

IN THE SUPREME COURT OF BELIZE, A.D. 2016

CLAIM NO. 652 of 2015

JESSIE STEPHENSON

CLAIMANT

AND

STEPHANIE JONES

DEFENDANT

BEFORE the Honourable Madam Justice Sonya Young

Hearings

2016

7.4.2016

Written Submissions

22.4.2016

Decision

5.5.2016

Mr. Kareem Musa for the Claimant.

Mr. Hubert E. Elrington, SC for the Defendant.

Keywords: Property – Administration of Estates – Grant of Probate – Sale of Property by Beneficiaries – Claim by Occupier – Overriding Interest – Proof of Legal or Equitable interest in the Land – Bona Fide Purchaser for Value – Valuable Consideration – Alleged Fraud in the Process Leading up to Grant – Registered Land Act Cap. 154 (The Act) – Administration of Estates Act Cap. 197 – The Wills Act Cap 203

JUDGMENT

1. The facts of this matter are not seriously in contention. Probate of the Will of Vernon Jones Sr. was granted to Norma Gillett on the 12th

December, 2012. The property in question (The Property) was transferred pursuant to that Will, to Nancy Pelissier, Marcia Edwards and Shirley Jones (The Three Beneficiaries named in the Will) jointly. They, in turn, sold it to the Claimant for \$30,000.00.

2. The Defendant has resided at The Property for a number of years and continues to reside there. She was in fact the wife of the deceased, Vernon Jones Sr. up until the time of his death.
3. The Claimant maintains that she is a bona fide purchaser for value without notice of any defect whatsoever, whether in obtaining Probate or in the transfer of The Property to the persons from whom she purchased. She exhibits her proof of payment and the transfer of land form duly recorded at The Land Registry. She says as such she is entitled to vacant possession of The Property. The Defendant is a trespasser to whom she has given proper notice to quit but who refuses to leave. She asks for possession, damages including mesne damages and costs.
4. The Defendant contends that her marriage to the deceased on 19th August, 2011 revoked his Will dated 11th October, 2008. That is the same Will which Norma Gillett has secured Probate of and under which The Property was distributed. Therefore, the grant ought not to have been made and should be revoked in accordance with section 16(1) of the Wills Act. Further, if the Claimant had only properly inspected The Property as required by law she would have seen that she was in occupation. She is adamant that she was in actual occupation at the time of the completion of the sale of The Property as well as the date of registration. Such occupation, she says, is an overriding interest which

moves with The Property according to The Act. She makes no counterclaim in accordance with the Civil Procedure Rules. An attempt was made to seek certain orders in the Defendant's witness statement through paragraph 25. That paragraph, however, was struck out in its entirety by the court before trial begun. This was done pursuant to Rule 29.5(2) of the CPR.

The Issues:

5.
 1. What is the effect of an unrevoked grant on the sale of devised property.
 2. Is the Claimant a bona fide purchaser for value.
 3. Does the Defendant have an overriding interest in The Property.
 4. Is the Claimant entitled to vacant possession of The Property.
 5. Whether the Claimant is entitled to damages and in what quantum.

What is the effect of an unrevoked grant on the sale of Devised Property:

6. From the date of the testator's death the executor of his will in effect stands in the testator's position by virtue of his appointment under that Will. Once Probate has been proven the executor's position as the representative of the deceased in regard to any real estate, to which he was entitled before his death, is confirmed. So too, is his authority to administer the estate - Admins of Estates Act Cap 157 section 4(3). This duty to administer includes distribution of the estate.
7. The grant of probate is the executor's proof of title and entitlement to act in any court. Williams, Mortimer and Sunnucks -Executors, Administrators & Probate 20th Ed paragraph 40-02 explains:

“Subject to the possibilities of revocation and of rectification a grant of probate (even a grant in common form) is conclusive in the courts of law and equity both as to the appointment of the grantee as executor and as to the validity and content of the Will. This is so even if there is evidence of fraud affecting the process leading up to the grant by the court ...

...In effect for a person to prove entitlement to act as a representative, the court must have exercised its jurisdiction by making a grant of probate or of administration to that person. Such a grant once made is conclusive (until such time as it is revoked). No other court can permit such a grant to be gainsaid and the courts are bound to assume that all documents admitted to probate are testamentary documents.”

8. Therefore, unless and until the grant is revoked the executor maintains the right to deal with the deceased’s estate according to the tenor of his will. Where he assents or transfers property to anyone not being a purchaser (as The Three Beneficiaries are) any person having a right to that property may trace same into the hands of the persons to whom it is vested.

9. However, where the beneficiaries have since transferred said property to a bona fide purchaser for value there is no right to trace the property - Section 43 of The Act. The person claiming a right at this stage may have a remedy against the personal representative himself. But they must be able to prove that the personal representative did not act in good faith or he had notice of some fact which cast doubt on the correctness of the grant made to him. The person claiming a right may also have a remedy against the wrongful recipient of the asset. This, of course, is only effective if the wrongful recipient is solvent. The bona fide purchaser for value on the other hand has absolute title as the conveyance is valid despite even the subsequent revocation of the grant.

Is the Claimant a bona fide Purchaser for value:

10. To qualify as a bona fide purchaser for value, the Claimant must have acted in good faith – no sharp practices or unconscionable conduct. She must also have given valuable consideration whether money/money's worth and the full consideration must have been paid. Part payment will not activate this defence. The defence extends only to the purchaser of a legal estate never an equitable estate. Notice has no effect on registered land. (The Property is registered land).
11. The evidence provided by the Claimant is that she was informed by a friend of The Three Beneficiaries' intention to sell The Property. She visited The Property with that friend. She obviously liked what she saw because thereafter, she met with the owners. They discussed a price, to which she agreed. She paid the entire sum and The Property was duly transferred to her. That transfer was recorded in the land registry. She then tried to get vacant possession of The Property and through her attorneys she served the Defendant with a notice to quit on 12th August, 2015. The Defendant admits receiving same but paid it scant attention. The one month's notice has long expired but the Defendant continues to occupy The Property.
12. The Claimant struck me as honest and forthright and I believed her testimony here. Furthermore, none of this evidence was refuted by the Defendant. Rather, in submission, Counsel raised that the sum of \$30,000 being paid for The Property was a nominal consideration which would not constitute a valuable consideration. He offered nothing in support of this contention.

13. This court is unfamiliar with any such rule and rejects it in its entirety. In fact, even a future marriage has been held to be a valuable consideration. How is one to measure whether such is nominal or otherwise. The Defendant also raised that The Property was not sold for what it is worth. She sets the value at \$150,000 but she herself is not a professional valuator. She offered nothing in support of this contention except her 'say so'. It is likewise rejected in its entirety.
14. Counsel for the Defendant strenuously cross-examined the Claimant about the value of The Property. She admitted to never having it valued and accepted that she did not know its value. She stated simply that she was offered a price which was acceptable to her, so she paid. She had had no previous relations with the sellers nor did she know the Defendant.
15. I could find nothing to indicate that the Claimant was not a bona fide purchaser for value and I hold her so to be.

Does the Defendant have an overriding interest in The Property:

16. The Defendant says she has a right to The Property. She claims first as a beneficiary on intestacy although there is a valid grant of probate in existence. Notwithstanding, even as a beneficiary on intestacy her right, is to one third of the deceased's estate which is not a specific piece of property. The Defendant herself admitted that her deceased husband owned several pieces of property at the time of his death. Even if all the property of the estate is sold, as this particular class of beneficiary, she will maintain her right to the proceeds of sale equivalent only to one third of the value of the estate. This is so because the rights of a beneficiary

are personal. They do not attach in rem to the real property. Her claim here would be against the personal representative for what she is entitled to and nothing else - *Williams & Glyn's Bank v Boland & anor; Williams v Glyn's Bank v Brown*[1980] 2 All ER 408.

17. Williams Mortimer and Sunnucks 16th Edition page 944 outlines the applicable law in Belize where they state as follows:

“Until assent or conveyance, a person interested under the Will or intestacy has an inchoate right transmissible to his personal representatives. He cannot, however, without the authority of the personal representatives, take possession of the property. A residuary legatee has no interest in a definite part of the estate until the residue is ascertained, ... His right which is, of course, transmissible is to have the estate properly administered and applied for his benefit when the administration is complete. The right of a beneficiary claiming on a total intestacy is similar, except that he takes under a Statutory trust for sale and conversion.”

18. Perhaps realizing the inevitable failure of the original assertion, the Defendant next claimed a right based on an agreement she allegedly made with The Three Beneficiaries. She says they agreed that since The Property formed her one third interest in the deceased's estate on intestacy, they would accordingly transfer The Property to her. However, this particular allegation was not pleaded and in accordance with Rule 10.7(1) of the CPR, the Defendant may not rely on any allegation or factual argument which is not set out in the defence. Be that as it may, Counsel for the Claimant cross-examined the witness on this allegation so I felt compelled to address it.

19. Whether there existed an agreement or not, the Defendant brought no proof. The law is clear, no action may be brought upon any contract for the sale or other disposition of and or any interest in land, unless the

agreement upon which such action is brought, or some memorandum or note thereto is in writing and signed by the party to be charged or his lawful agent - section 55(1) Law of Property Act. It is assumed that if such a document existed it would have been exhibited.

20. I consider all of this only because mere occupation of land does not of itself create the existence of an overriding interest under section 31(1)(9) of The Act. The person claiming to have such an interest must have a corresponding legal or equitable interest in the property capable of binding same in the hands of a purchaser. The Defendant stated it well:

“Thus a transferee is bound by the rights or interests of an individual who resides on the premises irrespective of their not being on the register. The interest holder must actually have a proprietary interest over the land present at the time of the transfer and be in actual occupation which should alert the transferee of the possible existence of an overriding interest.” (emphasis mine)

21. The Defendant’s status as wife is not relevant to this case as she has not claimed to have an interest in the property as such. She did say in her defence that without considering her contribution to the development of The Property, she had another right to The Property. Consequently, she presented no evidence at all to show that a trust of some sort existed for her in her deceased husband.
22. It therefore goes without saying that the Defendant has proven no right to a legal or equitable estate in The Property. Her occupation of the land does not create an overriding interest.

Is the Claimant entitled to vacant possession of The Property:

23. The registration of a person as owner of title to registered land vests in that person "*absolute ownership*"- Section 26 of the Registered Land Act Cap. 154. That absolute ownership is subject to few exceptions. The Defendant has proven none, in particular she has not proven an overriding interest. Whether or not the Claimant inspected The Property, before purchase, becomes irrelevant. Had she properly inspected and appropriately enquired, the defendant still would not have been able to inform her of the existence of a legally binding overriding interest. But likewise she would not have had need to bring this claim as she could have demanded vacant possession from the sellers upon whom that burden would have then rested.
24. The Claimant on the other hand has by her registered title proven herself to be absolute owner, as such she is entitled to vacant possession of The Property.
25. Before the Claimant bought The Property the Defendant may or may not have been considered a trespasser. That is irrelevant to the matter at hand. Once The Property was sold and she was given notice to quit, having no interest in The Property which would allow her legally to be present thereon, she becomes a trespasser. An order for her to deliver up possession must necessarily be made.
26. The Defendant also alleges fraud but this is made against The Three Beneficiaries and has absolutely no bearing on this matter. It may be good grounds for an action for the revocation of the grant, but that is not

an issue for this court. What is of concern, however, is the Defendant's own seeming condonation, if not acquiesce, in the alleged fraud.

27. She has admitted knowing of the Will since 2012 and of the alleged fraud since the grant was issued. Yet, she allowed the grant to be issued. She lodged no caution. She made no application to the court to have the grant revoked or to assert her right as a true beneficiary on intestacy. What she admits doing instead is making alternate arrangements for The Property to be transferred to her by The Three Beneficiaries. The very same property which she says they fraudulently obtained. She cannot approach the seat of equity with such unclean hands.
28. It was not open to the Defendant to sit on the fence for years; allow a grant to issue, and the assets distributed; allow The Property to be sold to a third party; then seek to challenge that sale on the ground of a fraud, the furtherance of which she conspired. Her acquiesce or delay however, is no bar to an action for revocation.

Whether the Claimant is entitled to damages and in what quantum:

29. The Claimant claimed damages but never addressed the issue in evidence or in submissions. It is assumed that this claim has been abandoned.
30. The order of the court is as follows:
 1. Judgment for the Claimant.
 2. The Defendant is to deliver up possession of The Property being Parcel 292 situated in Block 4 of the Carmelita Registration Section, which the Defendant currently occupies as a trespasser within six weeks of this Order.

3. Costs to the Claimant in the agreed sum of \$3,000.00.

SONYA YOUNG
JUDGE OF THE SUPREME COURT