

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

**CONSOLIDATED CLAIMS**

**Claim No. 246 of 2009**

**BETWEEN (GEORGE HEUSNER (Administrator CLAIMANT  
(of the estate of Julia Felipa Heusner)  
AND (  
(NAZIRA UC ESPAT a.k.a DEFENDANT  
(NAZIRA ESPAT UC  
(WATERS INVESTMENT LIMITED INTERESTED PARTY**

**Claim No. 247 of 2009**

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(of the Estate of Julia Felipa Heusner)  
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(of the Estate of Julia Felipa Heusner  
AND (  
(JOSE LUIS UC ESPAT DEFENDANT  
(WATERS INVESTMENT LIMITED INTERESTED PARTY**

**BEFORE The Honourable Madam Justice Michelle Arana**

**Mr. Darrell Bradley for the Claimant  
Mr. Michel Chebat, S. C., of Chebat and Co. for the Defendants  
Mr. Eamon Courtenay, S. C., and Mrs. Ashanti Martin of Courtenay  
Coye and Associates for the Interested Party**

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

**Background**

1. This action began by way of Fixed Date Claim form dated March 18<sup>th</sup>, 2009 by the Claimant George Heusner, as Administrator of the Estate of Julia Felipa Heusner before Muria J. who made certain preliminary orders including the consolidation of all three claims. The substantive case began in my court on October 11<sup>th</sup>, 2011 and was adjourned to June 7<sup>th</sup> 2012 when the matter concluded. Delays were largely due to changes in Counsel for the various parties. Closing submissions were due on July 30<sup>th</sup>, 2012. All parties agreed to an extension of time and deadline was extended by the court to January 2013. Submissions on behalf of the Defendants were received on January 15<sup>th</sup>, 2013 and on behalf of the Interested Parties on January 16<sup>th</sup>, 2013. To date, the Court has not received any closing submissions on behalf of the Claimant.

2. The Claimant sought the following relief as per the Fixed Date Claim Form:

- i)** A Declaration that the Estate of Julia Felipa Heusner is the owner of lands now situated on Block 45 Parcel 1337 Albert/Mesopotamia Registration Section Belize City, Belize which is now a portion of what formerly was the Northern portion of Lot No. 1797 situated at the Corner of Cemetery Road and Euphrates Avenue, Belize City, Belize;
- ii)** Possession of all those pieces or parcels of land situated on Block 45 Parcel 1337 Albert/Mesopotamia Registration Section, Belize City, Belize which is now a portion of what formerly was the Northern portion of Lot. No. 1797 situated at the Corner of Cemetery Road and Euphrates Avenue, Belize City, Belize;
- iii)** A Declaration that the Defendant is not entitled to enter, use, occupy or in any way deal with the lands situated on Block 45 Parcel 1337 Albert/Mesopotamia Registration Section, Belize City, Belize which is now a portion of what

formerly was the Northern portion of Lot. No. 1797 situated at the Corner of Cemetery Road and Euphrates Avenue, Belize City, Belize;

- iv)** An Injunction restraining the Defendant whether by herself or by her servant or agent from entering, using, occupying or in any way dealing with the lands situated on Block 45 Parcel 1337 Albert/Mesopotamia Registration Section, Belize City, Belize which is now a portion of what formerly was the Northern portion of Lot. No. 1797 situated at the Corner of Cemetery Road and Euphrates Avenue, Belize City, Belize;
- v)** Mesne profits;
- vi)** Damages for trespass;
- vii)** Such other relief as the court deems fit;
- viii)** Costs;
- ix)** Interest.

3. The Defence to the Claim is that the Defendants are bona fide purchasers for value without notice and that the Claimants are therefore not entitled to any of the relief which they seek. The Interested Parties purchased the properties from the Defendant and they also claim to be bona fide purchasers for value without notice.
  
4. I must say at the outset that this is one of the most convoluted matters I have ever had the pleasure of adjudicating over. This is so, not because of the intricacies of the legal issues involved, but because of the large amount of relevant facts and the difficulty in marshalling them in proper sequential order. I am therefore more than grateful to Counsel for the Interested Parties Mrs. Ashanti Martin for the timeline of events which she produced in her closing submissions. I have adopted this timeline for ease of reference with only minor adaptations to conform to the evidence as it unfolded in Court.

### **The Facts**

5. <b><u>DATE</u></b>	<b><u>EVENTS</u></b>
24 <sup>th</sup> October 2000	Julia Felipa Heusner (mother of George Heusner, Leah Marshall nee Heusner and Julie Amelia Heusner) transfers title to Lot

1797 to her daughter Julie Amelia Heusner by virtue of a conveyance dated October 24<sup>th</sup>, 2000.

18<sup>th</sup> December 2000 Julia Felipa Heusner transfers title to the Northern portion of Lot 1797 by virtue of a conveyance dated 18<sup>th</sup> December, 2000 to Julie Amelia Heusner.

3<sup>rd</sup> January 2001 Deed of Rectification executed by Julia Felipa Heusner and Julie Amelia Heusner to correct the description of the Northern Portion of Lot 1797 as described in the Conveyance dated 18<sup>th</sup> December, 2000.

29<sup>th</sup> January 2001 The Northern Portion of Lot 1797 is mortgaged to Barclays Bank by Julie Amelia Heusner.

February 2001 Nazira Espat Uc and Jose Luis Uc Mena (her husband) are approached by one Mr. Café, a tenant, at Lot 1797 regarding the sale of that

lot. Mrs. Uc met with Julie Amelia Heusner who agreed to sell her the property.

16<sup>th</sup> March 2001 An agreement for purchase of a portion of Lot 1797 is executed between Mrs. Nazira Espat Uc and Julie Amelia Heusner.

22 March 2002 An agreement for purchase of the eastern portion of Lot 1797 is executed between Nazira Uc Espat (daughter of Nazira Espat Uc) And Julie Amelia Heusner.

22<sup>nd</sup> March - Nazira Espat Uc pays \$50,000 to Julie  
28<sup>th</sup> June 2002 Amelia Heusner; \$40,000 is by bank draft from Scotia Bank.

22<sup>nd</sup> April 2002 Barclays Bank writes to Commissioner of Lands consenting to the subdivision of Lot 1797.

14<sup>th</sup> June 2002 A portion of Lot 1797 is surveyed by C. W. Arnold licensed Land Surveyor at the request of Julie Amelia Heusner.

29<sup>th</sup> June 2002 Nazira Espat Uc, Mr. Café and Julie Amelia Heusner attend at the law office of Pitts and Elrington where Nazira Espat Uc pays \$16,500 that was owed by Julie to Mr. Café. She later that same day paid Julie \$58,500.

29<sup>th</sup> July 2002 Julia Felipa Heusner institutes Action No. 386 of 2002 against her daughter Julie Amelia Heusner seeking to set aside the Conveyance dated 18<sup>th</sup> December, 2000 on the ground of fraud.

3<sup>rd</sup> July 2002 - The Ucs pay a further \$54,400 to Julie  
23<sup>rd</sup> November 2002 Amelia Heusner by five payments.

July 2002 Marie Heusner, wife of the Claimant, meets Nazira Espat Uc at the property and informs her that Julie Amelia Huesner does not have title to the property. (Under cross examination Mrs. Uc denies meeting Marie Heusner in March 2002. She says she met Marie in July



2002 on the property and informed Marie that the property had been sold.)

August 2002

Letter from Adolph Lucas Sr. Attorney at Law (as he then was) is sent to Nazira Espat Uc indicating that a claim has been filed challenging the validity of the December conveyance based on fraud. (At trial Mrs. Espat denied receiving this letter.)

5<sup>th</sup> November 2002

Julia Felipa Heusner dies.

27<sup>th</sup> December 2002

Final approval of the survey of a portion of Lot 1797 is granted.

24<sup>th</sup> March 2003

George Heusner obtains Letters of Administration in the estate of his mother Julia Felipa Heusner.

13<sup>th</sup> October 2004

Julie Amelia Heusner conveys title to the eastern portion of Lot 1797 to Nazira Espat Uc for \$50,000.

- 7<sup>th</sup> December 2004      George Heusner is added as a party to Action 386 of 2002 (on behalf of the Estate of Julia Felipa Heusner) against his sister Julia Amelia Heusner.
- 17<sup>th</sup> January 2006      Authenticated survey of a portion of Lot 1797 by C. W. Arnold shown as Entry No. 9526 in Reg. No. 25.
- 26<sup>th</sup> May 2006          Julie Amelia Heusner conveys title to the property surveyed as Entry No. 9526 to Nazira Espat Uc for \$75,000.
- 24<sup>th</sup> October 2007      The Ucs apply for First Registration of Parcels 97 and 1337.
- 1<sup>st</sup> December 2007      Julie Amelia Heusner and Nazira Espat Uc enter agreement for the purchase of the Northern portion of Lot 1797.
- 12<sup>th</sup> January 2008      Nazira Espat Uc (the mother) is registered as the proprietor of Parcel 1337.

12<sup>th</sup> January 2008 Nazira Uc Espat (the daughter) is registered as the proprietor of Parcel 97.

May 2008 First Caribbean International Bank (F.C.I.B. formerly Barclays Bank) publishes notice of intention to sell the Northern portion of Lot 1797 in the Amandala Newspaper.

Mrs. Uc learns of Ms. Heusner's default in servicing her loan and informs the bank's attorney's Barrow and Williams of her arrangement with Ms. Heusner.

February 2008 – Nazira Espat Uc pays \$57,000 to  
May 2008 Barrow and Co., attorneys for F.C.I.B., in satisfaction of Ms. Heusner's loan.

9<sup>th</sup> May 2008 Nazira Espat Uc pays \$3,063 to F.C.I.B. as legal and auction fees in respect of Ms. Heusner's loan obligations.

16<sup>th</sup> May 2008 F.C.I.B. releases Ms. Heusner from her loan and returns her title documents to her by letter.

16<sup>th</sup> July 2008 Jose Luis Uc Espat is registered as proprietor of Parcel 1336.

22 December 2008 Chief Justice Conteh (as he then was) gives judgment for the Claimant in Action 386 of 2002 and declares the 18<sup>th</sup> December, 2000 Conveyance to be fraudulent.

December 2004 – November 2008 Nazira Espat Uc makes almost 200 payments to Julie Amelia Heusner and/or her agents totaling \$49,665.12.

February 2009 Hans and Nandini Bhojwani enter discussions with Nazira Espat Uc for the purchase of Parcels 97, 1336 and 1337.

11<sup>th</sup> February 2009 Samira Musa Pott (attorney for the Bhojwanis) conducts a title search at the Lands Registry which confirmed that

parcels 97, 1336 and 1337 were all unencumbered.

- 17<sup>th</sup> February 2009      The Ucs and the Bhojwanis (and assigns) entered into a written agreement for the purchase of parcels 97, 1336 and 1337 for \$415,000.
- 12<sup>th</sup> March 2009        Musa and Balderamos, attorneys for George Heusner, wrote Mr. and Mrs. Uc informing them of the decision in Action 386 of 2002.
- 17<sup>th</sup> March 2009        George Heusner institutes Claim No. 247 of 2009 claiming various declarations as to the ownership of Parcel 97.
- 27<sup>th</sup> March 2009        The Ucs and Waters Investment Limited (a company owned by the Bhojwanis) complete the purchase, and transfer forms are executed in favor of Waters Investment Limited.

- 31<sup>st</sup> March 2009                      Samira Musa Pott submits the transfer forms to Lands Registry for registration but is unable to register due to a caution that has been lodged against the title by George Heusner.
- 3<sup>rd</sup> July 2009                              Waters Investment Limited is joined as an Interested Party to this claim and given permission to file an Ancillary Claim.
- 23<sup>rd</sup> July 2009                            Waters Investment Limited files an Ancillary Claim.

### **The Issues**

6.     There are only two issues in this case:
- i)     Are the Claimants entitled to the Declarations which they seek?
  - ii)    Are the Defendants bona fide purchasers for value without notice?

### **Issue 1**

7.     **Are the Claimants entitled to the Declarations which they seek?**

### **The Law on Notice**

As set out in the submissions by Learned Counsel Michel Chebat for the Defendants, ***Halsbury's Laws of England*** Volume 16 4<sup>th</sup> Edition paragraph 767 defines Notice as follows:

*“Notice may be actual or constructive. Notice of a prior dealing with or other circumstances affecting property which will defeat a plea of purchase for value without notice may be either actual or constructive. For actual notice to be binding it must be given by a person interested in the property in the course of negotiation.”*

Mr. Chebat went on to cite ***Halsbury's Laws of England*** at paragraph 772 which defines Constructive Notice as:

*“Constructive notice in relation to dealings with land. A purchaser of land without actual knowledge, by himself or his agent, of a matter prejudicially affecting his vendor's title may yet be regarded as having constructive notice of it.*

*Constructive notice has been defined as the knowledge which the court imputes to a person upon a presumption of the existence of the knowledge so strong that it cannot be allowed to be rebutted, either from his knowing something which ought*

*to have put him upon further inquiry, or from his willfully abstaining from inquiry to avoid notice.*

*The doctrine of constructive notice is inapplicable as a rule, to systems of registration in relation to transactions where priority and notice are governed priority in, or the fact of, registration; thus a subsequent purchaser or incumbrancer who gains priority by registering first does not lose priority by actual or constructive notice, but only by fraud.”*

8. On the issue of Notice, I agree with the submissions made on behalf of the Defendants that they had no notice, actual or constructive, of Claim No. 386 of 2002 or of the fraud alleged therein. I accept as true the evidence of Nazira Espat Uc that she never knew of any fraud nor was she a party to any fraud regarding these properties. While it is clear that she may have had some vague idea about a dispute surrounding the property, I believe that when she learnt of the dispute she exercised due diligence in seeking legal advice from two different attorneys (Michael Peyrefitte and the late Richard Stuart) on the matter. She also conducted searches at the Land Registry to further investigate the matter which revealed there were no encumbrances on the land.



9. I also accept as true her evidence that she did not receive the letter that was exhibited by the Claimant as prepared by Attorney at Law Adolph Lucas Sr. for the Claimants informing her that Claim 386 of 2002 *Julia Felipa Heusner v. Julie Amelia Heusner* had been filed in the Supreme Court based on allegations of fraud against Julie Amelia Heusner by her mother.
10. Unlike Julie Amelia Heusner (whose evidence I found on many instances to be vague and unreliable), I found George Heusner's testimony to be forthcoming and honest. I agree with him that in all likelihood, the letter from Attorney Lucas was sent. But this does not prove that Nazira Espat Uc received it, and in light of the subsequent substantial financial expenditure she incurred in paying for that property, I strongly believe on the balance of probabilities that she did not receive it.
11. As Learned Counsel Ashanti Arthurs Martin rightly pointed out in her submissions on behalf of the Interested Parties, even if Mrs. Uc had received that letter, it merely put her on guard as to a dispute concerning ownership of the property. It is not evidence of Mrs. Uc's knowledge of or participation in any fraud. I agree with the submissions made on behalf of the Interested Parties by Mrs. Arthurs

in referring to the reasoning of the Privy Council in William Quinto v. Santiago Castillo Ltd [2009] UKPC 15, where the Board adopted the dicta of Lord Lindley in Assets Company Ltd v. Mere Roibi [1905] 176 at 210 as follows:

*“...fraud which must be proved in order to invalidate the title of a registered purchaser for value, whether he buys from a prior registered owner or from a person claiming under a title certified under the Native Land Acts, must be brought home to the person whose registered title is impeached or to his agents. Fraud by persons from whom he claims does not affect him unless knowledge of it is brought home to him or his agents. The mere fact that he might have found out fraud if he had been more vigilant, and had made further inquiries which he omitted to make, does not of itself prove fraud on his part. But if it be shown that his suspicions were aroused, and that he abstained from making inquiries for fear of learning the truth, the case is very different, and fraud may properly be attributed to him.”*

12. The evidence clearly reveals that Mrs. Uc was never joined as a party to Claim 386 of 2002; that this claim was never served on her and no steps were taken by the Claimant to prevent her (or anyone else) from dealing with the property once that claim had been initiated. When Mrs. Uc learnt of certain issues regarding the property, she did not turn a blind eye to those issues. I find that she took reasonable steps by seeking legal advice from attorneys and investigating the matter at the Land Registry before proceeding with the purchase of these parcels.
13. As the detailed sequence of events set out above illustrates, the history of this property is convoluted. What is clear from the evidence, however, is that by the time Julia Felipa Heusner commenced her action in Claim 386 of 2002 in the Supreme Court against her daughter Julie Amelia Heusner, the sale agreement between Nazira Espat Uc and Julie Amelia Heusner was already completed.
14. I also find that at the time when Julie Amelia Heusner passed title to Nazira Espat Uc on October 13<sup>th</sup>, 2004 (to the property surveyed as Entry No. 6611 being the Eastern portion of Lot 1797), Julie Heusner had good title to the property. The same can be said of the transfer from Julie Amelia Heusner to Nazira Uc Espat of Entry No. 9526 on

26<sup>th</sup> May, 2006. It was only years later on December 22<sup>nd</sup>, 2008 that the Chief Justice declared the December conveyance to be null and void due to fraud. By that date Nazira Espat Uc, her daughter Nazira Uc Espat and her husband Jose Luis Uc Espat had all paid for and received titles to these properties from Julie Amelia Heusner.

15. I therefore agree with the submissions made on behalf of the Interested Parties and of the Defendants that the judgment in Claim No. 386 of 2002 does not affect the title of the Defendants. By the time that judgment was passed Mrs. Uc and the other two defendants had purchased all three parcels and had obtained registered title to these parcels in January 2008 and July 2008 respectively.

## **Issue 2**

16. **Are the Defendants bona fide purchasers for value without notice?**

As submitted by Mr. Chebat for the Defendants, application for First Registration to bring the parcels of land under the Registered Land Act was made by Julie Amelia Heusner relying upon the Deed of Conveyance dated October 24<sup>th</sup>, 2000 and not on the December 18<sup>th</sup>, 2000 Conveyance. The October 24<sup>th</sup>, 2000 Conveyance is the

conveyance by which Julie Amelia Heusner acquired title from her mother and that conveyance was never addressed or challenged in any way in Claim No. 386 of 2002 or in any other claim.

17. In addition, as Mrs. Arthurs-Martin for the Interested Parties rightly indicates, both conveyances of 13<sup>th</sup> October, 2004 and 26<sup>th</sup> May, 2006 between Julie Amelia Heusner and Nazira Espat Uc state that Julie Amelia Heusner was seized of title by virtue of the October 24<sup>th</sup>, 2000 Conveyance in respect to Parcel 97 and 1337. In reference to parcel 1336, this transfer was the result of a purchase directly from First Caribbean International Bank since the bank had foreclosed on the property. Registered title was therefore issued directly from the bank to Mr. Jose Luis Uc Espat.
18. I find that Claim 386 of 2002 affected only the December 18<sup>th</sup>, 2000 Conveyance, and not the October 24<sup>th</sup>, 2002 Conveyance which grounded the title transfer between Julie Amelia Heusner and the Defendants. I agree that that judgment does not affect the title passed to the Defendants. I therefore find that the Defendants are bona fide purchasers for value without notice. The Claimants are therefore not entitled to any of the relief which they seek and the Claim is therefore dismissed.

## **Ancillary Claim**

19. As no defence to the Ancillary Claim has been filed, judgment is given for the Interested Parties on the Ancillary Claim in terms of the relief sought.

Having dismissed the Claim, I grant the Defendants the following relief on the Counterclaim:

- i)** Declaration that the Defendants Nazira Espot Uc, Nazira Uc Espot and Jose Luis Uc Espot are bona fide purchasers for value without notice;
- ii)** Declaration that none of these Defendants participated in or were aware of any fraud committed by Julie Heusner or at all;
- iii)** Declaration that the said Block 45 Parcel 97 Albert/Mesopotamia Registration Section, Belize City, Belize has been lawfully sold to Hans and Nandini Bhojwani;
- iv)** An order of the Court requiring the Registrar of Lands to remove cautions placed by George Heusner on the said parcels of land;

- v) An order of the Court requiring the Registrar of Lands to issue titles in the names of Hans and Nandini Bhojwani or their assigns;
- vi) Costs to the Defendants and the Interested Parties to be agreed or assessed.

***Dated this 24<sup>th</sup> day of May, 2013.***

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**Michelle Arana  
Supreme Court Judge**