

IN THE SUPREME COURT OF BELIZE, A.D. 2015

CLAIM NO. 360 of 2015

STEPHANIE YOLANDA GUERRERO

CLAIMANT

AND

NORMAN HENKIS

DEFENDANT

BEFORE the Honourable Madam Justice Sonya Young

Hearings

2015

5th October

2nd November

Written Submissions Filed

Claimant - 16.10.2015

Defendant - 20.10.2015

Mr. Estevan Perera for the Claimant.

Mr. Darrell Bradley for the Defendant.

Keywords: Real Property - Possession - Proprietary Estoppel - Constructive Trust - Adverse Possession

JUDGMENT

1. Stephanie Guerrero is the daughter of the deceased, Therese Skeen. Therese Skeen from 1986 and up to the time of her death in 2009, was married to Norman Henkis. Ms. Guerrero, by a deed of assent dated 1st June, 2013

purports to be the legal owner of property located in Ladyville (The Property). The Property, on which two buildings stand, forms part of a larger parcel of land (The Land) which originally belonged to the now deceased Marsden Skeen (Ms. Skeen's father). By his Will, dated 29th September, 1998, Marsden Skeen appointed his son, Leo Skeen to be his executor. He also devised The Land to his five daughters (including Ms. Skeen) in equal shares. He died in 1990 or 2001 according to the Defendant or the Claimant respectively. Ms. Skeen died before Marsden Skeen's estate was administered. the executor of the Marsden Skeen's estate transferred The Property to Ms Guerrero by assent.

2. Ms. Guerrero contends that, as the legal owner, she is entitled to possession of The Property mesne profits. She says Leo Skeen, as executor of Marsden Skeen's or Ms. Skeen's estate (this evidence conflicts), has tried to evict Mr. Henkis but he remains on The Property in the upstairs of one of the buildings. She claims that on the 11th March, 2015 she, herself, gave him one month's notice to vacate, to no avail. Mr. Henkis says that he resides there because he was sent there to live by the Claimant and her siblings, after his wife died. He counterclaims that he is entitled to ownership of The Property, or a substantial portion thereof through proprietary estoppel, constructive trust and/or adverse possession. He pleads that Marsden Skeen and Ms. Skeen both induced him to spend his money on The Property. He felt that eventually he would be made the owner or joint owner. Further, having been on The Property undisturbed for more than 12 years, he in fact already owns The Property.

The Evidence:

3. Ms. Guerrero presented two witnesses. She stated that The Land was family land which belonged to her grandfather. Since the 1970's two buildings had been built on The Property, with her grandfather's consent. Building A had been built of wood by her (then married) parents and Building B was built of concrete sometime later, by her mother's next husband, Eric Richards. He and her mother also reconstructed Building A using concrete. There is some discrepancy in her testimony as to by whom and when Building A was constructed in concrete. Under re-examination the witness volunteered that it was she and her brothers who reconstructed the wooden structure. Nonetheless, Building A was their family home and Building B which was only a lower floor was used by her mother as a shop.

4. It seems that sometime after 1978 her mother moved to the USA where she eventually met and married Mr. Henkis. She returned to Belize in 2007 and lived on The Property with him. Ms. Guerrero subsequently informed her mother, that she intended to use Building A, so her mother started to construct the upper flat of Building B with plycem. Her mother was expected to live there, while the lower flat was to be rented out. During this time, the witness claims that she paid for the remodelling of Building A. From her statement of items purchased (there were no receipts) the remodelling was cosmetic at best. Her mother never made this contemplated move as she continued to live in Building A up until her death in September 2009.

5. Very shortly thereafter, Mr. Henkis brought his new wife to live in Building A. They were both quickly turned out by Ms. Guerrero. Mr. Henkis then moved into the upstairs of Building B where he continues to live up to the present. He does not pay rent nor was he ever required to do so.
6. Ms. Skeen accepts that she does not know what discussions her grandfather may have had with her mother, but her mother was never hindered by him or anyone else, from occupying, and/or building on The Property. In her estimation her mother treated The Property as her own.
7. She supported her claim with the testimony of Leo Skeen, uncle, executor and contractor. Leo confirmed that Ms. Skeen and Mr. Henkis came to live in Belize in 2007 and they remained in Building A up until the time of Ms. Skeen's death. Mr Henkis subsequently moved into the upper flat of Building B with his girlfriend and despite serving several notices to vacate on him, he continues to live there. He exhibited one such notice dated the 11th of November, 2009 which he signed as the executor of the Estate of Marsden Skeen. In 2010 he attempted to evict him through the Magistrates' Court but discovered it had to be done in the Supreme Court.
8. He testified that in the early 1970's he assisted with the construction of Buildings A and B. He said he knows Ms. Skeen and her then husband, Mr. Humphreys, paid for the construction. He went on to explain that Ms. Skeen lived on The Property all the time, except when she went to live in the United States. He also gave evidence of renovating Building A in 2007 by replacing rafters and zinc and making a 15 ft addition. This he said was

done, with money reimbursed to him, by Ms. Skeen while she lived in the United States. He maintained that an upper storey was added to Building B, but he is unaware of how it was done. He knows it had been completed before Ms. Skeen died, but it had not yet been constructed while he worked on Building A.

9. The defence also presented two witnesses. Both aged men who seemed somewhat confused with numbers in particular. Mr. Henkis testified to being married to Ms. Skeen in 1986, while they both lived and worked in the United States. He admitted to knowing nothing of her past, including the fact that she had children or property in Belize. He did not know whether she was a nurse or a nurse's aid and that concerned the court. Nonetheless, they certainly both had an income. He said that, while in the USA, they both cared for Marsden Skeen, during his illness. He subsequently died in 1990. With the leave of the court, he was shown a document by the defence and accepted that the document did state Marsden Skeen's date of death as 2001. Thereafter, he accepted that he had been mistaken as to his date of death and that he had in fact died in 2001.
10. He added that a long time before his death Marsden Skeen surveyed The Land which was referred to, then and even today, as family land. He said that he frequently went to The Property with his wife and Marsden. Marsden always behaved as if he owned The Land. He knows Marsden engaged a surveyor and gave instructions that certain specified portions of The Land were to be given to his daughters, including Ms. Skeen. He claims that she was given The Property by Marsden, but he does not say when. He simply

states that he believed the legal title had been vested in her and he only realized this was not so after she had died. He also claims that he and Ms. Skeen accordingly took up possession of The Property. He planned to retire and live there happily and comfortably until his death.

11. In 1998 they began construction of a large two storey concrete house and shortly thereafter they constructed a smaller single storey concrete house. They used their joint effort and money to do this. The larger house was to be their matrimonial home and the smaller, an income generating rental. He says that acting on what he had been told by Marsden (that Ms. Skeen was to be given The Property) and by Ms. Skeen (that they would own The Property jointly), he committed his money (almost all of his life savings) towards the development of The Property. A family friend, Warren Usher did the construction on the bigger building. He paid him \$100. per day. Leo Skeen constructed the smaller building. He and Ms. Skeen both paid him and bought the material he used. He presented no bills or receipts for any of this, but he says it cost them approximately \$250,000.00 US to build each building.
12. When they moved back to Belize in 2000 they lived together in the larger two storey dwelling house until Ms. Skeen died. His occupation had never been uninterrupted until she died. That was when Ms. Guerrero and her siblings forcibly moved him into the single storey house where he continues to live.

13. Under a lengthy and strenuous cross-examination, the 73 years old witness sometimes seemed disconnected. He maintained that his deceased wife's name was Stephanie (as stated throughout his pleadings) but later agreed, when prompted, that it was in fact Therese. He had difficulty stating the year he retired and begun with the year 2099. He said his wife did not discuss her ex-husbands with him. She never informed him that she had children who lived on The Property. He had difficulty with the measurements of the buildings. He did agree that he **contributed** to the construction of the concrete and plycem upper floor, but maintained that he supported Therese since she had no finances of her own when they came to Belize.
14. He also stated that he lived in the one storey house since coming to Belize and moved to the upper storey of the two storey building after Therese had died. He accepted that what he had said in his examination-in-chief was, therefore, incorrect. He also agreed that he had been given a notice of eviction by the Estate of Therese Skeen soon after she had died.
15. In support he presented Warren Usher, a now retired contractor and close family friend, who said Ms. Skeen was like a mother to him. Both she and Mr. Henkis had engaged him to construct a two storey cement house on The Property. He had to remove a wooden house before commencing his work in 1998. He was still working towards completion in 2000 when the couple returned to Belize. To his knowledge they lived in that two storey house until Therese died. After October 2009, however Mr Henkis moved into the

smaller cement house where he continues to live until the present. This entirely contradicted Mr. Henkis' testimony under cross examination.

16. He said he always believed The Property belonged to Mr. Henkis and Ms. Skeen because they were the ones who gave him his instructions and he had worked there completely unhindered by anyone. Under cross-examination, Mr. Usher revealed that since the 1970's there was a shop and a small dwelling house (where Ms. Skeen lived with her husband Mr. Humphreys) on The Property. He says he never worked on the small house but he in fact helped to build the upstairs of the shop. He did minor renovations downstairs but there already existed a concrete floor, walls and a roof. This too was in complete contradiction to what he had said in his examination in chief as well as what Mr. Henkis had said. He agreed he was paid \$100 per day. And although he signed acknowledging receipt, he issued no receipts and was unable to present any record of payment to the court.
17. He went on to accept that during the time Ms. Skeen was alive, she and Mr. Henkis lived in the small building. After her death, Mr. Henkis moved into the upstairs of the two storey building. He said he could not remember what year the construction started but agreed with counsel when he said two years before Ms. Skeen died.
18. I found the Defendant and his witness to be sometimes confused and other times, contradictory. I did not find their testimony to be exceptionally reliable. There were discrepancies which could not easily be overlooked. Moreover, if Marsden Skeen died in 2001 and not in 1991 as the Defendant

purported could their entire timeline possibly be off. Mr. Henkis' memory simply did not seem precise. The court wondered why he and his witness would lie about an issue as easily verifiable as where he lived during and after Ms. Skeen's death. What did he hope to gain thereby? Was it their memory or something more. The evidence from the Claimant seemed, on a balance of probabilities, closer to the truth. She and her witness were forthright and predominantly consistent.

The Facts:

19. The facts as this court finds them are that since the 1970's Ms. Skeen had been allowed by her father to construct two buildings on The Land. They were both constructed by her first husband. One was a wooden dwelling house where she lived, with her children, through two husbands. The other was a wooden shop. Both buildings were reconstructed from concrete with funds from her second husband Eric Richards (and not by the Claimant and/or her brothers).

20. During the 1980's to the 1990's Ms. Skeen migrated to the USA where she met and married Mr. Henkis. During this time she never sought to lay claim to The Property, she seemed accepting that it was her father's land and she had only been permitted by her father to build there. I say this because Mr. Henkis testified that she was to have been given The Property, never that she claimed to own it. He also admits that he knew The Land belonged to Marsden and he often went there with both Marsden and Ms. Skeen. He formed the belief that, (from things said by either of them) but was uncertain

whether, Marsden had in fact given The Property to Ms. Skeen. No legal action was ever taken by Ms Skeen or her estate to claim The Property. Nor did Ms. Skeen try to dispose of The Property through a Will or otherwise. Moreover, Marsden's own act of preparing a Will which disposed of The Property in a way not consistent with having already divided it in any particular way, shows his own frame of mind.

21. I find as a fact that Mr. Henkis returned to live in Belize in 2007 and no earlier. It is clear that even when he returned, he was uncertain whether The Property legally belonged to his wife. As it turns out, The Land had by that time been vested, in the executor of Marsden Skeen's estate. It so vest up to the time Ms. Skeen died. Marsden Skeen's executor in 2013 assented to the passing of The Property to Ms. Guerrero, who thereby became the legal owner. As the deeded owner of The Property she is also the owner of both fixtures thereon in accordance to the general rule 'quicquid planatur solo, solo cedit' - whatever is attached to the soil becomes part of it. She will remain thus unless someone proves a better title. Until and unless such is proven she is entitled to possession of her property having given proper eviction notice to Mr. Henkis.
22. The court also finds as a fact that the upper storey of Building B was constructed sometime between 2007 and 2009 and that Mr. Henkis contributed to its construction. The fact that he and Ms. Skeen both paid the contractor is not disputed. Ms. Guerrero admits that that addition was undertaken during the time her mother lived with Mr. Henkis on The Property. In addition, that is where he went to live with the consent of Ms.

Guerrero and her siblings and that speaks volumes. Why was he allowed to take up occupation there? It seems that it was accepted, at that time, that he had some interest in or some right to that part of The Property. No immediate action was taken for his removal, whether by Ms. Guerrero or anyone else, as had been done for the smaller house. I do not however believe the figure he gave for its construction. Nor do I find from the evidence that he contributed in any way to the construction or renovation of Building A. The figure he gives for this is entirely unbelievable. The contractor himself said he did not build Building A at the time Mr. Henkis claims and he was paid by Ms. Skeen alone for **renovations** only.

23. The question now to be answered is whether Mr. Henkis has a claim to The Property or any part thereof, whether through adverse possession or by way of a constructive trust or proprietary estoppel.

24. **The Issues:**

1. Whether the Defendant owns The Property through adverse possession
2. Whether the Defendant has an interest in or a right to The Property through a constructive trust
3. Whether the Defendant has an interest in or a right to The Property through proprietary estoppel.
4. Whether the Claimant is entitled to mesne profits.
5. If the Defendant is entitled to some right or interest what remedies are available to him.

Whether the Defendant owns The Property through Adverse Possession:

25. Title to land owned by A can be acquired by B, if B remains in deliberate and undisturbed possession, without A's consent, for a period prescribed by statute. Pursuant to sections 12(2) and 22 of the **Limitation Act**, title to land is extinguished after 12 years where no action has been brought by the true owner to recover same. Having found that Mr. Henkis returned to Belize in 2007 and that he had no part in the construction or remodeling of Building A, the earliest his possession has been proven to have begun was when he started living at The Property. This the court finds to be 2007.

26. In his closing submissions counsel for the defendant urged that the defendant's period of possession should be added to that of Ms. Skeen. However, Ms. Skeen lived there with the consent of her father and this was never disputed. She never asserted any rights as an adverse possessor. As such she was a licensee and was never in adverse possession. *"The possession should be adverse; it should have been acquired without the permission or authorization of the paper title owner. There cannot be adverse possession of land which is enjoyed, occupied or used under a lawful title or with the permission of the true owner"* **Commonwealth Caribbean Land Law p310** referring to **Ramnarace v Lutchman (2001) 59 WIR 511, 515**. In any event, where an original adverse possessor dies before the lapse of 12 years his period of adverse possession is only available to his immediate successor in title, the person through whom the claim is made - a purchaser or devisee. Mr. Henkis is neither. Time therefore begins to run from his own possession. As such he has acquired no title through adverse possession.

Whether the defendant has an interest in or a right to The Property through Constructive Trust:

27. *"A constructive trust will be imposed where B acts to his detriment in reliance upon a common understanding that he would acquire an interest in A's property"* **Megarry & Wade The Law of Real Property 6th Ed para 13-036.** This common intention may be inferred from the conduct of the parties. However, no common intention can be inferred where the legal owner was unaware of the contribution - **Lightfoot v Lightfoot - Brown [2005] EWCA 201.** To my mind when Mr. Henkis was investing his money in The Property, it legally belonged to Leo Skeen as executor of Marsden Skeen's estate. No evidence has been provided by the defendant to prove that there was any common intention between them or that Leo Skeen knew he was contributing. Mr. Henkis' claim on this ground must fail. He may have a cause of action against the estate of Therese Skeen but he has brought no such claim. Likewise the estate of Therese Skeen may have a cause of action against Leo Skeen as executor but again there exists no such claim.

Whether the defendant has an interest in or a right to The Property through Proprietary Estoppel:

28. *"The doctrine of proprietary estoppel allows a person who develops the land of another in the glare or with the knowledge of the land owner to lay claim to or recover the land together with the developments on the land effected by him. This is possible only if the landowner makes a promise of a grant of the land to the person or stands by and does not assert his title to the land while the person develops the land."* - **Commonwealth Caribbean Land Law p186.**

29. It is clear, therefore, that to be effective, that the promise must be made by the landowner to the person developing the land. A promise from anyone other than the land owner is of no importance. Mr. Henkis' own testimony, for the most part, is that Marsden Skeen owned The Land and any promises made or assurances given, were to Ms. Skeen, that The Property would eventually belong to her.
30. Consider paragraph 15 of his witness statement which reads: *“Acting on the representations and statements made to me by Marsden Skeen that my wife was to be given Lot No. 1 and the representations and statements made to me by my wife Therese Skeen that she and I were to own Lot No. 1 together, I committed all of my money and my efforts to develop Lot No. 1 along with my wife. Therese Skeen.”*
31. He continues at paragraph 23: *“I am the true owner of the land either entirely or I am entitled to a substantial portion thereof, owing to the fact that Marsden Skeen gave instructions that the land was to belong to Therese Skeen, my wife, and that Therese Skeen and I cared for Marsden Skeen and that Therese Skeen and I, acting to our detriment and a representations made to us by Marsden Skeen ...”* Although Mr. Henkis speaks definitively of what Marsden said about The Property in relation to Ms Skeen, there is complete silence about what Marsden said in relation to him. In that regard the evidence becomes vague. He gives not a single instance of Marsden encouraging him or assuring him that The Property would eventually belong to him. Perhaps Ms Skeen encouraged him accordingly, but she was not the owner of The Property.

32. At best, Ms. Skeen may have a claim to a beneficial interest which she never sought to assert. The **Administration of Estates Act Cap 197 section 26** entitled 'Rights of action by and against personal representatives and the effect of death on certain causes of action', states at **subsection 4:**

On the death of any person after the commencement of this Act, all causes of action subsisting against or vested in him shall survive against or as the case may be, for the benefit of, his estate.

33. It is clear therefore that if any right to an equitable interest was to be asserted on the deceased's behalf it would have to be done by the personal representative of her estate and not by her widower or a beneficiary. Ergo, Mr. Henkis cannot seek to enforce Ms. Skeen's rights in his defence.
34. Consideration now turns to the other limb of the estoppel, where the landowner stands by and does nothing to assert his title. When Norman says he developed The Property, Marsden was already dead. His executor, appointed under his Will, certainly gave no evidence of attempting to stop Norman from any development on The Property. What Leo Skeen does state, however, is that to his knowledge, the developments were being done by his niece. He clearly knew nothing about who was building nor did he do anything to find out or to ensure that the construction ceased. This court therefore finds that Leo Skeen, knowing he was the legal owner, stood by and did nothing while Mr. Henkis and Ms. Skeen in plain sight constructed that upper storey on his property. Mr. Henkis under the belief that he would gain some benefit acted to his own detriment by investing in that construction. Mr. Leo Skeen's acquiescence invokes the doctrine of promissory estoppel. He is estopped from denying the impression created by

his silence. Mr. Henkis can now follow his interest into the hands of any third party who is not equity's darling.

Whether the Claimant is entitled to Mesne Profits:

35. Ms Guerrero, having inherited the property with Mr. Henkis in possession, is not a bona fide purchaser for value without notice and could be compelled by a court of equity to do justice in the matter - **Inwards v Baker [1965]1 ALL ER. 446**. Ms. Guerrero is likewise estopped from claiming otherwise and is therefore not entitled to any mesne profits from him.

What Relief is the Defendant entitled to:

36. In the British Virgins Islands case of **Carlton Smith v Esther Oakley BVIHCV 2009/0201** Hariprashad Charles J. while considering a remedy, in a case similar to the one before this court, stressed that *"the relief granted by the court must be proportionate to the detriment suffered and that the court is not always required to satisfy his or her expectation by awarding the promised or expected interest in the land."*
37. The court must analyse the minimum and maximum extent of the equity. The maximum being Mr. Henkis' expectation and the minimum being the detriment he actually suffered. Mr. Henkis says he expected to be a joint owner with the now deceased Ms. Skeen (but that was perhaps her promise to him and will be given no effect here) and his detriment as the court finds it is the investment in the upper storey. The circumstances of this case as it has unfolded do not persuade me to grant to Mr. Henkis anything more than the value of half of his investment. His continued living on The Property,

which he accepts to be Skeen family property, may prove more difficult for him than taking his investment in hand and moving elsewhere.

38. The court is obligated to do what is just and convenient in this case. So although in his counterclaim he has asked for certain declarations, none of these are available to him. The court, following the decision in **Virginia Moncur v Margaret Palacios Supreme Court of the Bahamas, Equity side, No.1163/1985 (unreported)** will instead make an order for the upper floor of the two storey building to be valued. Equity is equality. Since no reliable evidence has been given as to the contribution of either Mr. Henkis or Ms. Skeen to its construction, Mr. Henkis shall be awarded half of the value of that portion of The Property. He is to continue to live rent free in the upper storey until full payment is made to him by the new owner, Ms Guerrero. Once payment is made, he is to give up possession and a permanent injunction will take effect barring him from entering upon The Property. This is a family matter where both sides have seen some level of success, as such, no order as to costs will be made.

IT IS THEREFORE ORDERED

1. Judgement to the Claimant.
2. Possession of the property by the Claimant is conditional upon payment of compensation to the Defendant.
3. The upper storey of the two storey building is to be valued by a valuator agreed by both sides.
4. The Claimant is to pay compensation to the defendant which is equal to half of the value reported.
5. The Defendant is to continue to live in the upper storey until full payment

of the compensation.

6. Within one month of payment of the compensation the Claimant is entitled to possession of the upper storey and the Defendant is required, whether by himself, his servants or agents, to remove all of his belongings and to vacate the said premises.
7. Thereafter a permanent injunction is granted restraining the Defendant whether by himself, his servants or agents from entering upon the property.
8. No order as to costs.

**SONYA YOUNG
JUDGE OF THE SUPREME COURT**