

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 808 of 2021

BETWEEN:

[1] HECTOR ISAIAS ROMERO

Claimant

and

[1] JUAN FRANCO

Defendant

Appearances:

Mr. Darrell Bradley, Counsel for the Claimant

Ms. Audrey B. Matura, Counsel for the Defendant

2023: May 4
September 12

DECISION AFTER TRIAL

[1] **FARNESE, J:** Mr. Romero asks that 27.92 acres of land, currently in Mr. Franco's possession, be returned to him and for compensation for profits Mr. Franco has obtained from the land. Mr. Romero claims that he gave Mr. Franco permission to cut and clear three acres of land in 2017, but Mr. Franco has cultivated and occupied 27.92 acres without permission and refuses to vacate. Mr. Franco claims that he is in lawful possession of the land pursuant to an oral agreement with

Mr. Romero to purchase the land for \$15,000. Mr. Franco does not dispute that he has not paid the purchase price. Mr. Franco counterclaims for specific performance of the agreement or compensation for his improvements. Mr. Romero denies that there is an agreement of sale but countersues for the purchase price if the court finds that an agreement exists.

[2] After reviewing all of the evidence, I find that the parties entered into an oral agreement for the future transfer of land. The oral agreement, however, is not enforceable. At the time the agreement was entered into, Mr. Romero had no rights to the land he agreed to transfer to Mr. Franco. When Mr. Romero acquired rights to the land, transfer would only have been possible with the Minister of Natural Resources' consent. No consent was obtained. Moreover, oral agreements for the purchase of land are generally not enforceable in Belize. Mr. Franco must vacate the property. I find that no other remedy is just in the circumstances.

Issues

- [3] The following issues are raised in this matter:
- a. What did the parties agree to in relation to the Property?
 - b. Is the agreement enforceable?
 - c. Is either party entitled to compensation?

Analysis

What did the parties agree to in relation to the Property?

[4] The land at the centre of this claim is comprised of 27.92 acres of national lands located at Block 4 in the Doubloon Lagoon, Orange Walk Town, Orange Walk District. The land is described as Parcel 1175, Block 59 in the Millers Bight Registration Section (the Property). Mr. Romero claims he has been in possession of the Property since at least 2015, but he only began leasing the Property from the Lands and Survey Department of the Ministry of Natural Resources in 2019. Nonetheless, in 2017, Mr. Romero entered into an agreement with Mr. Franco with respect to the Property.

- [5] The Parties dispute the terms of that agreement. Mr. Romero says he agreed to allow Mr. Franco to clear and use 3 acres to maintain his sugar cane quota, but instead Mr. Franco took possession of the entire property in 2017 while Mr. Romero was ill and refuses to leave. Therefore, in addition to his possession being restored, Mr. Romero asks for mesne profits for sticks he alleges Mr. Franco cut and sold from the Property and from sugar cane sales.
- [6] Mr. Franco claims that they made an oral contract for the purchase of all 27.92 acres that was subsequently confirmed in writing before Mr. Raoul Torres, a Justice of the Peace. He paid \$500 upfront and would pay \$15,000 after Mr. Romero obtained title and transferred it to him. Mr. Franco argues that he cleared and planted many acres of land based on that agreement and he seeks specific performance of the agreement or compensation for the improvements.
- [7] I have considered all the evidence, and all of the authority stated to the court. I, however, only refer to that which is necessary to resolve the dispute because the law governing this dispute is very clear. I find that the parties entered into an oral agreement whereby Mr. Romero permitted Mr. Franco to possess all the Property in anticipation of transferring at least a significant portion of the Property to Mr. Franco in the future.
- [8] Mr. Romero offered no corroborating evidence to support his claim that his agreement with Mr. Franco was limited to permission to clear and plant 3 acres. In contrast, Mr. Franco presented a written document sworn by Mr. Romero before Justice of the Peace, Mr. Raoul Torres. The document was prepared near contemporaneously with their agreement and supports Mr. Franco's claim that Mr. Romero agreed that Mr. Franco would have the right to purchase the entire Property in the future. Mr. Torres also testified in a straightforward, direct manner and largely confirmed Mr. Franco's claim as to the content and purpose of their agreement.
- [9] I found Mr. Romero unnecessarily evasive and lacking candor during his testimony. This demeanor was especially evident from his denial of knowing Mr. Torres, who testified that they had known each other for close to 40 years. Mr. Romero also alleges the document sworn before Mr. Torres was a forgery. He asks the court to make that finding based on its own comparison of two signatures purporting to be those of Mr. Romero and the fact that the document was in English, a language Mr. Romero does not speak. I find, however, those factors are not sufficient evidence of

a forgery. The Court of Appeal has held that it is not proper for a judge to engage in a comparison of signatures.¹ Had Mr. Romero wished to challenge the authenticity of the signature, he was free to request that an expert conduct an analysis on behalf of the court.

[10] While it is the case that the person relying on a document must prove its authenticity, I find that Mr. Franco established the document was authentic by presenting Mr. Torres as a witness. Mr. Torres gave clear and compelling testimony that withstood cross-examination regarding the circumstances that led to the document's creation. I accept Mr. Torres' evidence that he drafted the document in English based on information provided to him by Mr. Romero. Mr. Romero offered a mere assertion that Mr. Torres was lying because he "knows" Mr. Franco to explain why the court should regard Mr. Torres's testimony as untruthful. Mr. Romero offered no evidence to demonstrate the existence of a relationship between Mr. Franco and Mr. Torres.

[11] Finally, Mr. Romero admitted that Mr. Franco cleared and cultivated much more than 3 acres of the Property although he disputes the value of those improvements. Mr. Torres's testimony also confirmed that Mr. Franco understood in 2017 that Mr. Franco did not have a lease, which is why Mr. Romero requested that the document be drafted and sworn. I find it unlikely that Mr. Franco would develop the land without seeking his own lease for those lands, as he was aware that Mr. Romero did not have a lease when the agreement was made, if he did not believe he would get title through Mr. Romero.

Is the agreement enforceable?

[12] Despite my finding as to the content of their agreement, any agreement between the parties is unenforceable because Mr. Romero had no legal or equitable interest in the Property that could be transferred at the time the agreement was made. In addition, oral agreements for the sale of land are generally unenforceable in Belize.

[13] The legal rule, known in Latin as *nemo dat quod non habet*, and translated as 'no one can give what they do not have', settles this dispute in Mr. Romero's favor. In 2017, Mr. Romero may have been in possession of the Property, but that possession bestowed no legal or equitable interest.

¹ Neal v. Macaw Farms Ltd., Civ. App. No. 2 of 2008 at para 9.

Under section 42 of the Registered Land Act,² continuous and undisturbed possession of national lands for 30 years may result in a declaration of title by the High Court. But even where a person can prove they have had continuous and undisturbed possession for 30 years, the acquisition of title by long possession remains at the discretion of the High Court:

42.-(1) Title to the fee simple in any land, or to an easement, right or privilege in or over any land, including land belonging to the Government, **may** be acquired by continuous and undisturbed possession of that land for thirty years if such possession is established to the satisfaction of the Supreme Court which may issue a declaration of title in respect of the said land, easement, right or privilege in favour of the person who has had such possession. [emphasis added]

Prior to the court's declaration, all one has is a claim to title, not an enforceable interest or right. Therefore, Mr. Franco could not have acquired any interest in the Property from Mr. Romero.

[14] Characterizing the agreement as personal obligation to transfer the Property to Mr. Franco once Mr. Romero obtained a leasehold interest does not permit this court to award specific performance of the agreement as requested by Mr. Franco. The lease Mr. Romero has for the Property is a standard form lease that is intended to be used in a variety of circumstances. The standard form is drafted to allow for the circumstances of the particular agreement to be reflected by adding information to blank spaces or striking out an option not selected from several choices. For example, in clause 7 reads in the standard form as follows:

The lot/land shall be used for residential, commercial, agricultural, industrial purposes* (and any development shall comply with the zoning and planning regulations of the appropriate Legislative Planning Committee and accordance with the development plan presented to the Minister of Natural Resources.

In Mr. Romero's lease the words land, residential, commercial, and industrial are struck out leaving lot and agricultural so that the clause reads:

The lot shall be used for agricultural purposes* (and any development shall comply with the zoning and planning regulations of the appropriate Legislative Planning Committee and accordance with the development plan presented to the Minister of Natural Resources.

² Cap. 194, The Substantive Laws of Belize, Rev. Ed. 2020.

[15] The nature of Mr. Romero's interest in the Property and whether he had any legal interest that could be subject to an agreement for sale cannot be understood without considering the modifications made to Mr. Romero's specific lease agreement. The legal rule *nemo dat quod non habet*, applies. In Mr. Romero's case, the lease does not contain an unqualified right to purchase. The applicable provision provides:

(10) Where the lessee fails to carry out improvements in accordance with the approved scheme and not being to the satisfaction of the Minister of Natural Resources; and or fails to make improvements of a minimum value of, the lessee may not qualify for a Minister's Fiat (Grant) or a Land Certificate.

(a) The lessee shall/may have an option to purchase the lot/land provided all conditions of the lease shall have been first carried out-upon application to the Minister and upon payment of a fee of 10% of the unimproved Market Value.

The exact requirements that Mr. Romero must satisfy to have the option to purchase, if at all, are not clear because the necessary modifications to the standard form's language have not been made.

[16] Clause 10 references improvements being required before an option to purchase can be exercised. The mandatory improvements are outlined in section 9 of the National Lands Rules:³

The lessee will be required to undertake to perform and observe the following conditions, that is to say, that he will agree at all times during a period of five years from the date of the lease—

(a) to develop and cultivate the land demised by the planting of permanent crops which shall be taken to mean and include the planting of coconuts, cacao, coffee, mangoes, citrus and other fruit trees and rotational crops according to a programme approved by the Chief Agricultural Officer;

(b) to clear not less than one fifth of the total area demised and plant with permanent crops not less than one half of such cleared area each year;

(c) to follow the orders given to him by the officers of the Ministry of Agriculture and the Belize Agricultural Health Authority for the control or prevention of disease;

(d) to comply in all respects with the conditions contained in the lease.

³ Cap. 191, The Subsidiary Laws of Belize, Rev. Ed. 2020.

Furthermore, clause 10(a) says Mr. Romero shall/may have the option to purchase. Shall indicates a right or imperative where may is discretionary.⁴ Because no election has been made, Mr. Franco cannot argue that a plain reading of the language of the lease provided Mr. Romero with an unqualified option to purchase even if he made the mandatory improvements.

- [17] But even if I found that Mr. Romero held a transferable interest in the Property, the court is limited in its ability to transfer the lease to Mr. Franco because section 5 of the National Lands Act⁵ outlines “national lands shall not...be dealt with or disposed of, except in the matter hereinafter provided.” Section 12 of the Regulations, expressly limits Mr. Romero’s ability to enter into any such agreement:

The lessee will be required to agree not to assign or transfer or set over or by any act or deed in any manner whatsoever deal with any right or interest under the lease without the consent in writing of the Minister or some person delegated by the Minister.

Therefore, the agreement Mr. Franco is asking this court to enforce is unlawful because it was made without the Minister’s consent. Specific performance is not an available remedy in the circumstances.

- [18] Furthermore, I do not find that the agreement between the parties was sufficiently certain to be recognized as an enforceable contract. In particular, the evidence presented has not convinced me that there was sufficient certainty as to what land would be transferred. Mr. Romero testified that he surveyed a much larger portion, but only 27.92 acres were ultimately leased to him. The declaration sworn before Mr. Torres referenced 29.7 acres. Consequently, it is not clear that the scope of Mr. Romero’s future interest in the land was precisely defined when the oral agreement was made. In addition, there is no evidence as to a timeline for when the transfer was to occur. In fact, I was unable to decide conclusively from the evidence presented whether the agreement was to transfer the lease interest or title.

⁴ Interpretation Act, Cap. 1, The Substantive Laws of Belize, Rev. Ed. 2020 at s. 58.

⁵ Cap 191., The Substantive Laws of Belize, Rev. Ed. 2020.

[19] Finally, in order for a contract for the sale of land to be enforceable, section 55 of the Law of Property Act⁶ requires the contract to be in writing unless there is sufficient part performance.⁷ The parties do not allege the document sworn before Mr. Torres was a contract. By his own admission, Mr. Franco has only paid \$500 to Mr. Romero and owes another \$15,000. It was not clear whether the \$500 was payment pursuant to the alleged oral contract or an amount paid in exchange for use and enjoyment of the land before the transfer. In any event, Mr. Franco has had the benefit of possession of the land since 2017 without sufficient performance of his obligations, namely tendering of consideration.

[20] As the valid leaseholder of national lands, Mr. Romero alone is entitled to possession of the Property.

Is either party entitled to compensation?

[21] The remaining question for this court to determine is whether any money is owed between the parties for the use and development of the Property while Mr. Franco has been in possession. Mr. Romero believes he is entitled to the income and profits generated by Mr. Franco from the Property. Mr. Franco wants to be compensated for the investments he has made in improvement to the Property in anticipation of Mr. Romero transferring his interest. I decline to award either party the compensation they seek.

[22] Mr. Franco is not entitled to compensation for his investment. He grounds his defence and counterclaim solely on the basis of breach of the contract that I have found to be unenforceable. Although a claim for compensation of \$60,600 is stated as an alternative to specific performance of the contract, this claim for compensation is still grounded in an action for breach of contract. Mistake of title, unjust enrichment, or any other action that may have justified a compensation award have not been pleaded. Therefore, to award Mr. Franco any compensation based on these pleadings would be enforcing a contract I have found to be unenforceable.

⁶ Cap. 190, The Substantive Laws of Belize, Rev. Ed. 2020.

⁷ Padron v. Minister of Natural Resources et al. CV No. 671 of 2012 at para 11.

[23] I find, however, that Mr. Franco does not owe Mr. Romero for the income he has earned while in possession of the Property. To require Mr. Franco to compensate Mr. Romero would be unjust. Equity will not allow a wrongdoer to profit by a wrong.⁸ Mr. Franco made investments in the Property based on an agreement he made with Mr. Romero. Because that agreement is unenforceable and Mr. Franco's pleadings were limited to a claim for breach of contract, Mr. Franco has lost that investment. Instead, Mr. Romero gets to retain those benefits despite entering into the agreement with Mr. Franco that he had no right to make. Moreover, until this court found the agreement to be unenforceable, Mr. Franco had good cause to believe he had a right to possess the Property and to resist Mr. Romero's attempts to eject him. As Mr. Romero has only achieved partial success in this claim, each party shall bear his own costs.

Disposition

[24] I order that:

- a. Mr. Franco must vacate, remove all possessions from, and deliver possession of the Property to Mr. Romero by 25th September 2023.
- b. Mr. Franco is permanently prohibited, whether by himself and/or his agents and/or servants and/or those authorized by him or claiming under or through him, from accessing, entering upon, coming unto, or dealing with the Property or interfering with Mr. Romero's quiet possession of the land.
- c. Each party shall bear his own costs.

**Patricia Farnese
High Court Judge**

⁸ Jehon v. Vivian (1876) Law Rep. 6 Ch. App. 742.