

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

CLAIM NO.369 OF 2015

	(BERNARD LESLIE	CLAIMANT
	(
BETWEEN	(AND	
	(
	(RACHEL BATTLE	DEFENDANTS
	(MICHAEL BATTLE	
	(REGISTRAR OF LANDS	INTERESTED PARTY

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mr. Oscar Sabido, SC, for the Claimant

Ms. Darlene Vernon for the Defendant

No representation for the Interested Party

Hearing Dates:

10th November, 2015

1st July, 2016

D E C I S I O N

1. This is an application by the Defendants to Strike out the Claimant's Claim. The relief sought in the substantive claim is for declaratory judgment in relation to a parcel of land in Placencia. The application is made pursuant to Civil Procedure Rules 26.3(1)(b)(c) and (d) and further to Civil Procedure Rules Part 15. There is an affidavit dated September 30th, 2015 which was filed by the Applicant/Defendant Rachel Battle which supports the

application. The Respondent/Claimant Bernard Leslie has filed an affidavit in response dated November 4th, 2015.

Submissions on Behalf of the Applicant/Defendant

2. Ms. Vernon on behalf of the Applicant/Defendant urges the Court to strike out the Claim on the basis that the Claimant has no identifiable cause of action. Secondly, she asks that the claim be struck out as being frivolous and vexatious and an abuse of the process of the court. Learned Counsel submits that when one peruses the claim form and statement of claim filed on July 7th, 2015, it appears that the Claimant is asking for a declaratory order as to adverse possession to the detriment of the Defendants, while on the other hand he is asking the Court to state that the land is the property of Daisy Cabral (Deceased) and is not the property of the Defendants. She argues that the Claimant is seeking a “back-door” approach to having the court indicate that he is indeed the proprietor to Parcel 3175, when he had admitted in previous proceedings before this court that the portion which he presently occupies is in fact part of Parcel 2443 which belongs to the Defendants. She says that the Claim Form before the Court is vague and it is not for the court to try and decipher what it is the Claimant is seeking. What Mr. Bernard Leslie appears to be seeking is a declaratory order for prescriptive title. If that is what he is seeking, then in bringing the matter by way of an ordinary claim he has brought the matter in the wrong form. Rule 8.1(5) of the Civil Procedure Rules require that any order for possession of land must be brought by Fixed Date Claim Form.
3. The second reason urged upon this Court by Ms. Vernon for striking out the Claim is that the Respondent has no *locus standi* to bring this claim. He is asking this court to find

that this property belongs to another, the estate of Daisy Cabral, and he is not bringing the claim in any representative capacity either for or on behalf of the estate as indicated by the rules. Learned Counsel further submits that the Claimant is trying to avoid the requirements of section 138 of the Registered Land Act which deals with the requirements and the procedure which a party has to follow in order to obtain prescriptive title. She cites Claim 364 of 2006 **Melford Ramsey v Carla Young** where Hafiz J (as she then was) stated the principle that *“Where the occupier’s possession of land is by permission of the owner, the possession cannot be adverse; possession is never adverse if it is enjoyed under a lawful title... For there to be adverse possession, the person claiming possession should have the necessary animus possidendi, that is, an intention to possess the land to the exclusion of all other persons including the owner with the paper title so far as is reasonable and so far as the process of the law will allow...”* Ms. Vernon points out that in previous proceedings in Claim No. 314 of 2013 Mr. Leslie informed the court that at all times he obtained possession of the land with permission. At no time did he therefore have the requisite *animus possidendi* to possess that property to the exclusion of all parties, therefore his claim must fail. She also indicates that in the Ramsey matter cited above, the matter was brought in the proper manner by Fixed Date Claim as required by the Rules.

4. Ms. Vernon also argues that this present claim is an abuse of process in tin previous proceedings before the Honorable Chief Justice in Claim 314 of 2013 **Bernard Leslie v The Registrar of Lands Rachel Battle and Michael Battle** this same Claimant filed an action against the Defendants seeking title to property based on adverse possession. In

an affidavit filed in that action, this Claimant stated that had he known that the property was being sold to the Defendants he would have taken steps to obtain the property for himself. Mistake and fraud were not pleaded in those proceedings. Ms. Vernon argues that the Claimant had ample opportunity to advance his claim based on adverse possession in that suit but he chose not to do so. She says that the matter is therefore *res judicata*, under the third limb of that principle in **Henderson v Henderson** (1843) 3 Hare 100 where Morrison JA said:

"But there is yet a third - and a wider - sense in which the doctrine of res judicata may be invoked. This derives from the well-known judgment of Wigram VC in Henderson v Henderson where the learned judge said this: '...where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.' "

5. While the Claimant submits that the information (surrounding the fact that he resides on a piece of land which is different from that which the Defendants own) only came to his attention recently, Ms. Vernon submits that there is no indication as when this information became available to him. Having had the opportunity to properly challenge this same matter in earlier litigation, and having failed to do so, she argues that by

constantly re-litigating this matter this amounts to an abuse of process of the court. She cites ***Belize Port Authority v Eurocaribe Shipping Services et. al.*** Civil Appeal No. 13 of 2011 and Morrison JA in ***Eurocaribe***:

“Although Somervell LJ considered that conclusion to be sufficient to dispose of the case, he nevertheless went on to deal with the alternative argument put forward by counsel for the defendants to deal with the alternative argument put forward by counsel for the defendants, which was that it would be vexatious and an abuse of the process of the court to allow the transaction to be brought before the court again. In that learned judge’s view, the authorities also established that res judicata ‘is not confined to the issues which the court is actually asked to decide, but ... covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them’ ”.

Submissions on Behalf of the Respondent/Claimant

6. Mr. Sabido, SC, on behalf of the Respondent/Claimant contends that there has been a blatant and clear misrepresentation of the present Claim by Counsel for the Applicant/Defendant. He says that this is not a petition for a declaratory judgment as to adverse possession of a property. What Mr. Leslie is seeking are declarations against the Defendants as persons who have asserted a right and formulated a specific claim against him to dispossess him out of Parcel 3175. He further argues that had it been an application for possession of land that application would have been made against the estate of Daisy Cabral, as that is the estate from which title to Parcel 3175 is derived. He says what is being sought is a declaratory order in terms of a right, since issue is joined between Raquel Battle who is in possession of Parcel 2443 for which she claims she has title, and who claims Mr. Leslie is on her land, and Mr. Leslie who (at the time of the

previous action) was under the impression that he was on a portion of Parcel 2443 but has now recently discovered he is on Parcel 3175 which does not belong to the Battles at all. Mr. Sabido, SC, seeks a binding declaration as of right under Part 8 Rules, 8.4(2) of the Belize Civil Procedure Rules:

“A party may seek a declaratory judgment and the Court may make a binding declaration of right whether or not any consequential relief can be claimed.”

7. Mr. Sabido, SC, further states that his client has no cause of action, and he is not asking for prescriptive title nor for consequential relief of any kind. What his client is seeking is for the court to investigate the matter as the Claimant is saying he has a right to be on this piece of land because he is not on the Defendants' Parcel 2443. As his claim is for a declaratory order and not for an interest in land, he has the right to come by way of ordinary claim and not by fixed date claim form. He cites ***Halsbury's Laws of England*** Volume 22 at para 1610.

“Declaratory Judgments. Judgments and orders are usually determination of rights in the actual circumstances of which the court has cognizance, and give some particular relief capable of being enforced. It is, however, sometimes convenient to obtain a judicial decision upon a state of facts which has not yet arisen, or a declaration of the rights of a party without any references to their enforcement. Such merely declaratory judgments may now be given, and the court is authorized to make binding declarations of right whether any consequential relief is or could be claimed or not”.

8. Mr. Sabido, SC, claims that the cases cited by Ms. Vernon can be distinguished from the present case. In the previous proceedings in this matter there was no *inter partes* hearing. The Claimant was merely acting as the person filing the claim under a Power of

Attorney given to him by his two elderly aunts who could not come to court to file the claim. They passed away before the matter could be heard, and so there was a deficiency of evidence. He concedes that he was not Counsel for the Claimant in those proceedings, but he understands that there was no hearing and there was no decision on the merits of the case. The Chief Justice suggested that the matter be withdrawn and that is what happened. There is no re-litigation of any issue as the matter has never been fully heard or litigated before. The Claimant is seeking a chance to put fresh evidence before the court, including evidence from the Registrar of Lands that the rectification of the land register reduced the size of Parcel 2443 issued to the Defendants from 1.126 acres to .159 acres, and the result is that the property on which Mr. Leslie resides does not belong to them. This evidence was not available to Mr. Leslie at the time this matter commenced. Any prescriptive title claimed will be made by Mr. Leslie later, as against the estate of Daisy Cabral, and not against the Defendants.

Submissions in Reply on behalf of the Applicants/Defendants

9. Ms. Vernon in her reply submission reiterates her arguments that the branch of *res judicata* under which she is applying to get the claim dismissed is the third branch established under ***Henderson v Henderson***. This branch is where a Claimant had an opportunity of previously litigating a matter and it was the Claimant's responsibility to put the entire case before the court: "*Where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of*

matters which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time"

This is not a question of issue estoppel or cause of action estoppel where the matter was previously litigated and is now being re-litigated. She states she was involved in the matter from its inception and the case had gone through Mediation and was unresolved. On the day of trial, it was discovered that the two aunts had died and the option was given to the Claimant's Counsel by the Learned Chief Justice to consider proceeding by way of representative capacity as provided for by the Civil Procedure Rules. The matter was not properly pleaded with respect to fraud and an order was made by the Chief Justice that the Claimant could not proceed on the basis of fraud. The only matter remaining at that point was mistake, and instead of proceeding in a representative capacity, the Claimant chose to withdraw the claim. In relation to the Registrar's evidence mentioned by Mr. Sabido, SC, Ms. Vernon said this evidence was available for the entire time since 2007 as that rectification was done at the request of her client. She also makes the point that Mr. Leslie has no *locus standi* to seek any declaratory orders over property which he knows and accepts belongs to the estate of Daisy Cabral. Thirdly, Ms. Vernon argues that in Volume 22 of Halsbury's Laws of England at page 748 it is stated that "*A declaratory judgment cannot be given where the only remedy is one prescribed by statute*". What the Claimant is seeking is a declaratory

order of the Court that he has prescriptive title under the Registered Land Act or the Limitation Act. It is an abuse of process of the court and should be struck out.

Ruling

10. I am grateful to Counsel for comprehensive submissions which have assisted the court in determining this issue. The Applicants/Defendants seek to have this matter struck out as an abuse of process on the basis that the claim is one which could have and should have been disposed of in the earlier proceedings before the Chief Justice in Claim No. 314 of 2013. Mr. Leslie had every opportunity to bring his claim before the court at that time in a representative capacity, but he chose to withdraw the claim instead. There is no new evidence before the court as the information from the Registrar has been available since 2007. The Claimant is seeking to obtain a prescriptive title through the back door. He has no *locus standi* to seek the declaratory orders he now seeks.

The Respondent/Claimant states that he is not trying to obtain prescriptive title. All he is seeking is the opportunity to present new evidence that will show that he is not living on the Defendants' land. There is no abuse of process as there was never any hearing before the Chief Justice. There is no prior decision on the merits, he was not the Claimant in the proceedings before the Chief Justice in the prior claim, so the Claimant has every right to file this claim and seek the declaratory orders he now seeks.

Having considered the submissions and authorities in their entirety, I agree with the submissions of the Applicants/Defendants that this case would fall under the third limb of the *res judicata* principle. I find that the Applicants/Defendants have established that

the Claimant had every opportunity to present his case by acting in a representative capacity on behalf of his late aunts Shelmadine Leslie Faux and Udith Leslie Westby in the previous matter before the Chief Justice, and he declined to do so. He had not pleaded fraud properly and was not able to proceed with the claim on that basis, but he could still have proceeded on the basis of mistake. However, he chose not to do so and chose to withdraw the claim instead. The evidence of the Registrar as to the mutation of the property and rectification of the land title which Mr. Leslie seeks to now put before the court in this present claim is not new evidence, having been available to him since 2007 as alleged by Ms. Vernon and later confirmed by Mr. Sabido, SC. I also agree with the submission by Ms. Vernon that Mr. Leslie has no *locus standi* to seek the declarations he presently seeks, since the property he is living on, by his own admission, belongs not to him, but to the Estate of Daisy Cabral. I therefore see no basis on which I can allow the claim to proceed. The Claim is therefore dismissed. Costs awarded to the Applicants/Defendants to be paid by the Respondent/ Claimant to be agreed or assessed.

Dated this Friday, 1st day of July, 2016

**Michelle Arana
Supreme Court Judge**