

IN THE SUPREME COURT OF BELIZE, A.D. 2017

Claim No. 9 of 2006

**BETWEEN: GUILLERMO FORMAN
AVIS WILLIAMS**

CLAIMANTS

-and-

**ANGELA CENOBIA VELASQUEZ
CECILIA VELASQUEZ**

**1st DEFENDANT
2nd DEFENDANT**

In Court

**BEFORE: Hon. Chief Justice Kenneth Benjamin
July 3 & 25, 2013**

**Appearances: Mr. Michel Chebat, SC for the Claimants
Mr. Fred Lumor, SC for the 1st Defendant**

JUDGMENT

1. The first Claimant is the brother of the Defendants. The Second Claimant is his common-law wife. The siblings are all children of the late Olivia White who died on August 21, 1997.
2. These proceedings relate to property comprised of land described as Block 20, Parcel No. 3093 in the Belmopan Registration Section of Belize ("the property"), which formed part of the estate of Olivia White.

BACKGROUND

3. On August 28, 1997, Probate of the estate of Olivia White was granted to the 2nd Defendant by virtue of a will dated September 24, 1996 which named her as

executrix and sole beneficiary. The 2nd Defendant first registered a caution on the property on September 4, 1997. She subsequently, on November 11, 1997, caused the property to be registered in her name.

4. The 2nd Defendant transferred the property to the 1st Claimant on December 17, 1997. In turn, the 1st Claimant surrendered the lease to the lessor, Reconstruction and Development Corporation ("RECONDEV") and upon payment of a fee of \$1,200.00, the property was transferred into the joint names of the Claimants on February 3, 1998. The Claimants thereafter executed a charge on the property in favour of the then Barclays Bank PLC (now First Caribbean Bank) to secure a loan of \$18,500.00 at an interest rate of 12 percent per annum.
5. The Claimants have since renovated a building on the property and made improvements to it.
6. On the strength of a later will dated December 31, 1996, the 1st Defendant commenced Action No. 16 of 1996 against the 2nd Defendant who did not defend the suit. On March 27, 2000 the Court ordered that the grant of Probate to the 2nd Defendant be revoked and declared the 1st Defendant to be the executrix of the estate of Olivia White. The Claimants were not parties to the action nor were they served with notice of same. Pursuant to the order of Court, the 1st Defendant petitioned for and was granted Probate of the estate of Olivia White on November 16, 2001.
7. By Action No. 62 of 2005 brought against the 2nd Defendant as Respondent, the 1st Defendant sought and obtained on July 4, 2005 orders cancelling the entries registering the names of the Claimants as proprietors of the property and for the entry of the name of the 1st Defendant as executrix and trustee of the estate of Olivia White. The 2nd Defendant did not participate in the proceedings and the

Claimants were never served. The Court, however, ordered that the charge in favour of Barclays Bank PLC entered on March 27, 1998 remain in effect.

PLEADINGS

8. The Claimants say that they became aware of the cancellation order in November 2005. They now seek the intervention of the Court by praying for the following orders:

“1. A Declaration that the Claimants are the owners of property being Block 20, Parcel No. 3093 in the Belmopan Registration Section, Belize, by acquiring good title from the Executrix of Olivia White’s Estate before the revocation of the Grant of Probate and/or in the alternative by being bona fide purchasers for value in good faith of the said property without notice of the Defendant’s interest.

2. That the Land Register of Title be rectified by the substitution of the Claimants’ names for that of the Defendant, or in the alternative that the Defendant be ordered to transfer the said property to the Claimants.

3. Such further or other relief as the Court deems just.

4. Costs”

The original statement of case was brought only against the first Defendant and by order of Court made on October 11, 2006, the 2nd Defendant was added as a Defendant.

9. In her Defence, the 1st Defendant acknowledged that her mother had at first signed a will on September 24, 1996 naming the 2nd Defendant as executrix and beneficiary of her estate. She averred that prior to her death, her mother executed a second will on December 31, 1996 in which she was made executrix and beneficiary. It was pleaded that on January 1, 1997, the 1st Claimant and the 2nd Defendant visited their mother who informed them of the new will and the appointment of the 1st Defendant as sole executrix and beneficiary of that later will. It was further stated that she made the said will available to the 1st Claimant

and that her mother had handed over to her all the original land certificates to her properties, which certificates she kept in her possession.

10. The 1st Defendant asserted that the 1st Claimant knew that the 2nd Defendant was not the proper personal representative of the estate of Olivia White and therefore, he did not acquire a good title as a bona fide purchaser for value without notice of the entitlement of the 1st Defendant as sole executrix and sole beneficiary of the estate of the deceased.

11. In the Reply, the Claimants denied that the deceased had ever informed them that she had changed her will and that the 1st Defendant was the executrix and beneficiary under the later will. It was denied that the 1st Defendant made the will available to them or that the deceased had handed over her land certificates to the 1st Defendant. Further, the Claimants specifically denied knowledge of the 2nd Defendant not being the personal representative of the estate of Olivia White and asserted that they did not consider her to be such. In this regard, it was reiterated that they enjoyed good title to the property as purchasers for value in good faith without knowledge of any entitlement on the part of the 1st Defendant.

THE EVIDENCE

12. Although served with the proceedings, the 2nd Defendant did not acknowledge service nor did she take part in any of the proceedings. The evidence was presented through the testimony of the other parties, namely, the two Claimants and the 1st Defendant. Each of them was cross-examined after his or her witness-statement was admitted as examination-in-chief.

13. The 1st Claimant stated in his witness statement that he had seen the first will of his mother and the Grant of Probate in favour of the 2nd Defendant when the lease of property was being transferred to him. He admitted in cross-examination that he had not paid the 2nd Defendant for the property and that he

was not entitled to it under the will as was represented on the Transfer Instrument that he had signed on December 17, 1997. On the same date, the 2nd Defendant withdrew a caution which she had placed on the property and the "Withdrawal of Caution" was witnessed by the 2nd Claimant who was a public officer attached to the Lands Department at the time. The Certificate of Lease was issued on the same date of December 17, 1997 and, its duration was for 25 years dating back to September 29, 1994, the date from which the lease to Olivia Whyte commenced.

14. The 1st Claimant confirmed that he had written a letter to RECONDEV requesting the Transfer of the property to himself and the 2nd Claimant. On February 3, 1998, the lease was surrendered and the property was transferred to the Claimants by RECONDEV upon payment of \$1,200.00. He said he did so in order to obtain a loan from the bank to complete the house. On March 10, 1998, a charge was placed on the property in favour of Barclays Bank PLC as chargee and the Claimants as the chargers to secure the sum of \$18,500.00

15. The 2nd Claimant said she was familiar with the procedures for the transfer of property at the Lands Department. She accepted that the lease to the 1st Claimant ought to have been for the remainder of the lease, and agreed that this was not the case with the lease transferred by RECONDEV to the 1st Claimant. Consistent with what the 1st Claimant said, she agreed that they did not pay for the transfer of the lease but that they had paid for the transfer to them of title to the property. She was shown the original lease certificate of Olivia Whyte and she conceded that the Registered Land Act does not allow for two certificates to be in existence for the same property. She attempted to say that there was a publication and in re-examination she said the lost certificate of Olivia Whyte was published in the Gazette for six months before the lease certificate was issued to the 1st Claimant. This was plainly untrue as Olivia Whyte had died on August 27, 1997, and the transfer of lease took place on December 17, 1997. In any event, the Certificate of Lease bore the same date as the Instrument of Transfer.

16. Both Claimants stated that they only became aware of the Claim by the 1st Defendant to the property in or around November 2005 that they were no longer the registered owners of the property. Thereafter, a caution was lodged on December 7, 2005 along with a statutory declaration. It was averred that they remained liable for the loan payments pursuant to the charge. The 1st Claimant said he received copies of the orders in Action No. 16 of 1996 and Action No. 62 of 2005 from the 2nd Defendant after he was informed that the records at the registry no longer had them as registered owners of the property. Property taxes were paid up to the time when payment by the 2nd Claimant was not accepted in November 2005.
17. The 1st Defendant stated that the second will was executed on December 31, 1996 by her mother appointing her as executrix and beneficiary. She was unable to recall if she was present when the will was executed. However, she purported to say that her mother had told the 2nd Defendant of the new will on January 1, 1997. She stated that in January 1997, her mother informed all her children about the second will and that she had given the title documents to all her properties to her, the 1st Defendant. However, in cross-examination she admitted she was not at such gathering and, further, that she had not shown or told the Claimants about the second will.
18. In cross-examination, the 1st Defendant agreed that (1) she brought an originating summons against the 2nd Defendant to which she did not make the 1st Claimant a party nor did she inform him of it; (2) she did not know if a caution had been lodged against the property; (3) she did not seek an injunction to restrain the 1st Claimant from dealing with the properties; and (4) to the time of trial, she had not notified the 1st Claimant about any of the proceedings she had taken against the 2nd Defendant. She told the Court that the proceedings she brought, were only against the 2nd Defendant and that she had not spoken to the Claimants since 1998. At first she said she only became aware of the charge on

the property two days before the trial, but she was shown paragraph 11 of the Defence at which point she said she did know how much the property had been mortgaged for. She disputed that the Claimants had completed the house but said she had helped her mother to build and complete it.

19. By an Originating Summons dated January 13, 1998 the 1st Defendant commenced Action No. 16 of 1998 seeking the revocation of the grant of probate issued to the 2nd Defendant on August 28, 1997. Shanks, J made an order dated April 7, 2000 declaring the said grant to be null and void and revoking same. The 2nd Defendant did not participate in the proceedings. There followed the grant of probate of the second will on November 16, 2001 to the 1st Defendant.

20. By Action No. 62 of 2005, the 1st Defendant applied pursuant to Section 143 of the Registered Land Act, Chapter 194 for the rectification of the register. On July 4, 2005, Awich, J granted the application and ordered that "the Register opened on September 27, 1993 be rectified by cancellation of the entry dated the 9th February 1998 registering entry 799/98 by which Guillermo Forman and Avis Williams are shown as proprietors" of the property. It was ordered that the charge entered on March 27, 1998 remain in effect. It was further ordered that the name of the 1st Defendant be entered as executrix and trustee of the estate of Olivia Whyte in place of the cancelled names of the Claimants. The Order was made in the absence of the 2nd Defendant who did not appear.

SUBMISSIONS

21. The main plank of the case for the Claimants was that they acquired good title to the property as bona fide purchasers for value without notice of the 1st Defendant's interest in the said property. In pursuit of this contention, it was submitted that the first issue to be determined by the Court is: Are the Claimants bona fide purchasers for value without notice?

22. In **Pilcher v Rawlins (1872) 7 Ch. App. 259**, it was enunciated that a bona fide purchaser for valuable consideration who took a legal interest in land without notice of a prior equitable right was entitled to priority in equity and at law. Such purchaser obtained legal estate free of the equitable interest. However, the doctrine of notice does not apply in determining the priority of interests in registered conveyancing. (See: Per Lord Wilberforce in **Williams & Glyn's Bank Ltd v Boland [1981] A.C. 487** at p. 503-4).

23. On behalf of the Claimants, it was urged that on the evidence, there was compelling proof that they had no knowledge or even suspicion of the interest of the 1st Defendant in the property. The testimony of both Claimants was relied upon as establishing that they did not become aware that their names had been removed from the register by a rectification order or that there was a subsequent Will clothing the 1st Defendant with an interest in the deceased's property until November, 2005 when the 2nd Defendant so informed them. Further, the testimony of the 1st Defendant did not in any way prove knowledge on the part of the Claimants as to the existence of the second Will. Having heard and reviewed the evidence, I have arrived at the same factual conclusion.

24. In **Spiricor v. Attorney General of Saint Lucia (1997) 55 WIR 123** at p. 133, Byron, ag. CJ (as he then was) came to the same conclusion as Lord Wilberforce when by reference to Land Registration Act 1984 of Saint Lucia he stated:

"The effect of this, and other relevant sections in the Act, seems to be that the doctrine of notice, whether actual or constructive, as it may pertain to purchasers of unregistered land has no application even by analogy to registered land."

25. The dealings with the property plainly show that the property is registered land subject to the provisions of the Registered Land Act, Cap. 194. Such dealings are governed by the provisions of the said Act (Part II) and every proprietor of

land is deemed to have actual notice of every entry in the register relating to such land (Section 33). The protection conferred on persons dealing in registered land as regards notice is set out in section 41 as follows:

“41 (1) No. person dealing or proposing to deal with valuable consideration with a proprietor shall be required:-

(a) to inquire or ascertain the circumstances in or the consideration for which such proprietor or any previous proprietor was registered or the manner in which any such consideration or part thereof was utilized;

(b) to search any register kept under the General Registry Act.

(2) Where the proprietor of a land, a lease or a charge is a trustee he shall in dealing therewith, be deemed to be absolute proprietor thereof, and no disposition by such trustee to a bona fide purchaser for valuable consideration shall be defeasible by reason of the fact that such disposition amounted to a breach of trust.”

The foregoing provisions operate to delineate the application of notice to transactions involving registered land.

26. Learned Senior Counsel for the 1st Defendant was at pains to highlight in cross-examination of the 1st Claimant and in his oral submissions that the 1st Claimant had not obtained the lease from the 2nd Defendant for valuable consideration and that, in fact, the transfer was made on a false basis, that is, as a so-called beneficiary of their mother's estate. Although, it must be recognized that, as executrix of and beneficiary under the first will, the 2nd Defendant would have been entitled to transfer the property to whomsoever she wanted. It was on the basis of such lease that the Claimants approached RECONDEV to obtain title to the property.

27. The plain facts are that the Claimants acquired the property for valuable consideration from RECONDEV and, at that time, there was nothing on the

register to put them on notice nor were they informed that there was a second Will that superseded the first Will by virtue of which the 2nd Defendant transferred the lease to the 1st Claimant. Be that as it may, the foregoing finding does nothing to resolve the matter of the Claimants' entitlement to a declaration as to ownership of the property.

28. The same can be said of the second issue put forward by the Claimants, namely, whether the revocation of the grant of probate in Action No. 6 of 1998 affected the title of the Claimants. In support of this, Learned Counsel cited the Learned authors of Halsbury's Law of England 4th edition Reissue, Vol. 17(2), at paragraph 267, which reads:

"All conveyances of any interest in real or personal estate made to a purchaser by a person to whom probate or letters of administration have been granted are valid, notwithstanding any subsequent revocation or variation of the probate or administration."

This passage mirrors to wording of Section 44(1) of the Administration of Estates Act, Cap. 197

29. Learned Senior Counsel for the 1st Defendant did not dispute the law on this point, but rather he directed the Court's attention to the effect of the order of Awich, J. I too accept that the purport of Section 44(1) of the Administration of Estates Act takes the matter not closer to resolution.

30. The third issue raised by the Claimants was: Whether the Claimants are bound by the decision in Action No. 62 of 2005? It is on this point that the parties effectively joined issue. Contrary to what is stated in the Claimants' written submissions, there can be no demur that the order of Awich, J. is valid as against the whole world including the Claimants, who are bound by it until it is discharged. Such order must be obeyed unless and until it is set aside by the

Court (**Isaac's v Robertson** (1984) 43 WIR 126 applying the dictum of Romer, L.J. in **Hadkinson v Hadkinson** [1952] P 285 at p 288)

31. The fons et origo of the present proceedings is the failure of the 2nd Defendant to serve the proceedings in Action No. 62 of 2005 upon the Claimants and making them parties to the action. The order for rectification being sought in the present proceedings is in essence an invitation to this Court to reverse the order of Awich, J and restore the Claimants to the register.

32. The jurisdiction of the Court to rectify the register resides in Section 143 of the Registered Land Act. This is a discretionary power and envisages that the registration to be impugned was obtained, made or omitted by fraud or mistake. Section 143 enacts:-

"143 (1) Subject to subsection (2), the court may order rectification of the register by directing that any registration be made, cancelled or amended where, it is satisfied that any registration including a first registration, has been obtained, made or omitted by fraud or mistake."

The Claimants have indirectly invoked the Court's jurisdiction under Section 143(1). However, as has been submitted on behalf of the first Defendant, no allegation as to fraud or mistake has been advanced in the pleadings or even in the evidence. Such a plea would have required the setting out in the statement of case of particulars of fraud and/or of mistake. No such particulars appear in the Statement of Case and this requirement is for all practical purposes mandatory (See: **Ecedro Thomas & et al v Augustine Stout et al** – Civil Appeal No. 1 of 1993 - Eastern Caribbean Court of Appeal – May 12, 1997).

CONCLUSION

33. Generally, in cases where it is alleged that a judgment has been obtained by fraud, the remedy open to the aggrieved party is to commence a fresh action to


set aside the judgment on the ground of fraud (Flower v Lloyd (1876) 6 Ch D. 297). The present case is somewhat different, there is no allegation of fraud. The Claimants' complaint is that they were not served and made parties to Action No. 62 of 2005 in which the Court ordered rectification thus removing their names as proprietors of the property.

34. Learned Senior Counsel made reference to Rule 11.18 of the Supreme Court (Civil Procedure) Rules 2005 which allows for an application to be made to set aside an order made in the absence of a party. This Rule is not helpful as it envisages a "party" and not an individual or legal person who was not a party to proceedings. The same applies to his reference to Rule 13.4 which prescribes the procedure for applying to vary or set aside a default judgment.

35. As it stands, the 1st Defendant is the registered proprietor of the property by virtue of the order of Awich, J. That order must be vacated by rehearing or on appeal. It seems to me that it is for the Claimants to either apply to be joined as parties and to set aside the order. It is unfortunate that learned Counsel for the Claimants declined to pursue this suggested course of action.

36. In the premises, the Court declines to make the declaration and order sought and the Claim stands dismissed. The Claimants shall pay the costs of the 1st Defendant in the agreed sum of \$7,500.00.

Dated this 6th day of October, 2017.


KENNETH BENJAMIN
Chief Justice of Belize
BELIZE