

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 414 of 2021

BETWEEN:

LILLIAN LOCKWOOD

Claimant

and

KEISHA CHRISTIAN

Defendant

Appearances:

Magalie M. Perdomo for the claimant

Stevanni Duncan Ferrera for the defendant

2023: October 16, 17

December 22

2024: January 12

JUDGMENT

[1] **CHABOT, J.:** Ms. Lillian Lockwood became a legal owner of 15 acres on both sides of the Northern Highway near Mile 17½ in the Village of Sandhill, Belize District (the “Property”) through a Deed of Gift dated 3rd September 1992 (Deeds Book Volume 20 of 1992 at folios 665-662) (the “Deed of Gift”). The Deed of Gift provides that Ms. Minna Lockwood (the grantor) conveys to Minna Lockwood and Lillian Lockwood (the grantees) the Property.

- [2] By court order dated 26th September 2007, Ms. Minna was ordered to transfer the Property to Ms. Lillian and Ms. Daphne Lockwood. The court also ordered that Ms. Minna was entitled to 2½ acres from the entire 15 acres of the Property. The 2½ acres was transferred to Ms. Minna by Deed of Conveyance LTU-201801007. Ms. Minna subsequently transferred her 2½ acres to Mr. Errol Jefferson Pascascio. Title to the Property was never transferred by Ms. Minna to Ms. Daphne.
- [3] Ms. Daphne passed away on 11th June 2019. By Grant of Administration dated 3rd June 2021, Ms. Keisha Christian was appointed as administrator of Ms. Daphne's estate.
- [4] Ms. Lillian alleges that around 11th September 2020, she left Belize for a vacation in the United States. When she returned in March 2021, she was surprised to find that the Property was occupied by her niece, Ms. Christian. Ms. Lillian alleges Ms. Christian changed the locks on the house and the front gate. She also claims that some of her personal belongings and documents are missing. Ms. Lillian further alleges that the Property contains two other small buildings for which Ms. Christian has been collecting rent from tenants without Ms. Lillian's permission.
- [5] Ms. Lillian seeks the following relief in the claim:
1. A declaration that the claimant is the legal owner of an estate in fee simple of all that block, piece or parcel of land situate on both sides of the Northern Highway near Mile 17½ in the Village of Sandhill, Belize District, Belize and which contains 15 acres as described in the Deed of Gift dated the 3rd day of September, 1992;
 2. A declaration that the claimant is entitled to immediate possession of the Property;
 3. An order that the defendant, whether by herself, her servants, agents or otherwise immediately delivers vacant possession of the Property to the claimant;
 4. A permanent injunction to prohibit and restrain the defendant, whether by herself, her servants, agents or otherwise whosoever, from taking possession, occupying, continuing occupation, trespassing, and/or entering upon the Property or any portion of the Property;

5. An order that the defendant pays the claimant damages, including general and special damages for trespass and for damage to the Property, with such damages to be assessed;
6. An order that the defendant returns all documents and properties in her possession which belongs to the claimant and that the defendant pays the claimant all rents collected from the properties during her unlawful occupation;
7. An order that mesne profits are paid to the claimant at the rate of BZ\$3,000.00 monthly from the date of occupation by the defendant until vacant possession is delivered up to the claimant;
8. Interest pursuant to the Senior Courts Act;
9. Cost;
10. Such further or other relief as this honourable court deems just in the circumstances.

[6] Ms. Christian denies the allegations in the claim. She alleges that her adoptive mother, Ms. Daphne Lockwood (also known as Daphne Gutman), asked Ms. Minna to purchase the Property on her behalf from Ms. Maria Cortez. Ms. Christian alleges that Ms. Daphne gave Ms. Minna BZ\$15,000.00 to buy the Property from Ms. Cortez and receive it on her behalf since Ms. Daphne was out of the country in the United States at the time. The Property was transferred via conveyance to Ms. Minna. Ms. Minna was holding 7½ acres of the Property on trust for Ms. Daphne. Ms. Daphne had promised to give Ms. Minna 2½ acres of the Property. According to Ms. Christian, Ms. Lillian was not involved in the arrangement between Ms. Daphne and Ms. Minna.

[7] Ms. Christian alleges that, as the administrator and sole beneficiary of Ms. Daphne's estate, she is beneficially entitled to the Property. She denies that the Property belongs to Ms. Lillian. Ms. Christian filed a counterclaim seeking the following relief:

1. A declaration that the Deed of Gift dated 3rd September 1992 is a fraudulent instrument and ought to be set aside and/or cancelled on the basis of fraud.
2. Alternatively, a declaration that Daphne Gutman and the claimant held the Property as tenants in common so that 50% of the Property belongs to the estate of Daphne Gutman.
3. An order that the Property is to be subdivided so that the estate of Daphne Gutman is vested with a 50% interest and portion of the Property, specifically

the portion where the residential home is situated. Alternatively, that the Property is sold and the proceeds split equally between the claimant and Daphne's estate.

4. Costs.

Issues for determination

[8] The only issue to be decided in this claim is whether Ms. Lillian and Ms. Daphne were joint owners of the Property, or tenants in common.

Analysis

Claimant's submissions

[9] Ms. Lillian argues that by the Deed of Conveyance dated 3rd September 1992, Ms. Lillian and Ms. Minna held the Property as legal joint owners. By the 2007 court order, the said legal joint tenancy was severed, and a joint tenancy, not a tenancy in common, was created for Ms. Lillian and Ms. Daphne.

[10] Ms. Lillian and Ms. Daphne filed Claim No. 445 of 2002 seeking the following relief:

1. A declaration that Daphne Lockwood Phillips Gutman and Lillian Lockwood are the rightful owners of the parcel of land more particularly described as 15 acres of land situate at mile 17½ Northern Road, Sandhill Village, Belize District, Belize.
2. A declaration that they are the joint legal owners of all the buildings and erections on the said parcel of land and is entitled to possession of them.

[11] The court ordered Ms. Minna to transfer the entire Property to the plaintiffs, being Ms. Lillian and Ms. Daphne, save for 2 ½ acres which remained with Ms. Minna. The court order reads as follows:

1. That the Defendant do transfer to the Plaintiffs the land being 15 Acres on both sides of the Northern Highway near mile 17½ in the Village of Sandhill, Belize District and described in Deeds Book Volume 20 of 1992 at folios 665-662.
2. That the defendant is entitled to 2½ Acres from the whole 15 Acres of land situate on both sides of the Northern Highway, near Mile 17½ in the Village of Sandhill, Belize District.

- [12] According to Ms. Lillian, tenants in common own an individual share in the property, while joint tenants are considered as one with respect to the property. Under joint tenancy, each party is said to be “wholly entitled to the whole of the land”. Joint tenants operate as a single owner having separate and equal rights. A joint tenant cannot lay claim to any specific portion of the property. Joint tenancy is characterized by four unities which must exist, being: (1) unity of possession; (2) unity of interest; (3) unity of title; and (4) unity of time. Contrary to a tenancy in common, where there is no right of survivorship, a joint tenant’s interest is extinguished upon his death. In cases where there are joint tenants, the survivor is seised or possessed of the whole of the property upon the death of the other.
- [13] Ms. Lillian alleges the Property was held by Ms. Lillian and Ms. Daphne jointly and not as tenants in common. The 2007 court order created a joint interest to the portion of the Property held by Ms. Lillian and Ms. Daphne. Upon the death of Ms. Daphne, the right to survivorship operated to extinguish Ms. Daphne’s interest in the Property. Ms. Lillian is seised or possessed of the whole Property. Ms. Lillian notes that joint tenancy in the Property by Ms. Lillian and Ms. Daphne only arose as a result of the court order. Prior to 26th September 2007, Ms. Daphne never had legal ownership in title as the Property was never transferred in Daphne’s name. There is no evidence or basis for the Court to find a tenancy in common or that any other interest was created as it relates to Daphne prior to the 2007 Court Order.
- [14] Ms. Lillian submits that the joint tenancy has not been severed. She notes that under section 4 of the Law of Property Act,¹ “a legal estate is not capable of subsisting or of being created in an undivided share in land”. Pursuant to section 38 of the LPA, the only way for a tenancy in common to exist is by beneficial interest where severance occurs. A beneficial interest can be created where either words of severance exist, the four unities are not present, there is severance of the joint beneficial interest, or where a trust would be imposed for tenancy in common. Ms. Lillian submits that none of these circumstances arise in this case.

¹ Cap. 190, Rev. Ed. 2020 (“LPA”).

[15] According to Ms. Lillian, the evidence shows there was no severance of the joint interest. Ms. Lillian provided evidence of her interest in the Property by exhibiting rental receipts and photographs of the development of the land over the years. She also provided viva voce evidence as to her payment of the purchase price and her intention to occupy the Property jointly with Ms. Daphne. Ms. Lillian called as witnesses in this matter Mr. Vince McKesey, Mr. Elvis Lockwood, and Ms. Mildred Lockwood. These witnesses corroborated Ms. Lillian's testimony. On the other hand, Ms. Christian's witnesses provided no evidence to support that the joint tenancy was severed by the parties.

Defendant's submissions

[16] Ms. Christian filed legal contentions prior to trial, but no closing submissions. In her legal contentions, she states that she "has elected to abandon, without prejudice to the possibility of future or other proceedings, her claim that the Deed of Gift is fraudulent".

[17] In her brief submissions, Ms. Christian submits that Ms. Lillian and Ms. Daphne held or owned the beneficial interest in the Property as tenants in common. Tenancy in common does not carry with it a right of survivorship. Therefore, a share of property of a tenant in common can pass by will or on intestacy upon the death of the tenant in common. Ms. Daphne's share of the Property fell to her estate on intestacy and ought to pass to her sole beneficiary, Ms. Christian.

[18] Ms. Christian alleges there is an equitable presumption of tenancy in common in circumstances where the purchase money to acquire property is provided in unequal shares.

[19] Ms. Christian notes that a joint tenancy can be severed in a number of circumstances: by an act of a joint tenant operating upon his own share, by mutual agreement, or by course of dealing. A joint tenancy may be ended in equity by mutual agreement, a court order, an implied agreement or even by an agreement by one tenant where that agreement is not specifically enforceable and is subsequently repudiated.

Analysis

[20] I find the Property was held in joint tenancy by Ms. Lillian and Ms. Daphne. As a result, on Ms. Daphne's death, her interest in the Property was extinguished. No interest in the Property passed to her sole beneficiary, Ms. Christian.

[21] Ms. Christian seeks to have her interest in the Property recognized as the sole beneficiary of her adoptive mother, Ms. Daphne's alleged interest as a tenant in common in the Property. To do so, Ms. Christian adduced evidence which she says proves that Ms. Daphne contributed to the purchase price of the Property, and thereafter made improvements to the Property.

[22] Ms. Daphne's interest in the Property was considered by Conteh CJ in the context of Claim No. 445 of 2002. In that claim, Ms. Daphne alleged that her contributions to the purchase price of the Property gave her an interest in the Property. Ms. Daphne and Ms. Lillian, as plaintiffs, asked the court for a "declaration that they are the joint legal owners of all the building and erections on the said parcel of land and is entitled to possession of them". Ms. Lillian and Ms. Daphne's joint interest was recognized by Conteh CJ in his order directing Ms. Minna to transfer "to the plaintiffs" (i.e. Ms. Daphne and Ms. Lillian) the Property. The absence of any words of severance or proportionate interests in the court order triggers the legal presumption that the Property was held jointly by Ms. Daphne and Ms. Lillian, as provided for in subsection 36(2) of the LPA:

36.-(1) An undivided share in land shall not be capable of being created except as provided by the Settled Land Act, 1925, c. 18, or as hereinafter mentioned.

(2) Where, after the commencement of this Act, the title to land is vested in more persons than one, the certificate of title or the title deed thereto, notwithstanding anything to the contrary in this Act, shall operate to vest the title in the grantees as joint tenants upon the statutory trusts hereinafter mentioned

[23] Title was never transferred by Ms. Minna to Ms. Daphne, and remains in Ms. Minna and Ms. Lillian's names. However, the 2007 court order created a trust by which Ms. Minna held an interest over 12½ acres of the Property in joint tenancy for Ms. Daphne.

[24] Ms. Daphne retained an interest as joint tenant of the Property until her death on 11th June 2019. There is no evidence the joint tenancy was ever severed during Ms. Daphne's lifetime. That Ms. Christian or the witnesses called on her behalf have "always known the house to be Daphne's house" is not sufficient to establish that the joint tenancy was ever severed. If Ms. Daphne made any improvements to the Property, these improvements were made with the understanding that they would benefit Ms. Lillian as the joint tenant, not Ms. Daphne's beneficiaries.

[25] Pursuant to subsection 38(3) of the LPA, upon Ms. Daphne's death the right to survivorship operated to extinguish Ms. Daphne's interest in the Property. Her interest did not pass to her estate, but vests solely in Ms. Lillian:

38.(3) Nothing in this Act shall affect the right of a survivor of joint tenants, who is solely and beneficially interested, to deal with his legal estate as if it were not held on trust for sale.

(4) Without prejudice to the right of a joint tenant to release his interest to the other joint tenants, no severance of a trust estate, so as to create a tenancy in common, shall be permissible.

[26] Therefore, as Ms. Daphne's beneficiary, Ms. Christian did not acquire any interest in the Property. Ms. Lillian is entitled to a declaration that she is the legal owner of the Property.

[27] Ms. Lillian seeks a declaration and an order for the immediate possession of the Property. On 25th July 2022, this court granted Ms. Lillian an Interim Order with Penal Notice granting Ms. Lillian possession of the Property by 12th August 2022. On 29th December 2022, the Interim Order with Penal Notice was discharged, but the court ordered the status quo remain in relation to possession of the Property. Since Ms. Lillian is in possession of the Property, there is no need to make the declaration and order she seeks to regain possession of the Property. A permanent injunction restraining Ms. Christian from taking possession or occupying the Property, however, will be granted as requested.

[28] Ms. Lillian seeks general and special damages for trespass and for damage to the Property. She also seeks mesne profits at the rate of BZ\$3,000.00 monthly from the

date of occupation by Ms. Christian until vacant possession was delivered up to Ms. Lillian. Damages and mesne profits are awarded to Ms. Lillian, with the quantum for both the damages and mesne profits to be assessed under Part 16 of the Supreme Court (Civil Procedure) Rules, 2005. The court will remain seized of this matter for the purpose of carrying out the assessment of damages and to establish the proper amount in mesne profits due to Ms. Lillian.

IT IS HEREBY ORDERED THAT

- (1) The claim is granted.
- (2) Lillian Lockwood is the legal owner of an estate in fee simple of all that block, piece or parcel of land situate on both sides of the Northern Highway near Mile 17 ½ in the Village of Sandhill, Belize District, Belize as described in the Deed of Gift dated the 3rd day of September, 1992 (“the Property”) and which contains approximately 11.050 Acres.
- (3) A permanent injunction is granted prohibiting and restraining Keisha Christian, whether by herself, her servants, agents or otherwise howsoever, from taking possession, occupying, continuing occupation, trespassing, and/or entering upon the Property or any portion of the Property.
- (4) Lillian Lockwood is awarded general and special damages for trespass and for damage to the Property, with such damages to be assessed.
- (5) Keisha Christian shall return all documents and properties in her possession which belong to Lillian Lockwood and shall pay Lillian Lockwood all rents, if any, collected from the Property during her occupation.
- (6) Keisha Christian shall pay Lillian Lockwood mesne profits at a rate to be determined by the court from the date of occupation by Keisha Christian until 12th August 2022.
- (7) The counterclaim is dismissed.
- (8) Interest on all sums due at 6% pursuant to the Senior Courts Act, 2022.
- (9) Prescribed costs are awarded to Lillian Lockwood.

Geneviève Chabot
High Court Judge