

IN THE SUPREME COURT OF BELIZE, A.D. 2019

Claim No. 196 of 2019

(ALLEN ROBATEAU CLAIMANT
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BETWEEN (AND
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(EWART LEROY ROBATEAU DEFENDANT

BEFORE THE HONORABLE JUSTICE LISA M. SHOMAN

Trial Date: October 26, 2021.

Appearances:

Mrs. DeShawn Arzu Torres for the Claimant

Mr. Hubert Elrington SC for the Defendant

Written Submissions:

12th November, 2021 for the Claimant

9th November, 2021 for the Defendants

JUDGEMENT

BACKGROUND

1. Allen Robateau and Ewart Robateau are brothers. They are the sons of Ms. Anita Robateau. This is a claim involving these brothers and a property at 1830 Chancellor Street, Belize City, Belize.
2. The property was transferred to the Claimant, Allen Robateau by his mother, Anita on November 14, 2017. Prior to being transferred to Allen, the home at 1830 Chancellor Avenue was known by Anita's children as a "family property" to which all of Anita's children were welcome.

3. The Defendant, Ewart Robateau was allowed to live there by Anita, when she was still the legal owner of the property, along with his wife and family. The Defendant is now living separate and apart from them, but he is still residing at the property at 1830 Chancellor Avenue.
4. Allen now claims that Ewart was only allowed to live at the 1830 Chancellor Avenue property by his mother as a bare licensee, and that since Anita is no longer the legal owner of that property, that the permission which was granted by her to Ewart has expired, and that Allen is entitled to possession of the property.
5. Ewart admits that he was served with notices to quit the premises and property at 1830 Chancellor Avenue in July 2018 and November 2018; but he has refused to leave the property.
6. Ewart alleges that the transfer of the property to Allen by their mother was not made with her free will and asserts that there was undue influence in the transfer of title to Allen.
7. Ewart also says that he built a dwelling home on his mother's property at her invitation and at his own expense, induced by a promise made to him by his mother, and in the expectation that once he had done so, he would acquire a life interest in the property.

THE CLAIM

8. By Fixed Date Claim dated the 20th day of March, 2019, the Claimant claims an order that the Defendant delivers up possession of the property situated at 1830 Chancellor Street, Belize City, Belize, more particularly described as Parcel 1839, Block 16, Caribbean Shores/Belize Registration Section; as well as damages for trespass, interest and costs.

9. By Defence filed on the 10th day of June 2019, the Defendant denies that the Claimant is entitled to full possession of the property and says that that he was given permission by his mother, Anita Robateau and that she “induced him” to build his dwelling house on the said property by telling him that if he did so, he could reside on the property for his entire life.
10. The Defendant states in his Defence that he built a dwelling house on the property, and upon the completion of the house in 1992, he began to live on the property as a tenant for life. He says that his interest as an occupier was an overriding interest binding on his mother and every person including the Claimant who claim to have taken interest from her.
11. The Defendant’s Defence also states that at the time when the Claimant claims that his mother transferred the property to him, that his mother lacked the mental capacity to deal with or dispose of the property and alleges that the Claimant used undue influence on his mother so that the transfer was not made by the free will or consent of the mother.
12. The Defendant filed no Counter claim or Ancillary claim.

THE ISSUES FOR DETERMINATION

13. The parties agree that the following are the issues for determination by the Court:
 - (a) Whether the Claimant is entitled to possession of the property?
 - (b) Whether the Defendant is a bare licensee of the premises?
 - (c) Is the transfer of the land voidable?

IS THE CLAIMANT ENTITLED TO POSSESSION OF THE PROPERTY?

14. The Claimant's Statement of Claim and his evidence before the Court is that title to the property was duly transferred to him by his mother in accordance with the Registered Land Act and he is therefore entitled to possession of the said property.
15. His evidence shows that the Registrar of Lands issued a new Land Certificate numbered LRS-201708872 and dated 14th November, 2017 to the Claimant for the property at 1830 Chancellor Avenue, pursuant to a transfer made to him by Anita Robateau.
16. The evidence of the Claimant under cross-examination is that the property was given to him, by his mother, Anita Robateau and that she was the one who asked him to take her to Belmopan to the Lands Department, to transfer the title into his name. At the time, Allen was living in the United States and his mother, living at 1830 Chancellor Avenue. Ewart was also living there. Allen came to Belize to visit his mother for two weeks, and during that time, he says, his mother asked him to take her to the Lands Department in Belmopan.
17. The Registered Land Act, Chapter 194 of the Laws of Belize at Section 26, provides that absolute ownership of a registered parcel of land is vested to a person to whom title is registered, as follows:

“26. Subject to section 30, the registration of any person as the proprietor with absolute title of a parcel shall vest in the person the absolute ownership of that parcel together with all rights and privileges belonging or pursuant thereto, free from all other interests and claims, whatever but subject –

(a) to the leases charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

(b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 31 not to require noting on the register...”

18. I accept as binding authority, the Belizean case of **William Quinto v. Santiago Castillo Ltd. (Belize)**¹ which was decided at the Judicial Committee of Privy Council. This appeal raised issues of both law and fact in respect of the effect of the Torrens System of land registration, as enacted by the Registered Land Act 1974 ("the Act"), which forms Chapter 194 of the Laws of Belize. In issue was title to a parcel of land which had been registered as Parcel 869, Block 16 Caribbean Shores ("Parcel 869"). Lord Phillips set the scope and the limits of the Torrens Registration system in Belize at paragraph 4 of his decision as follows:

“The Torrens system in Belize

4 Under the Torrens system registration confers title on the registered proprietor. A merit of the system is that a purchaser from the registered proprietor does not normally need to look further than the register for reassurance that the vendor has good title. Under some systems once a title is registered it is indefeasible. Under other systems the title of a bona fide purchaser from the registered proprietor will, once it is registered, be indefeasible. The indefeasibility of title is, however, capable of giving rise to injustice if the registration of the title is brought about by fraud, or by a mistake. For this reason, many Torrens systems make provision for rectification of the register, but the nature of such provision varies from system to system. The effect of each depends on its own terms.”

19. At Paragraph 9 of the **William Quinto** decision, Lord Phillips points out that Section 26 of the Act cited above provides that registration of any person as the proprietor with absolute title of a parcel shall vest in that person absolute ownership

¹ [2009] UKPC 15

of that parcel, subject to any leases, charges or other encumbrances shown on the register. Furthermore, Section 41 of the Act provides that

“No person dealing or proposing to deal for 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.”

20. There is no evidence before the Court to show that there were any registered leases, charges, encumbrances, conditions or restrictions noted on the Land Register of the property when Anita Robateau transferred it to her son, Allen Robateau, the Claimant. Neither was the Court provided with any copy of the transfer instrument form for the property from Anita Robateau to Allen Robateau, even though the said Instrument dated November 14, 2017 was listed in the List of Documents provided by the Claimant to the Defendant dated July 31, 2019.
21. The Claimant conceded that the Defendant had placed a caution on the property dated May 31, 2018. The caution was listed in the List of Documents provided by the Claimant to the Defendant, however, the caution was not produced to the Court by either party.
22. Legally, the position as to the absolute ownership of the property is clear. Allen Robateau is the Registered owner of the parcel of land which is the subject of this claim. There is nothing in evidence in this claim to the contrary.
23. The Defendant however, in his defence says he is entitled to a life interest in the property because his mother, Anita Robateau promised him that if he built a house on the land for her in order to satisfy the development condition so that she would be allowed purchase the property (which had been leased to her) from the Government of Belize, she would give him a life interest in the said property.

24. The Defendant asserted in his defence that he “agreed to build the house for her on the said land on the condition that when she became owner of the property she would give me a life interest in the said property”. Under cross-examination, the Defendant said it was a verbal agreement but he was unable to provide any evidence of the same to the Court. None of his siblings gave evidence of any such promise, and neither did any witness other than Ernesto Castillo mention his account of the promise or agreement.
25. Ms. Anita Robateau was brought to Court to give evidence on behalf of Ewart, but was so distraught and confused, that it was evident that she did not understand what was happening, was not able to take the oath, and could not give evidence. Her witness statement cannot be relied on by the Defendant and does not form evidence in this case.
26. Mr. Ernesto Castillo, who gave evidence for the Defendant, admitted under cross-examination that he only knew what he was told by Ewart regarding the property, and admitted not knowing the date when the property was constructed, saying that it was in 1990 - and that at the time he was living in Los Angeles and only made trips to Belize. He was an unhelpful witness and unable to confirm any details regarding a promise by Anita to Ewart, or any agreement between them.
27. The Defendant did not file a counterclaim to set out the nature or extent of the “overriding interest” or the “life interest” which he says he had in the property. Furthermore, the Defendant did not provide the Court with vital evidence regarding the dwelling house which he says he built on the property. There are no photographs of the same. He avers that he took a loan for \$75,000.00 from the Belize Bank Limited. No documentary proof of the same was provided to this Court, nor was any disclosed in the List of Documents filed by the Defendant. The Defendant conceded that he provided no mortgage document to the Court.

28. For his part, the Claimant says that a house was on the property, but that he did not know “who put it there”. He also admitted that he did not know when it was that Ewart started to live there, but said that he did know that when the house was built, it was rented out to a Mr. Hulse, and said that Ewart started to live there some time afterwards with his wife and children. The evidence of Allen was that as long as Ewart was living there, “he would take care of everything”. The Claimant admitted under cross-examination that he did not know if his mother had told Ewart to build a house on the property and that he could live there for his life. He says that the only person who told him that was Ewart.
29. Even though the Defendant says in his witness statement that he bought the house “prefabricated from a USA company from Ohio that sold prefabricated houses in Belize”, he also says that he cannot recall the name of the company.
30. The Defendant claimed that he paid a builder/contractor, Kingsley Morrison to complete the house and for a fence to be built. The Defendant provided no proof of any such payments, despite listing in his standard disclosure form at 7 and 8 “Compilation of receipts from and for businesses to repair the house at 1839 (sic) Chancellor Street, Belize City Belize” and “Estimate from Mr. Kingsley Morrison for work done at the house at 1839 (sic) Chancellor Street, Belize City Belize.”
31. The Defendant said under cross-examination that he had lodged a caution in 2018 on the property before Allen “picked up the title”. He was asked if he was claiming an interest in the property as “son and caregiver” of his mother. He said he had no copy of the caution, and did not know what it said.
32. In short, the Defendant did not, beyond making bare assertions in his witness statement and in cross-examination” provide the Court with the needed evidence to substantiate what was set out in his Defence regarding the house and his purported interest in the same. This was his evidentiary burden to discharge. He failed to do so.

33. For his part, the Defendant's witness, Mr. Morrison testified that the building was about 75% complete. He says that he completed the building "in the early nineties". He says nothing about the cost of such construction. He also said that Ewart contracted him to work on the building and the fence and was the one who paid him for the work. He said that it took some 18 to 20 thousand dollars to complete the fence, but he produced no records as proof of the work done, had no receipts, and admitted that he was unaware of what the arrangements were in respect of the property which the witness said Ewart Robateau told him was "family property". He was of no further assistance in this matter.

IS THE DEFENDANT A BARE LICENSEE OF THE PREMISES?

34. In 2018, after becoming the registered owner of the property, the Claimant served the Defendant with two notices to quit, dated 13 July 2018 and November 2018, respectively. Both were attached to his witness statement and tendered in evidence. Neither was challenged. In the first letter, the legal representative of the Claimant says that the Defendant occupied the premises at 1830 Chancellor Avenue pursuant to a license from the previous owner Anita Robateau, and that he was being given notice to vacate the premises by the Claimant who held absolute title. The Defendant admitted being served with the Notices.
35. In December 2018, the Defendant commenced suit against the Claimant, claiming among other things, a declaration that Ewart Robateau was, since June 1992 "the owner of a life interest in the said property" and entitled to have his interest classified as an overriding interest under Section 7 of the Registered Land Act. He also claimed a declaration that Anita Robateau's title was at all material times subject to his "overriding life interest" and that anyone who took or purported to take a proprietary interest in the land, did so subject to Ewart's "overriding life interest". On February 26, 2019, Ewart Robateau wholly discontinued the Claim against Allen Robateau and The Registrar of Lands. The Defendant did not file a

Counterclaim in this matter to assert his claim anew.

36. The written submissions provided on behalf of the Defendant urge this Court to accept certain evidence: that the cost of building the house was \$100,000.00, and that a further \$17,000.00 was spent on a fence, that the Defendant borrowed a portion of the necessary funds from the Belize Bank Limited and that his mother mortgaged the lot as security for the loan, and that he used his own funds to complete the house and fence on the property. The Defendant admitted in his witness statement and under cross-examination, and it is conceded in the same written submissions advanced on his behalf, that he did not put the purported mortgage deed or a certified copy of the Lands Register in support of his testimony. There is no evidence to support the contention of Ewart Robateau that he had an equitable interest in the property save and except for the fact that he had lived there for a number of years. Furthermore, I did not find him to be a credible witness.
37. If the Defendant wished to establish a right to a life interest in the property at 1830 Chancellor Avenue, based on his reliance on a promise by his mother, he needed to discharge the burden of proving both nature and extent of the promise made to him, as well as what was the alteration of his financial position in order to make a contribution to the property that was made acting on reliance of that promise.
38. In order to to be able to establish any kind of proprietary estoppel for the Court to recognize that he had an equitable interest therein, it was absolutely necessary for the Defendant to prove that at the request or with the encouragement of his mother Anita Robateau as the landowner, he spent money in improving the property in the expectation created by Anita Robateau that he would be allowed to occupy it, and under what terms or for how long. If Ewart Robateau had in fact established these requirements in his evidence, then no court would allow his expectation to be defeated where it would be inequitable to do so. Where a party before the Court is able to prove that under an expectation, created or encouraged by an owner of land or property, that he shall have a certain interest in that land or property, and the

party takes possession of the land or property with the consent of the owner or landlord; and acts on the basis of such promise or expectation, with the knowledge of the owner and expends money upon the land or property, a court of equity will compel the owner to give effect to such promise or expectation.

39. But the key to such recognition of an equitable right is that he who alleges must prove; and in this case, the Defendant has failed to show to the satisfaction of the Court the proof necessary to substantiate the allegation made in his Defence of being entitled to a life interest. Contrary to what is urged by the submissions made on his behalf, there is a dearth of evidence to corroborate his assertion that his mother had in fact promised him that he could live “on his house on her land for his life”.
40. Mere occupation of land does not of itself create the existence of an overriding interest under section 31(1) (9) of The Registered Land Act. The person claiming to have such an interest must prove that he has a corresponding legal or equitable interest in the property.
41. Because the Defendant failed to discharge the burden of proving to the Court that he did have an equitable interest in the property at 1830 Chancellor Street, although clearly the Defendant had lived there for a number of years, his occupation of the land did not create an overriding interest. The Defendant has failed to prove that he was anything other than a bare licensee on the property.

IS THE TRANSFER OF THE LAND VOIDABLE?

42. The Defendant alleges in his Defence that in November 2017, at the time that his mother transferred the land to the Claimant, she was “advanced in age and lacked the mental capacity due to disease of mind brought on by her age, to deal with and dispose of the property”.
43. The Defendant says further in his Defence, that the transfer was not made with the “free will” of his mother because at the material time, the Claimant “used undue influence on his mother and by that undue influence over powered her mind so that the transfer was not made with the free will and consent of the mother”.
44. Ironically, the Defendant brought his mother to court as a witness to bolster his claim regarding the granting of a life interest to him. The Witness Statement of Anita Robateau was sworn on September 12, 2019. At the time of the trial, a year later, the witness was visibly distraught, disoriented and confused as to where she was and why and was therefore unable to be sworn in and give evidence and her witness statement could not be tendered in evidence.
45. The Defendant says nothing at all about the undue influence which was allegedly exercised by the Claimant on their mother, in his witness statement which was tendered in evidence. There is not a single statement or reference in his witness statement to any undue influence that his brother purportedly used to overpower his mother’s free will when she transferred the property to him.
46. The Defendant did not provide the Court with any medical or documentary evidence to prove that his mother did not at the time “have a disposing mind and memory” because she “lacked the mental capacity due to disease of mind.”
47. Under cross-examination, the Defendant admitted that he had provided no medical

or documentary evidence to support his contention that his mother had schizophrenia. Neither did Ernesto Castillo provide any such evidence nor under cross-examination, he merely said that she now had a tendency to repeat herself and ask the same questions again and again.

48. There was some testimony given by the Claimant that Anita Robateau had voluntarily undergone some period of time in a psychiatric institution in the United States, but no date or time was provided, nor was any evidence tendered as for the reason for this, and neither was any medical evidence tendered in respect of the same. I found the Claimant to be candid with the admission that his mother had in fact been hospitalized in the United States of her own volition.
49. There was no evidence provided on which the Court could make a determination that the transfer is voidable because it was made by Anita Robateau to Allen Robateau at a time when, or in circumstances in which she lacked the capacity to understand what she was doing, nor was there evidence to substantiate the Defendant's contention that the Claimant exercised "undue influence" to cause his mother to transfer the absolute ownership of the property.

CONCLUSION

50. The Claimant did not pursue the issue of trespass against the Defendant and provided no evidence as to what damages he was seeking for trespass against his brother. Accordingly, the Court will make no order as to damages for trespass against the Defendant.

DECISION

51. The following Orders are made:

(a) The Defendant shall deliver up possession of the property situate at 1830 Chancellor Street, Belize City, Belize and more particularly described as Parcel 1839, Block 16, Caribbean Shores/Belize Registration Section to the Claimant within six months of the date of this Judgment.

(b) Costs are to be paid by the Defendant to the Claimant as agreed or taxed.

DATED THIS 14th DAY OF FEBRUARY, 2022.

**LISA M. SHOMAN
JUSTICE OF THE SUPREME COURT**