

IN THE SUPREME COURT OF BELIZE A.D. 2006

ACTION NO: 276 OF 2006

BETWEEN: 1. LEOPOLD LESLIE
 2. GWENDOLYN LESLIE
 3. DWANE GARCIA CLAIMANTS

AND

 1. LINDA GARCIA
 2. ATTORNEY GENERAL DEFENDANTS

Mr. Leo Bradley Jr. Esq. for the claimants.
Mr. Lindbert Willis, Esq. for the first defendant.
No appearance for the Attorney General.

AWICH J.

15.1.2010

J U D G M E N T

- Notes: Land Law; a claim that the defendant obtained conveyance by fraud, and her predecessor in title had also obtained his conveyance by fraud, that the recording of the conveyance be cancelled; whether there was evidence proving fraud; recording of conveyance under Part VI of the General Registry Act, Cap. 327 conferring legal interest; whether fraud as a ground for cancellation of the recording of the conveyances was proved – ss: 63, 90 and 91 of General Registry Act, also ss:3, 14, 15 and 41 of the Laws of Property Act, Cap. 190.*

2. Ms. Linda Garcia, the first defendant, is the holder of title to land parcel No. 30, at Placencia Village, in Stann Creek District, Belize. The parcel measures 686.617 square yards. She holds title by a deed of conveyance executed by her father, Frank Garcia, deceased. The conveyance was dated 4.8.2005, and recorded on the same date at folios 647 to 658 in Deeds Book, Volume 23 of 2005. Frank Garcia was said to have signed the conveyance on an earlier date, 22.5.2005. The defendant was born on the property, grew up on it and lives there.

3. The title of Frank Garcia had also been held by a deed of conveyance. The deed was executed by Rose J. Rivero, by powers of attorney, on 17.9. 1984, and recorded the same day at folios 871 to 879 in Deeds Book, Volume 9 of 1984. The powers of attorney were donated to Rose Rivero by Leonilla Romero-Rivero, her mother, Julian Romero and John Romero, the owners of the property then. Frank Garcia died in July 2005. Linda Garcia had, however, obtained her conveyance either from a contract between her father and herself, or as a matter of a gift *inter vivos*, not a *donatio mortis causa*.

4. The first claimant, Leopold Leslie, is the uncle of Linda Garcia; he is the brother of Frank Garcia. The second claimant, Gwendolyn Leslie, is one of the aunts of Linda Garcia; she is the sister of Frank Garcia. The third claimant, Dwane Garcia, is one of the three brothers of Linda Garcia; he is the son of Frank Garcia.

5. The joint claim of the claimants was that, Linda Garcia obtained the conveyance from Frank Garcia by fraud; he was mentally incapable by reason of illness, of understanding that he was signing a conveyance to the claimant or to anybody, or of understanding anything at all, at the time his signature was obtained. On that statement, the claimants claimed that the conveyance was obtained by fraud, and so the recording of it was also obtained by fraud.

6. The claimants claimed further that, Frank Garcia had also obtained by fraud, conveyance to himself instead of to Leonora Leslie, the mother of the first and second claimants and Frank. The fraud, they said, was that Frank, unbeknown to their mother and the other children, completed payment of the purchase price which had been partly paid by their mother, and took conveyance in his name alone. Based on

that, the claimants claimed that the title of Frank Garcia passed to Linda Garcia, was a title that had been obtained by fraud, and Linda's title was invalid.

7. The Attorney General was cited as a defendant, but no direct claim of wrongdoing was made against him as a representative of the Government, in particular, of the officer responsible, the Registrar General. The Attorney General was cited properly, in my view, because in the event the claim is successful, an order may be made under s. 90(4) of the General Registry Act, for cancellation of the recording of the deeds of conveyance. By citing the Attorney general, the Registrar was given opportunity to be heard if he wished.

8. In regard to their own rights to the property, the first and second claimants said that; they and Frank Garcia were children of Leonora Leslie, to whom one Leonilla Romero had sold the land, and that their mother Leonora, has since died, and so all the children were entitled to share in the land. The two claimants claimed shares in the beneficial interest in the land which they saw as an item in the estate of their mother, Leonora.

9. The two claimants further claimed that, they lived on the property since birth and that, “by prescription”, and by their mother having paid part of the purchase price, they were entitled to equitable interest in the land. They want the equitable interest recognized and, “converted to legal title”.

10. Apart from his part in the joint claim based on fraud, the claim of the third claimant is rather ambiguous. Unfortunately the statement of claim did not include a certificate of truth as required under ***R8.7 (5) of the Supreme Court (Civil Procedure) Rules, 2005***, and so there were no signatures of the claimants committing to the truth of the statement of claim. Apart from the paragraphs claiming fraud, only one paragraph in the statement of claim applied to the third claimant, namely, paragraph 14 that, he was the brother of Linda Garcia, and that he was seeking to protect his rights and the rights of his two brothers to the land. He did not state what his rights and the rights of his brothers were, and in what capacity and on what grounds of facts and law he sought to protect the rights.

11. The reliefs that the claimants claimed were: (1) a court declaration that Linda Garcia obtained the signature of Frank Garcia on the conveyance to her fraudulently; (2) a court declaration that the claimants are entitled, “by prescription to equitable interest in the property”, (3) an order granting legal title to the claimants based on, “prescription and on payment of part of the purchase price by their mother”; and (4) an interim injunction order restraining the defendant from carrying out certain development construction on the land until this claim has been determined.

12. The interim injunction order should have been asked for by an interim application at case management conference, as required by *R 11.3 of the Supreme Court (Civil Procedure) Rules 2005*. In any case, it was not pursued at trial. The claimants may have changed their mind about it. I do not concern myself with it in this judgment.

13. The Attorney General has taken no part in the proceedings. That is an indication that it did not matter to the Attorney General, on behalf of the Registrar General, whether the court upholds the claim and cancels the recording of the conveyance executed by Frank Garcia to

the first defendant, or dismisses the claim and leaves the recording of the conveyance unaffected.

14. Ms. Garcia denied the claim. Her heads of defence were the following: (1) She paid the land tax arrears on the land, and her father conveyed the land to her on 22.5.2005; he signed the conveyance of his own free will when he was of sound mind although ill, and in the presence of Jacqueline Vernon, and Percival Neal, Justice of the Peace, of Placencia Village. (2) Frank Garcia alone bought the property from Rose Rivero, there was no fraud in the purchase; at the time Leopold and Gwendolyn lived elsewhere in Placencia Village. (3) Leopold and Gwendolyn built a house on the land with permission of Frank Garcia who at all times had the sole control and possession of the land; he had two other houses on the property rented out to tenants, for which he collected monthly rent for his own benefit.

Determination

15. The case for the claimants as formulated, admitted that there had been a conveyance of the land to Frank Garcia from Rose Rivero, although they gave her name as Rose Romero, and that there was a

conveyance from Frank Garcia to Linda Garcia. Further, the case for the claimants admitted that both conveyances were recorded under the General Registry Act. They did not impugn the actual process of the recording of the conveyances on the grounds of fraud, irregularity, mistake or any other ground. They relied on fraud to show that both conveyances were executed as the result of fraud, and that the Registrar was induced by fraud to record the conveyances.

16. Since it has been admitted, or there has been no contest that the two conveyances were recorded by the Registrar, under *Part VI of the General Registry Act, Cap 327, Laws of Belize*, the conveyances must be admitted by court, “*without further or other proof of the execution*”, of the conveyances – see *s. 85 of the Act*. In any case, there has been sufficient proof by other evidence that, the conveyances were executed by Rose Rivero and Frank Garcia respectively. The only question is whether the execution of the conveyances was obtained by fraud.
17. Fraud aside for the moment, both conveyances were regular on the faces, they each conferred immediately upon making, equitable

interests. Thereafter, upon recording under *Part VI of the General Registry Act*, each recorded conveyance conferred legal title on the person to whom the conveyance was made. The recorded conveyance executed by Rose Rivero conferred legal title (estate) on Frank Garcia. The recorded conveyance executed by Frank Garcia conferred legal title (estate) on Linda Garcia. That principle of the law is stated in s: *15 of the Law of Property Act, Cap 190 of the Laws of Belize*, as follows:

“Except in respect of national land, title to legal estate or legal interest in land shall be evidenced either by a certificate of title issued or by a deed recorded under the General Registry Act”.

18. **Section 40** of the same Act repeats the principle as follows:

“40. From and after the commencement of this Act, and except in respect of national land, the legal title to all land or any interest in land shall be created either-

(a) by registration of the certificate of title thereto under and in accordance with the General Registry Act; or

(b) by recording the title deed thereto under and in accordance with Part VI of the General Registry Act.

(c) ...”

19. Next, the question may be asked; what are the benefits of a legal title?

The legal title transferred by Rose Rivero to Frank Garcia and further transferred by Frank Garcia to Linda Garcia, transmitted along, “*estate in fee simple absolute in possession*”. See **ss: 3 and 40 of the Law of Property Act**. The legal title gave Ms. Garcia authority to exclude all others from the land. The claim of fraud was intended to deny Linda that authority. It aimed at persuading the court to cancel both conveyances and to cancel the recording of the conveyances, and the endorsement in the Deeds book, of the certificates of the Registrar as to the recording. Should the claimants succeed, the court will then, acting under **s: 91 of the Act**, order the Registrar to cancel the recording, thereby cancelling the legal rights and authority of Ms. Garcia.

20 The claim was primarily one under **s: 90 of the Act**. The claimants should have formulated their claim under, or to include the section,

instead of formulating it in the general manner they did. **Section 90 of the Act** states as follows:

“90.-(1) Any person injuriously affected by any document recorded under this Part may bring an action in the Supreme Court claiming to have the record of such document cancelled.

(2) In every such action the burden of proof that such document was rightly recorded shall lie upon the defendant...

(3) The court shall adjudge whether such record shall be cancelled or not.

(4) If the court orders any such record to be cancelled, the Registrar shall cancel it accordingly and shall on or by the side of such record write the name and number of the suit in which such order was made and the date of such order”.

21. A legal title obtained by fraud or with knowledge of fraud, is defeated by fraud, except when the title has passed to a purchaser in good faith

for value. That has been stated in this jurisdiction in the cases of, *British American Cattle Company v. Caribe Farm Industries Ltd and the Belize Bank*, 3BzLR 468, and *William Quinto and Jimmy Quinto v. Santiago Castillo Ltd*, Privy Council Appeal No. 27 of 2008. Reference is also made to, s: 63 of the *General Registry Act* and s: 41(4) of the *Law of Property Act*.

22. The crucial questions to answer in this claim is therefore whether the evidence adduced proved that the execution of the conveyance by Rose Rivero to Frank Garcia was induced by fraud, and whether the execution of the conveyance by Frank Garcia to Linda Garcia was induced by fraud. I am aware that s: 90(2) puts the burden on the defendant, of proving that the documents, in this case, the conveyances were rightly recorded. However, I note that, it has not been the case for the claimants that the processes of recording the conveyances was improperly carried out. The proof required here is of fraud said to have been perpetuated by Frank Garcia, and Linda Garcia in obtaining the conveyances. The burden of proving the fraud must rest on the claimants.

23. About fraud regarding the execution of the conveyance by Rose Romero, The relevant evidence adduced by the claimants was that, Leonora, the mother of the first and second claimants and Frank Garcia, used to work for the Romeros, in particular for Leonilla Romero Rivero, and that they permitted her to live on their land. Further that, one Celia Muschamp, a friend of Leonora, went with Leonora to Rose Rivero to pay the purchase price for the land, but Ms. Rivero did not accept payment because it was short.
24. The belief by all the witness for the claimants that, Frank Garcia subsequently added to part of the purchase price that Leonora might have paid and thereby paid off the purchase price, is not evidence. The claimants did not adduce facts on which that belief was based, or may be inferred from. They did not adduce evidence of deceit and dishonesty. There has been no evidence of a false representation made by statement or conduct, by Frank Garcia at all, let alone knowingly or recklessly made in order to obtain material advantage, in this claim, the conveyances from Rose Rivero to Frank Garcia and from Frank Garcia to Linda Garcia – see *Derry v Peek (1898) AC 317*, *Claudius Ash Sons & Co Ltd v Invicta Manufacturing Co Ltd*

(1912) 29 RPC 465 and Wallington v Mutual Society (1880) 5 App. Cas 685.

25. On the other hand, Linda Garcia called Rose Rivero, the vendor, whose testimony was the following. Leonora had been allowed by Rose's principals to live on a larger tract of land which included the land in question; she was to pay rent of \$200.00 per month. She often failed to pay. Then Rose's principals subdivided the land, allowed Leonora and her family to remain on Parcel No. 30; the principals sold the other parcels. Parcel No. 30, was later sold by Rose on behalf of her principals to Frank Garcia, not to Leonora. Ms. Rivero said that Frank Garcia paid the full purchase price to her.

26. It is obvious whose evidence is the more probable; it is evidence for Linda Garcia. There was no fraud when the sale of Parcel No. 30 took place, and when conveyance by Rose Rivero to Frank Garcia was executed. So, the recording of that conveyance was not obtained by fraud.

27. About fraud regarding conveyance of the same land from Frank Garcia to Linda Garcia, the evidence for the claimants was that Frank Garcia was too ill to speak or to understand anything, he could not speak coherently. None of the witnesses for the claimants said that he or she was present at the moment when the signature of Frank Garcia was obtained by Linda Garcia.

28. The contrary evidence from Linda Garcia was that, Frank Garcia was ill, but did not lose his mental capacity; he signed the conveyance fully aware of what he was signing and with the intention of conveying the land to her. She called two witnesses who signed witnessing the signature of Frank Garcia. They saw him sign the conveyance. She explained that their father asked Dwane to pay off \$5,000.00 land tax on the land so that their father would give the land to him, but Dwane did not make the payment. Then their father asked her to pay off the tax; she paid and their father gave her the land.

29. Again it is easy to decide which evidence was the more probable one; it is evidence for Linda Garcia. The conveyance from Frank Garcia to Linda Garcia was not obtained by fraud. The recording of the

conveyance was also not obtained by fraud; it remains a valid recording as certified by the Registrar. Linda Garcia was duly invested with legal title to Parcel No. 30, Placencia Village, Stann Creek District.

30. The claim that beneficial interest in the land was acquired by the claimants, “by prescription”, and by their mother having paid part of the purchase price, is baseless on both the facts and point of law. If the claimants lived on the land from birth, they lived there by simple licence granted by the Romeros, to their mother, and thereafter by Frank Garcia. Moreover, as between Frank Garcia and Linda Garcia on the one part, and the claimants on the other, there was no exclusive possession of the land by the claimants. Regarding payment by their mother, of part of the purchase price, the evidence including evidence for the claimants, proved that their mother never paid any part of the purchase price.

31. Linda Garcia in her statement of case, recited her grounds of defence and made a counterclaim for several court declarations to the effect that she was the lawful owner of Parcel No. 30, Placencia Village. It

was not necessary to make the counterclaim, and it is not necessary to make the declarations.

32. The claim of Leopold Leslie, Gwendolyn Leslie and Dwane Garcia against Linda Garcia and Attorney General, for legal title or beneficial interest in Parcel No. 30, Placencia Village, Stann Creek District, is dismissed. All the reliefs requested by the claimants are refused.
33. In the circumstances of the family relationship between the parties, the claimants will pay one-half of the costs of the claim to Linda Garcia; the costs to be agreed or to be filed within one month for taxation.
34. The conveyance executed by Frank Garcia on 22.5.2005, was lodged for recording on 4.8.2005. That was more than one month after it had been executed. It was necessary to obtain court order extending time for recording it – see *ss: 71 and 72 of the General Registry Act*. Linda Garcia has asked that, as part of this claim, time be extended to include 4.8.2005. In my view, her evidence disclosed that the delay was unavoidable, given her preoccupation with the condition of her

father at the time, which ended in his death. It is now not possible to have him execute a new conveyance. In any case, she would have succeeded in proving her claim to equitable interest in the land, based on unrecorded conveyance, had there been administration of the estate of her father. I am also mindful of the overriding objective of the *Supreme Court (Civil Procedure) Rules, 2005*, namely, 2(b) saving expenses in court claim. I grant extension of time to include 4.8.2005, so that the conveyance by Frank Garcia to Linda Garcia stands duly recorded.

35. Delivered this Friday the 15th January 2010
At the Supreme Court
Belize City

Sam Lungole Awich
Judge
Supreme Court.