

IN THE SUPREME COURT OF BELIZE, A.D. 2009

CLAIM NO. 280 of 2009

**COROZAL TIMBER COMPANY CLAIMANT
LIMITED**

AND

DANIEL MORENO DEFENDANT

Hearings

2009

9th December

2010

7th January

27th January

1st March

Miss Deshawn Arzu for the Claimant.

Mr. Kevin Arthurs for the Defendant.

LEGALL J.

JUDGMENT

1. The claimant is a company duly incorporated under the Laws of Belize with registered offices situate at 99 Albert Street, Belize City. The company owns several parcels of land, including a parcel of land

previously described as Parcel No. 257 situate at Corozal Town, Belize. This parcel now falls under the Registered Land Act, Chapter 194 of the Laws of Belize and is described as Block 6, Parcel 15 in the Shipstern Bulkhead Registration section, Corozal Town, Belize City. Parcel 15 and five other parcels of land, namely parcels 5, 6, 13, 14 and 16 located at the said area as parcel 15, are subject to several mortgages, including one to a company named Shipstern Holding Company Limited with registered offices at #99 Albert Street, Belize City in the amount of US \$1,500,000. On 26th July, 1996, Julian Castillo, a chartered accountant was appointed under provisions of the mortgage debenture to be the Receiver in respect of the assets of the claimant company.

2. Occupying a part of Parcel 257 was Richard Augustus Grant also known as “Brother Largo.” The specific measurements and boundaries of the part of the land occupied by Grant were not given in evidence. The claimant company, desirous of selling all the parcels of land mentioned above, including parcel No. 257 caused its lawyer to send a letter dated 18th October, 2006 to Mr. Grant which states, inter alia, as follows:

“It is our instruction that you have been in occupation of the property belonging to the company more particularly the coastline of Parcel No. 257 situate in Corozal Town, Belize, without any lawful authority and any permission and any agreement whatsoever with our client.”.

3. The letter demanded Mr. Grant to remove immediately from the property, failing which proceedings would be instituted to remove him. Prior to receiving the letter, Mr. Grant signed a document dated 3rd August, 2004 in which he purported to sell his rights and interests to the land he occupied to the defendant for six thousand Belizean dollars. The document signed by both Mr. Grant and the defendant is as follows:

“I Richard Grant (aka Richard Reid) hereby sell all rights to parcel of land claimed by me Richard Grant on the northern main coast of the country of Belize of which I hold no official document to Daniel Moreno Jr., this 3rd day of august, 2004 for the sum of \$6,000.00 (Six Thousand Belize) dollars.”

4. Mr. Grant did not remove from the land; but the defendant brought a previous claim against the claimant company, Claim No. 452 of 2005, for a declaration of title for eight acres of land being part of parcel 257. The claim was stuck out on 23rd March, 2009 for non-appearance. On 29th March, 2009 the claimant company brought the present claim against the defendant for possession of parcels 13, 14 and 15, damages for trespass on the said parcels, a declaration and an injunction to restrain the defendant from entering or remaining on the claimant's land.
5. The defendant, prior to the claim by the claimant, had entered the portion of land allegedly occupied by Grant and built a house and a 250 feet pier on the seashore providing access to the land. He said he

spent about \$300,000 to construct the house and pier on the land, the rights and interest to which, according to him, he bought in June 2004 from Mr. Grant. He did not give the court a specific size of the land and the boundaries thereof, but a layman's rough description of the land. In his own words, this is what he said:

“A rough description can only be averred by myself because of my inability to have the property surveyed because all surveyors have refused to survey the said property due to the dispute between myself and Corozal Timber Company Limited.”

The defendant also tendered photographs of the newly constructed house, pier and an old house in which he claimed Mr. Grant lived.

6. In order to establish that he bought the rights and interests in the land, the defendant relied on the evidence of Mr. Grant. Mr. Grant testified that he was 61 years old and he lived on the land since he was 15 years old. He said he never got permission from anyone to occupy the land, because he thought it was government's land. He said he lived on the land with his stepfather and his mother when he was a child and when his stepfather died, and his mother emigrated to the U.S.A., he continued living on the land. He said he got married around 1973 to Justina Torres, and they had three children all of whom lived on the land. He said he was a squatter on the land where he planted coconut and sapodilla trees. He cleaned the trees, planted a farm and continued his work as a fisherman. He said he was in open,

peaceful and continuous occupation of the land for about forty-five years. In June 2004, according to him, he agreed to sell and transfer his legal, beneficial and proprietary interest in the land to the defendant. He was emphatic in pointing out that he could not sell the land, because it was not his own. He said, to use his own words, “whatsoever rights I have as a squatter I was selling to Mr. Moreno.”

7. Based on the evidence of Grant, the defence of the defendant is that he is not a trespasser, but he is in lawful occupation and possession of the land, based on the fact that he bought the rights and interests to the land which accrued to Mr. Grant by virtue of his open, peaceful continuous and uninterrupted occupation of the land for over forty-five years.
8. Moreover, it was submitted by learned counsel for the defendant that the claim by the claimants is barred by section 12 (2) of the Limitation Act Chapter 170 of the Laws of Belize. Section 12 (2) states:

“12.-(2) No action shall be brought by any other person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.” (emphasis mine.)

Since Mr. Grant and his predecessors were on the land, according to the submission, for about fifty years, the present action is barred by the above section. The Crown is also barred by section 12 (1) of the

Act which is similarly worded as section 12 (2), except that the period is thirty years and it applies to the Crown. But sections 12(1) and (2) do not apply unless the date on which the right of action accrued to the claimant is established. There is no evidence when the claimant first acquired the land, though there are records from the land Registry tendered in evidence which show that the claimant was registered as owner of the land on 4th February, 2008. But there is no evidence of any prior specific date showing when the claimant became owner of the land, which would have amounted to some evidence of when the right of action accrued to the claimant. In other words, there is no date on which the right of action accrued to the claimant, so that the provision of section 12 (2) of the Limitations Act would not apply.

9. There are however problems with Mr. Grant's credibility. In this case, he gave evidence on oath and swore to two affidavits – one is dated 27th March, 2009 and the other dated 14th November, 2009. In the first affidavit, he swore as follows: that he told the defendant he was selling a fishing shelter erected on the front portion of the land, and some trees, but not eight acres of land; that he had no authority to sell the claimant's land, and had never been in continuous possession and occupation of the land for thirty years; that he was given permission by the claimant to do some farming on the land, and that since the sale of the fishing shelter to the defendant, he no longer resided at the shelter.

10. In Grant's second affidavit, he said it was made "to clarify" his first affidavit. He swore, in this second affidavit, that a man named Nathan Funt, Managing Director of the claimant, showed him a document, and because he Grant could not read nor write, he asked Mr. Funt to read the document to him, which was read to him, but he did not understand it. He said that he asked that the document be explained to him and was told by Mr. Funt that the court determined that he could not sell the land, only the trees and shelter; and that was why he signed the first affidavit. He said that at no time did he state that he did not live on the property for thirty years as was stated in the first affidavit. He said, in the second affidavit, that he did sell to the defendant 8 to 10 acres, as he was told that he could sell because of the length of time he had lived on the land. He said, in the second affidavit, that Nathan Funk had taken advantage of his inability to read and write and had him sign the first affidavit by misleading him that the court had ordered him to sign it. In other words Mr. Grant's position in the second affidavit is that his first affidavit contained matters which were not true.
11. The confusion is compounded by his evidence on oath which is, at least in one major respect, different from his "clarifying" second affidavit, in that in his evidence on oath he swore, as we saw above, that he could not sell the land because he did not own it, but in his second affidavit he said he sold 8 to 10 acres to the defendant.
12. There is however, one consistent thread which weaves through his evidence: his vague description of the land he occupied. In the

document mentioned above purporting to sell his rights to the land, the land is described vaguely as “on the northern main coast of the country of Belize.” In the second affidavit, the land is described as a “portion of land situated along the eastern coast of the Corozal District.” On several occasions in the said affidavit, the land is referred to simply as “Coastal Property.” An example is Clause 15 of Grant’s affidavit:

“I am reliably informed and verily believe that due to my open, peaceful continuous and uninterrupted occupation of the Coastal Property for a period in excess of 30 years I have gained squatter rights to it.” (emphasis mine)

13. Two other witnesses who gave evidence in support of the defendant, Juan Perez, 79 years old Pastor, and Anatolio Nicholson 66 years old, security officer and father of the defendant, also gave a vague description of the land occupied by Grant, such as “Coastal Property,” “by the coast,” “disputed property,” and “coastline property near to Blackadore Caye.” Grant also testified that he did not know the parcel number of the land he occupied. The point is that the evidence fails to give a specific description of the location, size and boundaries of the land, the rights and interest to which were allegedly sold by Mr. Grant to the defendant.
14. It is accepted that Grant did occupy some portion of land on the coast at Corozal Town, but the precise size, location and boundaries of the

portion of land were not given in evidence. The defendant's position was that it was difficult to say the size of the land, and he estimated it at 8 acres, "more or less." Moreover, both Nicholson and Perez swore that they did not know the acreage of the land in dispute. This gap in the evidence as to the precise size and boundaries of the land could have been filled if an application was made for an order authorizing a sworn land surveyor to prepare a survey of the land in question. But unfortunately this was not done. A visit by the court to the locus could not have filled the gap.

15. Although the land was not specifically described, there is evidence from the defence witnesses Perez and Nicholson, and from the claimant's witness Grant, that Mr. Grant was in open, continuous and undisturbed possession of some portion of land on the coast line at Corozal Town for more than thirty years. The claimant, through the witnesses Julian Castillo and Nathan Funk, states that Grant had permission to occupy the portion of land, and was not in adverse possession of the land. But the letter mentioned above from the claimant's attorney-at-law to Mr. Grant, alleged that Grant was on the land without the permission of the claimant. Grant and two defence witnesses, Perez and Nicholson, swore that Grant was on the portion of land without the permission of the claimant. I accept that Grant was in occupation of a portion of the land on the said coastline as a squatter without the permission of the claimant or anyone else.
16. But was Grant in undisturbed, open and continuous possession of the said undescribed portion of land for over 30 years? In addition to his

evidence above, Grant further testified that his children went to school in Sateneja where he had a house which he built twenty years ago. Although he had a home at a place other than on the land, I believe that he and his predecessors namely his mother and stepfather were in continuous and undisturbed possession of some portion of land on parcel 15 on the coast at Corozal Town for more than thirty years. Section 42 (1) of the Law of Property Act, Chapter 190 of the Laws of Belize states:

“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 the said land, easement, right or privilege in favour of the person who had such possession.”

17. I am satisfied that Mr. Grant was in adverse possession of some portion of land on parcel 15 on the coastline of Corozal Town for more than thirty years. In order to prove adverse possession, it has to be established for the relevant period of thirty years, factual possession of the land and an intention to possess it. In *Toolsie Persaud Ltd. v. Andrew James Investment Ltd. and others 2008 72 W.J.R. 292, De La Bastide P and Hayton J* in the Caribbean Court

of Justice laid down the relevant principles to prove adverse possession:

“The position is that a claimant to land by adverse possession needs to show that for the requisite period he (and any necessary predecessor) had (i) a sufficient degree of physical custody and control of the claimed land in the light of the land’s circumstances (Factual Control), and (ii) an intention to exercise such custody and control on his own behalf and for his own benefit independently of anyone else, except someone engaged with him in a joint enterprise on the land (Intention to Possess). . . . There must be an intention to make full use of the land in the way in which an owner would.”: see paragraph 28 of the judgment.

18. Although, as I have repeatedly mentioned above, the portion of land on the said parcel 15 occupied by Grant was not specifically delineated by size, boundaries and location, I have no doubt that he was in occupation of some portion of land on the said parcel 15 on the said coast of Corozal Town. The question now is this: could the photographs tendered by the defendant give a general, though not specific, idea of where on the said parcel 15 on the coast of Corozal Town is the land Grant occupied?
19. The defendant tendered photographs of the house he built on the said portion of land on the coastline. Photographs were also tendered of

the house Grant lived in on the portion of land, and the pier constructed by the defendant: see Exhibits D.M. 2-4 to D.M. 2-6. As Exhibit D.M. 2-4 shows, the two houses are very close together on the seaside or coast, and the wooden pier juts out from in front of the houses, to the waters on the coast or seaside. I think this is some indication, though not specific, of the portion of land on the said parcel 15 that grant occupied on the coastline or seaside of Corozal Town and on which he acquired rights and interests due to his adverse possession. But what is the size of the said portion of land on which the houses and pier are located? The photographs gives a general idea of the size. Moreover, Mr. Grant testified that he gave the defendant:—

“a description of the piece of land on the seaside, the six thousand dollars were for. The seaside is about half acre. That is what I got the \$6,000 for.”

I take it that when he says seaside he means where the houses and pier are located and he is saying that what he sold were his rights and interests to about half acre of land on the seaside. He is not giving a specific acreage, but it may be more or less than half an acre. I accept this part of the evidence of Mr. Grant.

20. In my judgment, Mr. Grant sold to the defendant his legal rights and interests acquired by his adverse possession for over thirty years of about half an acre of land on the said parcel 15 on which the two houses and pier are located at Block 6 in the Shipstern Bulkhead

Registration Section Corozal Town, Belize. In the light of my finding above that the defendant bought the rights and interest in the said portion of land from Grant, I refuse the claims for damages and to remove the defendant's material from the said portion of land.

21. There were previous proceedings in the Supreme Court between the parties with respect to the land in question which were struck out for non-appearance. The defendant in this case, it is true, did not file a counterclaim. But in an attempt to prevent further similar proceedings with respect to the said land, I make some orders below not expressly asked for by any party to these proceedings. The court has the power to do so by section 28 of the Supreme Court of Judicature Act Chapter 91:

“28. Subject to any law, the Court may in any cause or matter make any order as to the procedure to be followed or otherwise which the Court considers necessary for doing justice in the cause or matter, whether that order has been expressly asked for by the party entitled to the benefit thereof or not.

From my observation of the photographs in exhibit D.M. 2-4 it seems that the houses and pier occupy less than half acre of land.

22. I therefore make the following orders:
 1. An order for possession is granted to the claimant of parcels

of land situate at Nos. 13 and 14 Block 6, Shipstern Bulkhead Registration Section, Corozal Town, Belize.

2. An order for possession is granted to the claimant of parcel of land No. 15, except half an acre thereof on which the two wooden houses and a wooden pier are located, situate at Block 6 Shipstern Bulkhead Registration Section, Corozal Town, Belize.
3. The defendant is authorized to cause to be surveyed the said half acre of land referred to at order 2 above and cause to be prepared a survey plan for the said half acre of land.
4. The defendant is entitled and authorized to apply and to obtain title for the said half acre of land on which the two houses and pier are located, as described in the survey plan.
5. The Registrar of Lands is authorized to execute all relevant documents required to convey and issue title to the defendant for the said half acre of land based on the survey plan and after all conveyancing fees are paid.
6. An injunction is granted restraining the defendant, servants and agents from entering, occupying, residing on Parcels No. 13, 14 and 15, except the said half acre of land on Parcel 15 on which two wooden houses and a pier are

located, situate at Block 6 Shipstern Bulkhead, Registration Section Corozal Town, Belize.

7. An injunction is granted restraining the claimant, its servants or agents from occupying, residing, entering the half an acre of land on parcel 15 on which two wooden houses and a pier are located situate at Block 6, Shipstern Bulkhead, Registration Section, Corozal Town, Belize.
8. The claim for damages and an order to remove material from the said half acre of land are refused.
9. Each party to bear his own costs.

Oswell Legall
JUDGE OF THE SUPREME COURT
1st March, 2010