

IN THE SUPREME COURT OF BELIZE, A.D. 2020

CLAIM NO. 407 of 2020

BETWEEN: (STEPHANEY ILONA RHABURN CLAIMANT  
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(AND  
(  
(VINCENT PAUL MARK DEFENDANT  
(REGISTRAR OF LANDS INTERESTED PARTY

BEFORE THE HONORABLE JUSTICE LISA M. SHOMAN

Hearing Date: 18<sup>th</sup> November, 2021.

Appearances:

Mr. Darrell Bradley for the Claimant

Ms. Payal B. Ghanwani for the Defendant

Written Submissions:

**Claimant**

16<sup>th</sup> December, 2021.

**Defendant**

16<sup>th</sup> December, 2021.

**JUDGEMENT**

**BACKGROUND**

1. Stephaney Ilona Rhaburn and Vincent Paul Mark were known to each other because she was living at his home in Hopkins Village near the beach with a cousin of Vincent. She lived there for almost 2 years before Mr. Mark said to Ms. Rhaburn and the cousin that they were not going to be able to live there anymore because he required his house on the beach and so they needed to move.

2. In June of 2004, Mr. Mark gave Ms. Rhaburn permission to live at another parcel of land in Hopkins Village – Lot 681. Their accounts differ as to the extent and terms of the permission that was given.
3. Ms. Rhaburn who is the Claimant, says that Mr. Mark gave her permission to go on the property – Lot 681 in Hopkins – and that she invested substantially in the development of the lot, including clearing and filling and that she constructed a dwelling house in 2004, where she has lived since 2004.
4. Mr. Mark says he told her to that she could occupy the property until he should require it for his own use, but that she should build a moveable house on the property, and that Ms. Rhaburn did not occupy the house until June 2005.
5. This claim is about Lot 681 in Hopkins Village, in the Stann Creek District of Belize, and what is the interest of Ms. Rhaburn if any, over the property which is now legally owned by Mr. Mark. He wants her to go. She says she has a right to stay on Lot 681.

#### **THE CLAIM AND COUNTERCLAIM**

6. The Claimant filed this claim against the Defendant seeking the following reliefs:
  - a. A declaration that the Claimant has an equitable interest in, and is thereby a beneficial owner of, the entire parcel of land or a portion of a parcel of land described as Lot 681 located in Hopkins Village, Stann Creek District, Belize (hereinafter called “Lot 681”).
  - b. An order that the Court determines the percentage of the Claimant’s equitable interest in Lot 681, either that the Claimant is entitled to the entire of Lot 681 or such reasonable portion of Lot 681 as the Court determines fair in all the circumstances.

- c. A declaration that the Claimant has been in open, peaceful, and uninterrupted possession and occupation of Lot 681 adverse to the entire world for a period exceeding twelve years, and that she is thereby entitled to provisional title by prescription or long possession.
  - d. A declaration that the Defendant's title to Lot 681 has been extinguished by virtue of Section 22 of the Limitation Act.
  - e. A permanent injunction restraining the Defendant, whether by himself or his agents or servants from coming unto, interfering with, or dispossessing the Claimant from Lot 681.
  - f. Costs.
  - g. Such further or other relief as the Honorable Court deems just.
7. The Defendant filed a Defence and Counterclaim for the following reliefs:
- a. A declaration that the Defendant is entitled to possession of Lot 681.
  - b. A mandatory injunction for the Claimant to deliver forthwith vacant possession of Lot 681 whether by herself, her servants, or agents or otherwise.
  - c. An order that the Claimant remove any and all structures placed on Lot 681.
  - d. An injunction restraining the Claimant and her agents from entering or being on Lot 681 or any portion thereof.
  - e. Damages including for trespass.

- f. Costs; and
- g. Such further or other relief as the Court may deem fit.

### **THE ISSUES TO BE DETERMINED**

- 8. The parties have agreed that the following issues are to be determined by the Court:
  - a. Whether the Claimant has an equitable interest in Lot 681 or whether the Claimant is a bare licensee?
  - b. If the Claimant has an equitable interest, to what extent?
  - c. Whether the Claimant has been in open, peaceful, and uninterrupted possession and occupation of Lot 681 adverse to the entire world for a period exceeding twelve years, so that she is thereby entitled to provisional title by prescription or long possession?
  - d. Whether the Defendant's title is extinguished by virtue of Section 22 of the Limitation Act?
  - e. Whether the Defendant is entitled to possession of Lot 681?

### **EQUITABLE INTEREST IN LOT 681**

- 9. The Claimant, Ms. Rhaburn claims that she has an equitable interest in, and is consequently a beneficial owner of the entire parcel of land/portion of land described as Lot 681 in Hopkins Village, Placencia. If the Court finds that she does have such an interest, I am asked to decide to what extent.

10. The evidence in the case is that the Respondent, Mr. Mark, sometime in 2004, gave Ms. Rhaburn permission to occupy Lot 681. At the time, Mr. Mark was not the owner of the property. Lot 681 was held at that time in the name of his mother, Celestina Casimiro, and as “the intended beneficiary and caretaker” he gave her permission to occupy lot 681, Ms. Rhaburn does not deny this.
11. Mr. Mark contends that he told her to build something moveable on lot 681. Ms. Rhaburn says that he told her that she could live there until she died.
12. The Statement of Claim filed on behalf of Ms. Rhaburn does not plead the alleged promise of Mr. Mark at all. It merely states that ***“In January 2004, the Defendant purportedly gave the Claimant permission to live on and construct a dwelling house, on Lot 681.”***<sup>1</sup>
13. The Defence filed on behalf of Mr. Mark states clearly that in June 2004, he gave the Claimant ***“permission to occupy the subject property until he required usage of the same” and avers that “the Claimant was constantly reminded by the Defendant that she needed to build something moveable because the Defendant would eventually use the land for his own purpose”***<sup>2</sup>
14. Neither did Ms. Rhaburn plead was any promise for a life interest made to her by Mr. Mark in the Reply to Defence and Defence to Counterclaim. In the Reply to Defence, what Ms. Rhaburn says to that, is ***“that she was never told by the Defendant that the dwelling house had to be temporary or moveable”***. She says that ***“the Defendant never saw the dwelling house being constructed or never inspected the dwelling house after construction.”***<sup>3</sup>

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<sup>1</sup> Statement of Claim dated July 1, 2020 at Paragraph 2

<sup>2</sup> Defence dated August 28 2020 at Paragraph 2

<sup>3</sup> Reply and Defence to Counterclaim dated September 9,2020, Paragraph 2

15. Ms. Rhaburn also denies in the following paragraph that the Defendant told her that the dwelling house had to be moveable and says that ***“If this were the case the Defendant would have seen that the dwelling house was a large permanent structure and he would have objected”***<sup>4</sup>
16. The failure of the Claimant to raise the promise that she could live on lot 681 “for life”, even after the Defence was filed irresistibly begs the question – why was the alleged promise to be permitted to live on Lot 681 for life not raised in the pleadings made on behalf of the Claimant?
17. The first time that Ms. Rhaburn says anything about such an alleged promise is in her Witness Statement, filed about a year after the close of pleadings where she says ***“But the Defendant told me that if I wanted to stay in Hopkins Village he had a piece of land that I could use and that I could live there until I die...The Defendant then said that I could move unto the land and build on the land”***<sup>5</sup>
18. Under cross-examination, Ms. Rhaburn said, when asked if Mr. Mark was a friend, that she was just meeting him in 2004. In cross-examination, Ms. Rhaburn continued to insist that Mr Mark (whom she had just met) told her that she could ***“live on the land until I die”***. Ms. Rhaburn does not say however, anything more in evidence, either in her witness statement to say when the promise was made, or if there were any terms or conditions attached, nor indeed, what portion of Lot 681 she could occupy and build on, or whether it was all.
19. It is the Claimant who is alleging that she was promised a “life interest” in the property by the Defendant who must establish what was the promise upon which she acted, and I find the evidence of the Claimant to be quite lacking in this regard. I cannot conclude in all circumstances that any such promise was made to Ms. Rhaburn by Mr. Mark.

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<sup>4</sup> Ibid, Paragraph 3

<sup>5</sup> Witness Statement of Stepheny Ilona Rhaburn dated September 17, 2021, Paragraph 4

20. What then is the basis of the equitable interest which is claimed by Ms. Rhaburn? In the Statement of Claim, the Claimant asserts that she has an equitable interest in Lot 681 based on the representations made to her by the Defendant that she could live and build on the land and based on the fact that she has expended significant sums of money on improvements to the land<sup>6</sup>. Paragraph 6 states ***“But the Claimant says that she has an equitable interest in Lot 681 based on the representations made to her by the Defendant that she could live and build on the land and based on the fact that she has expended significant sums of money on improvements to the land, including construction of the dwelling house.”***
21. The parties agree that in 2004, Mr. Mark gave Ms. Rhaburn permission to live on Lot #681 and to build a structure there. Ms. Rhaburn in her Statement of Claim<sup>7</sup>, and the Reply to Defence<sup>8</sup> asserts that she got permission from the Defendant to occupy Lot 681. She repeats that she went on the property with Mr. Mark’s permission in her Witness Statement at Paragraphs 3, 4 and 6 and asserted this during cross-examination over and over.
22. In any event, the clear basis on which Ms. Rhaburn believed that she was occupying the land, was as a result of a verbal permission given to her by Mr. Mark. During cross-examination Ms. Rhaburn was asked if she believed at the time that Mr. Mark was the owner of Lot 681; and she replied in the affirmative, confirming that she believed that he had the authority to give her permission to use Lot 681. She also confirmed that she was living there from 2005 to 2015 with the consent of Mr. Mark.
23. What is contradictory is that while the Claimant’s Statement of Claim asserts the permission given by the Defendant to her in order to ground an equitable interest;

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<sup>6</sup> Statement of Claim, Paragraphs 2, 4 and 6

<sup>7</sup> Ibid, Paragraph 2

<sup>8</sup> Reply to Defence, Paragraphs 2 and 11

and she states in Paragraph 11 that *“The Claimant says that the Defendant did give her permission in or about June 2004 that Mr. Mark gave her”*; yet at the same time, the Claimant denies the same permission, in order to ground a claim for adverse possession : *“The Claimant says that at or about 2004 the Defendant did not have any interest in Lot #681 either as leaseholder or titleholder and so the Defendant could not lawfully give the Claimant permission to enter into Lot #681. The Claimant therefore says that when she went unto Lot 681, her occupation and possession was adverse possession”*<sup>9</sup> and at Paragraph 9 of her Reply, the Claimant avers that *“The Claimant denies that the Defendant gave her permission”*.

24. This attempt at legal prestidigitation notwithstanding, I am clear that in 2004, Ms. Rhaburn went on to the property at Lot 681 in Hopkins Village with the permission of Mr. Marks, and that at the time, both parties believed that he had the right to give her such permission. Her evidence in cross-examination cements this belief held by her and I accept that under cross examination, Ms. Rhaburn confirmed that Mr. Mark gave her permission to live on and construct house on Lot 681, and that she went there and built her wooden dwelling house in 2005, with his consent.
25. I also accept the evidence of Mr. Mark who says that at the time when he gave Ms. Rhaburn permission to live on and build on Lot 681, he was acting as caretaker of the estate of his mother, Celestina Casimiro who owned a leasehold interest in Lot #681 from June 8, 2004 to June 8, 2011. He was not the legal owner and in fact, was not even a leaseholder prior to June 8, 2011, when his name was added to the lease. He did not acquire the fee simple title to the property until 2019.
26. I also accept that in 2004, Mr. Mark granted permission for Ms. Rhaburn to build a moveable structure on Lot 681 and did not promise her that she could remain for life if she built on the property. I accept that Mr. Mark and had no intention of

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<sup>9</sup> Statement of Claim, Paragraph 3

granting her any life interest in the property; and that he never promised her that if she built, she could remain “for life”.

27. The evidence of Mr. Mark on the matter of Ms. Rhaburn’s occupation of Lot 681 and the structure to be built by her, was consistent and credible. In the Defence filed on his behalf<sup>10</sup>, at Paragraph 2 he avers that “*...the Claimant was constantly reminded that she needed to build something moveable because the Defendant would eventually use the land for his own purpose*” He repeats the point in paragraphs 3 and 4, and in the Reply to Claimant’s Defence to Counterclaim at paragraph 3.<sup>11</sup>
28. In his witness statement<sup>12</sup>, Mr. Mark states that he “*...gave the Claimant permission to use the property provided she constructs something that is moveable*” and says further that “*I expressly informed the Claimant that I would eventually require the property for my own purpose*”. Paragraphs 15 and 16 are consistent with his testimony that the permission was only temporary and that she was to build a moveable structure.
29. Under cross-examination, Mr. Mark was adamant and unshakable that he offered Ms. Rhaburn to stay on the property until he was ready for the property, because she had no place to go. He insisted that the arrangement was that whenever he was ready for the property, she would move.
30. The Belizean case of *Stephanie Yolanda Guerrero v Norman Henkis*<sup>13</sup> decided by Justice Sonya Young provides guidance. That case dealt with the issue of whether a Defendant who does not have title in a property can give an equitable interest in that property to someone else. In the decision, Young J makes the point

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<sup>10</sup> Defence dated August 25, 2020

<sup>11</sup> Reply to Claimant’s Defence to Counterclaim dated October 9, 2020

<sup>12</sup> Witness Statement of Vincent Paul Mark dated September 17, 2021

<sup>13</sup> Claim No. 360 of 2015

that in order for the doctrine of proprietary estoppel to be effective, *“the promise must be made by the landowner to the person developing the land. A promise from anyone other than the landowner is of no importance.”*<sup>14</sup>

31. The Claimant did provide evidence that the structure, a dwelling house was built on a portion only of Lot 681. The Defendant did not deny that she built a dwelling house and maintained the lot. The Claimant provides photographs of the 14x15 wooden house on Lot 681 which took her some months to build. The Claimant says it is not moveable, the Defendant says that the structure can be moved. The Court has been provided with no expert evidence either way. Likewise the Claimant says that the structure is valued at \$35,000.00 and yet was able to prove receipts for material only in the sum of \$1,449.00. She says she undertook much of the labor.
32. The Claimant has lived on the property at Lot 681 since 2005, to present, a period of more than 16 years, without paying rent or property tax for the land. It is understandable that she did not and does not want to move; but she does say that she knows that Mr. Mark did not give her the property. She simply asserts she has a right to live there for her life.
33. In the all circumstances, however, I do not find that the Claimant has established an equitable interest in Lot 681. In my view, the evidence was clear. She was allowed to occupy the property and permitted to construct a moveable structure, by the Defendant who at the time was not the owner; and who moreover, made it clear to Ms. Rhaburn that she would be required to move when the Defendant asked her to move. This unfortunately makes her no more than a bare licensee.

## **ADVERSE POSSESSION**

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<sup>14</sup> Ibid, at paragraph 29

34. The Claimant asserts at every turn that she was given permission by Mr Mark to move on and occupy Lot 681. At the time, she truly believed that he was the owner of the property. Mr. Mark did not in fact have even a leasehold interest until 2011, and did not own the fee simple title to the Lot until 2019, by virtue of a Minister's Fiat Grant No 370 of 2019.
35. Yet, the Claimant's claim to Lot 681 is said to be that she "***has been in open, peaceful, and uninterrupted possession and occupation of Lot 681 adverse to the entire world for a period exceeding twelve years, so that she is thereby entitled to provisional title by prescription or long possession***"<sup>15</sup> Mr Bradley for the Claimant asserts that even though it is not framed in that way, this claim is in the alternative to the claim for an equitable interest.
36. I have already accepted that the Claimant began to occupy Lot 681 in 2004, and that she did so, and accepts that she did so with the permission of Mr. Mark. That fact already makes questionable any ***animus possidendi*** that Ms. Rhaburn would need to prove in order to ground a claim for adverse possession.
37. But even before Ms. Rhaburn crosses that hurdle, she would need to prove continuous and undisturbed factual possession for a period of years. At that time, the property was held on a lease by Mr. Mark's mother. In 2011, Mr. Mark was added as a leaseholder and in 2018, he was granted permission from the Government of Belize to purchase the property via a letter dated 23 August 2018 and attached to his witness statement.<sup>16</sup> In September of 2019, after payment of the purchase price of \$800.00 Mr. Mark was issued with a Minister's Fiat Grant No. 370 of 2019 for Lot 681 in Hopkins Village.<sup>17</sup>

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<sup>15</sup> Statement of Claim, page 9 at #3 of the Claimant's claims

<sup>16</sup> Witness Statement of Vincent Paul Mark at Annex 2

<sup>17</sup> Ibid, at Annex 1

38. In order to be able to acquire Lot 681 by adverse possession, the Claimant, Ms. Rhaburn is required to show open, peaceful continuous and undisturbed possession, acting as the owner, and for a 30-year period pursuant to the Law of Property Act. The land is unregistered land and therefore the Registered Land Act does not apply to Lot 681.
39. According to Section 42 (1) of the Law of Property Act, :***“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 favor of the person who has had such possession.”***<sup>18</sup>
40. Prior to 2019, the owner of the property was the Government of Belize. The Claimant is unable to obtain a declaration of title acquired by adverse possession in respect of Lot 681 because she cannot show factual possession of the property for 30 years.

## THE LIMITATION ACT

41. The Defendant in this Claim, Mr. Mark held only a leasehold title to Lot 681 prior to September 2019. Until then, as noted, the owner was the Government of Belize. Adverse possession can only be asserted against the owner of the property. In 2019, The Claimant did not have requisite period of occupation necessary, even if she could prove the will to possess.
42. The Limitation Act limits the time in which actions to recover land must be brought and extinguishes title at the expiration of that period. Sections 12 of the Limitation

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<sup>18</sup> Law of Property Act, Chapter 190 of the Laws of Belize, Section 41(1).

Act provides that: “12.—(1) *No action shall be brought by the State to recover any land after the expiration of thirty years from the date on which the right of action accrued to the State or, if it first accrued to some person through whom the State claims, to that person,*

*Provided that an action to recover foreshore may be brought by the State at any time before the expiration of sixty years from the date on which the right of action accrued to the State, and where any right of action to recover land, which has ceased to be foreshore but remains in the ownership of the State, accrued when the land was foreshore, the action may be brought at any time before the expiration of sixty years from the date of the accrual of the right of action, or of thirty years from the date when the land ceased to be foreshore, whichever period first expires.*

*(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,*

*Provided that, if the right of action first accrued to the State 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 State or of twelve years from the date on which the right of action accrued to some person other than the State, whichever period first expires.*

43. However, since this Court has already determined that the Claimant has failed to prove adverse possession of the property, her claim fails likewise under this heading.
44. The Claimant is not entitled to possession of Lot 681. The Defendant has counterclaimed for damages including for trespass, but provided the Court with no

evidence in respect of this counterclaim. In any event, he only gave Ms. Rhaburn Notice to Quit in 2020, and consequently, I will make no order for the same.

**ORDERS**

45. The following Orders are made:
- (a) The Defendant is entitled to possession of Lot 681, Hopkins Village, Stann Creek District Belize;
  
  - (b) The Claimant shall deliver up possession of Lot 681 to the Defendant and shall remove her dwelling house placed on the said lot within 6 months; unless the Defendant offers instead to purchase the same and the Claimant agrees, in which case, a fair market value shall be arrived at as established by a reputable land valuator as agreed between the parties.
  
  - (c) Costs are to be paid by the Claimant to the Defendant as agreed or taxed.

DATED THIS 22<sup>nd</sup> DAY OF FEBRUARY, 2022.



**LISA M. SHOMAN**  
**JUSTICE OF THE SUPREME COURT**