

IN THE SUPREME COURT OF BELIZE, A.D. 2007
(APPELLATE JURISDICTION)

INFERIOR COURT APPEAL NO. 4 of 2007

MARIA ELENA PEREZ

APPELLANT

AND

KIMBERLY GRIFFITH

RESPONDENT

BEFORE: Hon. Justice Minnet Hafiz

Appearances: Mr. Welch for Appellant
Dr. Elson Kaseke for Respondent

DECISION

1. This is an inferior appeal of the decision of the Magistrate of a Civil Claim in the Corozal Magistrate's Court (sitting as a District Court). By Complaint No. 23/06 issued out of the Corozal District Court dated 3rd February, 2006, Ms. Kimberly Griffith sought to recover from Mrs. Maria Elena Perez \$1,000.00 for four months house rent and for possession of premises situated at Corner of 6th Street South and 2nd Avenue, Corozal Town. Also, by Complaint No. 322/05 dated 2nd November, 2005, Ms. Kimberly Griffith sought eviction of Mrs. Perez. She stated that Mrs. Perez was given a notice of eviction since 2nd May, 2005 to 1st November, 2005 and

she has failed to comply with the notice. The two suits were heard together.

2. At the hearing, Ms. Griffith produced a Land Certificate dated 15th May, 2006 which is in her name and her brother Alex C.E. Johnson as joint owners. There is no dispute that when the actions were filed that Ms. Griffith and Mr. Alex Johnson were not the owners of the premises.
3. In her evidence at the Magistrate's Court, Ms. Griffith said that in June 2004 she informed Mrs. Maria Perez that her aunt, Ms. Evelyn Johnson had given her a Power of Attorney to do what she wanted with the property because eventually it would belong to her and her brother. She testified that Mr. and Mrs. Perez paid rent to her from 3rd February, 2004 to October, 2005.
4. She further testified that on 2nd May, 2005 she gave eviction notice to Mrs. Perez because she wanted her house. She said that Mr. Perez asked for more time as he was building a house. Ms. Griffith said that after speaking to her aunt about the request for more time, Mrs. Perez was given six months more, that is until November, 2005.
5. Ms. Griffith evidence was that she gave Mrs. Perez a reminder notice on 2nd August, 2006. However, they refused to move out as their house was not finished. At that time, they also requested that Ms. Griffith pay them for all the repairs and renovation that they did to the house.
6. In cross-examination by Mr. Welch, Ms. Griffith said that at the time she gave notice to Mrs. Perez, she was not the owner of the property. She said that her aunt gave her a Power of Attorney which she showed to Mr. and Mrs. Perez. She also said that she gave them the notice to quit because she had the Power of Attorney. Further, she testified that she

was never registered as the agent for her aunt, Mrs. Evelyn Johnson who is the Landlord. Also, that the Power of Attorney was not registered in Belize.

7. In further cross-examination, Ms. Griffith said that Mr. and Mrs. Perez told her that Mrs. Johnson promised to sell them the property. Further, they said to her that if she and her brother decide to sell the property they will be the first to buy.
8. Mrs. Perez evidence before the court is that Ms. Kimberly Griffith collected the rent for Mrs. Johnson. She also said that she improved the property for her convenience. Mr. Perez evidence is that he did repairs to the house and that he recalled on one occasion that Mrs. Johnson promised to sell the house to them. He said that it was because of this promise he continued to work on the house and that he spent \$35,000.00 on the house.
9. Mr. Perez further testified that on one occasion he was given a firm offer to buy the house so he went to the Bank of Nova Scotia to get a loan. However, his brother who was supposed to be his guarantor did not show up. He stated that this happened about ten years ago.
10. In further evidence, Mr. Perez said that for sometime he did not pay rent as he was investing the money in the house and also that he paid the property tax.
11. Mr. Perez said that he paid rent to Ms. Kimberly Griffith for about two to three years. He denied that he told Ms. Griffith that he would not move out of the house.

12. In cross-examination, Mr. Perez said that the house is not for him. He admitted that he is building his house. He said that he is not fighting for Ms. Griffith's house. That he just wants compensation for the improvement that he did to the house.
13. Mr. Welch in his submissions to the Magistrate argued that when Ms. Griffith gave notice to the Appellant she was not registered as an agent and did not have the authority to take the matter to court. Mr. Welch also argued that Ms. Griffith had to give a new notice after May 2006.
14. Mr. Welch further submitted that the evidence shows that the Court did not have jurisdiction to hear the matter as there was a promise to sell the house to them by Ms. Johnson. Mr. Welch said that the Appellant's title is equitable.
15. Counsel for Ms. Griffith at the Magistrate's Court, in response submitted that Mr. Perez is not claiming the property but the money he invested in the house. That there is no dispute that Ms. Griffith is the landlord agent.
16. The Magistrate after hearing submissions ordered the following:
 - (i) Civil Suit 322/05: Mrs. Maria Perez to vacate property by the 3rd September, 2006. In default ejection.
 - (ii) Civil Suit 23/06: Payment of \$2,500.00 for 10 months mense profit at the rate of \$250.00 per month with effect from 3rd September, 2006 until paid in full. In default distress.

17. On 30th August, 2006, Learned Magistrate, Emerita Ascoli gave reasons for her decision. The Learned Magistrate said that the Court had the jurisdiction to hear the two suits as it does not contravene the **Summary Jurisdiction Procedures Act, Chapter 99** because there is no challenge to title. Further, there was no challenge to Kimberly Griffith's title who presented a Land Certificate. See **Exhibit K.G. IV** for Land Certificate.

18. The Magistrate said that Ms. Griffith in January of 2004 presented a Power of Attorney to the Appellant and informed her that the rent was raised from \$125.00 to \$250.00 per month. Further, that Mrs. Perez accepted the Power of Attorney from Ms. Griffith because she commenced payment of house rent of \$250.00 on 03.02.04 until 3.10.05. That Ms. Griffith duly supplied receipts for each month. See **Exhibit K.G. III**. The Learned Magistrate said that Mrs. Perez had accepted Ms. Griffith as the person in charge of Ms. Johnson's property. Further, that although Ms. Griffith was not registered as an agent as required by the **Landlord and Tenant Act, Chapter 189, Section 64**, she relied on the Power of Attorney as authority to serve the two letters of notice to Mrs. Perez dated 2.5.05 and 2.8.05 to vacate the premises. The Magistrate said that that the Power of Attorney was never tendered into evidence but in Mr. Perez evidence in chief, he said that a Power of Attorney was presented by Ms. Griffith. The Learned Magistrate said that because of this she believes that the two letters of notices given to Mrs. Perez are valid in the hearing.

19. In her reasons the Magistrate also stated that the Appellant deposited rent in a Belize Bank account for Ms. Johnson. The last rent deposited was in September of 1991 after which they stop paying rent. The Learned Magistrate said that Ms. Griffith did not claim rent from October 1991 as she did not have the Power of Attorney then. That the Respondent is

seeking recovery of *mense* profit for non payment of rent from November, 2005 to August 2006 being 10 months at \$250.00 = \$2,500.00.

20. As for the visit to the Bank of Nova Scotia and the failure of Mr. Perez's brother to show up at the Bank, the Learned Magistrate said that Ms. Johnson made many visits thereafter and the parties could have returned to the bank and finish the sales transaction.
21. As for repairs done to the house by Mr. Perez, the Learned Magistrate said that the payment for investment on the property is not before the court and that the Appellant has no right to remain in the house for this reason. That Mr. Perez has the right to proceed with necessary action at the Supreme Court and that leaving the property does not diminish his right for financial reimbursement.
22. The Appellant, Mrs. Maria Perez appealed on three grounds. Learned Counsel Mr. Welch argued grounds 2 and 3 together. The grounds are as follows:

Ground 1: The inferior court had no jurisdiction in the matter.

Grounds 2 & 3: The decision was unreasonable or could not be supported having regards to the evidence.
The decision was erroneous in point of law.

Ground 1:

The inferior court had no jurisdiction in the matter.

23. Learned Counsel, Mr. Welch submitted that **section 3(2) of the District Court (Procedure) Chapter 97** of the Laws of Belize provides as follows:

The court shall not have cognizance of any action in which any corporeal right, or the title to any real property, is or may be In question ...

Learned Counsel submitted from the evidence before the Learned Magistrate that there was sufficient evidence to indicate that the title is subject to an equitable interest. Learned Counsel referred to the evidence of Ms. Griffith where Mrs. Perez told her that her aunt had promised to sell the house to them and that if she and her brother wants to sell the property they would be the first person. He also referred to the evidence where Ms. Kimberly Griffith said that Mr. Perez told her that she has to pay him for the repairs he did to the house. Further, Counsel referred to the evidence of Mr. Perez who stated that he spent about \$35,000.00 on the house, and in re-examination, Mr. Perez said that, *“The mutual agreement I would repair the house and to save the house until she sells me the house*”

24. Mr. Welch submitted because of this mutual agreement, the Magistrate had no jurisdiction to come to a decision on the merits of the case. Counsel relied on the case of **Sealy v. Sealy (1990) High Court of Barbados, No. 1492 of 1987** (unreported) where it was shown that title to the land was an issue. In that case the Defendant had invited and encouraged the Plaintiff, his son, to erect a dwelling house on half an acre of the Defendant's land, and promised that when the building reached a certain stage, he would convey the land to the Plaintiff by way

of gift. The Defendant failed to carry out his promise. It was held that equity had arisen in the Plaintiff's favour, which would be satisfied by the court ordering the Defendant to convey the plot to the Plaintiff.

25. Learned Counsel also referred to the case of **Chalmers v. Pardoe (1963)** **3 All ER 552** where Sir Donovan said at page 555 the following:

“There can be doubt on the authorities that where an owner of land has invited or expressly encouraged another to expend money on part of his land on the faith of an assurance or promise that part of the land will be made over to the person so expending his money, a court of equity will prima facie require the owner by appropriate conveyance to fulfill his obligation: and when, for example for reasons of title, no such conveyance can effectively be made, a court of equity may declare that the person who has expended the money is entitled to an equitable charge or lien for the amount so expended.”

26. Mr. Welch submitted that from the principles of law expressed in **Sealy v. Sealy** supra and **Chalmers v Pardoe** supra the Appellant has equitable rights in the property that was sufficient for the property to be transferred to her. Learned Counsel also relied on **Stuart Haylock v John Seddacy** No. 112 British Honduras Gazette, January 28, 1987 in which it is said that when a Magistrate is dealing with matter of claim or title to land, the Magistrate must look at all the evidence before he makes a decision if he has jurisdiction or not.

27. Dr. Kaseke for the Respondent submitted that ground 1 is misconceived for several reasons. First, the record at page 5 shows that the Appellant

did not lay any claim to the house in question. Mr. Perez said: *I am not fighting for the house. Yes I want compensation for the house.* That the real issue is compensation for the repairs which were done to the house and not ownership or any claim or title to the house. Dr. Kaseke said that the Learned Magistrate in her reasons for decision squarely dealt with that issue in paragraph 7 where she said:

“Miss Kimberly Griffith wants her premises, as she has to leave where she is presently residing and wants to live on her property, which is only justifiable. Mr. Perez refused to come out the property until the debt of substantial repairs which he has paid is reimbursed to him. The payment of reimbursement for investment on the property is not before the court.”

28. Learned Counsel, Dr. Elson Kaseke said that the issue of compensation was not before the Magistrate’s court. That the Appellant did not make any counterclaim against Ms. Kimberly Griffith for the repairs which they were raising. That they raised repairs as a defence and not as a counterclaim.
29. Dr. Kaseke submitted that secondly, during the course of the trial, the Respondent’s title to the land which was the subject of the claim in the Magistrate’s court was in evidence and was not the subject of any dispute.
30. And, thirdly, having accepted the proof of title by accepting the land certificate to be tendered the applicant cannot seek to go behind that title and introduce equitable principles to defeat that title. Dr. Kaseke referred to the case of **British American Cattle Company v. Caribe Farm Industries Limited and the Belize Bank Ltd.** BLR Vol. 3 468, at 471, per Lord Browne Wilkinson who said that:

Under the Torrens system a registered proprietor may obtain absolute title to land or an interest in land by registration even though there was no title in the person who granted him those rights.

- . Learned Counsel also relied on **Frazer v Walker** (1967) A.C. 569 , at 580 D and 585.
31. Fourthly, Learned Counsel submitted that the cases relied on by the Appellant are totally distinguishable from the facts in this case. He submitted that the case of **Sealy v. Sealy** supra is distinguishable from the present case since the case involved the father as donor and the son as donee, and did not involve a person like the Respondent who did not make any promises to the Appellant. That the father and son were parties to the transaction and they proceeded to the Supreme Court on that basis. The Supreme Court ruled that since the father encouraged the son to expend moneys in building the house, equity was introduced into the transaction and the father was ordered by the court to effect the transfer to the son. Dr. Kaseke submitted that in this case, the aunt, who is not a party to any of these proceedings, is said to have made the promise to sell. Counsel submitted that the Respondent never made any promise to sell to the Appellant, so there is no basis under which the principles of equity can be introduced into this case.
32. Fifthly, Dr. Kaseke submitted that **Chalmers v Pardoe** supra is also distinguishable because in that case, Chalmers was the solicitor and Pardoe encouraged Chalmers to build on his land contrary to an Act. After a dispute between the parties, Chalmers sought to eject Pardoe from the land. Again, there was a promise between the parties and the parties went to court on that basis. Counsel submitted that in this case Ms. Kimberly Griffith did not promise the Appellant to sell the property.

33. Lastly, Learned Counsel submitted that it is totally inconceivable how the Appellant can in one breath say that she owed the rent and paid the rent and was given receipts by the Respondent and in the same breath, say that she is entitled to the land. That one cannot be tenant and landlord at the same time.

Determination on Ground 1

34. I have carefully reviewed the evidence that was before the Magistrate's Court and it is my view, that no question of title arose on this claim. There was no claim to title or question as to title by the Appellant. The Magistrate was correct in finding that there was no challenge in regards to the ownership held by Ms. Kimberly Griffith.
35. I disagree with Learned Counsel, Mr. Welch that there was sufficient evidence which shows that the title is subject to an equitable interest. The conduct of the Appellant was that of a tenant. The evidence before the court is that when the Appellant was given the eviction notice by Ms. Griffith, she and her husband asked for more time as they were building their house. Mr. Perez who gave evidence for the Appellant said that he paid rent to Ms. Kimberly Griffith for about two to three years. When Ms. Griffith informed the Appellant that the rent will increase from \$125.00 to \$250.00, she accepted that decision and commenced payment of house rent of \$250.00 on 03.02.04 until 3.10.05
36. Mr. Perez also denied that he told Ms. Griffith that he would not move out of the house. Further, he said that that he is not fighting for the house. What he wants is compensation for repairs done on the house. This is the evidence for the Appellant and it is clear that there was no challenge to Ms. Griffith's title.

37. In fact, and as submitted by Dr. Kaseke, during the course of the trial before the Magistrate, Ms. Griffith tendered into evidence, the Land Certificate for the property with no objections by Mr. Welch who was Counsel for the Respondent.

38. Mr. Welch relied on evidence which shows that Ms. Griffith's aunt had promised to sell the house to the Appellant. He also relied on what Mr. Perez said in re-examination that there was the mutual agreement that Mr. Perez would repair the house so as to save the house until the Landlord sells the house to him. There is also evidence from Mr. Perez himself where he said that from 1986 he paid rent in the amount of \$125.00 and that he was told by Ms. Johnson to pay that amount because the house was in need of urgent repairs. He also said that he stopped paying rent for a while because he was investing in the house. Mr. Perez gave evidence that he spent about \$35,000.00 on the house but this was not established. There is no evidence to show how much rent money was used for repairs and how much if any, was spent by the Appellant which was not considered as rent money.

39. As for the promise made by Ms. Johnson, in my view, Mr. Perez can no longer rely on the promise that she would have sold the house to him for two reasons. One, Mr. Perez could not obtain the money to purchase the house. This can be shown from the evidence where Mr. Perez went to the bank to get a loan but his guarantor did not show up. The Magistrate was correct in saying that the parties could have returned to the bank on another occasion as Ms. Johnson made several trips to Belize. The evidence that follows is that they stopped paying rent for a number of years and thereafter they continued to pay rent to Ms. Griffith. The Appellant accepted that she is a tenant. The other reason is that Ms. Griffith who has title to the property since 2006 is not the person who

- made the promise to the Appellant. The Appellant cannot therefore, seek to enforce the promise against the Respondent, Ms. Kimberly Griffith.
40. Further, I agree with Dr. Kaseke's submission that since the Appellant did not object to Ms. Griffith's title, she cannot now seek to introduce equitable principles to defeat that title. See the principle in the case of **British American Cattle Company v. Caribe Farm Industries Limited and the Belize Bank Ltd.** supra – paragraph 30 above.
 41. I further agree with Dr. Kaseke's submission that the cases of **Sealy v Sealy** supra and **Chalmers v Pardoe** are distinguishable from the case at hand. In both cases the promise was made between the parties who were before the court and also the persons to whom the promises were made expended their own monies to build. In the case at hand, Ms. Griffith did not make any promises to sell the house to the Appellant or her husband.
 42. My review of the evidence shows that the real dispute between the parties is compensation for repairs done to the house. That is, whether the Appellant is entitled to the \$35,000.00 that Mr. Perez claimed that he spent on the house. But, that issue was not put before the Magistrate for determination. There was no counterclaim. The Appellant, as rightly submitted by Dr. Kaseke raised the issue of repairs as a defence. I find that the Magistrate was correct when she said in her reasons that, "*The payment of reimbursement for investment on the property is not before the court. Mr. Perez has the right to proceed with necessary action at the Supreme Court and that leaving the property does not diminish his right for financial reimbursement.*"
 43. From a review of the evidence, I find that the inferior court had jurisdiction in the matter. This ground is therefore, dismissed.

Grounds 2 and 3:

The decision was unreasonable or could not be supported having regards to the evidence. The decision was erroneous in point of law.

44. Mr. Welch submitted that the Magistrate rightly accepted that the Plaintiff was not registered as the landlord agent and as such would have no authority to bring an action. Learned Counsel relied on **section 64(1), Landlord and Tenant Act, Chapter 189 of the Laws of Belize** which provides that:

“Every person shall, before acting as an agent, be registered as such with the clerk of the court of the judicial district in which the tenement is situate, and if he so acts while his name is not on the register, he commits an offence.”

45. Mr. Welch submitted that Ms. Griffith had brought the action before the Magistrate’s court but she had no authority to do so because she was not registered as the landlord agent. That it was after she brought the action that she got title. Mr. Welch further submitted that the Magistrate was wrong to rely on a Power of Attorney that was not registered under **section 125 of the Law of Property Act, Chapter 190 of the Laws of Belize** which provides:

“Where an instrument creating a Power of Attorney confers a power to dispose of or deal with any interest in or charge upon land, the instrument or a certified copy thereof or of such portions thereof as refers to or are necessary to the interpretation of such power shall be recorded in the General Registry under Part VI of the General Registry Act.”

46. Mr. Welch submitted that it was necessary that the power of attorney be registered to give the Plaintiff legal power to act. Therefore the notices to quit were not legal and the Magistrate ought to have dismissed the suits. Learned Counsel submitted that the evidence disclosed that it was after the suits were filed that the Plaintiff obtained joint title to the land. He said that the evidence shows at the bottom of page 4 that it was only in court that the Plaintiff presented the title to the property in the joint name of herself and her brother. That the husband of the Appellant said that the Respondent *'never told me that she owned the house'* and after he was shown the title in court he stated *"I have not seen this paper, first time, never told me about it"*.
47. Dr. Kaseke in reply to grounds 2 and 3, submitted that the Appellant acquiesced to the Respondent acting as an agent and through a power of attorney and the Appellant paid the rent from 2004 to 2005. That they paid the rent under that power of attorney.
48. Learned Counsel submitted that **section 56 of the Landlord and Tenant Act, Chapter 189** allows a landlord to evict a tenant if the landlord has a right to possession of his property, even if there may be some irregularity in the mode of proceedings for obtaining possession. Dr. Kaseke said that the irregularity does not negate the right to possession because the aggrieved party has a right to lay out their special damages and get compensation.
49. Dr. Kaseke further submitted that it is totally inconceivable that the Appellant having accepted the *bona fide* power of attorney for over two years and paid rent under that power of attorney, she can now come to court and seek to claim illegality of the power of attorney which she fully accepted is legal and under which she fully performed her obligations as tenant by paying the rent. Further, that not only did the power of attorney

authorized Ms. Griffith to collect the rent but under the power of attorney, she exercised the right in raising the rent and the Appellant complied by paying the raised rent.

50. In response to Dr. Kaseke's arguments, Mr. Welch submitted that regardless of arrangements that people make between themselves which are accepted, the law is clear as it says in **section 125 of the Law of Property Act, Chapter 190** that where an instrument created a power of attorney which confers a power to dispose of or deal with any interest in or charge upon land the instrument should be recorded in the General Registry under part 6 of the General Registry Act. Therefore, Mr. Welch submitted that the power of attorney had to be registered to give the plaintiff legal power to bring the action. Learned Counsel submitted that it is not right to say that because the Appellant accepted the power of attorney in terms of rent, that she accepted it in terms of laying an action in court.

51. Mr. Welch submitted that Ms. Griffith should have brought a new action as she received the title during trial and that she cannot rely on **section 56 of the Landlord and Tenant Act**. Learned Counsel said that if the Respondent had registered the power of attorney or she was registered as the landlord agent, then **section 56** would have been relevant.

Determination of grounds 2 and 3

52. There is no dispute that at the time the action was brought, the Respondent, Ms. Kimberly Griffith was not the owner of the property. At that time she was not registered as the Landlord Agent but she had a Power of Attorney which she used as her authority to collect the rent, serve notices to quit and also to raise the rent. The Power of Attorney

was not tendered into evidence but Mr. Perez evidence is that he was shown the Power of Attorney. The Magistrate in her reasons said that because Mr. Perez accepted that a Power of Attorney was shown to him she believes that the two letters of notices to quit given to Mrs. Perez is valid in the hearing.

53. I disagree with Mr. Welch that the magistrate was wrong to rely on the Power of Attorney as it was not registered pursuant to **section 125 of the Law of Property Act**. In my view, the Magistrate was correct to say that the notice to quit given to the Appellant was valid. The Appellant accepted the *bona fide* power of attorney for over two years, paid rent under the power of attorney, and accepted the increase in rent which they paid. They are now estopped by their conduct from claiming that the Power of Attorney is no good.
54. Mr. Welch also submitted that the Power of Attorney had to be registered to give the Plaintiff legal power to bring the action. In my view, since the Power of Attorney was not registered pursuant to **section 125** this amounts to an irregularity. The question to be asked is what is the effect of this irregularity? Ms. Griffith was the Landlord agent but she was not registered. However, she acted under the Power of Attorney given to her by the Landlord, Ms. Johnson. I agree with Dr. Kaseke's submission that **section 56 of the Landlord and Tenant Act** allows a landlord to evict a tenant if the landlord has a right to possession of his property, even if there may be some irregularity in the mode of proceedings for obtaining possession. Section 56 provides:

“Where the landlord, at the time of applying for the warrant aforesaid, had lawful right to the possession of the premises, or of the part thereof so held over as aforesaid, neither he nor his agent, nor any other person acting in his behalf, shall be

deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Act but the party aggrieved, if he thinks fit, may bring an action for the irregularity or informality, in which the damage alleged to be sustained thereby shall be specially laid, and may recover full satisfaction for that special damage, with costs of suit” (emphasis mine)

55. Ms. Johnson was the Landlord at the time and had lawful right to the possession of the premises. Ms. Griffith was acting on her behalf when she brought the Suits before the Magistrate for eviction and arrears of rent. According to **section 56**, Ms. Griffith is not be deemed to be a trespasser by reason of any irregularity. However, the party aggrieved, which in this case is the Appellant can bring an action for the irregularity and claim damages. In this case, the Appellant has a remedy under **section 56** in which the damage sustained can be laid and they can recover full satisfaction for that special damage. For instance, they can make a claim for whatever monies they spent from their own pocket for repairs done to the house. For these reasons grounds 2 and 3 are also dismissed.

56. Order

The appeal is dismissed.

The Appellant to pay \$2,500.00 cost to the Respondent.

Dated the 13th day of October, 2009

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MINNET HAFIZ
SUPREME COURT JUDGE