

**IN THE SUPREME COURT OF BELIZE, A.D. 2022**

**CLAIM No. 4 of 2022**

**BETWEEN**

**FIDEL FUENTES**

**CLAIMANT**

**AND**

**EDUARDO ANGEL JUAREZ (Personally  
as Administrator of the Estate of Emeline  
Trapp Juarez)**

**DEFENDANT**

**REGISTRAR OF LANDS**

**INTERESTED PARTY**

**DECISION OF** The Honourable Madam Justice Patricia Farnese

**FINAL HEARING DATE:** July 14, 2022

**APPEARANCES**

Mrs. Andrea McSweeney Mckoy and Ms. Karen Munnings for the Claimant  
Mrs. Stevanni Duncan Ferrara for the Defendant

**DECISION AFTER TRIAL**

**Introduction**

[1] Mr. Fuentes claims he is entitled to prescriptive title and continued possession of a parcel of land known and described as Block No. 550, being 3.47 acres situated in North Stann Creek, Hope Creek Village, Stann Creek District, Belize (the property). The disputed property was held by the late Mr. Alphaeus Trapp, the father of Ms. Emeline and Ms. Eleanor. Mr. Trapp died in 1994 with a will that left the property to Ms. Emeline. Mr. Fuentes was raised on the property by Ms. Eleanor, whom he considers his mother. She lived and on the property from 1980s until her

death in 2016. Ms. Eleanor established two businesses on the property that Mr. Fuentes continued to operate. The first business rented apartments Ms. Eleanor constructed on the ground floor of the property. The second business was a restaurant and bar called the White Swan that was also on the property's ground floor. The second floor contained Ms. Eleanor's residence. Mr. Fuentes claims his continued possession of the property satisfies the statutory requirements for prescriptive title.

[2] Ms. Emeline has resided in the United States of America most of her adult life. She died in 2019 after probating her father's will in 2017. Mr. Juarez is Ms. Emeline's husband. He asserts that Ms. Emeline probated Mr. Trapp's will to realize their plans to retire in Belize, but Ms. Emeline's health did not allow them to carry out those plans. He now claims rights to the property through a Vesting Assent he obtained in 2021 as the beneficiary of Ms. Emeline's estate. He alleges that Mr. Fuentes is in unlawful possession of the property and businesses and has refused to vacate despite Ms. Emeline's request.

[3] I find Mr. Fuentes is not entitled to prescriptive title to the property. He has not proven, on a balance of probabilities, that he and Ms. Eleanor have had had continuous and undisturbed possession of the property without consent of the legal title holder for 30 years. Mr. Fuentes, however, is entitled to some compensation for the improvements he and Ms. Eleanor made to the property while they were in possession.

## Issues

[4] Several issues were outlined in the pre-trial memo, but after reviewing the evidence and submission of the Parties, I find that this dispute will be resolved based on the following two questions:

1. Did Mr. Fuentes, through Ms. Eleanor, acquire prescriptive title to the property?
2. Is Mr. Fuentes entitled to be compensated for significant development of the property?

## Analysis

*Did Mr. Fuentes, through Ms. Eleanor, acquire prescriptive title to the property?*

[5] Mr. Fuentes does not dispute that Mr. Trapp gifted the property to Ms. Emeline in his will. Although the will was not probated for many years, section 4 of the *Wills Act*<sup>1</sup> makes it clear that Ms. Emeline held an interest in the property upon her father's death:

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<sup>1</sup> Cap. 203, Rev. Ed. 2020.

(4) Every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears by will.

She held an equitable interest until title was transferred into her name whereupon legal title would follow.

[6] Mr. Fuentes asserts, however, that any rights Ms. Emeline had to the property were defeated by Ms. Eleanor having acquired prescriptive title. As this property is located outside of a compulsory registration area, section 42 the *Law of Property Act*<sup>2</sup> governs acquisition of title through long possession:

42(1) Title to the fee simple in any land, or to an easement, right or privilege in or over any land, including land belonging to the Government, may be acquired by continuous and undisturbed possession of that land for thirty years if such possession is established to the satisfaction of the Supreme Court which may issue a declaration of title in respect of this said land, easement, right or privilege in favor of the person who has had such possession.

(2) the possession of some other person through whom the applicant for a declaration of title lawfully derived his possession may be taken into account in computing the period of 30 years possession required by this section.

(3) The application for declaration of title shall be made in accordance with the rules of court.

(4) The title to any land, easement, right or privilege declared by the court under this section shall not vest in any person until the Registrar has issued to him a certificate of title based upon the said declaration.

Subsection 42(2) allows Mr. Fuentes to derive his rights to the property through Ms. Eleanor. Mr. Fuentes has the burden to prove, on a balance of probabilities, that Ms. Eleanor was in “continuous and undisturbed possession” for 30 years. This test has been described as “open, peaceful, continuous, uninterrupted and undisturbed possession of the land for the requisite period.”<sup>3</sup> The possession must also be without consent as an owner can give up possession without losing their rights to the property. Mr. Juarez does not dispute that Ms. Eleanor was in possession of the property while she was alive.

[7] I accept Mr. Fuentes’ testimony that he has lived on the property, save for some time away for work, with Ms. Eleanor since the 1980s until her death in 2016. While that is longer than the requisite 30 years required by section 42, I have no evidence that Ms. Eleanor lived on the property without her father’s consent prior to his death in 1994. If Ms. Eleanor had her

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<sup>2</sup> Cap. 190, Rev. Ed. 2020.

<sup>3</sup> *Samuels v. Flores*, claim no. 558 of 2009 at para 17.

father's permission to be in possession of the property, the timeframe for calculating the requisite period in section 42 would not begin until 1994. Thirty years have not elapsed since 1994.

[8] Mr. Fuentes has failed to meet the burden to prove that Ms. Eleanor was on the property without her father's consent prior to her death. Mr. Trapp's will is the only evidence I have with respect to Ms. Eleanor's relationship with her father vis-à-vis the property. The will leaves the property to Ms. Emeline. Ms. Eleanor was to receive a different piece of property. I cannot infer from the fact that Ms. Eleanor stayed on the property after her father's death that she was staying without his permission. Mr. Trapp would not have named Ms. Eleanor his Executrix if he had reason to believe that Ms. Eleanor would not respect the intention of his will.

[9] Even if I were to accept that Mr. Trapp did not consent to Ms. Eleanor's possession, that Ms. Emeline waited until Ms. Eleanor died to probate her father's will to facilitate her acquisition of the legal title supports a finding that Ms. Eleanor had Ms. Emeline's consent to be on the property. In addition, I do not accept Mr. Fuentes interpretation of Ms. Eleanor's frequent comment that "you would be a stupid boy to have anyone take [the property] away," as expressing any kind of legal entitlement on her behalf to pass the property on to Mr. Fuentes. Rather, as Executrix she likely understood her obligation to carry out her father's intentions but declined to do so to avoid the legal dispute that would arise with her sister. It is more likely than not that Ms. Eleanor's comment to her son reflects that she expected that Ms. Emeline would object when Mr. Fuentes asserted a right to the property. Mr. Fuentes has provided insufficient evidence to contradict a finding that the sisters recognized Ms. Emeline was entitled to the property while Ms. Eleanor was alive.

[10] Contrary to Mr. Fuentes' assertion, no limitation period applies that would have the effect of preventing Mr. Juarez from asserting his right to possess the property. Until Ms. Eleanor died, there is no evidence that Ms. Emeline had reason to believe her sister was not going to probate her father's will, especially if Ms. Eleanor had continued to express that it was her intention to do so. Therefore, any cause of action arising in relation to possessing the property arose when Ms. Emeline was granted the right to administer her father's estate. At that point, she had the authority to facilitate the transfer.

[11] I also find no evidence that the Vesting Assent was obtained through fraud or mistake. Mr. Juarez was under no obligation to disclose that Mr. Fuentes had a potential claim to the property. Ms. Eleanor had a duty as Executrix to transfer the property to Ms. Emeline. To hold otherwise would allow Ms. Eleanor, and by extension, her estate, to benefit from her failure to carry out that duty in an expeditious manner to the detriment of the very party to whom the duty is owed. Consequently, Mr. Fuentes is not entitled to any of the orders that he seeks to direct the Registrar to rectify the title, enjoin Mr. Juarez from dealing with the property as an owner is

entitled to do, or to declare that he, and not Mr. Juarez, is the rightful owner of the property. Mr. Juarez, on the other hand, is entitled to possession of the property.

*Is Mr. Fuentes entitled to be compensated for significant development of the property?*

[12] Mr. Fuentes claims to be entitled under section 43 of the *Administration of Estates Act*, to compensation from Mr. Juarez for the improvements he, his father, and Ms. Eleanor made to the property. Subsection 43(1) and (2)(a) provide:

43(1) An assent or transfer by a personal representative to a person other than purchaser does not prejudice the rights of any person to follow the property to which the assent or transfer relates, or any property representing it, into the hands of the person in whom it is vested by the assent or transfer, or of any other person, not being a purchaser, who may have received the same or in whom it may be vested.

(2) Notwithstanding any such assent or transfer, the court may, on the application of any creditor or other person interested –

(a) order a sale, exchange, mortgage, charge, lease, payment, transfer or other transaction to be carried out which the court considers requisite for the purpose of giving effect to the rights of the persons interested;

[13] In particular, he speaks of the construction of a concrete house, which includes the White Swan, and rental units at an approximated cost of \$80,000. Mr. Fuentes is not specific as to the dates when those improvements were made. In his affidavit, he references “some thirty years ago” and “the period late 1990s to mid-2000s.” Mr. Fuentes relies on his possession of the property and his ongoing management of the rental and restaurant businesses therein as support for his entitlement to compensation for the improvements in the form of a payment from the estate.

[14] Mr. Juarez disputes that Mr. Fuentes has any right to compensation for the improvements to the property because Mr. Fuentes has made no contribution. Mr. Juarez claims he and Ms. Emeline contributed with Ms. Eleanor to the property’s development. Mr. Fuentes was a child when the concrete structures were built. Mr. Juarez claims that his wife sent money to her sister to construct the concrete structures and to develop the property.

[15] I find that Mr. Fuentes’ claim arises as a beneficiary of Ms. Eleanor’s estate. I have not been made aware of any other persons who claim a superior right to benefit from Ms. Eleanor’s estate than Mr. Fuentes. Other than Ms. Emeline’s efforts to assert her rights, Mr. Fuentes has also been in undisturbed possession of the property since Ms. Eleanor’s death. I note that Mr. Juarez has not challenged Mr. Fuentes’ claim to be the “child” of Ms. Eleanor despite not being

her natural issue or formally adopted child. He only disputes that he has not currently appointed the administrator of Ms. Eleanor's estate. If Ms. Eleanor was entitled to compensation under section 43 of the *Administration of Estates Act*, those rights will flow to Mr. Fuentes as her beneficiary. This finding, however, is not intended to preclude a beneficiary stepping forward later to challenge Mr. Fuentes' claim as the intended beneficiary of Ms. Eleanor's estate.

[16] Mr. Juarez has no documentation or corroboration to support his oral testimony that financial contributions were made. The evidentiary record reveals nothing to suggest that Ms. Emeline was ever involved in the management or operation of the businesses or that any money from the rental units or restaurant businesses were ever paid to Ms. Emeline while Ms. Eleanor was alive. A long-time employee, however, testified that Ms. Eleanor told him that the land belonged to her sister, but she owned the business. Therefore, I find the operation and management of the businesses were solely undertaken by Ms. Eleanor. Mr. Fuentes assumed control of the businesses when Ms. Eleanor died.

[17] I find that Mr. Fuentes has proven, on a balance of probabilities, that the improvements to the property were done at Ms. Eleanor's expense. Ms. Eleanor's possession of the property and operation of the businesses therein are significant because of the lack of evidence, other than Mr. Juarez's testimony, of he and Ms. Emeline contributing to the property's development. In addition, there is no evidence that he or Ms. Emeline demanded an accounting of profits from the businesses from Ms. Eleanor.

[18] Ms. Eleanor's estate is entitled to some compensation for these improvements. This case can be distinguished from *Wagner v. Richards*,<sup>4</sup> where the party claiming prescriptive title to the property was found not to have been in possession of the property and, therefore, not entitled to compensation for alleged investments in developments. The party was also obligated to pay rents collected to the lawful owner. In the present case, there is no dispute that when the improvements to the property were made, Ms. Eleanor was in possession.

[19] I further find that Ms. Eleanor and Mr. Fuentes made ongoing investments to maintain and operate the White Swan to keep the business viable. At a minimum, these investments included their time, but also included restaurant furnishings, equipment, and inventory. Mr. Juarez is not entitled to these assets purchased in support of the White Swan business.

[20] I have been provided no evidence that rental units were anything more than a passive source of income once they were constructed. I accept Mr. Juarez's evidence that the apartments had been poorly maintained. As such, there is no evidence that Ms. Eleanor or Mr. Fuentes invested much in the rental units beyond the initial construction costs. Mr. Fuentes owes an accounting for the rents collected during that time that must be offset from the compensation to

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<sup>4</sup> Claim No. 148 of 2021.

which he is entitled as Ms. Eleanor's beneficiary. I accept that due to COVID-19, many of the units were either vacant or rented at a reduced rate.

[21] I am not confident that a verifiable accounting of the rent collected would be forthcoming as Mr. Fuentes has not kept records or receipts. I anticipate, however, that any estimate of what was owed would be disputed. It would be a waste of the court's resources to not dispense with that aspect of this claim once and for all. Thus, I have factored the amounts owed to Mr. Juarez for rent and from Mr. Juarez to Mr. Fuentes for the inventory in my decision on the quantum of compensation owed to Mr. Fuentes.

[22] The Court, therefore, must construct a remedy that is equitable and just in the circumstances with little more than oral testimony that lacks specificity about the purpose and quantum of investments and value of the assets under dispute. While the court heard from witnesses that confirmed Ms. Eleanor's possession of the property, her relationship with Mr. Fuentes, and her involvement with the business, none of these facts were in dispute. The witnesses, however, offered no assistance to the court as to any agreements in place between Ms. Eleanor and Ms. Emeline with respect to the property, including what, if any financial contribution Ms. Emeline made to the property's development.

[23] I am mindful that Ms. Eleanor's efforts to develop the property and its businesses were done so while she was ignoring her duties to her sister as Executrix of her father's estate. Thus, much of the responsibility for this dispute falls at her feet. She created the false impression in Mr. Fuentes that if he fought for the property, he would be recognized as the rightful owner. This false impression underlies Mr. Fuentes' refusal to vacate the property after Ms. Emeline became the administrator of her father's estate. Ms. Eleanor's failure to act also deprived Ms. Emeline of her right to use the property to generate income while Ms. Eleanor used the property for that purpose.

[24] Therefore, in reaching the amount of compensation owed to Mr. Fuentes, I have balanced Mr. Juarez's rights as the successor to Ms. Emeline, including the lost opportunities, against the investment Mr. Fuentes and Ms. Eleanor made to improve the value of the property. Mr. Fuentes is entitled to all furnishings, equipment, and inventory of the White Swan that are not fixtures. All furnishings and appliances found within the rental units that are normally rented with the rental units are to remain with the property. Mr. Fuentes is also entitled to remove all his and Ms. Eleanor's personal property that remain on the property and are not fixtures. Mr. Fuentes is entitled to one half of the assessed value of the property. One half of the cost of the assessment is to be deducted from the amount owed by Mr. Juarez to Mr. Fuentes as compensation.

## Disposition

[25] It is ordered that:

1. Mr. Fuentes is not entitled to a declaration that he is to be registered as the proprietor of Block No. 550, being 3.47 acres situated in North Stann Creek, Hope Creek Village, Stann Creek District as shown on Minister's Fiat Grant No. 70/1949 dated 27<sup>th</sup> September 1949.
2. Mr. Fuentes is not entitled to a declaration that Mr. Juarez unlawfully obtained his Vesting Assent to the property.
3. Mr. Fuentes is not entitled to a declaration that Mr. Juarez holds the property in trust for Mr. Fuentes.
4. Mr. Fuentes is entitled to all furnishings, equipment, and inventory of the White Swan that are not fixtures.
5. Mr. Juarez is entitled to all furnishings and appliances found within the rental units that are normally rented with the rental units.
6. The property is to be assessed within 90 days of this decision and one half of the assessed value will be paid to Mr. Fuentes as compensation from Mr. Juarez. One half of the cost of the assessment will be deducted from the amount of compensation owed to Mr. Fuentes.
7. Mr. Juarez is to pay the compensation within 60 days of receiving the assessed value or the property must be listed for sale within those 60 days. If listed for sale, the compensation must be paid to Mr. Fuentes within 14 days of the sale closing.
8. Interest on outstanding amounts will be paid pursuant to section 167 of the *Supreme Court of Judicature Act*.<sup>5</sup>

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<sup>5</sup> Cap. 91, Rev. ed. 2020.



9. Mr. Fuentes must remove all his and Ms. Eleanor's personal property that remain on the property and are not fixtures and vacate the property within 60 days of the release of this decision.
10. Each party shall have their own costs.

October 19, 2022

Patricia Farnese  
Justice of the Supreme Court of Belize