

IN THE SUPREME COURT OF BELIZE, A. D. 2019

CLAIM NO. 178 OF 2019

BETWEEN:

(DESTILL'S BELIZE ETHANOL LTD CLAIMANT

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(AND

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(RAMIRO RAMIREZ

DEFENDANT

**BEFORE THE HONOURABLE MADAM CHIEF JUSTICE ACTING
MICHELLE ARANA**

Mr. Estevan Perera of Estevan Perera and Co. LLP for the Claimant

Mr. Andrew Bennett of Morales Peyrefitte for the Defendant

J U D G M E N T

Facts

[1] This is a claim for a declaration and other relief regarding ownership of a parcel of land in the Corozal District. Destill's Belize Ethanol Ltd., the Claimant Company, holds a Certificate of Title over a parcel of land since 5th August, 2011. Destill's Belize Ethanol Ltd. ("Destill's") says that the Government of Belize sold Parcel No. 415 to a Panamanian Company , Meroconsult Ltd., on November 23rd , 2007. This property was later sold and transferred to Destill's Belize Ethanol Ltd.

(Destill's") on the 19th December, 2007 for the purchase price of \$300,000US. Mr. Ramiro Ramirez, the Defendant, holds a lease and permission to survey from the Government of Belize dated September 28th, 2007. The Defendant entered into possession of 205 acres of land and the Government of Belize approved the purchase of this parcel by the Defendant on November 26th, 2007. On December 3rd, 2007, Mr. Ramirez paid the purchase price to the Government of Belize for this 205 acres property. He has now brought a counterclaim against Destill's seeking, *inter alia*, a declaration that he is entitled to the beneficial ownership of this property. Destill's Belize Ethanol Ltd. claims that the Government of Belize was not in a position to give title to Mr. Ramirez because this land had already been sold to Meroconsult S. A. by the Government in November 2007, and later sold to Destill's in December 2007. The court now reviews the evidence in this case and gives its decision.

Issues

[2] Who is entitled to the ownership of this parcel of land? Is it Destill's Belize Ethanol Ltd. or Mr. Ramirez?

Evidence of Claimant

[3] At trial, the Claimant Company called one witness, Mr. Arturo Razo. In his witness statement, he said that he was a resident of a Santa Elena Town, Cayo District. Mr. Razo said that the Claimant is a limited liability company formed under chapter 250 of the Laws of Belize and acts as the holding company in Belize. The

Claimant Company became the owner of all that piece or parcel of land legally described as Parcel No. 450 Block 1 in the Douglas North Registration Section of the Corozal District (“the Property”) He exhibited the company’s Certificate of Title as **Exhibit “AR1.”**

[4] Mr. Razo said that the property was a portion of a previous parcel of land described as Parcel 415 Block 1 in the Douglas North Registration Section containing 2, 136.80 Acres of Land. The Government of Belize sold the original 2, 136.80 acres parcel to Meroconsult S. A., a Panamanian company on 23rd November 2007 by virtue of Land Register 200700349 (Exhibit “**AR 3**”). That parcel was then sold by Meroconsult S. A. to Destill’s Belize Ethanol Ltd, the Claimant company on January 3rd, 2008 for \$600,000BZ by virtue of Land Register report LRS-200800052 as shown in Exhibit “**AR 3.**” That parcel was mutated into two other parcels, Parcels 424 and 425 in the same block and registration section. Parcel 425 was then further mutated into two other parcels, Parcel 450 and 459 in the same block and registration section. Both parcels of land remain in the name of the Claimant as shown in the land reports Exhibits “**AR2**” and “**AR 3.**” Mr. Razo says that since the Government had already sold the original parcel to Meroconsult S. A. on November 23rd, 2007, it was not possible for the Government to sell a portion of that parcel on 26th November, 2007 to the Defendant because by that time the Government did not own any portion of the original 2,136.8 acre parcel. Mr. Razo

said that Mr. Ramirez has failed to prove that he has been on the Claimant's land for an extended period of time.

[5] Under cross-examination, Mr. Razo said that he lives in Veracruz, Mexico and has an office in Chetumal. He said that while he doesn't live in Cayo, his family owns a place that he visits regularly. He also goes to Libertad about ten times a year on business. He is a Director of the Claimant Company and he has a Power of Attorney. He has been a director since 2018. He did not join the Commissioner of Lands in this claim because he is not an attorney. He does not know about the survey because he has no qualifications as a surveyor. Mr. Razo said he cannot say if the survey plan of the Defendant is on the property of the Claimant. He doesn't know about other trespassers being on the company's property, or about any fencing and livestock. He agreed that he cannot tell the court exactly when the Defendant entered Parcel 450.

Evidence of the Defendant

[6] Mr. Ramiro Ramirez was the sole witness for the Defence. He said in his witness statement that he is the Defendant in this claim and the Claimant in the Counterclaim. He said he is the Lessee and beneficial owner of 205 acres of land known as Plock 1 Parcel 2734 in the Douglas North Registration Section on survey plan number 10872 ("the land"). He says that he has been occupying this land since the year 2000 under permission from the Development Finance Corporation

("DFC") which had foreclosed on it from the Petrojam Project. In 2005, the DFC passed the entire property to the Government of Belize from whom he acquired and remained in occupation of the land. Mr. Ramirez took steps to formally acquire the land from the Government and on September 28th, 2007 he was granted permission by the Commissioner of Lands and Surveys to survey 200 plus acres of land in that area, as shown by Permission to Survey marked Exhibit "RR1".

[7] Mr. Ramirez then hired licensed surveyor Patrick Sebastian to survey this land which was at the time national land in the Douglas North Registration Section. The Commissioner of Lands and Surveys authenticated the survey plan including the boundaries, as shown by Survey Plan Exhibit "RR 2." At no time did the Government of Belize notify him that this land was private property. Mr. Ramirez says that he was granted Lease 580/2007 from the Government, after which he formally went into possession of the land, even though he had been in occupation previously. On November 26th, 2007 the Government approved the sale of the land to Mr. Ramirez for the total of \$10,690 which was later reduced to \$5,360, as shown by Approval to Purchase Form and Land Rent Statement marked Exhibit "RR 3" and "RR 4" respectively. Mr. Ramirez paid the full purchase price to the Government on December 3rd, 2007 and has been waiting on the issuance of his land certificate in his name ever since. Exhibit "RR 5" show receipts from the Government for payment by Mr. Ramirez of Registry Fees and purchase price of the land.

[8] Mr. Ramirez said that after he paid the Government for the land he started investing heavily in the development of the land including clearing, fencing and maintenance of bushes in addition to 262 heads of cattle and 34 acres of sugar cane production. He says that he also built 1.5 miles of road which brings the total value of his investment to \$400,000.

[9] Mr. Ramirez says that he was never informed by anyone that there was any private interest in, or claim to the land and at no time before or during the contract for the sale of the land and the development did the Government indicate that the land was owned by some other person.

[10] Under cross-examination, Mr. Ramirez agreed that when this claim was filed he filed a Defence and a Counterclaim. He agreed that he has some cattle and fence on a portion of Parcel 415. He agreed that the Government of Belize is not a party to his counterclaim and said he should have joined the Government because he bought the land from them. Mr. Ramirez said he did not attach a copy of his Lease to his witness statement. He said he believes he has a right to remain on the property owned by Destill's because he has been working the land from 2002 and he purchased the land from the Government. He agreed that he purchased this land for \$5360 on November 26th, 2007, and that was three days after the Government had already sold the land to Meroconsult S. A.

[11] Mr. Ramirez agreed that he did not make a claim for the Claimant to pay him for the fence, livestock and road. He said this was because he believes that the land is his. He agreed that he provided no proof of the \$400,000 investment he claimed to have made on the property. He also agreed that he provided no proof that he has been on the land for more than ten years, e.g., photos, electricity bills, water bills, etc. He only knows that the land he was given by the Government overlaps with Destill's land because of this claim.

Evidence of Expert Witness

[12] After unsuccessful attempts to have the Commissioner of Lands come and clarify whether there was an overlap between the property of the Claimant and that of the Defendant, the parties agreed to have the court appoint an expert pursuant to Rule 32.8 of the Civil Procedure Rules to assist with the determination of this issue. Mr. Ian Gillett was appointed to assist the court. Mr. Gillett stated in his report that he holds Bachelor of Science degree in Surveying and Land Information with Honors from the University of the West Indies since July 1st, 2007. He has 25 years of experience working in the field of Cadastral Land Surveying with 12 years as a Professional Land Surveyor. He received his license to practice in Belize on September 30th, 2009 and he has gained extensive experience in Cadastral, Strata, Engineering and Topographic Surveying throughout this time. Mr. Gillett stated that he understood his duty to the court as an expert witness and he understood the

instructions given to him regarding this duty. Written questions were sent to the expert witness by counsel for both parties regarding his report and he submitted his written responses to those questions.

[13] Mr. Gillett explained that in reaching his findings, he relied on plans and documents duly certified by the Ministry of Natural Resources regarding the disputed area of land. He also conducted a physical inspection of the disputed area which allowed him to validate his findings. Having reviewed these documents and visited the property, Mr. Gillett stated that he could confirm that Parcel No. 450 is a portion of Parcel No. 415 Douglas North Registration Section and that the property claimed by Mr. Ramirez through the lease issued to him falls completely within the boundaries of the property owned by Destill's. Mr. Gillett said that in reaching this finding, he used the Universal Transverse Mercator (UTM) map projection system for assigning coordinates to identify locations on the surface of the earth; he used professional drafting software Autocad to plot the coordinates of both surveys. He also utilized Geographical Information System (G.I.S.) to plot the location of the survey then overlay the survey file of the two parcels of land with other cadastral layers to confirm their locations. He also confirmed that based on his inspection of the certified land documents, it was clear that at the time land purchase approval form was issued in respect to CZL 580 of 2007 to Mr. Ramirez on November 26th,

2007, Meroconsult S. A. was already in legal possession of the land title for Parcel 415 Douglas North Registration Section.

Legal Submissions of the Claimant

[14] Mr. Perera submitted on behalf of the Claimant that there are several issues to be determined by the court. The first issue is “*whether Parcel No. 450 Block 1 in the Douglas North Registration Section is a portion of the land originally comprised in Parcel No. 415. Block 1 in the Douglas North Registration Section which was sold by the Government of Belize to Meroconsult S. A. on the 23rd November, 2007.*”

This issue was answered by the Expert Responses to Questions where Mr. Gillett gave his findings after reviewing all documents. He found that Parcel 450 is a portion of Parcel 415 Douglas North Registration Section.

[15] Mr. Perera also raised the issue of “*whether the Government of Belize having sold the legal title to 2,136.8 acres of land to Meroconsult on 23rd November, 2007 could have entered into any sale agreement or pass any interest to the Defendant on 26th November, 2007.*” Mr. Perera submits that since the Government of Belize transferred the title to Parcel 415 (the entire 2,136.80 acres) to Meroconsult S. A. on 23rd November, 2007, as of that date the Government of Belize could no longer issue any future lease or any title to any portion of that area of land. The principle of “*nemo dat quod non habet*” also known as the “*nemo dat rule*” means no one can give that which he has not; or no one can transfer a better title than he himself has.

[16] Mr. Perera raised the issue of “*whether the Defendant can claim a beneficial ownership in the Claimant’s property as a result of his sale agreement (purchase approval form) which postdates the sale of the entire 2,136.80 acres to Meroconsult S. A. on November 23rd, 2007.*” The submission is that since the Government had already sold the property, it was divested of any and all interest in this land as of the 23rd November, 2007 and the only entity which could enter into a valid sale agreement in respect to that land was the legal owner and not the Government. The sale agreement between the Government and the Defendant was therefore void ab initio and bound to fail. The claim for adverse possession also fails because the Defendant admitted that he remained on the land as a result of the permission he received from the Government through the lease; he had no *animus possidendi*.

[17] “*Did the Defendant in his Counterclaim plead any particulars of fraud or mistake, and if so, did he prove any such claim against Meroconsult S. A. or against the Claimant?*” Mr. Perera contends that in order to set aside a land certificate issued under section 143 of the Registered Land Act Cap. 194, one needs to prove fraud or mistake as against Meroconsult S. A. or Destill’s. No particulars of fraud or mistake were pleaded or proven.

[18] The next issue raised by Mr. Perera was “*whether the area (205.49 acres) comprised in Lease No. CZL 580 of 2007 surveyed as Entry Number 10872 Register Number 33 dated the 8th November, 2007, falls completely within Parcel No. 450,*

Block 1, Douglas North Registration Section.” The submission is that the answer to this question was made clear under and by virtue of the Expert Report of 31st January, 2022. The expert found that the area of land held under the lease issued to the Defendant falls completely within Parcel 450 which belongs to the Claimant. Mr. Perera reminds the court that the Defendant also failed to produce a copy of the lease to the court in support of his evidence.

[19] *“Whether the area of land (95.19 acres) held under Lease CZL 1001 of 2007 surveyed as Entry Number 111905 Register Number 33 dated January 7th, 2008 falls completely within Parcel 450, Block 1 in the Douglas North Registration Section.”* The submission is that this question was also answered by the Expert Report. Mr. Gillett answered this question in the affirmative.

[20] Mr. Perera’s next issue was *“whether the Defendant is trespassing on the Claimant’s property.”* He submitted that the Defendant entered the Claimant’s property as a trespasser and he does not have permission to be there; he can therefore be evicted.

[21] Learned Counsel for the Claimant also raised the issue of whether general damages are available to the Claimant and submitted that once the Defendant has

vacated the premises and removed any structures (if any), the Claimant will be in a position to send in an expert valuator to examine and quantify the extent of damage to the property.

[22] The final issue raised by Mr. Perera is “*whether the Defendant is entitled to any of the relief sought in his Counterclaim.*” He submits that the Defendant failed to properly plead or prove any particulars of fraud or mistake stated in his counterclaim. He is not entitled to a declaration as he failed to tender evidence to prove he had a lease. He cannot prove any right to property under prescription because he did not have the requisite *mens rea* to deprive the Claimant of its property or to hold the property against the right of any other party. The Defendant failed to prove the existence of Parcel 2734 contrary to his pleadings, and failed to ask the expert to locate Parcel 2734. The counterclaim must also fail because the Defendant said that he was of the view that he had permission to remain on the property because of the lease given to him by the Government. The Defendant also failed to provide any evidence in the form of utility bills, photographs and other documentary proof in support of his claim of having invested up to \$400,000 BZ in this property; this was a bald assertion, without more.

[23] Mr. Perera therefore submits that the relief sought by the Claimant be granted and the Defendant be ordered to vacate the Claimant’s property forthwith and to remove any and all items thereon; that the Defendant’s counterclaim be refused and

the Defendant be ordered to pay the costs to the Claimant on the Claim and Counterclaim.

[24] There were no legal submissions made on behalf of the Defendant. On March 15th, 2022, in Oral Submissions of both counsel before me, Mr. Bennett for the Defendant, having been apprised of the findings of the expert witness, conceded defeat and advised the court that in light of the expert report, legal submissions by him would have been “*a fool’s errand.*”

Decision

[25] I thank both Counsel for their efforts in presenting this claim and counterclaim and for agreeing to the expert witness Mr. Ian Gillett, whose professional assistance was invaluable to this court in determining this matter. I must state that I find in favor of the Claimant on all the issues highlighted by Mr. Perera in his written submissions. The truth of the matter is that the Government of Belize made a major mistake in selling this property to the Claimant and subsequently issuing a lease to a portion of this same property to the Defendant. As Mr. Perera argued, quite correctly, the principle of *nemo dat* applies on these facts. I find as a fact that by the time the Government issued this lease to Mr. Ramirez on November 26th, 2007, it had already sold this property to Meroconsult S. A. on November 23rd, 2007; there was therefore no title that the Government possessed at that stage which it could pass in respect of this property to the Defendant or to anyone else, as it no longer owned

that land on that date. The Defendant clearly has a case against the Government to recover the damages incurred by him in this unfortunate situation. I agree with Mr. Perera that the Claim should be granted and the Counterclaim dismissed in its entirety. Damages awarded to the Claimant to be assessed. Costs awarded to the Claimant on the Claim and Counterclaim to be agreed or assessed.

Dated this Friday, 22nd day of April, 2022

Michelle Arana
Chief Justice (Ag)
Supreme Court of Belize