

IN THE SUPREME COURT OF BELIZE 2007

CLAIM: No. 275 of 2007

BETWEEN: WARD MCGREGOR

CLAIMANT

AND

WILLIAM NEAL

DEFENDANT/ANCILLARY
CLAIMANT

AND

ATTORNEY GENERAL (for
the Minister of Natural Resources
and the Environment

ANCILLARY DEFENDANT

Mrs. Sharon Pitts Robateau for the claimant.
William Neal the defendant, in person.
Douglas Carr for the ancillary defendant.

AWICH J.

25.2.09

DECISION

1. *Notes: Lease of national land granted by Minister's Fiat under ss: 7 and 17 of the National Lands Act Cap. 191; notice of termination not required in a fixed period lease, termination by effluxion of time; lease expired and right to possession reverted to the Government.
Licence: the sister, the leasee, allowed his brother to build and live on the land she leased from the Government, the licence expired on her death; brother remained in occupation without permission of the defendant, the sister's son or the lessor, the Government.
Admisistration of estate; the defendant obtained letters of administration only after the lease had expired and the right to possession of the land had*

reverted to the Government and Government had sold part of the land to the claimant.

Whether son of the lessor had any defence based on a claim of right against the Government, or the claimant.

2. This claim was listed for trial in my court yesterday, 24.2.2009. Muria J. had on 12.7.2007, granted an interim order in the claim, restraining the defendant, Mr. William Neal, from entering or building a fence on or across a certain land, Parcel 308 of Block 45, Lake Independence Registration Section, Belize City. The fence is meant to demarcate the boundary between the land and Vernon Street, as well as the boundary between an adjoining Parcel 309 owned by the defendant, and Vernon Street. Parcel 308 is the subject of this claim. The claimant, Mr. Ward Patrick McGregor, claims that Parcel 308, belongs to him, and that Mr. Neal trespassed on it. The order of Muria J. made on 12.7.2007 was made on an *ex parte* application. On 30.7.2007, Muria J. heard both parties and continued the injunction order until the final determination of the case or until further order.

3. After the interim orders were made, certain applications for procedural orders were made and granted by the learned Registrar then. It was not indicated, but I presume that the applications were

made in the course of case management conferences, leading to the last one on 19.6.2008.

4. Then on 11.7.2008, the claimant filed an application for an order to strike out the defence and ancillary claim filed by Mr. Neal. Curiously the matter was listed in my court. I would have thought the proper thing was to let the case proceed before the judge to whom the case had been assigned.

5. The ground for the application for an order to strike out the defence and ancillary claim, a counterclaim, was that the statement of defence and ancillary claim did not disclose reasonable ground for defending the claim, and for making the ancillary claim. According to R: 26.3, such an application must be made at case management. I did not hear the application, not because it was late, rather because Mr. Neal had dismissed his attorney. By his own account he had been to and abandoned at least five attorneys, mostly senior counsel. Mr. Neal has very little education and is also well advanced in age and has difficulty in following matters in court. I decided to let the matter proceed to trial so that the case against him could be given in the form

of evidence, and he could also provide evidence for his case. That way there was a better chance that he would follow and understand the claim against him. The application for an order striking out defence and ancillary claim of Mr. Neal, and for the possible order entering judgment against him was obviously too technical and complicated for him.

6. I directed that the trial would be by affidavits, with permission to crossexamine witnesses. I read the affidavits in court, mainly for the benefit of Mr. Neal. I offered to him opportunity to crossexamine Mr. McGregor and Ms. Ethel Gladden, the only witnesses for the claimant and the Attorney General, the ancillary defendant. Mr. Neal declined to crossexamine Mr. McGregor, but crossexamined Ms. Gladden, the Acting Deputy Registrar of Lands. Counsel for the claimant and counsel for the Attorney General, the ancillary defendant, chose not to crossexamine Mr. Neal.

7. ***The grounds for the claim and counterclaim.***

The claim of Mr. Ward McGregor is simple. He says he is the owner of Parcel 308, in Block 45, Lake Independence Registration Section,

Belize City, based on the following facts. His father, Patrick McGregor, and the family lived on the land which was then part of Parcel 2438. It was the eastern portion of the Parcel 2438. The claimant was born on the land. His father died on 21.10.1982. He left the land in a will to the claimant and his brother, Sherlock McGregor. They applied to the Government for approval to buy the land. Their application was approved on 6.1.1992. Parcel 2438 was subdivided into Parcel 308 and Parcel 309. They bought Parcel 308. They were registered as owners on 22.5.1992. The claimant deposed further that, his brother, Sherlock, died and left the land to him; and he was registered as the sole owner on 7.10.1999. The court notes that there has been no issue as to whether the brothers were tenants in common, or joint tenants, and the consequence to the claim of Mr. Ward McGregor. He has since obtained Land Certificate No.5968/99 under s: 34 of the Registered Lands Act, Cap 194.

8. Mr. McGregor deposes further still, that Mr. Neal is the registered owner of the adjoining subdivision, Parcel 309 in Block 45, Lake Independence Registration Section, Belize City. However, without the permission of Mr. McGregor, Mr. Neal has built a fence along the

front boundary of his own land Parcel 309, with Vernon Street, and continued that fence across the front of Parcel 308, the land of Mr. McGregor; and Mr. Neal parks his vehicle on Parcel 308.

9. Mr. Neal does not deny building the fence or parking his vehicle on the land in question. His defence is that he is the owner of the entire land area, that is, the area of Parcel 308 and the area of Parcel 309. He says the entire land area is Parcel 2438 Vernon Street, there are no parcels numbered 308 and 309. He says further that, Parcel 2438 belonged to his mother, Alphonsina Trapp, who died on 27.6.1967; and that he Neal, dully inherited the land. He says the Government made an offer to sell the land, Parcel 2438, for \$812.58 to him and he bought the entire land, not part of it. The letter of purchase dated 24.11.2000, gave the number of the parcel as 2438, not 309. He has not since sold the land to Mr. McGregor or to anyone.

10. Mr. Neal counterclaims declarations that: (1) subdividing Parcel 2438 was made illegally; (2) he is the holder of the freehold title in Parcel 2438; and he is entitled to possession; and (3) transfer of part of Parcel 2438 to Mr. McGregor was null and void, the Land Certificate

issued to Mr. McGregor was null and void. Mr. Neal also claims specific performance by the Government, of the contract of sale of the entire Parcel 2438 based on an approval form dated 24.11.2000, by which the Government offered to sell to him the entire Parcel 2438.

11. ***Determination.***

Two sets of facts provide answers to the claim of Mr. McGregor and to the counterclaim of Mr. Neal. According to the records kept by the Registrar of Lands, land parcels 308 and 309, were subdivisions of a larger Parcel 2438 at the corner of Vernon Street and Central America Boulevard, Belize City. Parcel 2438 was national land, it belonged to the Government. It was leased to Ms. Alphonsina Trapp, the mother of Neal. The lease was by Ministers' Fiat No. 21 of 1965 under ***s: 17 of the national Lands Act Cap. 191, Laws of Belize.*** It was for 25 years from 1.1.1964. It would expire on 1.1.1989. The area was declared a compulsory registration section, namely, Lake Independence Registration Section. The declaration was made by the Minister under s:4 of the Registered Lands Act, Cap 194. The subdivisions are known as Parcel 308, Block 45, Lake Independence

Registration Section, Belize City, and Parcel 309, Lake Independence
Registration Section, Belize City.

12. The evidence is that Ms. Trapp died on 27.6.1967. That is just three years after she had got the lease. Mr. Neal was granted administration of the estate of his mother on 10.11.1999, so that he could ascend to the estate of his mother, about thirty two years later. He says he inherited Parcel 2438 from his mother. The difficulty in the way for that claim of Mr. Neal is that when he obtained grant of administration of the estate of his mother on 10.11.1999, the fixed period lease for 25 years had already expired on 1.1.1989, by effluxion of time, and the lease had ended. The right to possession of the land, Parcel 2438, had reverted to the lessor, the Government, on that date. That was ten years before Mr. Neal obtained grant of administration of the deceased estate. Notice is not required to end a fixed period lease. – see the Jamaica case, *Scott v Lerner Shop Ltd (1988) 253 LR 219*, and *Cobb v Stokes (1807) 8 East 358*. There had been no renewal or extension of the lease. So, in law, Mr. Neal got nothing out of his mother's lease which expired before he could ask for extension or renewal of it.

13. Mr. Neal did the next advisable thing, he applied to the Minister for the purchase of the land left by his mother. By that time the right to possession of the land and the land, Parcel 2438, had reverted to the Government. The claimant and his brother Sherlock, had applied earlier to purchase the land. Apparently Mr. Neal lived in Los Angeles that time. The Lands Department instead subdivided the parcel into Parcel 308 and 309, and offered Parcel 308 for sale to the McGregor brothers on 6.1.1992. When Mr. Neal applied to purchase Parcel 2438, it was no more, but there was a subdivision of it, Parcel 309 still held by the Government. The Government approved on 24.11.2000, the application by Mr. Neal for the purchase of land stated on the approval form as “Parcel 2438”. The approval was in reality for the purchase of Parcel 309. It was what was left of Parcel 2438. That was confirmed by the fact that it was Parcel 309, that the Minister transferred to Mr. Neal by transfer instrument dated 8.9.2006. The transfer was registered on the Register of Lands on 20.3.2007. Mr. Neal was advised that he could collect the land Certificate for Parcel 309. He has not done so.

14. The usual way in which the Government gives land to people is by first leasing it for a very small rent; and when the lessee has secured or is able to secure the purchase price, which again is nominal compared to market price, the Government offers to sell the land to the lessee. Mr. Neal did not inherit lease of Parcel 2438 from his mother because it had expired. The mother never applied to buy the land. It was Mr. Neal who applied to purchase the land that the mother left on a lease which expired before Mr. Neal made his application. The Government nevertheless sold part of that land, Parcel 309, to Mr. Neal. He paid the purchase price, stamp duty and registration fee only on 24th November, 2000. The claimant does not claim Parcel 309 which Mr. Neal occupies peacefully.

15. The basic reason for the McGregors applying to buy Parcel 2438 or part of it was this. Their father, Mr. Patrick McGregory, was apparently a relative (brother) of Ms. Trapp. He lived on the eastern part of Parcel 2438 before she died. It was obviously with her permission. The legal consequence was that Patrick McGregor and his family lived on Parcel 2438 by licence of Ms. Trapp. It is said that he built a wooden house that Ms. Trapp lived in. He also built a wooden

house on the eastern part of the land, and lived in it with his family until he died on 21.10.1982. According to law, his licence from Ms. Trapp ended with her death on 27.6.1967 – see *Lucille Diaz v Magdalena Marin and Others Supreme Court Claim No. 169 of 2007*. Despite the death of Ms. Trapp Mr. McGregor and his Family remained on the land. There is no evidence that Mr. Neal, who at the time lived in Los Angeles, or any prospective personal representative of the estate of Ms. Trapp asked Patrick McGregor to quit. It must be inferred that the McGregors remained on the eastern part of Parcel 2438 from 27.6.1967 after the death of Ms. Trapp, without permission from anyone including the Government, until the lease expired on 1.1.1989, and until 6.1.1992, when the Minister approved the application of Ward and his brother Sherlock, to purchase that part of the land that their father left them on. The McGregor brothers had been in continuous and undisturbed possession for 25 years. Had they for another five years not applied to the Government for approval to purchase the land, they would have acquired the so called squatter's title, the freehold title by long possession (prescription) by remaining in possession of the land belonging to Government, for 30 years. The

law that authorizes such a title is *s: 42 of the Law of Property Act, Cap 190*.

16. By law, from death to when letters of administration are granted to anyone, a deceased estate is vested in the Chief Justice, under *s: 13 of the Administration of Estate Act. Cap. 197, Laws of Belize*. In practice, it is the Registrar of the Supreme Court who attends to reports about the death and the estate of the deceased. So, from 27.6.1967, the estate of Ms. Trapp was vested in the Chief Justice until 10.11.1999, when letters of administration for the estate were granted to Mr. Neal. Unfortunately, the lease of Parcel 2438 had expired and the land was no longer part of the estate. So, when the claimant and his brother applied to buy the land, they were on the land without permission of anybody.

17. The will made by Patrick McGregor was of no consequence in law because a licence cannot be willed, it expires on the death of the licensor or the licensee. It is an arrangement *in personem* not *in rem*.

18. The incidence of the licence granted by Ms. Trapp to Patrick McGregor, and which lasted for only three years, is also not important in this claim. The important material fact, and the law, are that the lease by Minister's Fiat No. 21 of 1965, granted to Alphonsina Trapp expired on 1.1.1989, and could not be inherited by Mr. Neal. It was a fixed period lease, notice by the lessor, the Government, was not required to end the lease. The Government was free to subdivide the land, Parcel 2438, and free to sell the two subdivisions to any applicant. It chose to sell Parcel 308 to the claimant, Ward Patrick McGregor, and his brother, Sherlock McGregor. It also chose to sell the other subdivision, Parcel 309, to Mr. William Neal. Later by the death of Sherlock, his brother, Ward Patrick, may have acquired sole title to Parcel 308. The right of Ward Patrick McGregor in respect to the right of the estate of Sherlock is not a point for decision in this claim. Mr. Ward Patrick McGregor proceeded to obtain Land Certificate No. 5968/99 on 7.10.1999, in his name alone. His title is absolute. Mr. William Neal has no valid claim to Parcel No. 308, Block 45, Lake Independence Registration Section, Belize City. He has no right to build a fence across the front of Parcel 308 bordering

Vernon Street, and he had no right to park his vehicle on Parcel 308.
He was a trespasser.

19. ***Orders made.***

Judgment is entered for the claimant, Mr. Ward Patrick McGregor, for the claim against the defendant, Mr. William Neal. Judgment is also entered for the claimant in the counterclaim, which is dismissed.

20. Further, judgment is entered against Mr. William Neal against the Attorney General in the ancillary claim that Mr. Neal brought against the Attorney General.

21. The following other orders are made as the consequences of this judgment:

21.1 The declaration claimed by Mr. William Neal which would affect the entries on the Register of Lands are refused.

- 21.2 Mr. William Neal must remove the fence that he built across the front of Parcel 308, Block 45, Lake Independence Registration Section, Belize City, within 14 (fourteen) days of today.
- 21.3 If Mr. Neal fails to remove the fence within 14 days, Mr. Ward McGregor may remove it, and the costs shall be recovered from Mr. Neal.
- 21.4 Mr. Neal must stop forthwith, parking his vehicle on Parcel 308, Block 45, Lake Independence Registration Section, Belize City.
- 21.5 A perpetual injunction order is hereby made restraining Mr. Neal from parking his vehicles or placing anything on Parcel 308, or in anyway interfering with Parcel 308, or in anyway interfering with the right of Mr. McGregor to possession of the said parcel of land.

21.6 It is declared that title of Mr. McGregor to Parcel 308, evidenced by Land Certificate No. 5968/99 is a good title not affected by any claim by Mr. Neal.

21.7 Mr. Neal shall pay damages of \$3,000.00 to Mr. Ward McGregor forthwith.

21.8 Mr. Neal shall pay costs of these proceedings in the sum of \$3,000.00 to Mr. McGregor forthwith.

22. Delivered this Wednesday, the 25th day of February 2009
At the Supreme Court
Belize City.

Sam Lungole Awich
Judge
Supreme Court

Present: Ms. S. Pitts Robeteau
Mr. Neal in person