

IN THE SUPREME COURT OF BELIZE, A.D. 2018

CLAIM NO: 734 of 2016

BETWEEN

KING'S COMPANY LIMITED

CLAIMANT

AND

SANTA ANA DEVELOPMENTS LTD.

DEFENDANT

**REGISTRAR OF LANDS
ATTORNEY GENERAL**

INTERESTED PARTIES

Keywords: Land; Ownership of Land; Crown Grant; Sale of Land; Deed of Title; Deeds Books; Transfer of Ownership;

Indenture; Conveyance; Descriptions of Land Tracing Root of Title; Description in Recitals of Conveyance and Indenture; Amendment; Survey Maps attached to Titles to Lands.

Register of Title; Mistake; Error; Amendment of Register;

Procedure; Expert Witness; Joint Single Expert; Credibility of Expert.

Before the Honourable: Mr. Justice Courtney A. Abel

Hearing Dates: 08th March 2018
03rd May 2018
06th June 2018.

Appearances:

Mrs. Nazira Myles for the Claimant.

Mr. Edwin Flowers S. C. for the Defendant

Mrs. Samantha Tucker for the Interested Parties.

WRITTEN JUDGMENT
Orally Delivered on the 6th day of June 2018

Introduction

- [1] This is a disputed claim by the Claimant (“**King’s**”) against the Defendant (“**Santa Ana**”) in relation to a 50 acre block of land, the total of which was 172 acres of land (“**the 172 Acres of Land**”) situate in between Mullings River and Mangrove Creek in the Stann Creek District of Belize and which is owned by the Defendant.
- [2] The 50 acres parcel of land in question (“**The 50 Acres Subject Land**”) is said by King’s to be described in a Conveyance dated the 21st day of December 2009 as:
- “ALL that piece or parcel of land comprising of 50 acres approximately situated between Mullins River and Mangrove Creek, bounded on the North by the property now or Formerly of Francis Arnold on the East by the sea and on the West by property now or formerly of Francis Arnold Together with all buildings and erections standing and being thereon.” (“**The 50 Acres Conveyance Land**”)*
- [3] King’s, within the present claim, is arguing that The 50 Acres Subject Land, of which it claims to be the owner, was by error entered on the Register of Titles within the 172 Acres of Land of which Santa Ana has title, and is therefore registered in the Deeds book as owner, and that as a result King’s, now wants such Register amended to show King’s as the owner, and claims to be entitled to such amendment.
- [4] Santa Ana by contrast is arguing that it is the owner of the 172 Acres of Land, with which it is in the Deeds book registered, and that there has been no such error, as alleged by King’s, and that Santa Ana is entitled to retain ownership of the 172 Acres of Land.

Issue

- [5] The issue for determination, as agreed by the parties, is whether the 50 Acres Conveyance Land is located within the 172 acres; or whether it is outside of the 172 acres.

Background

Introduction

- [6] Miguel Reyes is one of the directors of King's.
- [7] King's claims to be the owner of The 50 Acres Conveyance Land by virtue of Conveyance dated the 21st day of December 2009.

The 50 Acres Conveyance Land

- [8] In 1895 Francis Arnold may have purchased The 50 Acres Conveyance Land which was apparently mortgaged.
- [9] By way of Indenture dated the 31st day of March 1960, recorded in Deeds Book Volume 1 of 1960 at Folios 711-714, Francis Arnold may have sold and transferred to Erik Harold Rosen, 50 acres of land which was specifically described in this Deed as 50 acres bounded by the North by lands the property of Francis Arnold, South by the property of Francis Arnold; East by the sea, and west by the Crown Land.

The 172 Acres of Land

- [10] By Grant 7 of 1900, 172 acres of Crown land¹, was entered to Francis Arnold. Attached to this Grant was a plan of the 172 Acres of Land which was described as being situate on the Sea Coast and Mangrove Creek near Mullins River. This was by Conveyance made on the 7th day of July, 1971, between Mary Hyde and Melvan Arnold of the one part and Houston McClain of Freeport, Texas, of the other part.

¹ Tab 25 which is 7 of 1900 and dated the 25th of January, 1900.

- [11] The 172 Acres of Land 172 was then transferred on the 13th of June, 1972, by Houston McClain to Maya Development Limited.
- [12] On the 26th of April, 1978, Maya Development Company transferred the 172 Acres of Land to Charles Ray Edwards of 707 Oriole Lane, Texas.
- [13] On the 8th of July, 1993, Charles Ray Edwards then transferred the 172 Acres of Land to Elaine Edwards.
- [14] On the 19th of January, 2000, Elaine Edwards transferred the 172 Acres of Land to Eugene Joseph Zabaneh,
- [15] Then finally, on the 5th day of September, 2006, Eugene Zabaneh transferred the 172 Acres of Land to Santa Ana.
- [16] In this way Santa Ana became registered in the Register Deeds, as the owner of the 172 acres.

The 50 Acres Conveyance Land

- [17] Now, almost by a parallel course, let's trace the 50 Acres Conveyance Land.
- [18] By Indenture made the 31st day of March, 1960 Francis Arnold Francis Arnold transferred the 50 Acres Conveyance Land to Erik Harold Rosen of Miami which was then described as follows:
- "All that piece or parcel of land situate between Mullins River and Mangrove Creek comprising 50 acres or thereabouts and bounded as follows: On the North by land the property of the Vendor, on the South by land the property of the Vendor, on the East by the Sea and on the West by land the property of the Vendor to hold the same unto and to the use of the Purchaser in fee simple".*
- [19] On the 29th of July 1991, Reymundo Burgos, as Administrator, transferred to Balbina Rosen of Houston, Texas, this same 50 Acres Conveyance Land. This occurred because Erik Harold Rosen died intestate in 1987 and Reymundo Burgos was appointed Administrator of his estate and did declare the 50 Acres Conveyance Land in the Inventory of the Estate.

- [20] Upon Harold Rosen's death, his wife Balbina Rosen was the sole beneficiary of the estate and a vesting assent was executed on her behalf vesting in her the 50 Acres Conveyance Land.
- [21] Upon Balbina Rosen's death, her three daughters, Edita Hulse, Teresa Escalante and Nellie Mendez, who all reside in the USA, became the sole beneficiaries.
- [22] When the beneficiaries became aware of the transfer the 172 Acres of Land 172 to Eugene Zabaneh, the Director of Santa Ana, they caused their attorney at the time, Ms. Velda Flowers, to issue a letter on the 24th of May, 2007, to Mr. Zabaneh notifying him of the sale of the 50 Acres Conveyance Land to Erik Harold Rosen and Balbina Rosen and of their interest in the 50 Acres Conveyance Land.
- [23] Subsequently, on the 26th day of October, 2009, the beneficiaries of the estate of Balbina Rosen entered an agreement for sale and sold the 50 acres Conveyance Land to Miguel Reyes as a portion of Grant 7 of 1900 which was held by Francis Arnold.
- [24] Thereafter, the 50 acres Conveyance Land was transferred to Kings who is registered as the legal proprietor in the Deeds Register.
- [25] Since the transfer to King's of the 50 acres Conveyance Land, it has been paying taxes on the 50 acres Conveyance Land.

General Matters

- [26] All the lands which have been referred to in this case are unregistered land.
- [27] It is not disputed that from the 5th of September, 2006 the Defendants hold a Conveyance of the 172 Acres of Land.
- [28] It's also not disputed that King's holds a Conveyance of the 50 Acres Conveyance Land from the 21st of December, 2009. It is to be noted, however, that this Conveyance obviously postdates, by over three years, the Conveyance of the 50 acres Conveyance Land.
- [29] It is further undisputed that somewhere along the line there is an error either relating to the Claimant's title or the Defendant's title inasmuch as by the tracing of the root of title of both the 50 Acres Conveyance Land and the

172 Acres of Land an error more likely than not has crept in by the way that the Indentures, or Conveyances, were described: whether in the recitals or in the bodies of such Indentures or Conveyance.

- [30] It would appear that there has been a failure, an error, in failing to properly note the sale of The 50 Acres Conveyance Land on the respective titles of Huston McClain, Maya Development Limited, Charles Ray Edwards, Elaine Edwards, and Eugene Zabaneh.
- [31] This error was discovered in 2007, and the estate of Balbina Rosen as well as King's have tried to have the error amended, or rectified by the Lands Department.
- [32] On the 23rd day of September 2014 King's attorney-at-Law, wrote the Registrar of Lands requesting that the error be rectified before any court action is taken.
- [33] There has been not been a reply or any active step to rectify the error.

The Court Proceedings

- [34] The Claimant filed a Fixed Date Claim Form on the 23rd December 2016 in which the Claimant claimed the following reliefs:
1. A Declaration that the 172 acres of land situated in between Mulling River and Mangrove Creek that was transferred to the Defendant includes the 50 acres owned by the Claimant.
 2. A Declaration that the 50 acres of land owned by the Claimant and the 122 acres owned by the Defendant derive from the same title;
 3. A Declaration that the Defendant is the proprietor of only 122 acres of land situated in between Mulling River and Mangrove Creek.
 4. An Order that the Registrar of Lands take the necessary steps to amend the Defendant's title to reflect that the Defendant is the owner of 122 acres of land (only) situated in between Mulling River and Mangrove Creek.
 5. An injunction restraining the Defendant whether by itself, its servants or agents or otherwise howsoever from selling, leasing, registering or otherwise disposing of any of the 50 acres of land of the Claimant.

6. In the alternative, Damages

- [35] In support of its claim the Claimant filed an Affidavit of Miguel Reyes (a Director of the Claimant).
- [36] The First Hearing of the Fixed Date Claim Form was 6th February 2017. It was adjourned to 20th March 2017.
- [37] On the 20th March 2017 a case management conference (CMC) was held and directions were given including for amendment of the pleadings and for witness statements. The CMC was adjourned to 29th May 2017.
- [38] On the 8th May 2017 Eugene Zabaneh and John Hertular filed witness statements for the Claimant. On the 17th May 2017 a further witness statement was filed by Antonia Castillo on behalf of the Claimant.
- [39] On the 29th May 2017 this court gave directions for expert evidence, on the question of the root of title of the subject property, which was to be given by a single expert.
- [40] A pretrial review was fixed for 8th October 2017.
- [41] On the 10th October 2017 a further CMC was held at which further directions were given for the nomination of and, instructions to and completion of evidence of the single expert. The CMC was adjourned to 21st November 2017.
- [42] On the 21st November 2017 the CMC was further adjourned to 11th December 2017.
- [43] On the 11th December 2017 the CMC was adjourned to 14th December 2017 when further directions were given for questions to be put to the Expert. The CMC was adjourned to 12th January 2018.
- [44] On the 12th December 2017 Ms. Yvette Price, Assistant Registrar of Lands, as the joint single expert, filed an expert report.
- [45] On the 16th January 2018 further directions were given to the parties in relation to the joint expert and the trial was fixed for 8th March 2018.
- [46] On the 8th March 2018 Ms. Yvette Price as a single expert provided expert testimony in the case. The Claimant was permitted to call Mr. Arnold as an

additional fact witness and the Defendant was permitted to call Mr. Hurtular to give similar evidence.

- [47] On the 17th April 2018 Mr. John Hertular filed a witness Statement on behalf of the Defendant.
- [48] On the 19th April 2018 Mr. Cecil Arnold filed a witness statement on behalf of the Claimant.
- [49] The trial was continued on the 23rd April 2018.
- [50] On the 3rd May 2018 Mr. Cecil Arnold testified on behalf of the Claimant and Mr. John Hertular testified on behalf of the Defendant.
- [51] Mr. Cecil Arnold was cross-examined extensively. I've already ruled on the evidential value of the evidence of Cecil Arnold which is that he is a witness of fact and as a result this Court will disregard any opinion evidence that he has given and will only give any weight to his evidence insofar as it relates to factual matters.
- [52] The evidence of Mr. Eugene Zabaneh was uncontested as was the evidence of Miguel Reyes.
- [53] The Court had the significant benefit of written submissions from Counsel for Defendant (filed on the 24th May 2018) and Counsel from the Claimant (filed on the 4th June 2018; as well as detailed oral submissions from them both.

Whether the 50 acres Conveyance land is located within the 172 acres; or whether it is outside of the 172 acres?

- [54] I've already outlined the sole issue, stated here, and Counsel for the Claimant submits that the resolution of this issue is to be found as follows:
- (a) within the description of the 50 acres Conveyance Land and the 172 Acres of Land in the title passed on to the Claimant and Defendant respectively; and,
 - (b) within the survey maps attached to the titles which are passed on to the Claimant and Defendant.

- [55] The Defendant, on the other hand, submits that resolution of the issues turns on the recitals in the titles of the 50 Acres Conveyance Land and the 172 Acres of Land.
- [56] In determining how this court ought to proceed in resolving the issues before it, this court has to decide how to treat with the already noted error in the Registrar of Lands by its failure to properly note the sale of The 50 Acres Conveyance Land on the respective titles of Huston McClain, Maya Development Limited, Charles Ray Edwards, Elaine Edwards, and Eugene Zabaneh.
- [57] To cut a long story short, this Court is presented with a choice, a simple choice, whether to accept the evidence of the joint single expert in the case, Ms. Yvette Price, or whether to reject that evidence and to embark on the exercise of itself looking at the descriptions of the 50 Acre Subject Land and the description of the history of the Indentures and Conveyances (down the years from 1887) of the 172 Acres of Land.
- [58] This is in order to make a determination of the issue which is before this Court; that is, whether the 50 acres Conveyance is located within the 172 acres or outside of the 172 acres.
- [59] The single expert has a combined total of 16 years' experience of working at the Lands Registry, and the Lands Title Unit at the Ministry of Natural Resources. She is currently the Assistant Registrar of Lands at the Lands Registry, and which post she has now held for the last seven years.
- [60] I will now refer to the conclusions which this witness found and which this Court accepts. It is as follows:

"The first main conclusion that can be drawn from the investigation into the Claimant's and Defendant's title is that 172 acres of land situated in between Mulling (or Mullins) River and Mangrove Creek supposedly transferred to the Defendant does not appear to include the 50 acres claimed by the Claimant".

- [61] This expert witness goes on to give her reasons for these findings. She

traces the Claimant's title and she opined as follows in No. 4 of her reasons for her findings as follows:

“Only a Grant No. 6 of 1884 dated 6th December, 1884, to Dugald Taylor for 100 acres at Mullins River was confirmed. The reference to this Grant was provided by the Defendant in its instructions to the expert. No other record of a Grant for Dugald Taylor for lands in Mullins River was found.”

[62] The expert goes on in her second main conclusion to opine as follows:

“The second main conclusion that can be drawn from the investigation into the Claimant's and Defendant's title is that any title of the Defendant to the 172 acres could have only been derived from Grant No. 7 of 1900 in the name of Francis Arnold. It is to be noted, however, that tracing the Defendant's title to the 172 acres leads to a Conveyance from the personal representatives of trustees of a trust of land created by Francis Arnold (See No. 12, 15 and 17 of Table 2). However, the lands the subject matter of the trust mentioned are the lands bought by Mr. Arnold from James Currie. No trust by Francis Arnold of the lands comprised in Grant No. 7 of 1900 was found”.

[63] The third main conclusion that the expert found was as follows:

“If there is any overlap of claim to ownership of lands between the Claimant and Defendant, this overlap is in respect of lands, the title to which traces back to Grant No. 6 of 1884”.

[64] The expert then went on to provide her reason for making her finding, of importance to this particular case, where she, the expert, stated as follows:

“The Defendant's title describes four pieces of land. One of these lands is described as 65 acres comprised in Grant No.

6 of 1899. The reference to 1899 appears to be a mistake and the correct reference should be 1884 as per the description in the Conveyance between Elaine Edwards and Eugene Zabaneh and the descriptions in the earlier conveyances".

- [65] It's clear from the reasons for the findings of the expert that, from her investigations, she identified the mistake which both parties agree is likely to have occurred in the descriptions of these properties.
- [66] This Court has listened very carefully to the very extensive and detailed cross-examination of Ms. Yvette Price and has concluded that such cross-examination certainly did not discredit Ms. Yvette Price such that this Court should disregard or otherwise not rely on her evidence. On the contrary, this Court found that Ms. Yvette Price, as a disinterested expert, had correctly opined on the question which she was asked to opine upon, which is the root of title of the property the subject of the present proceedings, being the 50 Acres Subject Land.
- [67] This Court has listened very carefully to the submissions of Counsel for the Claimant, and of course Counsel for the Defendant, and could find no proper basis on which it could disregard the evidence of the expert witness; as this Court found her evidence both credible and indeed compelling.
- [68] By the same token, in the face of such evidence, this Court is unwilling and sees no benefit in disregarding such evidence of the expert and itself relying on the descriptions of the 50 Acres Conveyance Land and the 172 Acres of Land, and the survey maps attached to the titles of such lands.
- [69] Nevertheless, this Court did look at such descriptions and when faced with the reasons for the findings of the expert (that there was no overlap of claim to ownership of lands between the Claimant and the Defendant) could find no credible basis on which to agree with the Claimant's submissions.

- [70] In any event, it seems to this Court that the only way in which the Claimant's case can have any kind of validity or cogency would be based on the finding that the opinion evidence of Arnold should be relied upon (upon which this Court has already ruled and has already found that it cannot or ought not to be relied upon).
- [71] In conclusion, this Court would dismiss the Claimant's claim and refuse the Declarations and Orders sought, including that the 50 Acres Conveyance Land or indeed the 50 Acres Subject Land be transferred from the 172 Acres of Land, the latter of which the Defendant holds title in the register of Deeds.
- [72] This Court will therefore dismiss any claim that the 50 Acres Conveyance Land or indeed the 50 Acres Subject Land and the 172 Acres of Land is derived from the same root of title.
- [73] Further, this Court dismisses the claim that the Defendant is the proprietor of only 122 acres of land.
- [74] It follows that this Court declines to order, and will not order, that the Registrar of Lands take any steps to amend the Defendant's title to reflect that the Defendant as the owner of 122 acres of land only.
- [75] This court will also therefore refuse the application for an injunction or for damages.

Costs

- [76] Because the Defendant has wholly succeeded it is entitled to its costs.
- [77] Having heard representations from the parties I have determined that the Claimant should pay the Defendant's cost of the Claim as agreed by them or to be assessed by me.

Disposition

- [78] This court will therefore make the following orders:

- (a) The Claimant's claim is dismissed that the 50 Acres Conveyance Land (or indeed the 50 Acres Subject Land) and the 172 Acres of Land is derived from the same root of title.
- (b) The Claimant's claim that the Defendant is the proprietor of only 122 acres of land is dismissed.
- (c) The Claimant shall pay the Defendant's cost of the Claim as agreed between them or to be assessed by me.

The Hon. Mr. Justice Courtney A. Abel

10th October 2018