

**IN THE HIGH COURT OF BELIZE, A.D. 2020**

**CLAIM NO. 264 OF 2020**

**BETWEEN**

<b>(DANIEL BENJAMIN GONZALES</b>	<b>1<sup>st</sup> CLAIMANT</b>
<b>(CARIBE DUKE LIMITED</b>	<b>2<sup>nd</sup> CLAIMANT</b>
<b>(</b>	
<b>(AND</b>	
<b>(</b>	
<b>(MARTHA CASTELLANOS</b>	<b>DEFENDANT</b>
<b>(</b>	
<b>(REGISTRAR OF LANDS</b>	<b>1<sup>st</sup> INTERESTED PARTY</b>
<b>(</b>	
<b>(ATTORNEY GENERAL OF BELIZE</b>	<b>2<sup>nd</sup> INTERESTED PARTY</b>

**BEFORE THE HONOURABLE MADAM JUSTICE SONYA YOUNG**

**Decision Date:**

17<sup>th</sup> January 2023

**Appearances:**

Mr. Gavin Courtenay, Counsel for the Claimant.

Ms. Nazaira Myles, Counsel for the Defendant.

Ms. Lavinia Cuello, Counsel for the Interested Parties.

**KEYWORDS: Land - Adverse Possession - Pleadings - Animus Possidendi**

## **JUDGMENT**

1. The First Claimant is the registered proprietor of some parcels of land in San Pedro which he purchased from the Second Claimant. One parcel was purchased but has not yet been transferred. The Claimants say that the First Defendant, Martha Castellanos, for approximately nine years, has occupied and continues to occupy two of those parcels (the Parcels) as a trespasser.
2. She has, over time, constructed a wooden residence with a fruit stall from which she sells and an adjacent latrine structure. Despite having paid rent to the Second Claimant and acknowledging its ownership on several occasions, all warnings and notices to vacate have been ignored.
3. The Claimants seek a declaration of the First Claimant's ownership of all five Parcels, orders for possession of the Parcels, removal of the Defendant's structures, a permanent injunction, and damages with interests and costs.
4. In her Defence, Ms. Castellanos denies being a trespasser. She says she has been in adverse possession of the Parcels in excess of twelve years and was in open occupation of the Parcels but was never questioned by any of the Claimants as to her rights. By virtue of all this, she claims an overriding interest.
5. She asserts that when she went into occupation, the land had not yet been subdivided. It was owned by John Langford who never informed her that she had to leave. During her occupation, she never paid any rent to or made any arrangements with anyone for the payment of rent. She has never been dispossessed nor has she discontinued possession. She has never even been

approached by or engaged in any conversation with the First Claimant regarding her possession or occupation.

6. She counterclaimed for declarations as to her overriding interest and adverse possession as well as the ousting of the Claimants' right to bring a claim. She seeks orders for the First Claimant to surrender the title issued to him by mistake and title be issued to her instead, as well as a permanent injunction against the Claimants and costs.
7. The Claimant denies the Counterclaim in its entirety and the Defendant's right to any of the reliefs claimed.

**The Issues:**

1. Are the Claimants entitled to possession of the Parcels?
  - A. Is the Defendant in adverse possession of the Parcels and has the Claimant's claim to the Parcels been extinguished with the effluxion of time?
  - B. Does the Defendant have an overriding interest over the Parcels by virtue of **Section 31 (1) (f) and (g) of the Registered Land Act Cap 194?**
2. What, if any, remedies are the Claimants or Defendant entitled to?
8. This matter is heavily fact based so that a determination requires full scrutiny of the evidence before the Court. In aid, a synopsis of each witnesses' testimony would be outlined below.

**The Evidence:**

9. **Dr. Benjamin Gonzales** decided to purchase a parcel of land from Jorge Varela. He says when he visited, there was only a vacant lot with an unoccupied

two-storey building in which he hoped to live and establish his clinic. He entered into the first agreement with Jorge Varela for the purchase, paid a down payment and went into possession in April to May 2005. On completion of his renovations, he moved in and has been living there since. He also erected a wooden fence, separating his home from the Property, which he alone maintains.

10. In 2009, a Ms. Juana moved to "*what was supposed to be a street near my Home*" and began selling fruits there. First, she used baskets and bags and then she constructed a simple structure of plywood and tarp on a lot near the road and established a fruit stand.
11. When he questioned her, he learnt she was there with Jorge's permission and was paying rent. He was not concerned as he did not own the property where her stall was constructed but he nonetheless confirmed her claim with Jorge as it was in such close proximity to his home.
12. He noticed in 2011 that Ms. Juana had abandoned the stall and the Defendant began selling fruits and vegetables there instead. They developed a cordial relationship and he learnt that she was also Jorge's tenant.
13. In early 2012, she constructed another rudimentary structure behind the fruit stall and started living there with her family. She asked him for permission to install a water meter, and with Jorge's **consent**, he informed her that she could and she did so in early 2012. He is unsure whether she still has running water.

14. In late 2012, Dr. Gonzales agreed with Jorge that the Receptionist at his clinic would collect the rent from the Defendant on Jorge's behalf. Jorge was then living in the USA and the Defendant was only able to pay in cash. Around July 2013, he learnt that the Defendant had stopped paying rent. He took no action as it was not his land but noticed that she and her family continued to reside on the plot of land.
15. Around late 2017, he decided to purchase the entire Property from Jorge, and in July 2018, they entered into an agreement in this regard. The agreement provided that the Property would still be subdivided but he was allowed to go into possession of the entire Property.
16. He immediately informed the Defendant that she would have to leave but she believed she had Squatters' rights. He spoke to her on several occasions and showed her copies of the 2018 agreement. On one occasion, he and Jorge approached her together. She refused to leave. Since he was aware that she would have difficulty moving, he offered her assistance of \$2,000.00.
17. She continued to act as if the Property was hers while the smell (garbage, human waste and cooking) affected him at home and in the clinic. She and her associates became increasingly aggressive towards him - threatening and harassing him. In his opinion, the habitat is unsanitary, the stench and smoke (outdoor cooking) is unbearable, and the exposed garbage is disgusting.
18. In February 2019, Jorge gave him a Power of Attorney to remove the Defendant as the Property was still not in his name. His efforts remained futile and he eventually retained counsel who served her with a Notice, dated 3<sup>rd</sup> December

2019, to quit within four weeks of receipt. She was served on the 5<sup>th</sup> December 2019 but did not comply so he commenced these proceedings.

19. In late 2020, the subdivision was completed and the transfers lodged. He has since received certificates for two parcels. The other parcel remains in the Second Claimant's name with the application pending but should be issued soon. The Defendant's trespass continues.
20. He wishes to expand his clinic but can not as the Defendant's structure impedes his progress. He has to incur rent elsewhere at \$9,000.00 per month for his laboratory services. He is unable to fully enjoy and use his property while simultaneously losing out on rental income it could possibly generate which he estimates at \$1,000.00 per month. It will cost about \$2,500.00 to remove the structures she has constructed,
21. **Jorge Varela** testified that he was a director of the Second Defendant. He entered into an agreement in 2005 to sell a portion of his property to the Claimant after he received title from a third party. It was an investment for him and he intended to subdivide it for resale and to construct a road to enable access to back lots. He had already cleared the property and immediately allowed the Claimant to go into possession once he had paid his deposit as agreed.
22. In 2007, he moved from Belize to the USA but kept in contact with friends and family there and visited three times per year. He learnt in 2009 that a lady named Juana had begun selling fruits on his property. Juana asked for and received his permission to occupy the area and paid rent of \$200.00 per month. This arrangement ended in 2011 when Juana abandoned her wooden stall.

23. In late 2011, he then agreed with the Defendant to allow her to sell fruits and vegetables at the stall for \$300.00 per month. She was not consistent with payment but he allowed it as he was trying to be accommodating and understanding. Vianie Perez collected rent on his behalf and was replaced in 2013 by his niece Vanessa Guerrero who worked at the First Claimant's clinic.
24. He took no steps to remove the Defendant as the space she occupied continued to be in the name of the third party from whom he was purchasing. When his title seemed imminent, he instructed Vanessa to inform the Defendant that she would have to leave. He learnt that she refused to move.
25. On receiving Title, he notified the First Claimant who, after protracted negotiations, decided to buy the entire property (rather than just one lot as previously agreed) once it had been subdivided. He again instructed for the Defendant to move, she refused despite attempts at persuasion by both the First Claimant and Vanessa. He eventually gave the First Claimant a Power of Attorney so the necessary steps could be taken to have the Claimant removed.
26. She continues to trespass causing him to lose rental income of \$27,600.00 from July 2013 to February 2021. He is also aware that he could have rented it for more (\$1,000.00 per month) because it is commercial in nature. Her presence also made it difficult to market the Property even though the Second Defendant eventually bought it.
27. Mr. Varilla's testimony is that there had been someone else occupying the vegetable stall in the subject area from about late 2009 and he made her pay rent. She eventually abandoned the stall in mid to late 2011. From late 2011,

the Defendant was allowed to use the stall and paid rent of \$300.00 per month. These payments were dilatory and eventually stopped in 2013.

28. **Vanessa Guerrero** says she was aware that the Defendant occupied her Uncle Jorge's land. She learnt that the Defendant was paying rent to be there. In 2013, her uncle asked her to collect the rent from the Defendant. The Defendant or someone who lived with her, Lombardo Valdez, would irregularly pay the rent in cash which was \$75.00 bi-weekly. Rent stopped in June 2013 but the Defendant continued to stay on the Property and her uncle did not instruct her to take any action.
29. In May 2015, he asked her to have the Defendant vacate as he was selling the Property. She spoke with the Defendant in that regard - - the Defendant refused to leave, claiming the land was hers. She knows that her uncle, with the First Claimant, has approached the Defendant as well but she remains on the Property to date.
30. **Martha Castellanos** testified that she came to Belize in 1999 from Guatemala, left and returned in 2002 and moved straight to San Pedro. She moved around selling fruits and vegetables and had a tent on the front of the Property also selling her produce which she bought in Maskall. Two years later, she met Pedro Aventura and together they had her third child in December 2005. They also lived at the Property.
31. A couple years later that relationship ended and she met Jose Castillo who fully cleared the land and removed all the garbage. They constructed the shop better and enclosed a narrow passageway for people to urinate. With his father's help

and the assistance of some workmen, they built the house which is attached to the shop and filled the land. The utilities and Trade Licence were all in Jose's name.

32. Jose went missing in July 2012 and their daughter was born four months later. At that time, she extended the house and no one approached her or stopped her. She used to see an American man in the yard on the other side of the fence but he never interfered with her. The American moved out and the First Claimant began to occupy the house. Without anyone's consent or interference, she reinforced the fence.
33. Around 2016, Dr. Gonzales' family member, Ms. Guerrero, approached her and told her she would have to leave but when she visited the Town Board she found out that Dr. Gonzales was not the owner of the land. In December 2018, she received a letter from Dr. Gonzales' Attorney indicating that she must vacate but Dr. Gonzales had never before approached her to get off the Property or to collect rent, and she had never been evicted by any one before this. She had given birth to and raised her six children as well as earned an income right there on the land.
34. **Lorenzo Moh** said he met the Defendant when her two children were aged about 3 (Arely) and 2 (Michelle) and she was starting to run her vegetable stall in San Pedro. He helped her clean the area of garbage and overgrown bush and put up a tent for the little shop. About five to six years ago, he helped her to construct the wooden structure now present on the Property.

35. He does not know if she paid rent for the property to Mr. Bill whom he knew owned the Property. Afterwards, the Dr. started to claim ownership.
36. When Mr. Bill's home, which was made of lumber, was knocked down and replaced by a concrete structure about five years ago, the Defendant was still at her shop and never told him she had to move. He knows that sometime last year the doctor took her to court.
37. **Ercilla Arroyo** says she has lived in San Pedro for the last 22 years. She met the Defendant about 15 or 16 years ago when her son, Alex, was a year old. She was already selling fruits and vegetables from her shop. In 2007, she opened her deli and began purchasing produce from the Defendant. Even after her deli closed, she continued to purchase from her and currently do so for the Inn where she works. She has never seen the Defendant's shop move or heard her say she was having problems with the land until recently, she said, Dr. Gonzales wanted her to move as he owned the land.

**Are the Claimants entitled to possession of the Parcels?**

- A. Is the Defendant in adverse possession of the Parcels and has the Claimant's claim to the Parcels been extinguished with the effluxion of time?**
- B. Does the Defendant have an overriding interest over the Property by virtue of Section 31 (1) (f) and (g) of the Registered Land Act Cap 194?**

38. The Claimants submitted that they have paper title to the Parcels. The Defendant was Mr. Verela's tenant but she ceased paying rent in June 2013 when she became a trespasser.

39. Her claim of adverse possession must fail since she acknowledged that Mr. Langford owned the Parcels and he had witnessed her occupation. Her occupation was consistent with this acknowledgement as the structures erected were never permanent. She constructed no significant structure. Her admission that she knew Dr. Gonzales would be buying the Parcels was another acknowledgement that she was not the owner.
40. They continued that she gave no date from which possession started or that she exercised physical control over the Parcels as her testimony was that she only maintained the front. She provided no, or no clear and affirmative evidence of when her intention to possess began either. She did not exclude the world at large since the public used part of the Parcels as a walkway. She took no steps to affirm her alleged interest.
41. The Defendant pleaded that she was in actual possession for over twelve years. She was always in possession of a portion of the Parcels and has never moved or been dispossessed. She has never paid rent.
42. Under cross-examination, she revealed this was from as early as 2005. She began with a tent and then an enclosed structure to house a shop with living quarters. The alleyway was not open to the public as she had enclosed it to prevent this.
43. She had acted with the necessary intent to possess by her control of the Parcels, repairing the fence, updating her structures, and obtaining light and water meters in her name.

### **The Court's Consideration:**

44. The *viva voce* evidence on both sides seemed somewhat equal. The Claimants provided evidence, from an employee of one who was also a relative of the other, that the Defendant had been making dilatory payments of rent up until 2013 for the Parcels. No action was taken against her until 2015 or 2016, and then in 2018. She refused to leave even after being served with a Notice to leave in December 2019.
45. The Court notes that none of the actions taken would amount to dispossession or cause time to stop running for adverse possession as the bringing of this Claim has done.
46. The Court also found the evidence of payment of rent from 2010 (Statement of Claim) or 2011 (Mr. Varilla's testimony) to 2013 to be without any proof other than the witnesses' own statements.
47. No receipts were provided or any written indication that a rental agreement existed. The emails exhibited were from and with some third party who was not a witness in the matter so this evidence could not be properly tested under cross-examination. It referred to a "veggie lady" and there was no name used and certainly not the Defendant's name.
48. Furthermore, the Defendant vehemently denied ever paying rent. Ms. Guerrero who actually testified to collecting rent in or around 2013 is Mr. Varela's niece. Her evidence seemed quite convenient.

49. The instances noted by Counsel for the Claimants of the Defendant's acknowledgment of ownership by someone else do not really hold muster. The Defendant admits that at the time she began to occupy the Property, it was owned by Mr. Langford. Inherent in any plea of adverse possession is the fact that the property in issue was owned by someone else. In any event, the Defendant did proceed to construct a wooden structure which demonstrated greater permanence than a tent.
50. With respect, acknowledging that she knew someone was going to be buying the Parcels is not an acknowledgement by her of any person claiming to be the proprietor.
51. The Defendant, on the other hand, provided evidence from friends and acquaintances that she had been in occupation of the Property since perhaps 2005 but she only pleaded "*since before 2008.*" A party must plead the facts on which they wish to rely. Her witness statement never stated exactly when she went into occupation of the Parcels either.
52. There are certain fundamentals which ought to be pleaded in a claim for adverse possession - the date the alleged adverse possessor came into possession, the precise nature of his possession, whether the *factum* of possession was known to the other party, the length of his continuous possession, and that his possession was open and undisturbed.
53. The Defendant simply refers to the ages of her children and that she did not like living in Maskall so she moved to San Pedro. One is left to try to determine by some great deduction when exactly occupation began.

54. At the end of her witness statement, she asserted that all her children were born and grew up during her time on the Parcels, her eldest being 20. This was clearly untrue as she also said she moved there with two children.
55. The Defendant said Mr. Moh helped her to build her house. But nowhere in his witness statement does he say this. Even in amplification, he only said he helped her with her tent first and then her little shop.
56. The Defendant had another major inconsistency. In her defence, she denied ever being asked to leave before 2018 but her witness statement admitted at least two such instances. Perhaps, not strictly being asked to leave, but given information that she needed to leave.
57. The Defendant provided no utility bills although she claimed to have utilities. While those bills may not have been in her name (her testimony), they would have been strong evidence of her intention to possess. So too would proof that the Parcels had actually been filled.
58. The Court considered Mr. Moh's evidence and he too seemed unable to give dates even a year, and this caused the Court to doubt the reliability of what he said. So too Ms. Arroyo who seemed unable to tell the difference between a tent and a shop since her evidence is that from when Martha's son, Alex, was one Martha was selling fruits and vegetables from her shop. In fact, there is no evidence to prove when Alex was one. Again, this witness could not or simply did not state a specific year.

59. This is a familiar thread throughout the evidence provided by the Defence. Every statement of when the Defendant went on to or occupied the Parcels is made with reference to her children's ages and not a specific date. The evidence seemed contrived.
60. There was no doubt in the Court's mind that the Defendant had occupied the Parcels for some time. But because of the state of the *viva voce* evidence, a determination of when the occupation began was based primarily on a consideration of the independent evidence provided or not provided by the Defendant. It is the Defendant who asserted adverse possession so she must prove the duration of that period.
61. The first were the photographs, none of which were dated. The Court begins by stating that the Defendant failed to convince that she had built or maintained any fence around or upon the Parcels. The photographs presented of someone hammering a fence looked staged and were without context.
62. The Defendant seemed to ask that the size of her children in some of those photos be considered. She gave no context, other than her own evidence, as to who exactly was in the photographs and the ages. Perhaps, her intention was that if they appeared a certain age and were standing before the shop, then that was indicative of the length of time she had been in possession. I am no expert in this regard and would not venture into such speculative territory.
63. It seemed very suspicious that without any explanation no birth certificates were provided in support or that none of the persons who were the subjects of the photographs came forward to testify. Arely and Michel (alleged to be two of

the subjects) were stated to be 20 and 19 years old respectively. Their evidence may have significantly bolstered their mother's case.

64. The Defendant does present the birth certificate for a child born in November 2012. This is during a period when she said she was already doing business and living on the Parcels. What is noticeable however, is that the address stated on that certificate is Laguna Drive, San Pedro. The Informant is the Defendant herself. This leads the Court to believe that the Defendant was not living at Pescador Drive in 2012. She had been less than forthright in this regard.
65. This Court has no doubt that the Defendant knew the difference between Pescador Drive and Laguna Drive by 2019 (when the 2012 birth was actually registered). The 2016 Trade Licence which is discussed below states the location of her place of business as Pescador Drive.
66. The Court then considered the Trade Licence from 2012 issued to Jose Alfredo Castillo. The Defendant's evidence is that Jose Castillo secured this licence for her shop. However, it is a Peddler's Licence and has no stated stationery address, as is to be expected on a licence of this type. It simply states San Pedro.
67. Under the **Trade Licence Act Cap 66 Revised ed 2011**, then in force in Belize, a Peddler's Licence was for the sale of imported goods on a street or a public place - **Section 26**. If indeed the Claimant was conducting business from certain premises, as she and her witnesses testified, and she saw herself as the owner of those premises, as she testified, then why is the Licence a Peddler's Licence and not an ordinary Trade Licence issued for premises pursuant to **Section 6**.

68. The Court is aware that an Applicant must give the address for the business when making an application for a trade licence - **See Schedule 2 and 3 of the Trade Licence Act**. Why then is the address not Pescador Drive as it appears on the 2016 and 2020 licences also exhibited? Those licences are in her name and have a stated address.
69. The Court reminds that mere long possession is not sufficient to prove adverse possession. There must also be the *animus possedendi* or the intention to possess to the exclusion of the whole world. There is again no statement of when this was formed. The pitching of a tent on the front of someone else's Property is not evidence of any such intention.
70. The best this Court can make of the Defendant's evidence is that she put up a tent on the Parcels and eventually built a wooden shop. In 2012, she was still moving around to sell which indicates that she did not have a permanent structure at Pescador Drive (2012 Trade Licence). She was certainly not yet living at Pescador Drive in 2012 either, as evidenced by the birth certificate tendered. For this reason, I found that her evidence was unreliable and her claim that she had been on the Parcels before 2008 could not be believed and had not been proven.
71. The earliest this Court could determine the Defendant actually went into occupation was in 2011 (Claimant's evidence) or 2012. That would mean that the requisite 12 years would not have passed before this claim was brought in 2020. The Claim of adverse possession is, therefore, defeated.

72. Consequently, the Defendant has no overriding interest as her interest would have been based on her successfully establishing adverse possession which she has failed to do. There is, therefore, no right to which the Court needs to give legal effect.

73. The Counterclaim is accordingly dismissed.

**What, if any, remedies are the Claimants or Defendant entitled to?**

74. The First Claimant has asked for a declaration of his ownership. I see no need for any such declaration to be made and the Court will not act in vain.

75. The Claimants also seek damages. Their evidence was that the Parcels had been rented to the Defendant at \$300.00 per month. While the Court does not believe that there was sufficient evidence to prove any such rental, that is the figure which will be used as the basis of the award of damages. That sum will be awarded from December 2019 when notice to quit was served on the Defendant.

**DISPOSITION:**

The Court is prepared to make the following orders:

1. Judgment for the Claimant on the Claim and the Counterclaim with costs in the sum of \$20,000.00 as agreed.
2. The Claimants are entitled to possession of the Parcels.
3. The Defendant, her agents, or assigns are to vacate the Parcels within two (2) months of the date of this Judgment.
4. Thereafter, a permanent injunction is granted restraining the Defendant, her agents, servants, or assigns from entering or occupying or in any manner

dealing or interfering with the Claimants' peaceful enjoyment of any or any portion of the Parcels.

5. Damages for trespass are awarded to the Claimants in the sum of \$300.00 per month from December 2019 to the date the Defendant vacates the Parcels.
6. Interest is awarded on this sum at the rate of 6% from the date of the filing of the Claim herein until payment in full.

**SONYA YOUNG**  
**HIGH COURT JUDGE**