

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

**CLAIM NO. 97 of 2015**

**LEONARD BETANCOURT**

**CLAIMANT**

**AND**

**STEPHEN FRANZ HEUSNER III  
NOREEN HEUSNER**

**DEFENDANTS**

**BEFORE the Honourable Madam Justice Sonya Young**

Hearings

2015

3<sup>rd</sup> December

21<sup>st</sup> December

Written Submissions

2015

Ordered to be filed on 10th December

Neither party filed

Mr. Hubert Elrington, SC for the Claimant.

Mr. Richard Bradley for the Defendants.

**Keywords: Law of Property - Landlord and Tenant - Possession - Beneficial  
Ownership - Constructive Trust - Proprietary Estoppel**

**JUDGMENT**

1. Leonard L. Betancourt was married to Ammi Skeen (now deceased). Noreen Heusner was Ammi Skeen's daughter. Noreen and Stephen Franz Heusner III are married to each other. She is a housewife and he is a retired Colonel. Mr. Betancourt jointly owned a parcel of land situated at 6 Old Airport Road, with his wife. When she died he became the sole legal owner. That can not be in dispute. Although Mrs. Heusner claimed under cross examination not to know how the property was held, her Defence clearly states at paragraph 3 "*the Claimant and the mother of the Second Defendant, Ammi Skeen owned the premises known as 6 Old Airport Road, Ladyville, Belize District.... jointly.....*"
2. At some point in time, Mr. Betancourt, by himself or with his wife (evidence unclear), informally subdivided the land into four plots. He says he promised his wife that he would, by Will, leave one plot (No. 4) to Noreen. He claims that he has already executed a Will to this effect. That has no bearing on this matter and is stated only because plot No.4 was discussed.
3. In 2004 Mr. Betancourt, a retired carpenter and contractor, with the assistance of labourers only, built a house on Plot No. 2 (The Property). Mrs. Heusner and her husband currently live there, rent free. Mr. Betancourt says that he originally let The Property to the couple, in 2005, at a monthly rent of \$400.00. In about 2013 he realized that the house needed repair and general maintenance so he discontinued the payment of the rent and instructed them instead to maintain the house in a proper state of repair, pay the taxes and keep the surroundings clean. He admits that they did indeed do some repairs which were not to his satisfaction (he being experienced in the field). They also neglected to keep the general area clean or to pay any

taxes. Consequently, he served them with a notice to quit, which they admit receiving. However, they did not give up possession as stipulated and have simply refused to leave.

4. He has now approached the court for possession of The Property. The Defendants strenuously object. They claim that they had been tenants on Plot No.1 (No. 1) but they had never been tenants on The Property, nor were they ever required to pay property taxes. Rather, an agreement (The Agreement) had been made between Mr. Betancourt and Ms Skeen on the one part and Mrs. Heusner on the other, in relation to The Property. No indication is given in the pleadings of when The Agreement was made, but Mrs. Heusner, in her evidence in chief, places it at mid 2004 - when the foundation of the house was laid.
5. Pursuant to The Agreement, Mrs. Heusner claims she was to repay the mortgage on The Property which was held with Holy Redeemer Credit Union (the financier), at \$400.00 per month. On completion, Mr. Betancourt and Ms. Skeen promised that they would transfer The Property to her. She does not say when the mortgage was executed and she does not know its entire sum or when it was to be completed.
6. She says she has paid about \$41,600.00 toward's *"the claimant's loan, from August, 2004 to March, 2013 at \$400.00 per month"*. She is not in the habit of keeping receipts for more than a year and so was unable to exhibit any. She does not say what receipts she might have been able to exhibit if her habits were otherwise. However, in March 2013, Mr. Betancourt informed her that the mortgage payments were completed. At that time he rejoiced

with and congratulated her, while simultaneously informing her that she could now consider the house her own. As such, she and her husband begun to repair the house and they kept it clean as true owners would. They never paid any taxes as they were never required so to do.

7. She says she approached Mr. Betancourt, on two previous occasions, to share the cost of surveying The Property, he refused. When asked, he also refused to give her a letter acknowledging that she owned The Property . He never effected the transfer as promised. In fact, since marrying his new wife he has now completely reneged on The Agreement. The second defendant says she owns The Property through a constructive trust or proprietary estoppel. She counterclaims for declarations and orders which would give her ownership of and legal title to The Property.

8. **The issues for the court to consider:**

1. Whether the Defendants are tenants.
2. Whether the Claimant is entitled to possession of The Property.
3. Whether the second Defendant is the beneficial owner of the property by way of a constructive trust or proprietary estoppel.

9. **The Evidence**

This case, by the way it unfolded, requires a serious consideration of the evidence provided, as both sides are completely at variance. Neither presented any pertinent documentary evidence and very little was gained through the demeanor of the witnesses. The facts, as the court finds them, would answer each issue and the need for discussion of the principles may be very limited if at all.

10. The Claimant says the defendants were let into possession of The Property in 2005 as tenants. They were required to pay \$400.00 rent. No written agreement is alluded to or provided. He says they were to repair the house, keep it clean and pay taxes. They were not compliant so he served them with notice to quit, he does not exhibit this notice. He was consistent in his denial of The Agreement and in his refusal over the years to do any act which would give an indication of ownership on the second Defendant's part. The Defendants on the other hand say they were allowed into possession pursuant to The Agreement. They do not refer to or provide anything in writing either. Their amended counterclaim states that before taking possession of The Property the defendants paid \$400.00 rent per month for occupying No. 1. Neither party offers an explanation for why the Defendants moved from No. 1 to The Property when the payment on both (whether through rent or otherwise) was exactly the same.
  
11. Mrs. Heusner claimed also to have owned No. 4 through an agreement with Mr. Betancourt and her mother. She explains that originally she had, without compensation, driven five vehicles from the USA to Belize for Mr. Betancourt, assisted him in putting his financial affairs in order and on occasion she had also looked after his son, who has special needs, taken care of his sick daughter, and facilitated getting two of his daughters to Belize from the USA. With, perhaps, the exception of driving the vehicles, those acts seem to be such as are expected to be performed by a loving daughter for her father. Yet, Mrs. Heusner says she later suggested to Mr. Betancourt and her mother (sometime in 1991 or 1992) that she should be compensated for all that she had done by the transfer of No. 4 to her and they agreed. She

presents no documentation in support of this agreement either. But it is clear that such a transfer was never executed.

12. She said as part of The Agreement she 'gave up' No. 4 which was then worth \$1,500.00. In any event, if Mr. Betancourt was already receiving rent of \$400.00 from Mrs. Heusner, why would he require the same amount of money to pay the mortgage on The Property. Certainly, The Agreement could not have been made out of necessity on Mr. Betancourt's part. Perhaps he may have made such an agreement with Mrs. Heusner out of love and affection, (as she claims her mother did) but the evidence simply does not support this. Not the way she requested to be recompensed for the already executed duties of a loving child nor the way he seemed to take great exception whenever she referred to him as "my father" in court.
13. In accordance with The Agreement, The Property was to have been transferred to Mrs. Heusner when the mortgage payments were completed. It seems fairly odd to this court that Mrs Heusner entered into an agreement the, most important, specifics of which she did not know or was uncertain. It is from here that her story becomes doubtful as it seems implausible that she would be so completely reliant on Mr. Betancourt to be honest in his dealings with her. She did not know how much was owed on the mortgage, how much the mortgage was per month or when payment would be completed.
14. Now it is the testimony of Mrs. Heusner that she had gone to Mr. Betancourt in January 2013 asking for a letter acknowledging her as the owner, to assist her in getting a loan to do some repairs to The Property. He

baldly (and she maintains, profanely) refused. Yet, in March 2013, she also claims that he told her the payments were completed and she was now the true owner. Since then, (and in the face of an eviction notice) she inexplicably did absolutely nothing to enforce her right, until this action was brought against her two years later. Additionally, she volunteered under cross examination that the mortgage had in fact been paid off two years prior to March 2013, but Mr. Betancourt, nonetheless, continued to accept payment. Only when questioned, did she explain, that her mother had told her that she and Mr. Betancourt were having issues with the financiers and decided to cease business with them. The court could only conclude that she raised the early pay off (which was not in her witness statement) to cast Mr. Betancourt in a very bad, if not, dishonest light. It again caused concern as to the relationship which existed between the two and how much trust she, Mrs. Heusner, would really have had in anything he said to her.

15. Incidentally, she asks for that letter one month after her mother dies. How is it she never needed such a letter prior to her mother's death. Why is it that Mr. Betancourt would deny her a letter admitting ownership in January but rejoice with her on achieving ownership in March of the very same year. If she was indeed paying mortgage and not rent, why was she not paying it directly to the financiers rather than to Mr. Betancourt. She offers no explanation for this. That would certainly have supported her counterclaim. How was she sure Mr. Betancourt would in turn pay the mortgage and not spend her payments on dog food and the like (as per the testimony of Harley Burn), thereby jeopardizing her investment. She never testifies to one day asking him for a statement from the credit union so she could ascertain that the mortgage was indeed being paid. This unwavering, unreasonable trust

makes no good sense to me and it simply does not add up. To my mind, on a balance of probability, Mr. Betancourt's version of events is far more believable.

16. What is also striking is that precisely when Mr. Betancourt says he stopped her paying rent (March 2013) is when she says she completed payment. He claims that his decision to stop the rent was to effect repairs. Repairs, which by Mrs. Heusner's own testimony, were needed in January 2013 but, which by the receipts she exhibited began in September 2013. It is remarkable that the repairs which were so necessary that she attempted to get a loan since January 2013, could now wait until September 2013 even though her loan payments had ceased. Mr. Betancourt also claims that the Defendants were to pay the taxes. Throughout their pleadings, the defence denied paying taxes. But under cross-examination Mrs. Hesuner revealed for the first time, that she paid taxes at the Lands Department in Mr. Betancourt' s name - '\$21.00 per year she thinks'. She, however, is not asked and does not volunteer, for what period she had paid the taxes.
17. The court also considers the other witnesses for the defence. Stephen Franz Heusner III, says that in late 2004 or early 2005 Mr. Betancourt and his wife offered to put The Property in his name. Now that adds to the confusion, if Mrs. Heusner's story is correct, by that time she would have already entered into The Agreement for ownership of The Property. Why would they offer to give it to Mr. Heusner when it beneficially belonged to his wife. It is also clear from Mr. Heusner's testimony that although he says he was present on occasions when Mr. Betancourt and his wife discussed The Agreement with Mrs. Heusner, all he had been told of the details of same came from his

wife. She was the only person he heard referring to a loan and eventual transfer of The Property. What is not clear, however, is what in fact was discussed in his presence, if the specifics were only told to him by his wife. It was also his wife who told him the mortgage on The Property had been paid of. Even the receipts which Mr. Heusner referred to, in an attempt to prove that The Agreement exists, were in fact written up by him, in his own terms, though signed by Mr. Betancourt's admitted agent. Mr. Heusner admits to not knowing what the \$400.00 really was for, hence the reason he used the 'rent to own' term on the receipt.

18. Harley Burn, the defendant's other witness, testified that he had heard a conversation between Mr. Betancourt and Mrs. Heusner, in March 2013, where he told her she had completed payment for The Property. He gives no specifics such as where this conversation had taken place or who else may have been present. He does admit that no one ever spoke to him directly and anything he knew, he had simply overheard. To my mind, his having overheard this particular conversation was a coincidence of some magnificent proportion. In paragraph 9 of his witness statement he suddenly refers to 'conversations' which informed him of The Agreement. He does not say who the parties to those conversations were. He gives no other details surrounding those conversations either. Under cross examination he reveals that they were all family conversations he had heard over the years about how the five lots would be distributed and *"things that were said around"*. He could not give specifics of The Agreement, he had only *"heard something to that effect"*. Moreover, he was not even sure how the entire parcel of land owned by Mr. Betancourt had been informally subdivided. I found his testimony to be so vague as to be unreliable. He seemed simply to

be giving second hand rhetoric derived from unreliable or unknown sources in an attempt to assist his sister.

**Findings: Issues 1 and 2**

19. This court found as a fact that the Defendants were at all times the Claimant's tenants and nothing more. That he stopped them from paying rent of \$400.00 to him and made other arrangements for the use of the rent money. Any money spent by the Defendants to effect repairs ought to have been covered by the rent money. They are not entitled to recover any such sum. Further, the Claimant properly served them with an eviction notice which was to take effect sometime before the claim was filed. The statutorily required notice was not exhibited and so the precise date it was to take effect is not certain. He shall therefore have his mesne profits from the date of the filing of the claim and no earlier. He is also entitled to possession of The Property. Having so found, there is no need to consider Issue 3.
  
20. It is therefore ordered:
  1. Judgement is entered for the Claimant.
  2. The Defendants must deliver up possession of the property within 60 days of this judgement.
  3. Thereafter the defendants are restrained from entering or remaining on The Property.
  4. Mense profits to the Claimant in the sum of \$400.00 per month from the date of the filing of this claim until possession is delivered up.

5. The Counterclaim is dismissed.
6. Costs to the Claimant in the sum of \$7,000.00 as agreed.

**SONYA YOUNG**  
**JUDGE OF THE SUPREME COURT**