

**IN THE SUPREME COURT OF BELIZE, A.D. 2013**

**CLAIM NO. 149 OF 2011**

	<b>(GAYBURN MARTINEZ</b>	<b>CLAIMANT</b>
<b>BETWEEN</b>	<b>(AND</b>	
	<b>(ERNEST MARTINEZ JR.</b>	<b>DEFENDANTS</b>
	<b>(GENECO MARTINEZ</b>	

***BEFORE the Honourable Madam Justice Michelle Arana***

**Mr. Edwin Flowers, S.C., for the Claimant**

**Mr. Mark Williams for the Defendants**

**J U D G M E N T**

1. This is a Claim for a declaration of title in favour of the Claimant, Gayburn Martinez, to a parcel of land in Dangriga, South Registration Section, Block 31, Parcel 1817. His claim is based on a Minister's Fiat Grant No. 178 of 2000 issued to his late father in 2000 and passed on to him by way of a Grant of Probate of his father's Will in 2010. Gayburn Martinez also seeks an order that the Defendants Ernest Martinez Jr. and Geneco Martinez vacate the said property

and pay damages to him for trespass. The Claimant and the Defendants are brothers who had the same father, Ernest Martinez Sr., but had different mothers.

2. The Defendants claim that they are the rightful owners to the property in question and they base their claim on a Deed of Assignment dated 1974 between their mother Juanita Martinez and a building society known as Reconstruction and Development Ltd (RECONDEV). They also claim that they have been in continuous and undisturbed possession of the land from 1995 up to the present time; that they pay taxes on the land and that they collect rent from letting the ground floor of the property. The Defendants ask that the claim be dismissed with costs.

### **The Issue**

3. The only issue in this case is who is the legal owner of this property; is it the Claimant or is it the Defendants?
4. The Claimant's claim is grounded in the Grant of Probate issued to him by the Supreme Court in 2010. His father the late Ernest Martinez Sr. had obtained a Lease Fiat Grant from the Ministry of Lands in 2000 vesting in him title to this property Dangriga South

Registration, Block 31, Parcel 1817 which was formerly known as Lot No. 765B. The Claimant submits that the Deed of Assignment that was signed by Mrs. Juanita Martinez and RECONDEV on 30<sup>th</sup> June 1973 (on which the Defendants base their root of title) was never recorded and therefore not valid. In support of this contention Learned Counsel for the Claimant cites Section 83 of the General Registry Act, Chapter 327 of the Laws of Belize as follows:

**83.** *“All deeds made prior to 15<sup>th</sup> December, 1888, but after 18<sup>th</sup> February, 1857, and not duly proved and recorded, and every mortgage by deposit of deeds without writing shall be judged fraudulent and void in any court of Belize against any subsequent purchaser or mortgagee for valuable consideration who first records his deed or against any creditor who has actually seized or levied execution under any process of law.”*

5. The Claimant further argues that even if the Deed of Assignment were valid, it was an assignment of a 20 year lease of national land which had been issued by the Government of Belize on February 17<sup>th</sup>, 1973. That term expired in 1993 and was never renewed. RECONDEV had a mortgage over the leasehold interest in this property held by one Theodora Norales. Ms. Norales defaulted on her

payments to RECONDEV. Mrs. Juanita Martinez mother of the Defendants then paid RECONDEV for the leased land. That land was then conveyed to Mrs. Juanita Martinez by RECONDEV and held on trust for the Defendants and their sister Angelina Martinez (now deceased) who were all minors at the time. The Deed of Assignment between Mrs. Juanita Martinez and RECONDEV specifically stated that upon payment by Mrs. Juanita Martinez to RECONDEV of the sum of \$3,319.40, RECONDEV assigned to Mrs. Martinez:

*“All and singular the property described in the Schedule hereto to hold the same unto the Purchaser in trust for the Beneficiaries **for all the residue now unexpired of the term created by the lease** subject to the agreements and conditions therein contained.”*

As it was the residue of the term of years that was held in trust for the Defendants and their late sister, and that term of 20 years expired in 1993 and was never renewed or extended by the Government of Belize, the Claimant argues that the leasehold interest lapsed and the Defendants have no claim to the property.

6. On the issue of prescription, the Claimant submits that since the Deed of Assignment was invalid since 1993, the land reverted to the Government of Belize in that year. He further submits that the Defendants cannot fulfill the requirements of Section 12 of the Limitation Act, Chapter 170 of the Laws of Belize, which mandates that the Defendants prove that they have been in continuous and undisturbed possession of the property for thirty years:

***Section 12(1)***

*“No action shall be brought by the Crown to recover any land after the expiration of thirty years from the date on which the right of action accrued to the Crown or, if it first accrued to some person through whom the Crown claims, to that person...”*

7. It is further argued on behalf of the Claimant that time could only have begun to run in favour of the Defendants from the 19<sup>th</sup> March, 2000, the date when Ernest Martinez Sr. obtained the Minister’s Fiat Grant. Twelve years had not elapsed (from the date of the Fiat Grant up to the time of filing this claim) as required by Section 12(2) of the Limitation Act, Chapter 170 of the Laws of Belize:

**Section 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...”*

Gayburn Martinez received the Grant of Probate through which he was given this property by his late father on June 8<sup>th</sup>, 2010. He was issued a Land Certificate to the property on July 27<sup>th</sup>, 2010 when the area was declared under the Registered Land Act. In 2010 he brought an action to evict the Defendants from the property in the Magistrate Court in Dangriga and on 14<sup>th</sup> March, 2011 he brought this action in the Supreme Court.

8. On behalf of the Defendants it was argued that, notwithstanding the grant of a Fiat to Ernest Martinez Sr. and the subsequent issuance of a Land Certificate to the Claimant, that title is not indefeasible and is subject to rectification pursuant to Section 143 of the Registered Land Act Chapter 194:

**Section 143(1)**

*“Subject to subsection (2) the court may order rectification of the register by directing that any registration be made, cancelled or amended where it is satisfied that any registration, including a first registration, has been obtained, made or omitted by fraud or mistake.”*

Counsel for the Defendants submits that to substantiate this assertion of fraud or mistake, he relies on the following facts and circumstances:

- i) The Executrix of the estate of the Deceased (Ernest Martinez Sr.) is a person who had a common law relationship with the Claimant and at one time occupied the said land jointly with the Claimant and the Deceased.
- ii) The said Executrix at all material times was an employee of the Lands Department (in Stann Creek) and had specific knowledge of the execution of the Deed of Assignment by RECONDEV in favour of Juanita Martinez in trust for the Defendants.

iii) The Deceased himself was very much aware of the said Deed of Assignment and consented to a Court Order that he should vacate the said land and to that extent he was estopped from denying the title or right of the Defendants to the said land.

9. Counsel for the Defendants also submits that when the Deceased and the Claimant obtained title to the land, they were well aware that the Defendants were in occupation of the land. It is argued that the Claimant's title was therefore subject to the overriding interest of the Defendant, even though that interest was not noted on the Register as required by Section 31 of the Registered Land Act:

**Section 31**

*“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.*



The Defendants state that the Claimant and his predecessor in title would therefore have taken their title subject to the unregistered incumbrance to the creation of which they had both been privy.

10. Counsel for the Defendants further argues that since the Defendants have been in exclusive, continuous and undisturbed possession since 1995, they have acquired title by prescription. This possession can be traced to that of Theodora Noralez since the year 1973.

### **Decision**

11. Having listened to the testimony of the Claimant Gayburn Martinez and of the Defendant Geneco Martinez, I find that the evidence presented in court does not in any way bear out these allegations of fraud or mistake. Unlike the strong evidence of fraud which was present in ***William Quinto v. Santiago Castillo Ltd.*** (Belize) [2009] UKPC 15 as cited by Learned Counsel for the Defendants in his written submissions where the Privy Council found that specific actions on the part of Ann Williams (for example obtaining payment to the parcel of land in question and selling it to Santiago Castillo knowing she did not have title to it) demonstrated her fraudulent intent, I find that there is absolutely no evidence of fraud in this case

on the part of the Claimant or his father. While it is true that the Claimant admitted under cross-examination, albeit reluctantly, that he had heard of the existence of the Deed of Assignment on which the Defendants base their claim to this property, the fact of his knowledge by itself could never amount to fraud. It was conceded by the Claimant that his common law wife worked at the Lands Department in Stann Creek and it was suggested to the Claimant that it was she (one Ms. Aguilar) who assisted his father in obtaining the Grant Fiat in 2000. The Claimant denied this. But even if Ms. Aguilar helped the late Ernest Martinez to obtain his Fiat Grant, where is the evidence of fraud? Fraud must be specifically pleaded and proven. There is no evidence of fraud in this case.

12. The same can be said of mistake. In the Quinto case cited above, the Privy Council found that there was evidence of a mistake on the part of the Registrar which consisted of “the erroneous belief that Ann Williams rather than the Quintos had title to Parcel 869 at the time of the initial registration in Ann Williams favour.” In the case before me, apart from the bald assertion of a mistake in the written submissions, there is absolutely no evidence of a mistake to support this claim.

13. In relation to the issue of overriding interest, I find that this is the strongest argument in favour of the Defendants' claim. It is clear from Section 31 of the Registered Land Act cited above that the law states that the title to registered land is subject to the overriding interests as set out in that section, *even though* such interests are not recorded on the register. In his written submissions Learned Counsel for the Defendants sets out an excerpt on overriding interests from **Gibson's Conveyancing** Twenty First Edition, page 48 and 49, which I find particularly instructive:

*... "The first point to observe is that the overriding interest is the right of the person in actual occupation, not the occupation itself. Second, the right must be a right of property, not a mere personal right (such as, for example, a right to sue damages for breach of covenant). Third, the rights are overriding interests even though the occupation is not such as to put any purchaser upon notice; hence it seems that a purchaser should enquire of everyone living in the property (even though quite clearly member's of the vendor's family or licensees) whether they claim any proprietary interest.*

14. I find that the interest that the Defendants held in the property was an equitable interest by virtue of the Deed of Assignment between RECONDEV and their mother Mrs. Juanita Martinez in 1973. I fully agree with the submission of Learned Counsel for the Claimant that that Deed conveyed the residue of the leasehold interest in the property to Mrs. Martinez on trust for the Defendants and their sister. I also agree with the Claimant's submission that when the lease came to an end 20 years later in 1993, it was never extended or renewed by the Government of Belize so that was the end of the Defendants' legal and equitable interest in the land. The property reverted to the Government which proceeded, quite rightly, in my view, to issue the father of the deceased with Grant Fiat in 2000. There was therefore no overriding interest in existence belonging to the Defendants at the time that title was issued to the Claimant.

15. The Defendants also cannot succeed on the claim of prescription. I agree with the Claimant's argument that in claiming prescriptive title as against the interest of Ernest Martinez Sr., time runs not from 1995 as contended by the Defendants, but from 2000 when the late Ernest Martinez obtained his Fiat Grant from the Government of Belize. Twelve years have not yet passed from the time of this Grant to the

time this claim was brought in 2011, and there has clearly not been undisturbed possession on the part of the Defendants since the Claimant sought to evict the Defendants through the Magistrate Court in 2010. Similarly, the Defendants cannot prove that they have been in possession for thirty years in order to claim title against the Government. Their interest came to an end in 1993 and not only has the government issued legal title to the Claimant's father since that date, but 30 years have not yet elapsed to ground such a claim.

16. I therefore find that the Claimant Gayburn Martinez is the rightful owner of this property and I grant the following relief:-

i) A declaration that the Claimant Gayburn Martinez is the registered proprietor of the parcel of land in Dangriga South Registration Section, Block 31, Parcel 1817.

ii) An order that the Defendants Ernest Martinez Jr. and Geneco Martinez vacate the property Dangriga South Registration Section, Block 31, Parcel 1817.

iii) Damages for trespass in the sum of \$400 per month (rent collected by the Defendants from tenant on the property) from August 1<sup>st</sup>, 2010, the date when the Claimant received his Land Certificate from the Government of Belize up to the present date, \$400 per month x 31 months, amounting to \$12,400.

iv) Costs to be paid by the Defendants to the Claimant to be agreed or assessed.

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**Michelle Arana**  
**Supreme Court Judge**

***Dated this 25<sup>th</sup> day of February, 2013***