

IN THE HIGH COURT OF BELIZE, A.D. 2022

CLAIM NO. 657 OF 2020

BETWEEN

(ARIEL DURANTES

CLAIMANT

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(AND

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(ANSI GOMEZ

DEFENDANTS

(JOHANA RUBY GOMEZ

BEFORE THE HONOURABLE MADAM JUSTICE SONYA YOUNG

Decision Date:

21st December 2022

Appearances:

Mr. Leo Bradley Jr., Counsel for the Claimant.

Mr. Anthony Sylvestre, Counsel for the Defendants.

JUDGMENT

1. The Claimant is the registered proprietor of a parcel of land (the Property) in the quaint and pristine coastal village of Sarteneja. The Claimant says the Defendants occupy the Property as trespassers and despite directing them in writing and otherwise to cease their trespass they have refused to leave. They have caused the Property to diminish in value and have prevented the Claimant from its peaceful use and enjoyment to which he is entitled.

2. The Claimant seeks possession, a permanent injunction, mesne profits, damages including aggravated damages or exemplary damages, interest, and costs.
3. The Defendants say that they are not trespassers. Chris Young, now deceased, was their close friend and the rightful owner of the Property. He had paid the Claimant in full for the Property and the Claimant had executed a Deed of Conveyance dated 6th October, 2006. Chris Young then occupied the Property from 2006 until his death in 2010.
4. In February 2018, Alex Young, the only living relative of Chris Young, let the Defendants into possession by letter. It was agreed that instead of paying rent the Defendants were to maintain and repair the house and they have been doing so. Alex Young died in May 2018, and this claim was brought only after his death.
5. They deny that the Property has fallen into disrepair or diminished in value and counterclaim for a declaration that the Claimant has no legal standing to bring this claim. Alternatively, they ask to be reimbursed \$7,000.00 for the repairs and development of the Property and be given compensation for the safety of the Property from February 2018 to present, with interests and costs.

The Issues:

1. Is the Claimant entitled to possession?
2. Does the Claimant have legal standing to bring this Claim?
3. Alternatively, should the Defendants be reimbursed for the repairs they effected to the Property or for keeping the Property safe?

The Evidence:

6. Ariel Durtantes admits to having entered into a sale agreement for the Property with Chris Young. He says there remains \$20,000.00 outstanding so that the Property remains in his name to this date and he continues to pay the property taxes. In 2019, his attorney sent a notice to quit or vacate the premises to the Defendants. He has also asked the Defendants to leave but they have refused to do so. He eventually took out a civil suit in the Magistrate's Court which has not proceeded.
7. Ansi Gomez simply stated his age and occupation and agreed with the Second Defendant's witness statement. The Second Defendant is his wife.
8. Yohana Gomez says she worked with Chris Young and his family for many years. Chris Young introduced her to his nephew Alex Young. Alex Young started living on the Property after Chris Young died but eventually he moved. In his absence, the house was vandalized and the yard was overgrown.
9. Before he died, Mr. Alex Young gave them permission in writing to occupy the Property. He also gave them the Deed of Conveyance for the Property and a copy of a Scotia cheque issued to Ariel Durantes by the St. Francis Xavier Credit Union Ltd. dated 20th September 2006 in the sum of \$55,000.00.
10. Armando Williams, a former Treasurer of the board of the St. Francis Xavier Credit Union Ltd. admitted that his signature appears on the copy of the cheque issued to Ariel Durantes.

Is the Claimant Entitled to Possession?

11. The Claimant submits that the Defendants were tenants at will whose tenancy could be terminated by either the tenant or the landlord with fair notice being given. Their tenancy ended when Alex Shaw Young died. Since the land remains in the Claimant's name, he is the legal owner. Possession should, therefore, be returned to him as the Defendants have no legal right to be on the property.
12. The Defendant strikes first at the Claimant's pleadings, saying no cause of action whatsoever had been pleaded. The Court admits that the Claim was badly pleaded but notes that there was never an application to strike out. Rather, there was a full Defence and Counterclaim filed and a full trial endured.
13. The Court understands the claim to be in trespass as well as the Defendants must have done by the Defence they filed particularly paragraph 13 which states: “, however, the Claimant is also claiming trespass to the property by the 1st and 2nd Defendants. The Defendants repeat that they were given a license to occupy the said premises.”
14. Next, the Defendant says the Claimant is not the owner of the Property as it had been sold to Chris Martin Young and the Claimant took no steps to recover the Property until after both Chris Martin Young and his nephew Alex Young had died. He asked the Court to find that the Claimant only holds the Property on a resulting trust for Chris Martin Young. This was, however, never pleaded.
15. But even if the Court were to determine that the Claimant holds the property on trust (perhaps a constructive trust: *See Lysaght v Edwards (1876) 2 Ch.D 499*) the only person who would be entitled to any such declaration would be the

person who has been wrongfully deprived - Chris Martin Young. Since he is now deceased, then his personal representative could seek such a remedy on his behalf - Administration of Estates Act Cap197 section 26.

16. The Defendants have not pleaded or proven themselves to be the personal representatives of Chris Martin Young, so they are not entitled to any such declaration. A resulting or constructive trust is effective only when declared by the court. The upshot is that the Claimant continues to have good paper title.
17. However, “(a)ll titles to land are relative in the sense that a person's title, including a documentary (or ‘paper’) title, is only good in so far as there is no other person who can show a better title.” Commonwealth Caribbean Property Law (4th ed) pg 223.
18. The Defendants then submit that the Claimant’s right to recover possession has been extinguished as the claim is brought more than 12 years after the sale of the property to Chris Young. He therefore has no legal standing to bring this action.
19. The Claimants, in response, say that the Defendants have not pleaded any limitation so that is not an issue to be determined by this Court - ***Marva Rochez v Clifford Williams Supreme Court Claim No 179 of 2015.***
20. Again, this strikes at the state of the pleadings. The Defence is, however, in far worse shape than the Claim. The Defendant asked the Court to consider both paragraph 15 of the Defence and the remedy sought i.e. a declaration that the Claimant had no legal standing to bring the Claim and to find that there was

sufficient presented to raise the issue that the Claimant's title had extinguished with time.

21. Paragraph 15 reads:

“That the only living relative of Chris Martin Young in Belize, Alex Young, died on the 11th May 2018. It was only after the death of Alex Young, over 12 years following the sale, that the Claimant sought the services of the very same attorney at law who witness (sic) the Deed of Conveyance to have the 1st and 2nd Defendants removed from the said property.”

22. If the Court accepts the Defendant's submission, then it would run counter to what is actually plainly pleaded in paragraph 11 that the Claimant is not the true or legal owner of the property.

Paragraph 11 reads:

“Paragraph 5 is denied. The Claimant is not the true owner of the property in dispute and is put to strict proof of the legal ownership of the property in question. The Claimant lacks standing to bring the claim against the 1st and 2nd Defendant.”

23. It would seem to me that inherent in a plea of adverse possession is the allegation that someone else was the owner of the property. Therefore, a claim of ownership and adverse possession (which is a salient ingredient for the extinguishing of title), must be inconsistent.

24. There was never any other indication of why the Claimant lacked standing (other than he was not the true owner) and the mention of more than 12 years is insufficient to bring to the Claimant's mind that his title extinguishment was in issue.

25. The alternative claim for reimbursement of sums spent on repairs and compensation for keeping the property safe only adds to the confusion as it would make absolutely no sense in those circumstances.
26. The Court finds that the extinguishment of title had not been pleaded and can not be pursued. However, even if the Court were to consider whether the Claimant's title was extinguished the Defendants would not be successful.
27. Title is not simply extinguished through the expiration of a period of 12 years. Section 22 of the Limitation Act actually states:
"Subject to the provisions of section 15 of this Act and of any law relating to the registration of land titles, at the expiration of the period prescribed by this Act for any person to bring an action to recover land, the title of that person to the land shall be extinguished."
28. Section 15 deals with settled land and land held on trust and is of no relevance to these proceedings.
29. However Section 18 explains:
(1) No right of action to recover land shall be deemed to accrue unless the land is in possession of some person in whose favour the period of limitation can run (hereafter in this section referred to as "adverse possession") and where under the foregoing provisions of this Act any such right of action is deemed to accrue on a certain date and no person is in adverse possession on that date, the right of action shall not be deemed to accrue unless and until adverse possession is taken of the land.
(2) Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action shall no longer be deemed to have accrued and no fresh right of action shall be deemed to accrue unless and until the land is again taken into adverse possession.
30. Firstly, the evidence of the Claimant is that he had entered into an agreement with Chris Young for sale of the Property. Pursuant to that contract, he had allowed Chris Young to go into occupation although there were sums

outstanding. Under these circumstances, Chris Young would be in possession by licence of the Claimant and can not then be said to be in adverse possession. This means no cause of action would have accrued and time would not begin to run - *See Hyde v Pearce [1982] 1 WLR 560*.

31. If, however, Chris Young was indeed in adverse possession from 2006 when it is alleged he purchased it, when he died in 2010 whoever took his interest, whether on intestacy or by gift in a will, could add Chris Young's period of possession to his own. There is no evidence before the Court that there was any Grant of Administration or Probate of Chris Young's Estate or that he disposed of his right to the land before he died.
32. This means that no one ever took Chris Young's right to the land. In those circumstances, anyone who would have gone into possession after Chris Young would not be a successive squatter unless they had dispossessed or driven out Chris Young. There is no evidence of this at all.
33. During this gap between Chris Young's death and when Alex Young may have taken possession, the owner (Ariel Durantes) then has possession by law. The land is no longer in adverse possession and time will begin to run afresh when a new squatter takes possession.
34. The evidence, if accepted, is that Alex took possession in or around sometime after Chris Young died. There is no precise date given and so when time would have begun to run in relation to Alex Young remains unknown. Alex died in 2018. Even counting from 2010 when his Uncle died to 2018, he would not have met the 12-year period.

35. In any event, the Defendant's pleaded case is that Alex Young granted them a licence to remain on the property. Licenses terminate on death. So when Alex Young died in 2018 that licence would have expired. There is no evidence that the Defendants are Alex's personal representative or that Alex gave or sold his right to anyone, least of all the Defendants. There is no evidence that the Defendants dispossessed Alex. His rights could not have been added to anyone else's.
36. Neither of the Defendants have demonstrated the necessary *animus possedendi* to prove that at any time since Alex's death in 2018 they intended to possess the land to the exclusion of all others. They continue to claim that they remain in possession by licence given by Alex.
37. This is important because mere possession is insufficient to ground a claim of adverse possession so that a right of action for possession against the Defendants would not accrue unless and until they had gone into adverse possession.
38. The Claimant, as the legal owner, is entitled to possession as against these Defendants who have not proven a better title than his.
39. The Defendants claim for reimbursement or compensation has no merit and fails accordingly. They embarked on a certain course of action by agreement with someone other than the Claimant. The Claimant was no party to any agreement with them and can not be held responsible for anything which they have done to their possible detriment.

40. The Claimant has asked for mesne profits of \$17,500.00 being rent of \$700.00 per month for 25 months. He has failed to prove any tenancy agreement between the Defendants and himself which would have stated this sum as rent. He has also failed to prove otherwise that rent of \$700.00 is a fair and reasonable amount. The Court will award nominal damages of \$200.00 per month from the date of his notice to quit in December 2019 to the date the Defendants cease occupation.
41. The claim in nuisance was not made out and is dismissed. There will be no award of aggravated or exemplary damages.

IT IS ORDERED:

1. Judgment for the Claimant.
2. The Counterclaim is dismissed.
3. The Defendants are to give up possession to the Claimant within 45 days of the date of this Judgment.
4. The Defendants are to remove all pipes, gates, fittings, or any other infrastructure which they have placed or caused to be placed upon the land within 45 days of the date of this Judgment.
5. Thereafter, a permanent injunction is granted restraining the Defendants whether by themselves, their servants, employees, agents, or otherwise howsoever from entering or using the Claimant's land.
6. The Claimant is awarded nominal damages in the sum of \$200.00 from December 2019 to the date the Defendants cease to occupy the premises.
7. Interest is awarded on this sum at the rate of 6% from December 2019 until payment in full.

8. Costs to the Claimant on the Claim and Counterclaim on the prescribed basis as agreed. The Court will depend on both Counsel to calculate and agreed this figure.

SONYA YOUNG
HIGH COURT JUDGE