant to purchase property for him. I believe that the Claimant gave the Defendant the money more in the vein of paragraph 34 of the Claimant's witness statement in giving assistance to his brother.

55. Consequently, I hold that the Claimant did not establish a constructive trust over the property in Maypen and his case in this regard is dismissed.

56. Having regard to the facts of this case and in particular that both parties have contributed to the circumstances they found themselves in. The fact that the Claimant won some aspect of his case and lost others and the lack of evidence on both sides. I will make no orders as to costs

/s/Westmin James

Westmin R.A. James

Justice of the Supreme Court (Ag)