IN THE SUPREME COURT OF BELIZE, A.D. 2004

ACTION NO: 543/2004

BETWEEN	BELIZE SEA ISLAND COTTON GROWERS LIMITED	CLAIMANT
	AND	
	ISRAEL JONES	DEFENDANT

Mr. Phillip Zuniga, S. C. for the claimant.
Mr. H. E. Elrington, for the defendant.

AWICH J

30.5.2008. JUDGMENT

1. *Notes: Assignment of leasehold title; whether terms not included in the deed of assignment can be admitted into evidence; whether there is overriding interest of the assignor who remained in actual occupation after the assignee has mortgaged the leasehold interest, and which was subsequently sold by the mortgagee to the claimant.*

2. The claimant, Belize Sea Island Cotton Growers Limited, claims against the defendant, Israel Jones, possession of land, lot 198, Trial Farm Village, Orange Walk District, together with erections, an injunction order requiring the defendant to cease occupation, and damages for trespass. The land is national land. It is not in a registration area. The claimant claims the right to possession based on a leasehold title to the property. It says, the title was passed to it by assignment dated 6.9.2004, by Sea Island Club Limited who had been a mortgagee of the leasehold title to the property, and who sold it to the claimant, by right of a mortagee. The mortgagor was one, Gustavo Cardenas. The claimant did not call him as a witness. The claimant says, upon the sale of the leasehold title, Sea Island Club Ltd assigned the remainder of the term of the lease to the claimant. The lease was for thirty years. It is usual, however, that lessees of national land proceed to buy the title absolute (the freehold title) whenever they wish.

3. The defendant says, he has been in actual occupation of the land for thirty years, and that on 8.2.1993, he obtained a Minister's Fiat No. 123 of 1993, for thirty years. His account of how the land was dealt

with since is as follows. He "assigned [his] leasehold interest" in the land to Gustavo Cardenas, by a deed of assignment dated, 2.9.1997. The deed of assignment did not record all the terms of the agreement between them. The additional terms were that, he bought a vehicle for $25,000.00 from Mr. Cardenas; he paid $21,000.00. The sum of $4,000.00 remained owing; and they agreed that once the defendant completed payment, Mr. Cardenas would "reconvey the leasehold interest" to the defendant. He completed payment of the sum owing after one year, and Mr. Cardenas said he would obtain the necessary permission from the minister for Mr. Cardenas "to reassign the lease" to the defendant. It was after that, that the defendant built a two storey building on the land. Mr. Cardenas did not "reconvey" the land to the defendant, instead in July 2004, the defendant heard that Sea Island Club Ltd had a mortgage over the land in its favour and intended to sell off the land. Subsequently Mr. Inoue (witness for the claimant) came to the land and told the defendant that the land had been bought, it "belonged to the company". The defendant did not call Mr. Cardenas as a witness either.

4. So the defence of Mr. Jones is on two grounds. The first is that the deed of assignment dated 2.9.1997, exhibit No. C(KI)4 in court, between Mr. Cardenas and Mr. Jones is not the true deed they made, and in any case, the true deed they made did not record all the terms agreed. The second ground is that the defendant was in actual occupation of the land when the claimant bought it, the defendant's interest was an overriding interest, the claimant had a duty to inquire of the right of the defendant before the claimant bought the land.

5. Despite the denial by the defendant, I accept that exhibit No. C(KI)4 is the true deed of assignment between Mr. Gustavo Cardenas and the defendant. He testified that he obtained the necessary approval by the minister for assignment of the lease, despite that, he failed to produce the deed of assignment that he says is the true one. The claim by the defendant that he left his true copy of the deed of assignment at home is preposterous. This is the one most important occasion on which he would produce the deed.

6. I also reject the statement that the deed of assignment did not contain all the terms of the assignment between the defendant and Mr.

Cardenas. In any case, the law does not allow him to introduce terms into the deed – see ***Smith v Jones [1952] 2 All ER 823,*** cited by learned counsel Mr. P. Zuniga SC., for the claimant. The rule is consistent with the general rule in the parol evidence rule in contract. The deed of assignment was in fact registered and so its terms as shown in the registered deed were all that the public, including the claimant, needed to take notice of, not other undisclosed terms, as far as the land, lot 189 Trial Farm Village, Orange Walk District, is concerned.

7. The defence that the defendant had an overriding interest, and that the claimant had a duty to inquire of the interest that the defendant had in the land also fails. The interest of the defendant was already recorded in the deed of assignment between him and Mr. Cardenas, which deed was registered. The claimant had notice of the interest which was shown in the deed of assignment as already assigned away to Mr. Cardenas. The defendant admits that. Any inquiry would have yielded the same information. The claimant also had notice of the subsequent mortgage between Mr. Cardenas and Sea Island Club Ltd, which mortgage was also registered. He acted accordingly.

8. Failure to inquire benefits only a person in actual occupation who has a valid claim to a right or interest in the land, not just any person in actual occupation. If, as the result of the inquiry, a legal estate or equitable interest of someone other than the vendor is discovered, the intending purchaser must terminate his intended purchase or make the purchase subject to the right or interest revealed. If the inquiry reveals a baseless claim, that should not cause the intending purchaser to terminate his intention to purchase. The vendor will obviously take action to evict the occupier who has no right to be on the land, or the purchaser will take the action as the claimant has done in this case. In ***National Provincial Bank Ltd v Ainsworth [1965] 2 All E.R 474*** (UK), Lord Upjohn made the point at page 485 in the following words:

> *"Of course an intending purchaser is affected with notice of all matters which would have come to his notice if such inquiries and inspections had been made by him as ought reasonably to have been made (s: 19 of the Law of Property Act 125).*

Surely, however, any inquiry, if it is to be made reasonably, must be capable of receiving a positive answer as to the rights of the occupier and lead to a reasonably clear conclusion as to what those rights are".

9. Mr. Jones was an occupier who had no legal basis for being in actual occupation. If he had the permission of Mr. Cardenas, then he remained there as a licensee. His licence terminated when Mr. Inoue, a representative of the claimant, informed him of the change in title and asked him to leave. Mr. Jones did not leave the land. He remained on it as a trespasser.

10. The claim of Belize Island Cotton Growers Limited filed on 27.10.2004, succeeds. Judgment is entered for the claimant, Belize Sea Island Cotton Growers Limited, against the defendant, Mr. Israel Jones.

11. The orders that the court makes are that:

11.1 the defendant must vacate land lot 198, Trial Farm Village, Orange Walk District;

11.2 the defendant will pay damages in the sum of $500.00 for each month he has been in occupation since the date on which the representative of the claimant asked him to vacate.

11.3 the defendant will pay the costs of these proceedings to be agreed or taxed.

12. Delivered this Friday the 30th May, 2008.
At the Supreme Court
Belize City

Sam Lungole Awich
Judge