

IN THE SUPREME COURT OF BELIZE, A.D 2006

CLAIM NO. 168 of 2006

BETWEEN: GUADALUPE ROSADO CLAIMANT

 AND

 TERESA MANUELA KAY DEFENDANT

Mr. Lionel Welch for the claimant.
Mr. Oswald Twist for the defendant.

AWICH J.

2.11.2007

J U D G M E N T

1. *Notes:- Transfer of fee simple absolute title; whether unregistered donation of a fee simple absolute title accompanied with handing over land certificate (certificate of title) during the life of the deceased transferred title to land in a compulsory registration area. Gift inter vivos by handing over land certificate. Effect of registration of title, ss: 26, 30, 86 and 143 of the Registered Land Act Cap. 194.
Alternative claim of joint investment and joint venture.*

2. The claim of Mr. Guadalupe Rosado, the claimant, is for court declarations that would effectively give him fee simple absolute titles to two parcels of land which had belonged to Mr. Telmo Batty, now deceased. Alternative to the claim for the declarations, the claimant asked for an order for sale of the properties and division of the proceeds, or an order awarding to him \$40,000.00 as compensation for his investment and for developing the properties. The parcels are: Parcel 122, Block 1, Consejo Road SE Registration Section, and Parcel 202, Block 1, Corozal North Registration Area. They were, before the transactions which are the subjects of this claim, held by “land certificates” dated 20.11.1979, and 1.6.2000, by Mr. Batty. A land certificate is *prima facie* evidence of the registered title of the person named in the certificate – see **s: 34 (2) of the Registered Land Act, Cap. 194, Laws of Belize**.

3. Mr. Batty died intestate on 18.11.2002. The defendant, Teresa Manuela Kay, is the administratrix of the estate of Mr. Batty. She obtained letters of administration of the estate on 23.7.2004. She has obtained land certificates dated, 11.4.2005, and 26.04.2005, in respect of the parcels of land, in her name, without any indication that she

holds the titles as an administratrix of the deceased estate, or as a trustee. I assume for the purposes of this claim, that she obtained her titles by due distribution and transfer from the estate. As the person named in the land certificates, currently, she is presumed the holder of the legal title, unless fraud or mistake of law can be proved – see *ss: 26, and 143 of the Act.*

4. The defendant, is also the daughter of the deceased. She is 62 years old, so she was 57 when her father died on 18.11.2002. She never at all lived with her father. She obtained her birth certificate only after he died, however, she adduced in evidence an extract from the record of her baptism at St. Francis Xavier Church, Corozal, Belize, showing her father as Adelmo Batty. She said that her father Telmo Batty, was also known as Adelmo Batty. The claimant did not press the issue, he said that he had no knowledge of it. I accepted it as proved that the deceased was the father, at least the putative father, of the defendant.
5. The claimant testified that he is the grandson of Rubencia Rosado, the common law wife of Telmo Batty. She predeceased her husband Mr. Batty. The claimant went on to testify that he lived with the couple

from the age of two years until the age of thirteen years when he went to live with his father, Valentin Rosado. Dr. Miguel Angel Rosado, the brother of the claimant, also lived with the couple. About paternity of the defendants, the claimant said that he first learnt that the defendant may be the daughter of the deceased after the death of the deceased, when her attorney made a claim in 2005, on her behalf, to the parcels of land, and demanded that the claimant vacate the parcels. He had never seen her visit the deceased at home, and never saw her at the funeral arrangement or at the funeral in 2002. The claimant explained that he quit the land because he did not want trouble, but he pursued his claim in court.

6. About the parcels of land specifically, the claimant testified that he helped with work on the land when he lived with the deceased, starting at the age of 5 years, and continued even after he had moved from the home until the demise of Mr. Batty who he referred to as his grandfather. He said that the deceased and him had very close relationship and that they carried on the farming business on the parcels of land together, and had a joint bank account for it at the Belize Bank, Corozal Branch. He also said that after his grandmother

died, the deceased gave him the two parcels of land and handed over the land certificates to him so that the claimant would proceed to transfer the titles to himself during the lifetime of the deceased.

7. The ground for the claim of Mr. Rosado was that he was “the owner of the absolute titles” to the two parcels of land, or had “equitable beneficial interests” in them, based on the fact that the deceased, during his lifetime, gave the two parcels of land to the claimant, and handed over to him the land certificates so that the claimant could proceed to transfer titles to himself. He explained that he did not transfer the titles to himself during the lifetime of Mr. Batty because there was time, he did not expect that Mr. Batty would die that soon. An alternative ground for the claim was that the claimant and the deceased jointly invested in the farming business and jointly carried on the business.

8. ***Determination***

Having seen the claimant and the defendant testify, I have no hesitation in finding that the claimant testified truthfully, whereas the defendant lied about her relationship with her father. I do not believe

that she visited her father during his lifetime, or discussed his affairs with him and he informed her that the two properties would pass to her. He would have made her a party to the bank account if what she said was true. I also do not believe that she attended at his funeral. She did not know at which church the requiem mass was conducted. She at least admitted that she did not contribute to the payment for the funeral expenses. When the question was asked she had already learnt from the previous question and her answer to it that it would be very easy for counsel for the claimant to catch her again on a false answer about the funeral arrangement. I have to mention though, that there is no claim for funeral expenses which would have included transporting the deceased by air. The claimant chose not to claim the expenses, obviously because he regarded the deceased as his grandfather.

9. I believed the testimony of the claimant. He was unequivocally and unconditionally given the two parcels of land by Mr. Telmo Batty, during his lifetime. Mr. Batty handed over the lands certificate to make the gift complete. I also believed the testimony that the claimant invested in the two parcels of land of the deceased and carried on the farming business with him jointly, until his demise on

- 18.11.2002. The claimant continued to carry on the business after the demise of the deceased until the defendant stopped him. The claimant and the deceased had a joint bank account for the business which the defendant learnt about only when she became the administrator of the estate of the deceased.
10. The evidence in fact established a partnership and *gift inter vivos*, of the two parcels of land. There was another well established property which had a building on. The defendant now lives on it. The claimant has not made any claim for it. That shows that once the defendant showed up claiming to be the daughter, the only child of the deceased, the claimant decided to claim only what he participated in by investing and carrying on the business.
 11. The difficult question to answer in this case is purely a question of law. Was the donation of the parcels of land good enough to be recognised by law as a way of transferring titles to the parcels of land which are in a compulsory registration area?
 12. Law is not always the same thing as justice, though rarely.

Application of the law does not always result in justice. This is one such a rare occasion. Mr. Batty during his lifetime made a straight forward *gift inter vivos* by which he intended to divest himself of the titles of the two parcels of land and invest the claimant with the titles. It was not a gift which was conditional on the death of Mr. Batty, known as a *donation mortis causa*, intended to take place if the donor should die. It was a direct unconditional gift to take place immediately.

13. Unfortunately the gift by the deceased of the registered parcels of land to the claimant was verbal, transfer instruments in the usual format were not signed by the deceased and, of course, the intended transfer by gift was not registered. The law does not recognise a verbal gift of land in a compulsory registration area, even if accompanied with handing over the certificate of title. Handing over the land certificate is not recognised as a means of transferring legal title in registered land. *Sections 26, 40 and 86 of the Registered Land Act* read together, leave no doubt as to that rule. I set them out here in a more logical sequence for convenience:

“40 (1) No land, lease or charge registered under this Act shall be capable of being disposed of except in accordance with this Act, and every disposal of such land, otherwise than in accordance with this Act shall be incapable of creating, distinguishing, transferring, varying or affecting any estate, right or interest in the land, lease or charge”.

“86. (1) A proprietor by an instrument in the prescribed form may transfer his land, lease or charge to any person with or without consideration.

(2) The transfer shall be completed by registration of the transferee as proprietor of the land, lease or any charge and by filing the instrument”.

“26. Subject to section 30, the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or

appurtenance thereto, free from all other interests and claims, but subject to...”.

14. So according to the above quoted provisions, especially s: 86 (2), the donation failed as an effective way of transferring the legal titles of Mr. Batty during his lifetime, to the two parcels of land, in a compulsory registration area, to the claimant because the donation, which was intended to transfer the titles was not completed by registration of the claimant as the new proprietor of the titles to the two parcels of land.

15. Verbal donation and handing over land certificate may evidence equitable interest, but that cannot rank before a legal title created in the manner provided for in the Act. Handing over land certificate may also create an equitable charge over land, but again such a charge cannot rank before a registered charge, which is a legal charge – see also *ss: 3 and 7 of the Law of Property Act Cap. 190, Laws of Belize.*

16. Accordingly, my conclusion regarding the question of title is that the legal titles to the two parcels of land remained with Mr. Batty after he

had given away the parcels of land, and upon his death, automatically passed to his deceased estate, despite the gift he made, and were available for distribution in accordance with the laws regarding administration of deceased estates. The laws are largely codified in the *Administration of Estate Act, Cap. 197*. I assume that the defendant obtained titles by due process of administration of the deceased estates under the Act.

17. Unfortunately, the clear intention of Mr. Batty, expressed by his concrete action during his lifetime cannot now, after his death, be carried through as a matter of law. If Mr. Batty left a will, which would be in writing, the law would insist that his intention be carried through without the need for prior registration of transfer. Contrast the two rules of law.

18. The matter does not end there. The alternative claim as to investment and joint farming business has been proved by uncontroverted evidence. I adjudge the claimant, Mr. Guadelupe Rosado, entitled to recover the sum equal to his investment in the farming business, and

the value of the improvement to the land due to working it. The investment and the carrying on of the business was done in partnership as a joint business venture or at least at the implied request of the deceased. Mr. Rosado claimed the sum of \$40,000.00 (forty thousand dollars). I award that sum to him. He is not entitled to judgment *in rem*.

19. This case was conducted with a view to proving and contesting liability. If it is desired, I grant leave to the parties to come back to court within thirty days, for assessment of the monetary value of the liability.
20. Judgment is entered for Mr. Guadalupe Rosado for the second part of his alternative claim. The declarations prayed by the claimant are denied, instead the sum of \$40,000.00 (forty thousand dollars) is awarded to the claimant. Interest at 6% per annum is payable from 25.10.2006, the date of filing the claim. The land parcels remain the property of Teresa Manuela Kay.

21. The defendant will pay costs to the claimant to be agreed or taxed.

22. Delivered this Friday the 2nd day of November 2007.
At the Supreme Court,
Belize City

Sam Lungole Awich
Judge
Supreme Court