

**IN THE SUPREME COURT OF BELIZE, A.D. 2008**

**CLAIM NO. 493 OF 2008**

**BETWEEN:**

**IGLESIAS EVANGELICAS EL CALVARIO (BELIZE)                      Claimant**

**AND**

**ELFEGO PANTI, JNR.    Defendant**

**BEFORE: Hon. Chief Justice Kenneth Benjamin.**

December 19, 2012.

Appearances:            Mr. Michel Chebat, SC for the Claimant.  
                                 Mr. Lionel Welch for the Defendant.

**JUDGMENT**

[1]     The Claimant is a church organisation duly registered as a company limited by guarantee under the Companies Act, Cap. 250 of the Revised Laws of Belize 2000.

[2]     On November 29, 2007, the Claimant put in a successful bid by its representatives at a public auction held at the instance of the Development Finance Corporation (“DFC”), and purchased the property described as: ALL THAT piece or parcel of land being Lot No. 373 situate in San Jose Succotz Village, Cayo District, bounded and described as shown by Plan No. 585 of 1997 attached to Minister’s Fiat Grant No. 585 of 1997 together with all buildings erections and developments standing and being thereon (hereinafter referred to as “the property”). The property was transferred to the Claimant by the former mortgagee, DFC by Deed of

Conveyance dated February 11, 2008 recorded at the Land Titles Unit in Belmopan at Vol. 6 of 2008, Folios 961 to 976.

[3] Prior to the sale of the property by auction the previous owner of the property, Elfego Panti, Snr. had mortgaged the property to DFC as surety for a loan in the sum of \$35,000.00 to his son, Omero Panti, by Deed of Mortgage dated February 21, 2000. The sale of the property by the mortgagee was advertised in the Belize Gazette and local newspapers.

[4] There stands on the north corner of the property a house occupied by the Defendant, Elfego Panti, Jr. who is the son of the former proprietor of the property, Elfego Panti, Snr.

[5] The Claimant being desirous of assuming possession of the property made approaches to the Defendant to procure the vacating of the property. By letter dated December 4, 2007, the Claimant granted to the Defendant 30 days to vacate the property. This was followed by a notice dated January 7, 2008 from the Claimant's Attorney-at-Law giving the Defendant 60 days to vacate the property from January 5, 2008. By a letter dated February 29, 2008, the Defendant requested an extension of one month to vacate the premises. The Claimant's Attorney-at-Law replied extending the time allowed to vacate to March 14, 2008. The Defendant did not give up possession.

[6] The Claimant initiated proceedings against the Defendant in the District Court seeking possession of the property. However, the learned Magistrate declined to hear the matter on the basis of lack of jurisdiction.

[7] The present proceedings arose from the foregoing events. By a Fixed Date Claim Form filed with Statement of Claim on July 24, 2008 this suit was commenced. The Claim Form was subsequently amended by Order of Court and claimed the following:

1. A Declaration that the Claimant is the owner of the property.

2. A Declaration that the Defendant is illegally occupying the property.
3. Possession of the property.
4. An Order that the Defendant vacate the property forthwith.
5. Costs.
6. Interest.
7. Such further or other relief as may be just.

The Defendant acknowledged service and filed a Defence and Counterclaim.

[8] In the Defence, it is stated that the Defendant built a house on the property and has occupied it since March or April, 1997. The crux of his Defence is set out in paragraph 6 as follows:

“(6) On or about March 1997 he was given permission by his father Elfigo Panti Sr. to build a house on a property Lot 373 situate in San Jose Succotz Village, Cayo District. In discussions with his father Elfigo Panti Sr. before the house was built and that he told (sic) by his father and they both understood that the spot that the house would have been built (sic) was to be his and that sometime thereafter the land would be sub-divided and that portion of land that his house is situate would be transferred and placed in his name. The defendant built his house on a corner of the said Lot No. 373 at a cost of approximately fifty thousand dollars (\$50,000.00).”

The Defendant denied that the Claimant is entitled to the Orders sought. Further, on the basis of the above averment the Defendant counterclaimed for an order that the portion of the property on which his house is situate be sub-divided and conveyed into his name.

[9] In its Reply, the Claimant denied that: the Defendant ever built any house on the said land; and that the house is not worth \$50,000.00 as asserted in the Defence. It was further averred that the Defendant was aware that the house and land had been mortgaged to DFC, that the property had been put up for sale by DFC, yet he took no legal action against DFC or against his father to protect his alleged interest in the property before the present claim was commenced. The Claimant denied that the Defendant is entitled to the relief sought by way of counterclaim.

[10] The evidence in the case for the Claimant was led through the witness statement and testimony of the managing director of the Claimant, Eduardo Yacab. Reference was made to an advertisement in the Amandala newspaper of November 18, 2007 publishing the intended sale by auction of the property. He confirmed the purchase of the property by the church at the auction and the subsequent conveying of the property by DFC.

[11] At the trial, Mr, Yacab explained that before the auction, he passed by the property and observed the building standing on it. He did not make inquiries as he was not clothed with permission to go on the property. On the very day of the auction and before proffering the Claimant's bid, he inquired of an officer of the DFC, one Mr. Torres, as to the position relative to persons on the land. He told the Court that he was informed that upon receiving title, the persons would remove without any problem. No doubt, he placed reliance upon this representation. It is relevant to point out that nowhere on the mortgage deed or the Minister's Fiat Grant to Elfego Panti, Snr. is there any reference to any interest being held by the Defendant or any one else.

[12] On December 1, 2007, two days after the auction, Mr Yacab and other members of the Claimant Church Organisation's Executive Board approached Mr. Elfego Panti, Snr. and told him they had purchased the property. He did not express surprise and gave them permission to go and view the property. In response to the Court, Mr. Yacab stated that at no time did Mr. Elfego Panti, Snr. make mention of his son, the Defendant, having been given any interest in the land.

[13] The witness statement and the Claimant's documents recount the giving of written notice by the Claimant and its lawyers as earlier set out at paragraph 5 of this judgment. None of these notices were disputed. By way of explanation, the Defendant told the Court that his letter asking for further time to vacate was written prior to seeking legal advice.

[14] Of some significance to the factual issues is the conversation between Mr, Yacab and the Defendant's wife as recounted in Mr. Yacab's witness statement at paragraphs 9 through 12. She acknowledged that they were aware of the property, including the house, being included in the mortgage to secure the loan made by DFC to Omero Panti to start a tour business. She acknowledged that her husband, his father and his brother had all agreed to the loan. She went to refuse to vacate the property until being paid for the house or being given the piece of land on which the house is built.

[15] These matters confirm the fact that, on the face of the documents inclusive of the mortgage deed and the advertisements, the property mortgaged included the house occupied by the Defendant. No reference is made to any rights of the Defendant in respect of any interest in the property.

[16] The Defendant asserted an interest in the property pursuant to oral permission given by his father. However, his father did not give evidence and the Court must assess the cogency of the alleged representation. In the first place, there is no written document evidencing a promise, which was made at a time when, according to the Minister's Fiat Land Grant dated November 4, 1997, Elfego Panti, Snr, was not seized of title to the property. Further, there is no evidence of a renewal of that promise after November 4, 1997 nor was any attempt made in any manner whatsoever, to subdivide the land or safeguard any interest claimed by the Defendant. Although he admitted being aware of the default on the loan, he made no effort to protect any interest.

[17] It can safely be concluded that, the representation of a promise by father to son aside, the highest we can put the evidence is that the Defendant was able to occupy the house with the acquiescence of whoever was the proprietor of the

property, which is not revealed on the evidence before the Court. The Defendant was only mobilised to assert ownership by way of a sub-division based on an oral promise when he was confronted with the prospect of eviction. As a finding of fact, I am not impressed by and reject the Defendant's testimony as to the existence of any promise to him of the land upon which the house stands.

[18] In any event, the Defendant falls afoul of section 43(1) of the Law of Property Act, Cap. 190 which prescribes that no interest in land can be conveyed except by some writing signed by the person who is alleged to have conferred such interest. Not only is there no written agreement, deed or other writing before Mr. Elfego Panti, Snr. acquired the property but there was none at any time after, in circumstances where he proceeded to mortgage the property inclusive of the house standing thereon occupied by the Defendant.

[19] For completeness, it is necessary to address the issue of whether the Claimant would be fixed with notice of an interest by the Defendant in the land. The Claimant's representative admitted that before the auction he passed by the property and ascertained that persons were living on the property. The evidence reveals that the Claimant made an inquiry to the mortgagee's representative, whose response was that obtaining possession would not be a problem. The Claimant's representative would have done all that was reasonable in inquiring as to the occupation of the house on the property.

[20] In the premises, the Defendant has failed to establish his Defence or any Defence to the Claim and the Claimant is entitled to judgment. Since December 1, 2007, some five years ago, the Defendant has been aware of the Claimant becoming the proprietor of the property. It seems to me that an order for possession must take that fact into account. It is therefore declared that the Claimant is the owner of the property described as ALL THAT piece or parcel of land being Lot No. 373 situate in San Jose Succotz Village, Cayo District, bounded and described as shown by Plan No. 585 of 1997 attached to Minister's Fiat Grant No. 585 of 1997 together with all buildings erections and developments standing and being thereon.

It is ordered that the Defendant deliver up possession of the said property on or before January 15, 2013. The costs shall be prescribed costs based on the value of the property set at the auction in the sum of \$40,000.00, which costs are calculated at \$10,000.00. The counterclaim shall stand dismissed with no order as to costs.

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**KENNETH A. BENJAMIN**  
**Chief Justice**