

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 70 of 2022

BETWEEN:

GLORIA TURNER TUCKER

Claimant

and

ADELITA UCK

Defendant

**Appearances:**

Rene A. Montero for the Claimant

Orson J. Elrington for the Defendant

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2023: 29 September  
2024: 2 January  
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**DECISION**

[1] **FARNESE, J:** Ms. Tucker has initiated a claim against her former sister-in-law, Ms. Uck, to recover possession of property in San Pedro in which she holds title. In her defence and counterclaim, Ms. Uck alleges fraud and claims she has beneficial rights to the property arising from an unresolved matrimonial property claim (Claim No. 26 of 2012) she initiated against Mr. Glen Turner in 2012

pursuant to the Married Women's Property Act.<sup>1</sup> Mr. Turner died in 2021 before settling the matrimonial property.

[2] Case management in this matter was adjourned to review the court filings associated with Claim no. 26 of 2012 to determine if the matrimonial property claim ought to be consolidated with the present claim. I learned that the matrimonial property claim was delayed because of Mr. Turner's refusal to comply with disclosure requirements. I invited the parties to provide written submissions on whether this refusal raised equity concerns if Claim no. 26 of 2012 was not resolved as a direct consequence of Mr. Turner's actions. Ms. Uck's counsel did not file submissions, so I dismissed the application for consolidation noting that it was still open to Ms. Uck to present evidence of fraud and a beneficial interest in her defence and counterclaim in the present claim.

[3] No evidence was submitted on Ms. Uck's behalf. Ms. Uck has failed to meet her burden to prove that she has an over-riding interest arising from a matrimonial property claim that has priority over Ms. Turner's title. Ms. Uck has also failed to prove that Ms. Turner obtained her title by fraud. I, therefore, find that Ms. Turner is entitled to possession of Parcel 458, Block 7 in the San Pedro Registration section (the property) because she is the registered owner. The counterclaim is dismissed.

## Issue

[4] The central issue in this dispute is whether Ms. Turner is entitled to possession of the property.

## Analysis

[5] Ms. Turner was vested with absolute title to the property upon registration.<sup>2</sup> Title is *prima facie* proof of ownership. That means a person challenging the validity of the title of a registered owner has the burden to prove that the title is defective. The burden is also on a person claiming that they have rights to the property that take priority over the registered owner's rights. In this case, Ms. Uck is challenging the validity of Ms. Turner's title based on fraud and that she has rights in the property that take priority by virtue of her matrimonial property claim.

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<sup>1</sup> Claim No. 26 of 2012.

<sup>2</sup> Registered Land Act, the Substantive Laws of Belize, Cap. 194 (Rev. Ed. 2020) at s. 26

- [6] If Ms. Uck's matrimonial property claim is successful, she would have an over-riding interest in the property because she remained in possession when the property transferred to Ms. Turner.<sup>3</sup> Under subsection 31(1)(g) of the Registered Land Act a grant of absolute ownership is subject to an unregistered over-riding interest in favour of "the rights of a person in actual occupation of the land". Those rights, however, remain unproven.
- [7] Belize is not a jurisdiction which presumes equal division of property upon the dissolution of marriage. Rather, the court looks to provide a "just and equitable" division based on each parties' contribution to property acquired during the marriage.<sup>4</sup> Consequently, evidence of the existence of a matrimonial property claim alone is not sufficient to prove an over-riding interest. Moreover, the parties dispute when Mr. Turner purchased the property. Ms. Uck provided no evidence to support her claim that the property was acquired during the marriage and, consequently, is properly included in the matrimonial claim.
- [8] Ms. Uck has led no further evidence to prove her claim of fraud. Instead, her counsel expects this court to draw an inference of fraud from the timing of the property's transfer to Ms. Turner and the fact that Mr. Turner was her brother. He relies on this inference as sufficient to shift the burden to Ms. Turner to disprove the fraud allegation. He argues that the court should conclude Ms. Turner fraudulently acted with her brother to prevent Ms. Uck from getting her share in the divorce proceedings because Ms. Turner has not provided documentation in support of her assertion that title was transferred to her as full and final settlement of monies owing on a debt. Counsel also tried to undermine Ms. Turner's credibility during his cross-examination of her by suggesting she misrepresented the value of the property on the transfer documents to avoid stamp duties.
- [9] The court may have had reason to question whether Ms. Turner acquired title to the property in good faith if the only evidence on the record was a transfer of land for no value during divorce proceedings. That, however, is not the record before me. Ms. Turner and her sister, Ms. Ethel Ann Turner Middleton, testified that the transfer occurred in 2010, two years prior to the breakdown of Ms. Uck and Mr. Turner's marriage. While Ms. Uck's counsel suggested during their cross-examination that the marriage ended in 2010, neither witness agreed with that suggestion.

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<sup>3</sup> McQuarrie v Ascendancy Belize Limited, Claim No. 550 of 2021 at para 17.

<sup>4</sup> Vidrine v Vidrine Civ. App. No. 2 of 2010.

[10] Ms. Turner's claim that the property transfer was in exchange for the forgiveness of Mr. Turner's debts to her is also supported by Ms. Middleton's testimony. She testified that in 2005 her brother told her that their sister, Ms. Turner, loaned him money. I find Ms. Middleton's explanation for why she was not aware of the details of the loan agreement reasonable. She stated she did not want to become involved given that both parties were her siblings.

[11] Ms. Uck has not convinced me that I have reason to question whether the property transfer was done in good faith. As such, Ms. Turner's failure to provide documentary evidence in support of her claim that she loaned her brother money is of no consequence. Nonetheless, I do not find the lack of documentary evidence suspicious given the time that has lapsed since the loans are purported to have been made and satisfied, and the fact that the loan was between siblings.

[12] Finally, I gave no consideration to the suggestion that Ms. Turner misrepresented the value of property. That is a serious allegation and requires some evidence before the court will turn its mind to addressing its validity, especially where the issue is raised for the first time at trial. Ms. Turner is entitled to know the case she is expected to meet well in advance of trial.

[13] The weight of evidence supports the finding that Ms. Turner is entitled to possession of the property. Ms. Uck has failed to meet her burden to prove that she has an over-riding interest in the property that has priority over Ms. Turner's absolute interest. I also find no evidence that Ms. Turner obtained her title by fraud.

## **Disposition**

[14] IT IS ORDERED THAT:

1. Judgment for the claimant;
2. The counterclaim is dismissed;
3. The defendant is to give up full possession of Parcel 458, Block 7 in the San Pedro Registration Section within 45 days of this decision;
4. The defendant is required, whether by herself, her servants, or agents, to remove all her belongings from the property within 45 days of this decision;

5. Thereafter, a permanent injunction is granted restraining the defendant, whether by herself, her servants, or agents from accessing, entering, using, or remaining on the property;
6. The defendant shall pay to the claimant mense rent from January 2022 to the date the property is delivered to the claimant with interest of 6% per annum; and,
7. Costs are awarded on a prescribed basis.

**Patricia Farnese  
High Court Judge**