

IN THE HIGH COURT OF BELIZE A.D. 2021

CLAIM NO. 395 of 2021

BETWEEN: (LIN HAN HSIN	FIRST CLAIMANT
(JUI LIANG HUANG	SECOND CLAIMANT
AND	
(ERNEST WILTSHIRE	FIRST DEFENDANT
(KEVIN NICHOLAS	SECOND DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE LISA SHOMAN

TRIAL DATES: AUGUST 10 & 11, 2022

WRITTEN SUBMISSIONS: Defendant: January 11, 2023

APPEARANCES: Ms. Iliana Swift for the Claimants

Ms. Payal Ghanwani for the 1st Defendant

JUDGEMENT

1. The Claimants who are the owners of 4 acres of registered land located at Mile 42 on the George Price Highway have filed a Fixed Date Claim Form dated June 7th 2021, seeking possession of Parcel 96, Block 20 in the Mount Pleasant Registration Section (“the Parcel”); an injunction to restrain the Defendants, whether by themselves or by their employees or agents or otherwise howsoever from entering or crossing the Parcel; and damages for trespass.

2. The First Defendant has filed a Defence dated January 3rd, 2022 in which he denies the Claimants' claim and avers that he took possession of the Parcel in April of 2005 and that he has been in continuous and exclusive possession of the Parcel since that time for a period in excess of 12 years, without the permission of the Claimants, or any other person lawfully entitled to such possession.

3. The First Defendant further claims that the title of the Claimants to the Parcel was extinguished by virtue of Sections 12 and 22 of the Limitation Act; or alternatively that the Claimants' Title to the Parcel is subject to an overriding interest in favor of the First Defendant.

4. The First Defendant has also filed a Counterclaim dated the 3rd day of January 2022, seeking:
 - a. A Declaration that the First Defendant has been in open, peaceful, and uninterrupted possession and occupation of the Parcel adverse to the entire world for a period exceeding 12 years, and that he is thereby entitled to title by prescription or long possession pursuant to Section 138 of the Registered Land Act;
 - b. A declaration that the Claimants' Title to the Parcel has been extinguished by virtue of Section 12 and/or 22 of the Limitation Act;
 - c. A permanent injunction restraining the Claimants, whether by themselves and/or their agents and/or servants and those authorized by them from accessing, entering upon, interfering with, preventing or obstructing the rights of access to and from the property, or otherwise dealing with the Parcel;
 - d. An Order directing the Registrar of Lands to register the First Defendant as proprietor of the Parcel and issue title to the Parcel to the First Defendant;
 - e. Further or Alternatively, a declaration that the Claimants' Title to the Parcel is subject to an overriding interest in favour of the First Defendant pursuant to Section 31(f) and (g) of the Registered Land Act of Belize;

- f. Costs; and
 - g. Such further or other relief as the Court sees just in the circumstances.
5. The Claimants have filed a Reply and Defence to Counterclaim dated the 1st day of February 2022, in which they deny that the First Defendant has been in continuous and exclusive possession of the parcel since April 2005 and aver that the First Defendant has only commenced occupation of the Parcel in August of 2020 and put the First Defendant to strict proof of his Counterclaim.
6. The Parties have agreed that the following issues are to be determined in this Claim:
- a. Does the Defendants' possession of the Parcel constitute trespass?
 - b. Has the Claimants' title to the Parcel been extinguished pursuant to Sections 12 and/or 22 of the Limitation Act?
 - c. Is the 1st Defendant entitled to title by prescription or long possession pursuant to Section 138 of the Registered Land Act?
 - d. Which party is entitled to possession of the Parcel?
 - e. Is the Claimant's title to the Parcel subject to an overriding interest in favour of the 1st Defendant pursuant to Section 31(f) and (g) of the Registered Land Act?
7. In order to determine the issues in this claim, it is important to review the law on adverse possession since the First Defendant says that he is, by virtue of peaceful and undisturbed possession of the Parcel in excess of 12 years, while the Claimants exhibit proof of ownership of the Parcel, by way of a Land Certificate dated December 14th, 2015 and say

that they have been owners of the property since 1995, and that they applied for first registration and obtained registered title on December 14th, 2015.

8. The property is registered land, and the Claimants are the registered proprietors. The legal presumption is that they are in possession. However, although the Claimants do have absolute title, the property remains subject to any registered or overriding interests.

9. According to the Registered Land Act, Chapter 194 of the Laws of Belize (“the RLA”):

“26. Subject to section 30, the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant 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...”¹

10. Also, according to Section 138 of the RLA:

138.-(1) Subject to subsection (2) of this section, the ownership of land may be acquired by open, peaceful, and uninterrupted possession for a period of twelve years and without the permission of any person lawfully entitled to such possession.

(2) In the case of national land other than the foreshore, the period of such possession shall be 30 years. Prescription shall not lie with regard to the foreshore.

¹ Section 26 of the RLA

(3) Any person who claims to have acquired the ownership of land by virtue of subsection (1) of this section may apply to the Registrar to be registered as proprietor thereof.

11. The First Defendant, Ernest Wiltshire claims such an unregistered but overriding interest through his peaceful, uninterrupted occupation of the Parcel since April of 2005.
12. The rights of a person who is in actual occupation of registered land, even where those rights are not registered, are protected by the RLA which provides that:

“31.-(1) Subject to subsection (2), unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect it, without their being noted on the register-

(g) “The rights of a person in actual occupation of land or in receipt of the rents and profits thereof except where inquiry is made of such person and the rights are not disclosed.”²
13. Actual occupation does not create rights. What it does is to set the stage for a second consideration – that is, what equitable right or interest flows out of the alleged occupation of Ernest Wiltshire of the property. The First Defendant’s counterclaim also rests on Section 31(1)(f) of the RLA which specifically protects the rights which persons have acquired or are acquiring by virtue of the Limitation Act (or prescription) as an overriding interest which serves, in particular circumstances, to extinguish the title of the true owner, for property.
14. The Limitation Act by virtue of Sections 12 and 22 respectively, limits the time in which actions to recover land must be brought -12 years for private property, or 30 years in the

² Section 31(1)(g) of the RLA

case of national or what used to be known as crown land, and serves to extinguish title when the applicable period expires.

15. Section 12 (2) of the Limitation Act states that:

“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:

Provided that, if the right of action first accrued to the Crown through whom the person bringing the action claims, the action may be brought at any time before the expiration of the period during which the action could have been brought by the Crown or of twelve years from the date on which the right of action accrued to some person other than the Crown, whichever period first expires.”

16. By virtue of those statutory provision, in the prescribed circumstances, if the true owner has failed within the prescribed time period, to assert his title to that property and that property is wrongfully possessed by someone other than the true owner thereof, in a manner which is ‘adverse’ to the rights of the true owner to that property, then that other party’s possession of that property, ripens into a valid title. This is known as ‘adverse’ possession’ and in this claim, it is the well-established legal concept of ‘adverse possession’ which is founded upon a statutory framework, which constitutes the foundation of the First Defendant’s counterclaim.

17. According to Section 18 of the Limitation Act, time begins to run from the moment the land goes into adverse possession. Where the land ceases to be in adverse possession, time may begin to run afresh if it is taken again.

18. Section 139(6) of the RLA must also be considered. It provides that:

“Possession shall be interrupted-

(a) by dispossession by a person claiming the land in opposition to the person in possession;

(b) by the institution of legal proceedings by the proprietor of the land to assert his right thereto; or

(c) by any acknowledgement made by the person in possession of the land to any person claiming to be the proprietor thereof that such claim is admitted.”

19. In the Jamaican case of **Seaton Campbell et. al. v. Donna Rose Brown et. al.**³ adverse possession is explained thus :*“Title to land can be acquired by appropriating a piece of land of another person and remaining in undisturbed possession of it, for a period prescribed by statute, without acknowledging the title of the true owner. If the true owner fails within the prescribed period to assert his title to his land, which is wrongly possessed by a person, his title to the land will be extinguished by operation of the statute. That person’s possession of that land, ripens into a valid title to that land, if his possession is adverse to the rights of the true owner.”*

20. In the **Seaton Campbell** case, Anderson J went on to discuss the elements required to establish adverse possession as follows: *“For adverse possession to property arise, there should be acts which are inconsistent with the enjoyment of the soil, by the person entitled to the land. See: West Bank Estate Ltd. v Arthur – [1966] 3 W.L.R. 150. The land should have been used in a way which altered or interfered in a permanent, or semi-permanent way, with the land. A classic case is where substantial structures are constructed on it by the squatter, leaving in its trail, substantial traces of use.*

³ [2016] JMSC Civ.157 at Paragraph 33

*Such acts which are incompatible or inconsistent with the due recognition of the title of the owner, constitute adverse possession. They should effectively exclude the possession of the true owner. The concept does not impose any element of aggression, hostility or subterfuge, as the word, 'adverse' suggests. It is a word used to describe conveniently, a situation where the land falls into the possession of some person other than the true owner under circumstances in which the true owner can treat that other person as a trespasser who is asserting a claim of right, or under circumstances which cannot be explained in a way which is consistent with the title of the paper owner."*⁴

21. In order to establish adverse possession of the Parcel, the First Defendant must establish not only factual possession, but must also prove an intention to possess the Parcel to the exclusion of the Claimants who are the legal owners of the Parcel; for a period of 12 years.
22. Mr. Wiltshire, the First Defendant gave evidence that in or around April of 2005, he entered the Parcel, and began clearing a path in the overgrown bush from the highway along the left edge of the Property towards the path cleared by BEL for hydro line.⁵ He gave evidence that once he had cleared the land from the highway to the hydro line, he made his way from the path cleared for the hydro line, to the front of the Parcel, clearing and taking possession of approximately two and a half acres of the Property. He says that he also cleared the half acre behind the hydro line.⁶
23. According to Mr. Wiltshire, at that time, he cleared two lot size parcels which he treated with a weed killer solution and began planting cassava, cocoyam, sweet potato, and plantain on the Parcel.⁷

⁴ Ibid at Paragraph 34

⁵ Witness Statement of Ernest Wiltshire at Paragraph 13

⁶ Ibid at Paragraph 15

⁷ Ibid at Paragraph 16

24. Mr. Wiltshire also gave evidence that he planted fruit trees such as coconut, lime, avocado, golden plum, mango and soursop on the parcel, and says that he has have over a 100 cocoyam and cassava plants on the parcel. He provided photos taken by him since the commencement of this claim of the trees and crops, at “EW 1”.⁸ He avers that he and his family have planted on the property and have used as their own since 2005.
25. According to the First Defendant, the portion of the land that he occupies and plants on is approximately two and a half acres in size, but he says that he cleans and upkeepes the entire four acres of the Property, early in the morning before work at 5:30 am and again after he returns from work until about 7:00 pm. His evidence is that he works on the property on Saturdays, Sundays and days off, for the entire day⁹.
26. Mr. Wiltshire says that in early 2006, after he had finished clearing out the borders of the parcel, he and his son constructed a barbed wire fence using 10 rolls of wire and 250 wooden posts, around the parcel and installed a gate in the back of the land, which was accessed through a picado road, and in front by an already existing cement fence. His evidence is that the fence and gate were completed in or around June of 2006.¹⁰ Photos of the fence and the gate were attached to his Witness Statement as “EW 2.”
27. Mr. Wiltshire gave evidence that since the fence was completed, both gates have been padlocked and only he has the key to those gates, which he does give to his helpers who access the property with his permission,¹¹ and that he opens the gate to allow Belize Electricity Limited access to the hydro line on service days.¹²

⁸ Ibid at Paragraph 17

⁹ Ibid at Paragraphs 21 to 23

¹⁰ Ibid at Paragraphs 26 to 29

¹¹ Ibid at Paragraph 30

¹² Ibid at Paragraph 31

28. Mr. Wiltshire says that after the property was fenced, he began to wean cattle on the property which was brought from the farm of his father-in-law's farm.
29. In his Witness Statement, Mr. Wiltshire gave evidence of enclosing a structure on the property and said that in the latter part of 2006 once the fence was finished, he built a few makeshift wooden doors and windows to enclose a cement structure previously built on the Property by a Mr. Petterson,¹³ and that in March 2008, purchased four doors with frames and two sets of windows along with other materials and replaced the makeshift doors and windows installed by him.¹⁴
30. Mr. Wiltshire also gave evidence regarding the mechanic shop that he started with the 2nd Defendant to sell scrap vehicle and fix tires on the front acre of the property and attached a picture as "EW 5."¹⁵
31. The First Defendant applied, on September 8th, 2020, to the Lands Department for title to the Property by Prescription on the basis of having been on the property without interference for more than twelve years and attaches a Revenue Collector's receipt and his application as "EW 6."¹⁶
32. According to the First Defendant, from 2005 to September of 2020, he has "*enjoyed continuous and exclusive possession of the property without the permission or interference of the Claimants or any other person*".¹⁷ Mr. Wiltshire has provided this Court with sufficient evidence to show by his many acts of factual possession over the

¹³ Ibid at Paragraphs 33 to 35

¹⁴ Ibid at Paragraphs 36 and 37

¹⁵ Ibid at Paragraphs 53 to 56

¹⁶ Ibid at Paragraphs 61 to 62

¹⁷ Ibid at Paragraph 56

property, as well as his intention to possess the property, to discharge the burden of rebutting the presumption that the Claimants were in possession of the Property.

33. The other witnesses for the First Defendant, Mr. Egbert Rowland, a retired Carpenter and Ms. Irma Anderson, Superintendent of Police gave evidence supporting the claims of Mr. Wiltshire that he has occupied the property since 2005, and that he has been farming the property since then. Evidence was also given corroborating the work done by Mr. Wiltshire on the property and his work on the land as well as the type of fruit trees and crops on the land. Both gave evidence regarding the fence and restoring the building on the property. Both witnesses were convincing and forthright and the evidence provided by both was able to stand up under vigorous cross-examination.
34. The witnesses for the Claimants are the son of the Second Claimant, Mr. Yu Huang, and Mr. Liu Chang, a friend of the family of the Second Claimant. Mr. Huang's evidence was that his father and the First Claimant are the owners of the property and says that he has had *“primary responsibility of managing the property and is familiar with the history of its ownership and the activities on the Property.”*¹⁸
35. Mr. Yu Huang says that he resided between Taiwan and Belize up to 2014, but under cross-examination he admitted that he was away from Belize, from 2007 to 2010 while he was studying in Taiwan. He returned to Taiwan in late 2010 to late 2013, and that during that time he returned to Belize only 2 to 3 times during a 6 year span up to 2014 and yet he says in his witness statement that he is “certain that the Defendants were not occupying the Property from 1995 to 2014”¹⁹. On a number of occasions, his responses in cross-examination were that he could not recall all the details of his statement. The overall

¹⁸ Witness Statement of Yu Huang at Paragraph 2

¹⁹ Ibid at Paragraph 4

impression of Mr. Yu Huang as a witness is that he was evasive and less than forthcoming and that he actually did not know very much about the property of the Claimants.

36. Mr. Huang also testified under cross-examination, that after his return, after 2014, he observed the property when he drove by, but that he relied on the observations of Mr. Chang, whom he claimed passed the property every day. He was obliged to concede, however under cross-examination that he didn't really know the dimensions of the land, and said that he could not recall that he walked on to the property, except when he visited a Mr. Hilton Wade who was squatting on the property.

37. The other witness for the Claimants, Mr. Chang gave evidence that weekly trips along the Phillip Goldson Highway to Spanish Lookout allowed him to view the property on a weekly basis.²⁰ On that basis, his evidence is that ***“the property was unoccupied and not covered with any vegetation and that in 2016, he notified Yu Huang about Mr. Hilton Wade trespassing on the property.”***²¹

38. He also said that at the end of 2020 he noticed a barbed wire fence with bush sticks being erected on the property and notified Yu Huang of the Defendants trespassing on the property.²² This witness admitted under cross-examination that he never stopped at the property and that he drove by at 60-75 miles per hour, and that from the car, he could not see the trees and plants on the four acres. His evidence was simply not credible.

39. The Claimants say that they issued Notice to Vacate to the First Defendant in November 2020 by a letter issued dated 9th November 2020 and a copy of the letter is attached to the

²⁰ Witness Statement of Liu Chang at Paragraph 3

²¹ Ibid at Paragraph 4

²² Ibid at Paragraph 6

Witness Statement of Yu Huang as “YH 4”. The First Defendant denies that he ever received any such notice.

40. After a careful review of the evidence for the Claimants and the First Defendant in this claim, and observing all the witnesses and their responses in cross-examination, the First Defendant has been able to satisfy this Court that he has been in adverse possession of the Parcels since 2005, and that from then until the present, he has treated the property as his own; and that his adverse possession altered and interfered with the land, that structures were repaired, and that fruit trees and crops were planted and harvested, that fences and gates were built, and livestock weaned on the property were planted.
41. No action was taken by the Claimants to interrupt the adverse possession of Mr. Wiltshire in the terms of section 139(6) of the RLA - until this claim was filed by the Claimants in June of 2021. The Claimants’ witnesses have not been able to controvert the evidence of the First Defendant nor to displace the proof that he has provided to show that he has occupied the property since 2005, and used the parcel as his own, to the exclusion of the Claimants.
42. In the circumstances of this claim, the First Defendant has proven that he does have an overriding interest in the property by virtue of open, peaceful, and uninterrupted occupation of the property for a period of almost 15 years and he has provided sufficient evidence to this Court that he has treated the property as his own.
43. Mr. Wiltshire has shown that he is entitled to the property by exercising adverse possession for over 15 years to the exclusion of the Claimants and others and without the permission of the Claimants, and consequently has an overriding interest in Parcel 96, Block 20 in the Mount Pleasant Registration Section. The First Defendant’s possession of the premises is consequently not trespass.

44. By operation of Section 12 (2) of the Limitation Act, “*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*“, and section 22 of the same Act, at the expiration of the period prescribed by the Act for any person to recover land, the title of that person to the land shall be extinguished and therefore, the Claimant’s claim is barred and the title of the Claimants to the Parcel is extinguished.

ORDERS

45. It is hereby ordered as follows:
1. The Claimants’ claim is dismissed and it is declared that the Claimants’ claim to Parcel 96, Block 20 in the Mount Pleasant Registration Section is statute barred and the Claimants’ title to the property has been extinguished;
 2. It is declared that the First Defendant has been in open, peaceful and uninterrupted possession of the property described as Parcel 96, Block 20 in the Mount Pleasant Registration Section for a continuous period of more than twelve years without the permission of any person lawfully entitled to possession;
 3. It is declared that the First Defendant has an overriding interest in Parcel 96, Block 20 in the Mount Pleasant Registration Section;
 4. The Claimant shall pay the First Defendants costs of this Claim and costs to the 1st Defendant in respect of the counterclaim as agreed or assessed.

DATED JANUARY 18, 2023.


LISA M SHOMAN
JUSTICE OF THE HIGH COURT OF BELIZE