

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 711 of 2020

BETWEEN:

[1] MEI-HUI YEH

Claimant

and

[1] ILUER BARRIENTOS

[2] VICTOR MANUEL BARRIENTOS GAMEROS

Defendants

Appearances:

Brandon S. Usher for the Claimant

Andrea McSweeney McKoy for the Defendants

2023: 11-12 July
3 October
2024: 2 January

DECISION

[1] **FARNESE, J:** Mr. Iluer Barrientos and Mr. Victor Manuel Barrientos Gameros (the Barrientos) are in possession of a parcel of land to which Mrs. Mei-Hui Yeh holds title. She is suing for possession

of the parcel, rental arrears, and mesne profits. She also claims that the defendants have not complied with the terms of their rental agreement.

[2] The Barrientos filed a counterclaim asserting a right to title to the property by way of adverse possession. They contend that Mrs. Yeh was either issued her title by mistake or her title is subject to an overriding interest in favour of Mr. Victor Barrientos. They further claim that the lease agreement is unenforceable because it was signed by Mr. Iguer Barrientos, who does not reside on the property, without Mr. Victor Barrientos' consent.

[3] For the reasons provided below, I find that the Barrientos have failed to prove that they have acquired rights to the property through adverse possession. After reviewing the evidence and submissions presented in this case, I find that it is more likely than not that the Barrientos had permission to be on the property.

Issue

[4] Do the Barrientos have rights in the disputed property through adverse possession?

Analysis

[5] Mrs. Yeh inherited title to Parcel 4069, Block 20, Belmopan Registration Section from her late husband, Mr. Jung-Chao Yeh (Pastor Yeh). Pastor Yeh died in 2014. Title to the property was registered in Mrs. Yeh's name in 2017. Pastor Yeh purchased the property from Mr. Chang in 2006. Mr. Chang did not testify so the court has no first-hand account of the circumstances of the sale between Pastor Yeh and Mr. Chang. There is no dispute that Pastor Yeh purchased the property with a small wooden house and some fruit trees present. The parties dispute who constructed the house and planted the trees.

[6] Mr. Victor Barrientos is Mr. Iguer Barrientos Gameros' father. They allege that they moved onto the property in 2000 after Mr. Victor cleared the land and constructed a small, thatch-roofed house. Mr. Victor testified that he began working next to the property in 1990 and never saw anyone on the overgrown parcel. He decided to move his family on to the property because he considered it abandoned. The Barrientos say that Mr. Victor has lived uninterrupted on that property ever since

and currently has 3 homes on the property. Mr. Iluer states that he has not lived on the property since 2002.

[7] The Barrientos make two claims regarding how Mr. Victor acquired rights through adverse possession. First, they assert that Mr. Victor had acquired rights to the property before title was transferred to Mrs. Yeh. Consequently, Mrs. Yeh obtained her title either by mistake or her title is subject to Mr. Victor's over-riding interest. Under subsection 31(1)(f) of the Registered Land Act (RLA),¹ Mrs. Yeh's title is subject to any interest "acquired or in the process of being acquired by virtue of any law relating to limitation or prescription."² In the alternative, the Barrientos argue that Mr. Victor acquired rights through adverse possession after Mrs. Yeh became the property's registered owner.

[8] The RLA requires that a person be in "open, peaceful and uninterrupted possession" for 12 years to obtain rights to private property through adverse possession. The test for proving adverse possession, as established by the Caribbean Court of Justice, is as follows:³

...a claimant to land by adverse possession needs to show that for the requisite period he (and any necessary predecessor) had (i) a sufficient degree of physical custody and control of the claimed land in the light of the land circumstances (Factual Control), and (ii) an intention to exercise such custody and control on his own behalf and for his own benefit independently of anyone else, except someone engaged with him in a joint enterprise on the land (Intention to Possess)...There must be an intention to make full use of the land in a way in which an owner would.

The possession must also be without the consent of the landowner. Mr. Victor has the burden to prove that he has acquired rights to the property as he claims.

Duration of Possession

[9] The Barrientos have proven, on a balance of probabilities, that Mr. Victor and his family moved onto the property in 2000 and have lived there ever since. The weight of evidence does not support Mrs. Yeh's claim that Pastor Yeh purchased the property with an unoccupied board house built by Mr. Chang. I find that the house was built by Mr. Victor. Mr. Levi Tello testified that he visited the

¹ Registered Land Act, the Substantive Laws of Belize, Cap. 194 (Rev. Ed. 2020).

² Adverse possession is an equivalent, but more descriptive name for prescription. The terms will be used interchangeably throughout this judgment.

³ *Toolsie Presaud Ltd. v. Andrew James Investment Ltd.* (2008) 72 WLR 292 at para 28.

property while Mr. Victor was constructing the house. Retired Commissioner of Police Jose Zetina also testified that the Barrientos have lived on the property since 2000. Mrs. Hsiang-Yuan Liu also testified that she believed that the Barrientos were “already there” when Pastor Yeh purchased the parcel. I find it is more likely than not that Pastor Yeh was led to believe he was purchasing unoccupied land. Mr. Victor testified that shortly after Pastor Yeh purchased the property, Pastor Yeh visited the property and did not know what to do because he did not expect to find the Barrientos living there.

[10] The Barrientos, however, have not proven that they possessed the property prior to 2000. Mr. Victor testified that he moved to the area in 1990 and observed that no one was on the property for 10 years before he decided to move his family there. While I accept his evidence that he cleared brush and planted a few fruit trees starting in 1996 or 1997, I find those actions were taken with the intention of future possession. Mr. Barrientos testified that he was waiting to see if the true owner would appear before he moved his family on to the land.

[11] Therefore, the Barrientos have proven that Mr. Victor met the requisite time to acquire rights to the property through adverse possession in 2012, 5 years before Mrs. Yeh became the property’s registered owner. If they satisfy the remainder of the test, Mrs. Yeh’s interest in the property would be subject to Mr. Victor’s over-riding interest and Mr. Victor would be entitled to have the title rectified to list his name as the registered owner.⁴

[12] The claim that Mrs. Yeh’s title was issued by mistake, however, is unfounded. The Barrientos have not contested that Mrs. Yeh is the lawful beneficiary of Pastor Yeh’s estate, including the disputed property. For the title to have been issued by mistake, Mr. Barrientos would have had to have asserted and proven his adverse possession claim prior to the transfer of title to Mrs. Yeh. The evidence establishes that Mr. Victor did not apply to the Registrar for recognition of his adverse possession of the property until 2020.

⁴ RLA at subsection 142(1)(b).

Factual Control

- [13] Although whether the Barrientos had permission to be on the property is disputed, that they have custody and control of the property is conceded by Mrs. Yeh's pleadings and her testimony. Mrs. Yeh's evidence is that she has been excluded from the property and her efforts to evict the Barrientos have been unsuccessful. She also testified that she desires to permit family to build on the property but is unable to do so with the Barrientos living there. Therefore, I find Mr. Victor's use of the property is inconsistent with Mrs. Yeh's enjoyment of its use.
- [14] Mrs. Liu's testimony that she spent time on the property with Pastor Yeh and children from their church is not inconsistent with Mr. Victor's control of the property. Mrs. Liu provided few details of why they visited the property and what they did while they were there. She also admitted only visiting the property a few times. She was also unable to recall if she met the Barrientos while she was there, why they were on the property, or much of what they did while they were there, which suggest her visits were very infrequent and fleeting.

Intention to Control

- [15] The Barrientos have also proven, on a balance of probabilities, that they have the requisite intention to control the property. Mr. Victor constructed two homes on the property, one for himself and one for his daughter's family. He also allowed his son to build a third house. Mr. Chun-Hung Kuo testified that the construction was without Mrs. Yeh's permission. The building caused Mr. Kuo to hire Mr. Joshua Ashburn to manage the properties and to prevent further building. Not seeking permission of the landowner for these large construction projects shows the intention to control.
- [16] Mr. Tello and Mr. Zetina both testified that they considered the property as belonging to Mr. Barrientos as they have known no other owner. Mr. Victor also stated that he chose to move onto the land in 2000 after waiting 10 years until he was satisfied that it was abandoned. Mr. Victor has not paid rent or complied with any of the conditions Mrs. Yeh claims her husband required in exchange for his permission to live on the property. Recently, Mr. Victor applied to the Registrar to be granted title through adverse possession. I find each of these actions prove an intention to control the property.

Permission

- [17] I find that it is more likely than not the Barrientos resided on the property with Pastor Yeh's permission until his death in 2014 despite my finding Mrs. Yeh's testimony uncredible. On the one hand, she was certain to have seen Mr. Victor when she visited the property and when Mr. Victor brought fruit to the church as required by his agreement with Pastor Yeh. On the other hand, she could not identify Mr. Victor in court. She also testified that she went to check on the property a few times with Mr. Kuo after she asked for his continued assistance managing the property when her husband died, but Mr. Kuo made no reference to visiting the property with Mrs. Yeh. Nonetheless, the Barrientos have the burden to prove they were in open possession without the registered owner's permission.
- [18] After reviewing the evidence, I am left with no doubt that Pastor Yeh was aware Mr. Victor was living on the property. Until his death, Pastor Yeh lived and led a church congregation near the property. Mr. Victor also admits to speaking with Pastor Yeh on the property shortly after its purchase in 2006. It is unreasonable to conclude that Pastor Yeh would abandon a newly purchased property merely because someone else was living there. The property is 2.5 acres located along the hummingbird highway and is suitable for development as demonstrated by Mrs. Yeh's plans for the property.
- [19] The Barrientos provided no explanation for why Pastor Yeh did not object to them living on his property. I found Mr. Victor's responses to questions about his encounter with Pastor Yeh evasive. Mr. Victor recalled that Pastor Yeh did not know what to do when he unexpectedly discovered the Barrientos on his land and never spoke with Mr. Victor again. Mr. Victor's testimony that he never spoke to anyone else about the property until Mr. Ashburn sought rent and began eviction proceedings is disingenuous. Even if true, his claim that he spoke with no one before Mr. Ashburn is not evidence of a discontinuance of possession by Pastor Yeh or Mrs. Yeh. Mr. Kuo testified that Pastor Yeh asked him to manage his properties, including the property where Mr. Victor resides, while Pastor Yeh returned to Korea before his death. Mr. Kuo stated that he visited the property 2 or 3 times a year, but often would only encounter children on the property who informed him that Mr. Victor was working. I find it highly unbelievable that Mr. Victor was unaware of these visits.

Moreover, Mr. Kuo identified Mr. Victor in court as the person he spoke to about paying rent on one of his visits to the property.

[20] I find the evidence of Mr. Kuo and Mrs. Liu that Pastor Yeh allowed the Barrientos to stay on the property as an act of charity the more reasonable explanation. Mr. Kuo testified that Pastor Yeh coordinated the settlement of new immigrants on land Mr. Kuo owned in Orange Walk. Therefore, it is reasonable to conclude that Pastor Yeh did not displace the Barrientos family because he had no immediate plans to use the property..

[21] I am unable to conclude, however, that Pastor Yeh required Mr. Victor to keep the land clean and to give 10% of the things grown on the property to the church. The evidence presented is that Mr. Victor worked in Belmopan. I have not been provided with any details of the extent of fruit trees planted on the property that would suggest that the fruit grown on the property was for anything other than personal use. I also have no reliable evidence that supports Mrs. Yeh's claim that Mr. Victor delivered fruits to the church while Pastor Yeh was alive. Mr. Victor denies providing any fruit to Pastor Yeh. It may be that Mr. Kuo assumed such agreement was made with Mr. Victor because that was the arrangement made by Pastor Yeh with the persons on his land in Orange Walk.

[22] I find none of the other evidence presented dispositive. While I find that Mr. Victor reconstructed the first house on the property with more durable building materials, I do not find that Mr. Barrientos' use of the property changed significantly while Pastor Yeh was alive. The additional homes were built after Pastor Yeh died. The timing of the new construction equally shows that Mr. Victor waited until Pastor Yeh died to assert more control over the property because he knew that such actions exceeded his permission for use, or they show that Mr. Victor was using and investing in the land because he was confident in his right to do so. Likewise, his failure to construct a fence may demonstrate that Mr. Victor understood that property was not his to fence as Mrs. Yeh contends. Mr. Victor's testimony that he had no need for a fence because he felt secure on the property is an equally reasonable explanation.

[23] Finally, the circumstances surrounding the negotiation of the 2018 lease signed by Mr. Iluer and Mr. Ashburn, Mrs. Yeh's agent, are not relevant to this dispute. I accept that Mr. Iluer did not reside

on the property and any impression that he left with Mr. Ashburn that he did can be explained by miscommunication. That Mr. Iluer was present on the property does not establish residency.

[24] I also find no evidence that Mr. Victor authorized Mr. Iluer to enter into the lease on his behalf. I am not convinced that Mr. Iluer was talking to his father on a cellphone, as Mr. Ashburn alleges, and not his brother, as Mr. Iluer testified, when the lease was negotiated. The only inference I am prepared to draw from this interaction is that Mr. Iluer understood that his father did not have title to the property and was vulnerable to eviction based on the information told to him by Mr. Ashburn. Mr. Iluer was trying to do what he thought was best to assist his family. His decision to sign the lease is not relevant to the question of whether his father was occupying the land without consent.

Remedy

[25] The Barrientos have failed to meet the burden to prove that they acquired an over-riding interest in the property through adverse possession. The weight of the evidence supports a finding that Mr. Victor was living on the property with Pastor Yeh's consent. Mrs. Yeh is the successor of title to the property as beneficiary of Pastor Yeh's estate. As the registered owner she is free to use and enjoy the property as she sees fit. She is not bound to continue Pastor Yeh's legacy of charitable work by permitting the Barrientos to remain on the property. The Barrientos must vacate the property to allow Mrs. Yeh to regain possession. The Barrientos will be given time to remove the homes they constructed onsite.

[26] I do not find it just to make an award for mesne profits or rental arrears. The Barrientos are entitled to offset the improvements they made to property that cannot be removed such as the planting of fruit trees. They also cleared the property of bush and levelled the property where a concrete slab was poured.

Disposition

[27] It is hereby ordered:

1. Judgment for the claimant;
2. The counterclaim is dismissed;
3. The defendants are to give up full possession of all that piece and parcel of land situated in Belmopan, Cayo District, Belize, specifically described on Land Certificate LRS-201709565, dated the 7th day of December 2017 as 2.50 acres in the Registration Section: Belmopan, Block No. 20, Parcel No. 4069 within 90 days of this decision;
4. The defendants are required, whether by themselves, their servants, or agents, to remove all structures constructed on the property and all things whatsoever associated with the structures placed on the property by the defendants;
5. Thereafter, a permanent injunction is granted restraining the defendants, whether by themselves, their servants, or agents from accessing, entering, using, or remaining on the property; and,
6. Costs are awarded on a prescribed basis.

**Patricia Farnese
High Court Judge**