

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

CLAIM NO. 666 of 2017

CONCEPCION MIS

CLAIMANT

AND

**GLENN JAY MIS
OMARCITO MODESTO MIS**

DEFENDANTS

BEFORE the Honourable Madam Justice Sonya Young

Hearings- 2019

9th & 30th January

Written Submissions

13th February

Oral Submissions

26th February

Decision

26th February

Mr. Leo Bradley Jr for the Claimant/Counter Defendant

Mrs. Rachel Montejo Juan for the 1st Defendant & 2nd Defendant/Counter-Claimant

Mr. Joseph C. Danilezyk for the 2nd Defendant/Counter Claimant

**Keywords: Probate – Estate Property – Possession – Overriding Interest –
Proprietary Estoppel – Adverse Possession – Conversion – Gift before Death
– Restitution – The Administration of Estates Act Cap 197 – The Registered
Land Act Cap 194**

JUDGMENT

1. Concepcion Mis is the administratrix of the estate of Manuel Mis, her deceased husband, and is also the mother of Omarcito and the grandmother

of Glenn Jay Mis. She now seeks the Court's assistance in recovering damages for two vehicles which are in Glenn Jay's possession. She alleges that they actually belong to Manuel's estate. She also wishes to recover possession of property (the Property) currently in Omarcito's possession which she says rightly belongs to the estate. She makes a claim for arrears of rent for the Property, as well, in the sum of \$27,600.00.

2. In his defence Glenn Jay pleads that he had been given the vehicles by his grandfather before he died and that he can prove his ownership.
3. Omarcito denies owing any rent whatsoever. He says he was never a tenant nor was he ever required to pay rent. He has live on the Property for over 21 years and it had been given to him by his father, more than thirty-seven years ago, to build his home on (which he did). He pleads proprietary estoppel, or alternatively, adverse possession and he counterclaims for declarations in this regard.
4. In defence to the counterclaim Concepcion denies the allegations in their entirety. She alleges that Manuel during his lifetime often asked Omarcito for rent but he always refused to pay. She insists that he never gave Omarcito the Property nor did Omarcito build the house. It was built by Manuel with the assistance of several of his sons. She asked that the counterclaim be dismissed with costs.

The issues, as the Court finds them, are:

On the Claim:

5. Against the second Defendant
 1. Whether the Claimant is entitled to possession of the Property

2. Whether the Claimant is entitled to arrears of rent in the sum of \$27,600.00

Against the First Defendant

3. Whether the Claimant is entitled to possession of the two vehicles (Cherokee and Silverado) or damages for conversion or detinue.

On the Counterclaim:

6. 1. Whether a proprietary estoppel exists in favour of the Counter Claimant
2. Whether the Counter-Claimant is in adverse possession of the Property

1. Whether the Claimant is entitled to possession of the Property

7. The Administration of Estates Act section 4 (1) and (3) makes it quite clear that the duly appointed administrator of the deceased's estate has the right to ownership of both the deceased's real and personal estate:

'4. (1) All real estate and personal estate to which a deceased person was entitled for an interest not ceasing on his death shall on his death, and notwithstanding any testamentary disposition thereof, devolve from time to time on the personal representative of the deceased, in like manner as real estate and personal estate at the commencement of this Act devolved in Belize on the personal representative of the deceased.

(3) The personal representatives shall be the representatives of the deceased in regard to his real estate to which he was entitled for an interest not ceasing on his death as well as in regard to his personal estate.'

8. Counsel for the Defendants raised early in their submissions that the Claimant had no standing to bring the Claim. Not only was this improperly raised in submissions, as it had not been pleaded, but there is, exhibited, both the Land Certificate in relation to the Property and the Grant of Administration evidencing, respectively, that Manuel Mis owned the Property and that Concepcion Mis was the duly appointed administratrix of his estate. There is no doubt, therefore, that Concepcion Mis, in her capacity

as administratrix, has a right to ownership of all Manuel's real and personal estate and standing to bring this claim.

9. Ordinarily, legal ownership guarantees a right to possession. However, in the case at bar, the Counter Claimant asserts an overriding interest. He says he either has a proprietary estoppel which the Court must give effect to and he offers a number of options to do so, or alternatively, he is in adverse possession.
10. In order to determine who is entitled to possession, the Court will have to give consideration to the Counterclaim as well, since an affirmative answer to one must necessarily preclude an affirmative answer to the other.

A. Whether a proprietary estoppel exists in favour of the Counter Claimant

11. The author of **Commonwealth Caribbean Land Law at p186** succinctly explains that:

“The doctrine of proprietary estoppel allows a person who develops the land of another in the glare or with the knowledge of the land owner to lay claim to or recover the land together with the developments on the land effected by him. This is possible only if the landowner makes a promise of a grant of the land to the person or stands by and does not assert his title to the land while the person develops the land.”

12. The Court may find it to be unconscionable to allow the landowner to assert strict legal rights in such circumstances. The possibility exists that the landowner's rights may be affected, but he is now deceased. He can not speak on his own behalf and this leaves quite a gap. The Court is, therefore, called upon to make a thorough analysis of all the evidence provided from those who knew him and any action he took in relation to the Property.

13. That evidence must prove that Manuel encouraged Omarcito to believe that he would acquire some right over the Property; that in reliance on this encouragement, Omarcito acted to his detriment and finally that it would be unconscionable for Manuel, or anyone claiming through him, to deny Omarcito the right he expected.

The Evidence:

14. We begin with Omarcito, the Counter Claimant. He was the fourth child of eight born to his parents. He says he left school at nine when he became an unpaid apprentice to his father, Manuel Mis, who was a mason. He worked with him, in this way, for four years, then his father gave him the Property (which was next to the family home) and told him in Spanish: *“this land is yours to build your home and live.”* From then on, he, Omarcito, cleaned and maintained the land.
15. At age fourteen he begun earning and started to construct his home. It took him from 1976 to 1995 to build. During this time he continued to live in the family home until 1995 when he moved into his own home. He has lived there ever since. He recounts how a fire destroyed the family home. His father then assisted him in completing his house so that the family could be accommodated. In exchange he Omarcito assisted Manuel with the reconstruction of the family home which took about one and a half years.
16. Omarcito says that he paid the utilities although both houses were on the same lines. The meters are in his parents’ names. He fenced the Property in 1993 and made renovations in 2010. Under cross examination he said there was no fence dividing the two parcels. He says that he was given the title papers in 1995 but would return them whenever the father wanted to take out

a loan. Such a loan was taken in 1991. As soon as each loan was paid off those papers were consistently given back to him.

17. He has never paid rent, was never a tenant and has invested all of his *“life’s time, great energy and aspirations at the assurance of my father that the lot was mine to build my house on and live there as my own.”* He was never asked to leave the Property by his father and lived there with his wife and children, in absolute harmony with his parents, until his father died. It was then that his siblings begun agitating about his occupation of the Property. Zeny, his sister, by some trickery convinced him to give her the land papers for safekeeping so that they are now in her possession
18. Omarcito finds supports in his counterclaim from his brother, and the eldest child of the union, Orlando Mis. In his witness statement, Orlando says he was present when Manuel gave Omarcito the land as his own to build his house and live there. It took Omarcito almost nineteen years to fully complete. Omarcito got married in 1994 and moved in in 1995. He says Omarcito always lived there and was never required to pay rent. He thinks this attempt to remove Omarcito is his sister Zeny’s doing and it is totally unfair and unreasonable.
19. From the evidence, Orlando seems to have lived between his grandparents and his parents for sometime. Zeny testified to only knowing he was her brother when she was 7 years old. He, Orlando, said he moved out of the family home when he was 19 and although he claims to have been born in 1957 he maintains that he still lived with his mother in the 1980’s. There is clearly some discrepancy, but he did admit that he was now already 60 and sometimes his *“mind don’t work.”*

20. Zeny Carlita Encalada, Manuel's sister and the representative for the now ailing Claimant, says her father Manuel was the sole owner of the property and he alone paid the land taxes. She was 14 in 1992 when a fire destroyed the upper part of the family home which was on her mother's property. The family home was then reconstructed on her father's adjoining property, the Property, with the assistance of Omarcito and labourers hired by her father.
21. The family lived in that house (which is the one currently occupied by Omarcito) for two years (1994 to 1996). This coincides almost precisely with Omarcito's testimony as to the length of time, although the years are not exact. The Court understands that it has been a long time and one's memory as to the exact year may not be precise.
22. Under cross examination Zeny denied that Omarcito helped his parents, whether in the business or otherwise. She insisted that the house in which Omarcito lives was constructed with money from DFC (not the insurance as she had claimed in her examination in chief) and money her father borrowed from his employer. She also insisted that it was constructed in its entirety between November and December, 1993. She changed her original testimony that her father built the two houses at the same time and said he first built the one that Omarcito lives in and he rebuilt the family home afterwards.
23. It became clear than Zeny would not have been born when Omarcito was allegedly gifted with the Property and would have been quite young during the early phases of construction. There are also many gaps in Zeny's testimony. She does not explain how she knows the taxes were paid by her father. She offers no reason why the family home was not simply

reconstructed where it original existed or why the family lived in the other house for only two years.

24. In fact, Zeny changed her evidence on the year they moved into the house on the Property. What really shook the foundation of her testimony, however, was when she revealed that her father preferred to “*finish*” the house Omarcito now lives in until he could get the money from DFC. Although she maintained that Omarcito was only allowed to live in the house through the goodwill and kindness of her parents, her choice of word was quite instructive.
25. Marco Julio Mis, another child, informs of the fire in 1992 which consumed the family home situated on his mother’s property. That same year the father using the insurance money and a loan from his employee constructed a home for the family on the Property. That is the house Omarcito lives in. Marco would have been thirty-two years old then.
26. He later admitted that he was living in the United States during that time. He was, therefore, uncertain about the year of the fire. He did not know when the family moved into the house Omarcito now lives in or when it was constructed. In fact, Omarcito testified that when he was fourteen years old Marco had already moved out and was living elsewhere. This would have been since around 1977, if my calculations are correct.
27. Marco also admitted having had no part in the construction. That was done by Omarcito and labourers hired by Manuel. He insisted, however, that Omarcito was always paid whenever he worked for his father. He does not say how he knows this. While he was grateful to Omarcito for staying and working with his father, he explained that he and other siblings had also

helped the family by sending remittances. He, was certain, therefore, that his father would not have given the Property to Omarcito alone.

28. Alfita Chan, a retiree from Benque Viejo Del Carmen speaks of living on the Property in a thatch house in the 1970's. In her cross examination she clarified this to be from 1976. She says she rented it from Manuel and was then well acquainted with him and his family. Over the years she witnessed Manuel "*build his property on his own.*" He would "*come home weekends and holidays and work on both houses that were on his property.*" She did not explain what she meant by both houses but said it was Manuel who worked on building the house in which Omarcito now lives. If Manuel had any help it was from all the sons.
29. It is evident that Ms. Chan must have been present on the Property during the construction. She does not, however, put a time frame on the construction. But according to her, it must have been during a period when the boys were there to assist Manuel. Zeny was unable to assist with placing Ms Chan on the Property at a particular period.
30. It appeared from Ms. Chan's cross examination that she did not live there for more than seven years (she left when her son turned 7). She testified that the building of the house where Omarcito lives was "*ongoing.*" She explained that the family was able to move into that house after the fire because it was like a box. It had a roof but no interior divisions. Manuel put in partitions so the family could be more comfortable. It was only under cross examination that the Court realised that Ms. Chan was in fact the Claimant's niece.

Consideration:

31. What is noteworthy is that none of the witnesses for the Claimant explained the circumstances surrounding Omarcito's moving into that house and why he was allowed to stay there with his family, rent free, for so long. If the Claimant was aware that his presence there was through a kind, family arrangement, then why was the claim made for rent. This leads one to believe either that the Claimant was unsure of the arrangement or intended to mislead the Court as to its true nature. Neither of which progresses her claim.
32. None of the witnesses for the Claimant explained why the family did not remain in that house after the fire, particularly, as they insist it had been built with either the insurance money from the destroyed house, DFC money and/or a loan. What was settled, however, is that Omarcito lived there with his own family, undisturbed from around 1995; there was no agreement to pay rent and he never paid any. He was allowed to fence the Property in some way and make renovations without interference.
33. The Court also found that the entire house was not built in two months. It was being built since perhaps the 1970's, early 1980's and by 1995 it was a concrete shell without windows, doors or interior partitions. This could adequately explain why Omarcito took no loans for its construction, (an issue raised by Counsel for the Claimant in his submissions). It is believed that because the house was almost complete, that was why the family could so quickly occupy it after the fire, rather than actually rebuilding the upper portion of the family home.

34. The Court accepts Omarcito's version that the Property had been given to him by his father. That with his father's blessing, encouragement and eventually, help, he, Omarcito, acted to his detriment by constructing that building. He was never stopped from building, he was never asked to leave or to pay rent. The title document remained with him and upon request he would give them to his father to secure loans. It seems unconscionable to now deny Omarcito some right or benefit which he expected. All this strongly supports the Court's finding that a proprietary estoppel exists in Omarcito's favour which must be given effect.
35. The nature of the relief which the Court gives to Omarcito is equitable and discretionary. Again the Court must look at all the circumstances in its attempt to do justice and satisfy the minimum equity which arises. It must look at the conduct and misconduct (if any) of both Manuel and Omarcito and give no greater right or interest than Omarcito believed he would receive.
36. Since Omarcito and Manuel's conduct seemed to harmonize with the promise that Omarcito said Manuel made that, he Omarcito, would own the Property, the Court will make an order to give effect to this promise. The Court also notes (though neither party raised it) that by virtue of Omarcito's actual occupation of the Property he has established an overriding interest pursuant to section 31(1)(g) of the Registered Land Act Cap 194. The Counter Defendant, as Administratrix of the Estate of Manuel Mis will therefore be ordered to transfer the Property to Omarcito. Although Counsel for the Claimant submitted that in 1977 Manuel Mis did not own the Property and so could not promise what he did not have, there is no evidence before the Court of this.

37. Counsel points to the Land Certificate dated 19th December, 1989 but the Court is well aware, as is Counsel, that the Registered Land Ordinance called for the registration of land which may have already been owned by the registered proprietor by virtue of some other recognized document. The land certificate can therefore not conclusive prove what he contends.
38. Before going any further, the Court must comment briefly on the submissions made by Counsel for the Claimant. He presented **Rudolfo Juan v Trinidad Santiago Juan teal Belize Supreme Court Action 229 of 2005** where the Court considered the enforceability a written arrangement between the father (now deceased) and his son which stated “upon my death the farm will pass over to my son Rodolfo.” The Court found that “*(t)he disposition was to take effect on the death of the father. Such disposition can be made only in a will...A document which is short of a will cannot make the disposition.*”
39. Counsel then urged this Court to find that the agreement made between Omarcito and his father was neither a will nor a codicil and could not effectively pass any interest in the Property. This case, however, has no applicability here because there was never a contention that the deceased passed any interest in the Property. The interest which is passed is conferred by the Court through operation of law and not by Manuel Mis during his lifetime.
40. With that, the Claim for possession made by Concepcion Mis fails and the Claim for arrears of rent (**Issue 2. Whether the Claimant is entitled to arrears of rent in the sum of \$27,600.00 against the First Defendant**) falls away.

41. Although, Counsel for the Claimant never addressed issue 2, he stated quite clearly in his submissions “*(i)t is also clear that Manuel Mis let him into possession on his property to help him..... As an act of generosity. There was never the intention to enter into landlord and tenant relationship.*” There is, therefore, no way a claim for arrears of rent could properly be supported or considered.

B. Whether the Counter-Claimant is in adverse possession of the Property

42. Counsel for the Claimant asked the Court to consider **Edwards v Brathwaite WIR, vol 32** and to find that Omarcito’s occupation was nothing more than that of a mere licensee, gained through family arrangements, and so he was incapable of deriving title by prescription.
43. Having found that a proprietary estoppel exists, which is to be satisfied by a full transfer of the Property, there is no need to consider adverse possession.

3. Whether the Claimant is entitled to possession of the two vehicles (Cherokee and Silverado) on damages for conversion or detinue:

44. The Claimant brings her claim in conversion and detinue. Both are an unlawful interference with goods. **Winfield and Jolowitz on Tort 17th ed at paragraph 17-6** explains that:

“Conversion at common law may be committed in so many different ways that any comprehensive definition is probably impossible but the wrong is committed by dealing with the goods of a person which deprives him of the use or possession of them.... there must be some deliberate act depriving the claimant of his rights: if this element was lacking there was no conversion.”

45. The only remedy for conversion is an award of compensatory damages. Damages being the market value of the goods at the time of the conversion and any consequential loss flowing therefrom, providing such loss is not too remote. When the Defendant continues in possession of the goods, but

refuses to give them up when demanded, this constitutes not only conversion but also detinue. Detinue allows a remedy of either restitution of the goods or damages.

46. Counsel for the Defendant referred to the Trinidadian case of **Castor v Comptroller of Customs Claim No. CV2016-03528** which cites the Trinidad decision in **Mootoo v The Attorney General HCA 431/1997** and distinguishes the torts as follows:

“Conversion is a purely personal action for pecuniary damages resulting in judgment for a single sum, generally measured by the value of the chattel at the date of judgment together with any consequential damage flowing from the conversion which is not too remote.

Where conversion cannot be directly proved, it may be inferred from proof of a demand for the item and the refusal to hand it over.

Detinue is more in the nature of an action in rem because the Plaintiff seeks the return of the item or payment of its value assessed at the date of judgment, together with damages for its detention. This effectively gives a defendant a choice of whether to return or pay for the item.

It is immaterial whether a defendant obtained the item by lawful means because the injurious act is the wrongful detention, not the original taking or obtaining of possession. Detinue is usually evidenced by a failure to deliver an item when demanded.

Damages for detinue are intended to compensate a plaintiff for his loss, not to punish a defendant. Consequently, the fall in value of an item subsequently recovered can be recovered only if the loss is proved. Otherwise, only nominal damages are recoverable.”

The Evidence

47. Although Counsel for the 1st Defendant/Counter Claimant asserts that since the Claimant/Counter Defendant provided no evidence of ownership of the vehicles she has failed to prove that they fall under the deceased’s estate, this is not correct. There is no doubt in the Court’s mind that the vehicles were owned by Manuel Mis. Glenn Jay asserts his ownership through a gift

from Manuel. He produces a transfer from Manuel for one vehicle and he makes a declaration that he acquired title to the other from Manuel Mis. If Glenn Jay is proven to have usurped Manuel's or Manuel's estate's right to possession he would be strictly liable even if he laboured under some mistaken belief as to his own right to possession.

48. Zeny testified that Glenn Jay was assisted by her father to open his taxi business but her father never gave him any of the cars. She offers no foundation for this statement other than that was her firm belief. She admits that she was not living in the family home at that time and would not have known everything that transpired there. Zeny does not give any evidence relating to any demands made for the return of the vehicles. While a demand and refusal are not the only ways to prove conversion, it is the usual way. The Court is, however, also allowed to look at the Defendant's conduct.
49. Marco Julio Mis informed in his evidence-in-chief that it was he who sent the 2007 Jeep Cherokee to his parents as a gift, although it was placed in Manuel's name only. He exhibited his Florida registration. As far as he was concerned, after his father's death, only his mother was authorized to do anything with that vehicle. He insisted that it ought to form part of his father's estate. Under cross examination however he was adamant that the vehicle was a gift to his father only and that he, Marco, transferred the title to his father. He did acknowledge that there was a special relationship between his father and Glenn Jay.
50. Glenn Jay Mis says he was very close with his grandfather. In 2012 his grandmother suffered a stroke which left her partially paralyzed. At his grandfather's request and with his grandmother's (the Claimant) consent, he

left his own father's home to move in with them. He happily assisted them by running errands, purchasing medication, paying bills and buying groceries.

51. He also did some maintenance work to his grandparent's house and assisted at his grandfather's bar cleaning, removing trash and stocking the freezer and kitchen. When his grandfather fell ill he took him to the doctor and helped to pay his medical bills until he died. His aunt Zeny would sometimes accompany them on the doctor visits but she never paid or contributed.
52. Glenn Jay admits that the vehicles belonged to his grandfather and that he removed them both from 74 Church Street, Benque Viejo (the family home). He attested to having been "*harassed*" by his Aunt Zeny to return the Jeep Cherokee after his grandfather died. This the Court accepts as Glenn Jay's admission that the same demand was made for the return of the Cherokee. Glenn Jay maintains that in September 2015, his grandfather had transferred the said Jeep Cherokee to him. He exhibited the transfer document and it was never impugned in any way. This vehicle can, therefore, form no part of Manuel's estate. That claim would according be dismissed.
53. Glenn Jay testified further, that his grandfather agreed to give him the 1999 Chevrolet Silverado on the condition that he repair it. He does not say when this agreement was reached. But pursuant thereto he did the necessary repairs and he exhibited receipts (all dated in March, 2016) to a total value of \$1,435.86. He adds that he also expended significant labour.
54. His grandfather, notwithstanding his promise, never transferred the vehicle to him. So after he died, he, Glenn Jay, had it registered in his own name

using a notarized declaration and took it as his own. He exhibits that declaration. It is notable that it states only that, he, Glenn Jay “*had acquired ownership*”, there are no specifics to this acquisition. This registration is certain proof that Glenn Jay having taken possession, intended to exclude the rights of the original owner and to treat the vehicle as his own.

55. Glenn Jay also speaks of a 1991 Plymouth Dodge which he said was given to him by his grandfather some three years before he died. It was intended to be used for his taxi business. Consequently, he, Glenn Jay, bought and installed a new battery and a used transmission all for a total of \$1,878.00. He exhibits some receipts totaling \$1,077.80, one of which is dated November, 2015. The Court was confused as to why this evidence was being presented since Glenn Jay had no Counter Claim and the Claimant had not made any Claim whatsoever in this regard. In fact it formed no part of the Claimant’s pre-trial memorandum.
56. Counsel for the first Defendant asked the Court to look at Glenn Jay’s conduct and actions and to find them consistent with his being gifted with both vehicles. But his conduct and actions could just as easily be consistent with having been given permission to use the Silverado for a period of time. What casts significant doubt on Glenn Jay’s testimony is that his grandfather was certainly well aware of how a vehicle could be properly transferred. He had obviously gone through the process with the Jeep Cherokee. Why had he not done the same with the Silverado and why hadn’t Glenn Jay encouraged him in his lifetime to do so. It is striking that Glenn Jay’s testimony is completely silent as to why his grandfather never transferred the Silverado particularly since he had had more than sufficient time in which he could have accomplished this.

57. What was even more troubling was the fact that after his grandfather's death, rather than have his grandfather's estate transfer the vehicle to him or even discuss the matter with his grandmother, the Administratrix, he decided to do a declaration to register it in his own name. The Court found the first Defendant to be a most unbelievable witness in this regard and rejected his testimony.
58. To my mind, the Claimant's ownership of the Chevrolet Silverado has been proven to the requisite civil standard. The Court finds that it rightfully belongs to the estate of Manuel and Glenn Jay Mis is liable for its conversion. Since the Court does not find that the claim in detinue has been made out (lack of any demand) the Claimant is entitled to damages she has sought damages of \$10,000.00 which she says is the value of the vehicle. But she has made no effort whatsoever to prove those damages in anyway. All parties kept making reference to the inventory attached to the application for the grant of letters of administration. I wish only to remind that that document did not form part of the trial.
59. Even where damages have not been proven, the Court is nonetheless allowed to give nominal damages and an award in the sum of \$3,000.00 will accordingly be made. As both parties have seen some level of success each party shall bear their own costs.
60. Glenn Jay has made no claim for the improvements he alleged he made to the vehicle, but even if he had, it is very unlikely that he would have recovered since he has had the use and enjoyment of that vehicle at no cost for a very long period of time.

Determination:

It is hereby Ordered or Declared:

1. The Claim against the first Defendant succeeds in part.
2. Nominal damages are awarded to the Claimant in the sum of \$3,000.00.
3. The Claimant and the first Defendant shall bear their own costs.
4. The Claim against the second Defendant is dismissed.
5. Judgment for the second Defendant/Counter Claimant on the Counter Claim.
6. The second Defendant/Counter Claimant has an equitable interest in the Property which constitutes an overriding interest pursuant to section 31(1)(g) of the Registered Land Act, Chapter 194.
7. The Claimant/Counter Defendant shall execute a transfer of land form for the
Property in favour of the second Defendant/Counter Claimant forthwith.
8. Should the Claimant/Counter Defendant be unwilling or unable to execute the transfer of land form within two weeks of today's date, The Registrar of the Supreme Court is to execute the requisite form in her place.
9. Costs to the second Defendant in the sum of \$7,500.00 as agreed.

**SONYA YOUNG
JUDGE OF THE SUPREME COURT**