IN THE SUPREME COURT OF BELIZE, A.D. 2007

CLAIM NO: 169 OF 2007

BETWEEN LUCILLE DIAZ CLAIMANT

AND

1. MAGDALENA MARIN DEFENDANTS
2. CHRISTOPHER JONES
3. ALLYSON JONES

Miss Alifa Elrington, for the claimant
Mrs. Agnes Segura – Gillett, for the 1st defendant
Dr. Elson Kaseke, for the second and third defendants.

AWICH J.

10.10.2008. J U D G M E N T

1. *Notes: Property Law: -joint title, lease, bare licence, contractual licence and licence coupled with estoppel. A claim based on joint title of the claimant to a portion of a farm- land; whether an agreement between the joint title-holders and the first defendant was a bare licence, or an irrevocable contractural licence, or a licence coupled with estoppel; whether the first defendant had right or authority to lease out the portion of the farm-land to the second and third defendants without the permission of the joint title-holders; privity of estate between the parties; misrepresentation, a void or*

voidable lease; whether the claim for an injunction order restraining harvesting crops was a claim in trespass which a title-holder not in possession could not make. Assessment of damages or indemnity – a reasonable sum of money for the use of the land or the ordinary letting value.
Civil Procedure- Counterclaims by the defendants, and ancillary claims between defendants – part 18 of the Rules.

2. ***The Background and Lucille's claim***.

The claimant, Lucille Diaz, one of the holders of a joint title to a 33.3 acre portion of a farm land on Canada Hill Road, Stann Creek District, Belize, brought this claim against the three defendants; Magdalena Marin, Christopher Jones and Allyson Jones, who occupied the land by, "a memorandum of agreement", and a "lease", respectively. The other joint title-holders were Delsie Diaz and Alexie Diaz Davis; they were not cited as parties. The three joint title-holders were sisters. The rest of the farm was comprised of a larger portion of 57 acres, and another of 36.9 acres, that belonged to Leroy Diaz (deceased), and a smaller portion of 15 acres that belonged to Darrell Diaz. Leroy and Darrell were brothers of the three sisters. Magdalena Marin is the widow of Leroy Diaz.

3. The claim was for: a court injunction order restraining the three defendants from, "continuing to reap crops from the said

land;…damages for loss and damage suffered,… and costs". It has not been stated in the prayer for reliefs that the injunction order was also to restrain trespass on the 33.3 acres, however, if the claimant succeeds in obtaining an order restraining the defendants from harvesting crops from the said land, the order will necessarily restrain trespass, that is, restrain interfering with the portion of land by entering or remaining on it for the purpose of harvesting crops.

4. Although the general claim form mentioned trespass, Lucille based her claim in the statement of claim exclusive on her joint title to the portion of land, and the agreement styled, "a memorandum of understanding", made on 10.5.1996, between Darrell Diaz and the three sisters, of the one part, and Magdalena Marin, the first defendant, of the other part. By the memorandum, it was agreed that Magdalena would work the lands of Darrell and of the sisters as part of her farm for five years, from 6.5.1996, consult with them each year, pay debts owed by Leroy on the farm and expenses, and then pay from the remaining income, a sum of money to each owner of land each year. The sum to be paid was not specified.

5. The first defendant, Magdalena Marin, and Leroy Diaz were common law husband and wife. Leroy died on 1.3.1995. He had been in possession of, and managed, the farm that was comprised of the land belonging to the sisters, the land belonging to his brother, Darrell, and his own land. The farming business was his alone. Upon his death, his widow, Magdalena took over the possession and management of the entire farm with the consent of the three sisters and Darrell. Leroy left a will in which he appointed his wife Magdalena, his brother Clifford, his sister Alexie Davis, and Floyd Wagner as executors. The last three denounced their appointment; and Magdalena alone obtained probate of the will on 23.1.1996. By law, her authority, that of an executrix or an executor appointed by a will, over the deceased estate dated back to the day Leroy died 1.3.1995. When Magdalena signed the memorandum of 10.5.1996, between her and the three sisters and their brother, Darrell, she had already taken possession of the farm, with the consent of the sisters and Darrell.

6. The second and third defendants are Christopher Jones and Allyson Jones, husband and wife. They were family friends of Leroy and Magdalena's family. They leased the entire farm from Magdalena, by

a lease made on 3.11.1999, three years and four months after the memorandum of understanding between Magdalena, and the sisters and their brother had been signed. The lease commenced on the same date. The lessees, the Jonesses, were given the right to sub-lease and assign their lease-hold estate, and the first option to purchase the reversionary estate at the price of $2,000.00 per acre or $260,000.00. The Joneses took possession of the entire farm, that is, the portions of land that belonged to the three sisters and Darrell, and the portions that belonged to the estate of Leroy. They continued to carry on fruit farming on the farm. They were required to pay $4,800.00 as rent for every six months.

7. ***The Material Facts***.

The common evidence was that long before his death, Leroy had been allowed to use the 33.3 acre portion of land, and the portion that belonged to Darrell for carrying on citrus farming. At the time, their mother, Celina owned the 33.3 acres. She left the land in a will to the three sisters. Leroy and the sisters and Darrell then agreed on an arrangement, whereby Leroy was allowed to continue to have the use of the two portions of land that belonged to the sisters and Darrell, and

work them together with his own land as one farm. In return he provided monetary support to Lucille and Delsie, and possibly to Darrell. The third sister, Alexie, lived in the U.S.A.

8. Leroy established and worked a successful farm. He was a well regarded farmer and brother. He obtained trading credits and a bank loan for the purpose, and mortgaged the portion of the farm-land that belonged to him; and deposited the titles, of the sisters and of Darrell, apparently as equitable mortgage. When he died the debt owed was $103,520.34.

9. After Magdalena took over the farm, she had difficulty in managing it. She fell behind in the payment of the trading debts and the bank loan. As the result, Barclays Bank, the mortgagee, informed her that she was to make an acceptable proposal to pay up or the bank would foreclose and sell the entire farm. She said that she informed Lucille about the difficulty in managing the farm, the debts and, the demand and intention of the bank. According to Magdalena, the response of Lucille was that she was tired of hearing about loans, she did not care

what Magdalena would do with the farm, Magdalena could, "sell the bloody place".

10. Under the pressure of the debts owing, Magdalena decided to hire out the management of the farm to save it from sale by the mortgagee. First, she obviously granted a contractual licence to one, Michael Chiu, on 19.12.1997, for seven years in return for payment by Chiu of all the debts and property taxes. The agreement referred to Magdalena as, "the licensor", and Mr. Chiu as, "the licensee". How that licence ended was not an issue in this claim. Thereafter, Magdalena leased the farm to Christopher Jones and Allyson Jones by the lease of 3.11.1999. The lease was for 15 years ending on 3.11.2014. The Joneses, by an arrangement made by Magdalena, paid to the bank $70,000.00 which the bank agreed would extinguish the entire indebtedness. The land title belonging to the three sisters, and the title belonging to Darrell, were released and given to them. Leroy's title was given to Magdalena.

11. Lucille has taken back possession of the 33.3 acre portion of land from the Joneses, and is said to be harvesting citrus fruits from it. The

circumstances of that taking back and the date were not disclosed in the evidence. It was said to be, after the Joneses had received a letter dated 5.2.2007, from Lucille, informing them that the 33.3 acres had been sold to Kent Diaz; and also, after this case had commenced.

12. ***The grounds of Lucille's claim, the defences and counterclaims.***

The grounds of the claim of Lucille against Magdalena were that: Magdalena did not get permission from Lucille to lease the farm out to the Joneses; she failed to consult the three sisters annually as agreed, and she failed to pay a sum of money annually to each sister as agreed. The ground of the claim against the Joneses was that as between Lucille and the Joneses, the lease between the Joneses and Magdalena, to the extent that it included the 33.3 acre portion was entered into without the permission of the holders of the title to the 33.3 acre portion, and so the Joneses had been working the 33.3 acre portion, and harvesting crops therefrom wrongfully. Lucille claimed against Magdalena and the Joneses, damages, an injunction order restraining them from harvesting crops on the land and costs.

13. Magdalena in her defence denied title of Lucille, but in her testimony she conceded completely that Lucille and the two sisters held title to the 33.3 acre portion, and that their mother, Celina Diaz, gave the land to them in a will, and title was transferred to them on 28.6.1980.

14. The main defence of Magdalena was that when she leased out the entire farm to the Joneses, she had explained to Lucille, the reason for intending to lease out the farm, and Lucille had agreed to the intended lease. Magdalena said, in any case, Lucille knew that Magdalena had to lease out the farm to save all the lands mortgaged, including the land belonging to Lucille and her two sisters. Magdalena explained that she had informed the title- holders of the other two portions of land, of the problem of the debts, they did not want to take on any responsibility. In her testimony, Magdalena emphatically made the point that if she did not lease the farm, and got the Joneses to pay $70,000.00 to discharge the indebtedness, Lucille and her sisters would have lost the 33.3 acres because the bank would have sold the entire farm.

15. About the agreement of 10.5.1995, Magdalena said that she was "coerced" into signing it by uncle Clifford Diaz, the brother of Leroy; she accorded him much respect. Regarding the claim for damages for loss occasioned, Magdalena said, the sisters did not lose, instead they gained as the result of the lease granted by Magdalena to the Joneses, because the sisters' land was saved from sale by the bank. Magdalena went on to inform the court that the sisters had taken back the 33.3 acres and have since been harvesting and selling fruits that were planted there by Leroy, and gaining from the sale. Magdalena instead counterclaimed, $50,000.00 from Lucille, "for all the improvements and cultivation done by [Magdalena] to the 33.3 acres, [further] damages, interests, further or other relief…and costs".

16. The defence of Christopher and Allyson Jones to the claim of Lucille was also that Lucille did not own the land, another person, Kent Diaz, had written a letter claiming the land. Then they also pleaded further, rather inconsistently, that they entered into the lease of 3.11.1999, with Magdalena, on a false representation made by her, "that she was the owner of the land in question"; and that the lease was valid and subsisting. The latter ground would really be a ground for making an

ancillary claim by the Joneses against Magdalena, not against Lucille. Christopher and Allyson Jones counterclaimed against Lucille, the reliefs of, "damages in the sum of $155,000.00 representing the proceeds of loans obtained… and expended in planting and cultivating…, and damages for improvements which they did on the land when they were in occupation…".

17. ***The Ancillary claims between the defendants.***

There have been ancillary claims in these proceedings, under ***part 18 of the Supreme Court (Civil Procedure) Rules, 2005.*** Magdalena has made an ancillary claim against Christopher and Allyson Jones. The Joneses have also made an ancillary claim against Magdalena. So there are in all three claims in these proceedings.

18. In summary, the grounds of the ancillary claim of Magdalena against the Joneses were that: the lease of 3.11.1999, between the Joneses and her was a valid lease; the Joneses have since failed to pay rent except to the extent of $10,500.00, and were therefore in breach of a condition of the lease. She claimed that despite her demand that the Joneses pay the rent or vacate the farm, they have unlawfully

remained on the farm, except for the 33.3 acre portion which they have surrendered to the three sisters. Magdalena claimed as reliefs against the Joneses for breach of a condition of the lease and for wrongfully remaining on the farm: $46,500.00 rent arrears; delivery up of possession; "profit" made during the period the Joneses unlawfully remained in occupation of the farm; damages and other just reliefs and costs.

19. The grounds of defence of the Joneses to the ancillary claim of Magdalena were that: they entered the farm and worked it lawfully, they were entitled to occupy and have possession of the land under the lease of 3.11.1999; they entered into the lease, "because of the misrepresentation by [Magdalena] who… at the material time represented that she was the owner of the land in question". They also said that Magdalena, collected rent on a monthly basis from 3.11.1999, up to the date the claim was instituted. They contended that they were entitled to remain on the farm.

20. The Joneses' own ancillary claim against Magdalena was based on the above averment of misrepresentation. They claimed against her, "all

rents paid under the lease", and damages for improvements on the land and interest. Magdalena answered that she did not make the representation alleged, and that the Joneses knew all along that some parts of the farm-land did not belong to Magdalena; and of course she denied the claim for reliefs.

21. ***Determination***.

The more difficult problem in this case is the state of the human relationship between the three sisters and Magdalena; they are sisters-in-law; and between Magdalena and the Joneses who were said to be close friends until this case. This is not a case involving outright fraudulent scheming. The question it raises is: who is to bear the loss, brought about by the demise of a successful man, Leroy? It is the kind of case that attorneys would usually work out a settlement in.

22. Let me mention at the outset that my discussion of the issues in this case covers more than the points of law raised in the submissions by the three learned counsel because the case raised many relevant important points of law, which were not included in the submissions by counsel, and which provided answers to the claim and the ancillary

claims. I must mention, however, that most of the submissions by counsel were very useful regarding the points of law they addressed. I thank them for their submissions.

23. **(**1) *The claims of Lucille against Magdalena, and against Christopher and Allyson Jones.*

In my view, the arrangement between Leroy and his mother, and the second arrangement, between Leroy and his sisters, were family arrangements where enforceable contractual obligations were not intended. The evidence was that the father, Murray Diaz, gave a large part of his land to Leroy and 15 acres to Darrell. The mother, Celina Diaz, gave her land, the 33.3 acre portion, in a will to the three daughters. Leroy had been allowed by the mother to work the 33.3 acres together with his land as one farm. The sisters allowed Leroy to continue to work their land together with his own land. Frequently he gave them some unspecified sums of money to help them, and some fruits from the farm for their consumption.

24. The legal consequence was that the mother gave a bare licence to Leroy, the licence terminated on the death of the mother. The sisters inherited the 33.3 acres, and gave a new licence to Leroy to remain on

the land and work it with the other lands, as a farm. Again the licence they gave was a bare licence, not a contractual licence, because the intention to create a contractual obligation was lacking, and Leroy did not give consideration for the licence. A bare licence is a gratuitous permission to enter or remain on land that belongs to another. It may be ended anytime without notice, but if it is necessary to give the licensee notice to remove himself, reasonable notice may be given. The licence is also ended by the death of the licensee or licensor.

25. The text book case of ***Balfour v Balfour [1919] 2 K.B 259,*** where a man returned to work overseas (Ceylon), leaving his sick wife in England, and subsequently promised to pay her £30 as a monthly maintenance sum until she would join him, is a good example of a family arrangement where a binding contractual obligation was not intended. The court held in the particular case, that there was no intention to enter into legally enforceable obligation, although it was possible in some cases, to enter into a legally binding maintenance agreement.

26. A contractual licence is a permission to enter land of another person for valuable consideration, but which does not create a right or interest, that is, an estate, in the land itself in favour of the licensee. If the contract is wrongfully terminated by the licensor, the licensee will be entitled to damages, not to a right to the land, he must vacate the land, unless the court considers it unjust and orders the equitable relief of specific performance – see ***Kerrison v Smith [1897] 2 QB 445,*** and ***Winter Garden Theatre (London) Ltd v Millennium Productions Ltd [1948] AC 173.*** That Leroy occasionally gave money to Lucille and Delsie to help them, and also gave some fruits for their consumption, were too vague to constitute a valuable consideration required in a contract.

27. I also think that it was far fetched to claim that the arrangement with the sisters included an agreement that the three sisters would eventually sell the 33.3 acres to Leroy, or let him have it as a gift. That was a suggestion in cross-examination; and later learned counsel Mrs. Segura-Gillett, submitted that it was the agreement between the sisters and Leroy. With due respect to counsel for her well researched and passionate submission, there has been no evidence supporting the

submission. Some evidence of the details of the sale or gift would naturally have been disclosed in the testimonies of Magdalena and her witnesses; there was none.

28. Further, I do not consider that the sisters gave Leroy a licence coupled with an interest, to enter the land. A licence coupled with an interest is a permission to enter land of another for the purpose of obtaining something of benefit *(profit a pendre)* therefrom granted to the licensee. The evidence did not show that the sisters or their predecessor in title, granted to Leroy *a profit a pendre*, such as, a right to collect produce or soil from the land, or graze animal on the land, so that Leroy would have the right to enter the land according to the terms of the grant, which sometimes may be interpreted to be permanent. There were no fruit crops on the land to be collected when the licence was first granted by the mother. The fruits harvested were planted on the land by Leroy as a consequence of the licence. In any case, a licence coupled with an interest would have to be made by a deed.

29. Further still, there has been no evidence to establish that a licence created by estoppel, usually described as, *"a licence coupled with estoppel"*, or *"a licence protected by estoppel",* had arisen between the sisters and Leroy. There was no evidence that the sisters promised, or by their conduct assured, Leroy that he would eventually buy the land from them, or that they would eventually let him have the land as his own, and that Leroy committed money and effort to the development of the land on that promise or assurance, - see the old cases of, ***Dillwyn v Llewelyn [1861-73] All E.R. Rep. 384, Chalmers v Pardoe [1963] 3All E.R. 552,*** and ***Pascoe v Turner [1979] 2 All E.R. 945***.

30. Generally, a licence to enter or remain on land of another is a personal arrangement between the parties, and ends with the death of either party; it does not create an estate in the land. It is not a right *in rem*, and does not run with the land – see ***King v David Allen & Sons Billposting Ltd. [1916] 2 A.C. 54, and Clore v Theatrical Properties Ltd and Westby & Co Ltd. [1936] 3 All E.R. 483.*** In this claim, the right granted by the mother to Leroy ended on the death of the

mother; and the licence granted by the three sisters to Leroy ended on the death of Leroy on 1.3.1995.

31. What about the arrangement after the death of Leroy, between the sisters and Magdalena? The evidence proved the following. The sisters consented on the death of Leroy, that the widow, their sister-in-law, Magdalena, would continue managing their land as part of the farm. Then after a year and two months, on 10.5.1996, they decided to record in the memorandum of understanding, the relationship that they desired between them and their sister-in-law. They recorded that, "the intention and the spirit", of the agreement was to assist Magdalena Marin pay the debts which had been incurred by Leroy. They also recorded confirmation of their titles, what Magdalena was required to do for them and other obligations. In my view, they showed in that memorandum, their intention to change the family arrangement into enforceable contractual obligations. Magdalena signed the memorandum of understanding. She must have understood that the sisters and Darrell intended that the terms of the memorandum would, from thereon be enforceable contractual obligations. That is

why she explained in court that she did not want to sign the memorandum, she was "coerced" into signing.

32. I do not accept though, that there was influence or coercion of the nature that would furnish legal duress, so as to vitiate the memorandum of understanding. The family pressure exerted by uncle Clifford was not such that could compel her to sign the memorandum. Moreover, any compulsion due to economic pressure, such as might have been exerted on Magdalena by creditors, is not recognised as duress in law – see ***Hardie and Lane Ltd. v Chilton [1928] 2K.B 306,*** and, ***Eric Gnapp Ltd. v Petroleum Board [1949] 1 All E.R. 980.***

33. It is my finding that the legal relationship between Magdalena, of the one part, and the sisters and Darrell, of the other part, has been that of a contractual licence since 10.5.1996. The sisters and Darrell were the licensors, Magdalena was the licensee. She was permitted to remain on the lands belonging to the sisters, and to Darrell, on the legally enforceable terms spelt out in the memorandum of understanding of that date.

34. I repeat that a contractual licence is a permission granted to enter or remain on the land of another for a valuable consideration, and does not create privity of estate between the parties. The terms of a contractural licence fall short of the terms of a lease. In the memorandum of understanding of 10.5.1996, the sisters and Darrell offered as consideration to Magdalena, permission to remain on their land and the benefit of carrying on citrus farming on the land, for five years. Magdalena in return offered as consideration to them, to pay the debts for which the sisters' and Darrell's lands had been charged or pledged by Leroy, to consult with them, and to pay some money annually to each of them. The arrangement was short of a lease because it was not clear whether the sisters (and other people), were excluded from entering the lands, so that Magdalena would have *exclusive possession*; and there was no provision for payment of *rent* by Magdalena, although the agreement was for a *definite duration* of five years – see ***Street v Mountford [1985] 2 All E.R. 289***, ***HL***.

35. Note, however, that since ***Ashburn Anstalt v Arnold [1988] 2 All E.R. 147***, a term as to payment of rent is no longer always a requirement for an agreement to qualify as a lease. Note also that the

intention of the parties as to whether the agreement is regarded as a lease, or a licence still looms large in the Caribbean since the decision of the Privy Council in, ***Isaac v Hotel de Paris Ltd [1960] 1 All E.R. 348***, an appeal case from Trinidad and Tobago. Several judgments from the courts in the Caribbean still treat the intention of the parties as the most important element in deciding whether an agreement is a lease or a licence, regardless of a term in the agreement, for the payment of rent.

36. The evidence in this case showed that while Magdalena was a contractual licensee, on 3.11.1999, she leased the farm including the 33.3 acre portion to the Joneses. Magdalena said that she had permission from Lucille acting on behalf of the sisters, and in any case, they knew that she had to lease out the farm to be able to pay debts. Under cross-examination Magdalena seemed to admit that she did not get permission, and that she never showed the lease to Lucille or to the other sisters.

37. I do not accept that the response by Lucille that she was tired of hearing about loans and that Magdalena could, "sell the bloody

place", was permission to sell or to lease. It was merely an instantaneous response to the frequent bothersome news about the loans. I would expect that upon Magdalena obtaining an intending purchaser or a lessee, would proceed to obtain a formal authorization from the sisters and Darrell before signing the contract of sale or lease. The parties had adopted a formal course of action when they signed the memorandum of 10.5.1996; if there was a proposal to change from what was agreed in the memorandum, there needed to be clear evidence that the parties agreed to the change. A formal form similar to the memorandum would be expected, unless the evidence was otherwise so clear. I also think that if permission was requested and given for selling or leasing out the portions of land as part of the farm, the evidence would have included discussion with Lucille and the sisters and Darrell about important terms such as the price, the rent, and how the sisters and Darrell were expected to share in them. It is my finding that Magdalena was not authorized by Lucille or any of the sisters to sell or lease out the 33.3 acre portion of the farm to the Joneses or to anyone else.

38. Even if it were to be assumed that the memorandum of 10.5.1996, created a lease and not a licence, still Magdalena could not commit herself to an under-lease of 15 years, a term longer than the term of 5 years granted to her in the memorandum of understanding. The lease made on 3.11.1999, between, "Mrs. Magdalena Marin and Christopher & Allyson Jones", was void, as between the three sisters and the Joneses, and at best, voidable as between Magdalena and the Joneses.

39. It follows, that as far as the sisters were concerned, Christopher and Allyson Jones, took possession of the farm by a void lease to the extent of the 33.3 acres, and they were not entitled to possession of that portion of the farm. They were not entitled to occupy and work the farm and harvest crops from it. There was no privity of estate between the Joneses, and Lucille and her sisters in respect of the 33.3 acre portion. The defence by the Joneses that Lucille was not the owner of the 33.3 acre portion because Kent Diaz claimed it, has been swept away by the admission by Magdalena that Lucille , Delsie and Alexie held joint title to the portion of land; and of course, there has been no evidence from the Joneses to the contrary. The operative

factor was authority of the lessor to lease out the land, not her title. With due respect, learned counsel Dr. Kaseke, for the Joneses, was mistaken in relying on lack of title.

40. Learned counsel Miss Alifa Elrington for Lucille had a very clear view of the case she presented. In the short statement of claim, confirmed by the testimony of the only witness she called, counsel presented in a short and clear manner the case for her client as follows: Lucille jointly with her sisters, owned the 33.3 acre portion of the farm-land; they signed an agreement allowing Magdalena to work the portion as part of the farm, and requiring her to pay the debts of their deceased brother, the husband of Magdalena; she wrongfully leased the land to the Joneses; and so Lucille asked for an injunction order restraining Magdalena and the Joneses from harvesting crops from the land. Miss Elrington was careful to avoid the technicality that pleading trespass might have brought into the case. It might have been contended that Lucille was not in possession of the portion of land when the Joneses entered upon it and so Lucille could not bring a claim in trespass – see ***Levender v Betts [1942]2 All ER. 72,*** and ***Jones v Lovington [1963] 1 K.B. 253.*** As between Lucille and the

Joneses, Lucille's case was unanswerable. With due respect to the effort of learned counsel Dr. E. Kaseke, and despite the court granting to him the indulgence to fill in gaps in the witness statement of his client, and further, despite his long crossexamination of Lucille, Dr. Kaseke could not shake off the short and clear case against his clients. Lucille has successfully proved her claim based on title, against the Joneses.

41. *(2) Reliefs granted to Lucille*.

Lucille has succeeded in her claim against Magdalena, and her claim against Christopher and Allyson Jones. Lucille's claim for the relief of an injunction order restraining the defendants from harvesting crops from the land was, in reality, a claim for the relief of ejectment of the defendants from her property, a relief which was available to her, a person entitled to the reversionary interest; and which could end any trespass, despite the fact that the case was not presented as a claim in trespass.

42. I might have accepted a claim in trespass even if the claimant was not in actual occupation, and some may argue, not in possession of the

portion of land, when the Joneses entered and occupied it. There are two reasons for my view. The first is that giving a licence to another does not mean the licensor has given away exclusive possession or the right to it. Secondly, the sisters became entitled to exclusive possession of the 33.3 acre portion of land right from the moment Magdalena wrongfully gave a lease to the Joneses; the sisters could regard Magdalena and the Joneses as trespassers.

43. To clear up any doubt about the standing of Lucille Diaz, I state here that Lucille had the standing to bring this claim on behalf of Delsie Diaz, Alexie Diaz Davis and herself. The three were given the 33.3 acres jointly in their mother's will. That meant that there were, *"no words of severance",* in the statement devising the land to them in the will. As joint title-holders, technically known as *"joint tenants",* each sister owned the whole 33.3 acres together with the others; there was only one title they owned together as against all others (against all the world), and they were regarded together as a single owner. So a claim by one of them, in this case by Lucille, must be regarded as a claim by all of them as one owner, based on their single title.

44. The Joneses have since the commencement of the claim, given up possession of the 33.3 acre portion to Lucille. An injunction order restraining them from harvesting crops from the portion of land is no longer necessary. An appropriate relief in the place of an injunction order is a declaration of right. The court makes the declaration that: "Christopher and Allyson Jones did not acquire, by the lease of 3.11.1999, any lease-hold estate or any other estate or interest in the 33.3 acre portion of the farm – land, which portion belonged to Lucille Diaz, Delsie Diaz and Alexie Diaz Davis, and which was part of the farm, wrongfully leased by Magdalena Marin to the Joneses; the said Lucille Diaz, Delsie Diaz and Alexie Diaz Davis became entitled to take back exclusive possession of the 33.3 acre portion of the farm on 3.11.1999, when Magdalena Marin wrongfully handed over possession of the farm to Christopher and Allyson Jones, in breach of the terms of her licence granted on 10.5.1996."

45. Lucille claimed the relief of damages as well. She urged that in the assessment of damages court should include profit that she said was made unlawfully on the land. But she did not prove any profit that the defendants may have made when the land was unlawfully occupied

from 3.11.1999. I cannot assume that profit was made, and so, I am unable to use profit in the assessment of damages.

46. I accept, however, that the sisters are entitle to some compensation for having been deprived of their property from 3.11.1999, when the Joneses took possession of the farm, to 21.6.2007, when the claim was served on the second and third defendants, and they surrendered the land to Lucille. The defendants said that the land was surrendered, "when this claim was instituted". No date was specified. The claim was filed on 3.4.2007, but served on the Joneses over two months later on 21.6.2007. I took 21.6.2007, as the earliest date on which the 33.3 acre portion of land was returned to Lucille.

47. Based on the above date, my computation is that the sisters were deprived of their land for 7 years, 7 months and 17 days. Compensation is usually, *"such a sum as should reasonably be paid for the use of the land, or the ordinary letting value of the land, for the period"* – see ***Swordheath Properties Ltd v Tabet [1979] All ER 240,*** a case cited by Mrs. Segura-Gillett. I think that in this case, it is fair to base compensation that the sisters are entitled to on the rental worth

of the 33.3 acres for that period. That is the only evidence available, of the value of the use of the land. The entire farm, said to be 130 acres, was leased for a rent of $4,800.00 for every 6 months, so the rent was $800 per month for the entire 130 acres, or $6.15 per month for an acre. For 7 years, 7 months and 17 days for 33.3 acres, the rent would be $18,764.12. Accordingly my decision is that the three defendants are jointly and severally liable to pay the sum of $18,764.12 as damages to Lucille Diaz, representing the three sisters, for the loss occasioned by the defendants wrongfully depriving the sisters of their land from 3.11.1999 to 21.6.2007.

48. I am unable to make an award for the sums of money that Magdalena was to pay to the sisters annually. Lucille did not include the sums in her statement of claim. In any case, the sums were payable only after payments had been made for the debts and expenses for the months. The evidence showed that Magdalena was unable to pay debts.

49. ***The counterclaims against Lucille.***

Magdalena counterclaimed against Lucille, $50,000.00 as, "compensation … for all the improvements and cultivation done", by

her on the 33.3 acre portion of land which the sisters have taken back. There is no ground at all for the counterclaim. It was never agreed in the memorandum of 10.5.1996, that the sisters would pay for any improvement carried out on the land by Magdalena, at the end of the five year term of the agreement when the licence would expire and the land would be returned to the sisters, or on termination otherwise. Moreover, Magdalena unilaterally terminated the contractual licence granted to her by wrongfully giving possession of the land to the Joneses without the permission of the sisters. Magdalena is not entitled to any sum payable as compensation from Lucille and her sisters.

50. The counterclaim of the Joneses against Lucille for somewhat duplicitous reliefs of, damages for improvement to the 33.3 acre portion of land, and for $155,000.00 loan money said to have been spent on cultivating and planting crops, are also baseless. As between the Jonesses and Lucille, the Joneses had no right to enter upon and work the land of the sisters without their permission, regardless of any false representation made to the Joneses, by Magdalena.

51. ***The ancillary claims between the defendants, Magdalena and the Joneses.***

(1) The ancillary claim by the Joneses.

I start with the ancillary claim by the Joneses against Magdalena. There has been proof that Magdalena had no right or authorization to lease out the 33.3 acre portion of the farm to the Joneses. On the other hand, there has been no proof that she did not have authorization to lease out the 15 acre portion that belonged to Darrell; and there has been proof that Magdalena, as the executrix, was entitled to generate income from the farm. According to the will of Leroy, she was the beneficiary for life, of the income from the farm. Magdalena made a false representation that she had the right or authority to lease the whole farm, but the falsehood applied only to the 33.3 acre portion. As the consequence, it was open to the Joneses to terminate the entire lease if the 33.3 acre portion was a vital and an integral part of the total land leased, and claim indemnity or damages for the total loss of the lease. – see ***Whittington v Seale –Hayne (190) 82 LT 49,*** and compare a case about severance of illegal or unlawful term, ***Bennett v Bennett [1952] 1 KB. 249.***

52. The Joneses decided to surrender the 33.3 acre portion; and continued to regard the remaining 96.7 acres as still leased. They were entitled to make that election and to hold Magdalena to the remainder of the lease and claim damages for the loss of the 33.3 acres. They could not keep the 96.7 acres and claim damages for total failure of consideration. Based on the election made by the Joneses, they were and are entitled to damages against Magdalena alone, for the loss of 33.3 acres for the 7 years, 4 months and 12 days left on the fifteen year lease. The sum of money based on the rental value is $18,115.20.

53. They are also entitled to a refund of that part of the $70,000.00 applied to the release of the 33.3 acre portion for the period from 21.6.2007 when the portion was surrendered by the Joneses, to 3.11.2014, when the lease would terminate. The Joneses did not have the full benefit of the $70,000.00 for the full term of the lease. That part of the $70,000.00 which applied to the release of the 33.3 acre portion for the period 21.6.2007 to 3.11.2014 should be returned to the Joneses. The period is 7 years, 4 months and 12 days. The proportional part of the $70,000.00 is $8, 805.99. The Jones lost that

sum as the result of the false representation by Magdalena. I award that sum as damages to the Joneses against Magdalena Marin.

54. The Joneses also claimed against Magdalena, "all rents paid on the lease". They claimed that the $70,000.00 that they paid to the bank to release the farm was agreed on to be rent paid in advance, and would be offset against the total rent payable in the 15 years of the lease. Allyson stated in court that, that point of agreement was oral. When asked why then did they pay $10,500.00 at the commencement of the lease, between March of 2000, and July of 2003, Allyson answered that the sums were gifts to help the widow.

55. The oral part of the testimony of Allyson, that the $70,000.00 would be offset against the total rent is not admissible as evidence under the oral evidence rule in contract. It was out right unbelievable anyway, that such an important point of the lease, and concerning a large sum of money, would be left out of the written lease. Moreover, the point of fact was not stated in her witness statement, it was solicited by leading questions in court.

56. I do not believe that the sums of money totalling $10,500.00 were gifts to Magdalena, the sums were paid as rentals. The evidence showed that the $70,000.00 was part of the loan of $155,000.00 given by the bank to the Joneses. The $70,000.00 of the loan was intended to pay off the loan owed by Magdalena on behalf of the estate of Leroy; and have the farm released for leasing by the Joneses. From the whole evidence, the reasonable inference was that the $70,000.00 was part of the consideration, in addition to the rent of $4,800.00 payable every six months, to be provided by the Joneses for the letting of the farm to them under the lease. A lump sum payment, sometimes referred to as premium is not unknown in leases. My conclusion is that, instead of Magdalena owing rentals paid by the Joneses, the latter owed Magdalena rent arrears up to the time this claim was filed.

57. The claim of the Joneses against Magdalena for, "$150,000.00 representing …. a loan … expended in planting and cultivating citrus crops….", and for, "damages", was just a repeat of the counterclaim against Lucille, in which the Joneses claimed the two reliefs against Lucille jointly with Magdalena. The sum is actually $155,000.00. As against Lucille, I have already decided that the claim is baseless

because there was no privity of estate between the Joneses and Lucille. As against Magdalena, the two reliefs have simply not been proved. Some evidence of expenditure was led, but was too general. As regards profit, there was no clear evidence that the Joneses were making profit that was reduced by the surrender of the 33.3 acres, or that the loss of the 33.3 acres aggravated loss that was being suffered by the Joneses. There was no evidence of income from sale against which expenses were deducted, to prove profit or loss. Further, the testimony of Atanacio Figueroa, an employee of the Joneses, tended to prove that the whole farm was not cultivated, and that the Joneses did not produce as much from the farm as Leroy had been producing.

58. *(2) The ancillary claim by Magdalena.*

In the ancillary claim of Magdalena against the Joneses I accept the claim for the relief of arrears of rent owed. The Joneses did not cancel the lease on discovering the innocent misrepresentation made by Magdalena. The representation she made was not fraudulent. Given their acquaintance with one another, Magdalena simply assumed that the Joneses were aware that some portions of the farm-land did not belong to the estate of Leroy. She also assumed that

because the three sisters and Darrell knew of the danger of losing the entire farm-land, they would welcome leasing out the farm so as to obtain money to pay off the bank loan. Magdalena was wrong in her assumptions, but not dishonest

59. As between Magdalena and the Joneses, the lease of 3.11.1999, was voidable at the election of the Joneses. The Joneses elected not to terminate the lease; they were required then to pay the rent. They had to pay the full rent upto 21.6.2007, anyway. Thereafter, by choosing to continue with the remaining part of the lease, they were required to continue paying rent proportional to the 96.7 acres that they retained.

60. I accept the tabulation of rentals due and payments made, prepared by Magdalena in exhibit D (MN)2M. She commenced with the six months ending June 30th, 2000, so she excluded part of November and the whole of December 1999. That favoured the Joneses, I need not concern myself with it. Up to 1st June 2008, the gross rent payable was shown as $60,000.00. She explained that she agreed to reduce rent to $3,000.00 for every six months, from 1st December, 2002, because of the fall in the prices of produce and that she would

reinstate the rent to $4,800.00 for every six months, if prices improved. From the gross rent, Magdalena deducted $10,500.00, which was the total payment made and ended with a net sum of $49,500.00 owing as rent arrears, although she claimed $46,500.00 in her ancillary claim.

61. I shall make an adjustments to the figure of $49,500.00. Magdalena's claim is for the period up to 1st June 2008; but we know that earlier on 21.6.2007, the Joneses surrender the 33.3 acre portion. The rent from 21.6.2007 up to 1.6.2008, (some 11 months and 10 days) should be for 96.7 acres, not for 130 acres. So the rent became $2,231.54 not $3,000.00, for every six months. The consequent reduction is $4,215.13 from $49,500.00 which brings down the sum owing to $45,284.87. I award the sum of $45,284.87 to Lucille Diaz, as rent arrears owing and payable by Christopher Jones and Allyson Jones to Magdalena Marin.

62. I am satisfied on the evidence, that Magdalena has given notice to the Joneses to quit based on the failure of the Jonesses to pay rent, and they have failed to pay up the arrears. Magdalena is entitled to an

eviction order to evict the Joneses from the farm forthwith. She will also be entitled to compensation based on the rental value of the 96.7 acres which is $2,231.54 for six months, or $371.92 for every month, from 1st June 2008, until the date the Joneses vacate the farm.

63. As between Magdalena Marin, and Christopher Jones and Allyson Jones, each party shall bear own costs of the proceedings.

64. ***The Orders made.***

The orders that the court makes are the following:

64.1 Judgment is entered for Lucille Diaz one of the joint-holders of title to the 33.3 acre portion of the farm on Canada Hill Road, Stann Creek District, formerly managed by Leroy Diaz (deceased), against Magdalena Marin, Christopher Jones and allyson Jones.

64.2 The Court makes a declaration of right that: Christopher and Allyson Jones did not acquire, by

the lease of 3.11.1999, any leasehold estate or any other estate or interest in the 33.3 acre portion of the farm-land, which portion belongs jointly to Lucile Diaz, Delsie Diaz and Alexie Diaz Davis, and which was part of the said farm-land, wrongfully leased by Magdalena Marin to the said Christopher and Allyson Jones; the said Lucille Diaz, Delsie Diaz and Alexie Diaz Davis were entitled to take back exclusive possession of the 33.3 acre portion on 3.11.1999, when Magdalena Marin wrongfully handed over possession of the whole farm-land to the said Christopher Jones and Allyson Jones.

64.3 Magdalena Marin, Christopher Jones and Allyson Jones are liable jointly and severally to pay $18,764.12 damages to compensate Lucille Diaz representing her sisters, for the denial to them of the use of their 33.3 acre portion of the farm-land

from 3.11.1999 to 21.6.2007; the sum to be paid forthwith.

64.4 The counterclaim of Magdalena Marin, and the counterclaim of Christopher Jones and Allyson Jones, against Lucille Diaz are dismissed.

64.5 Magdalena Marin, Christopher Jones and Allyson Jones shall pay $9,000.00 costs of the claim of Lucille Diaz, each paying $3,000.00

64.6 Judgment is entered in the ancillary claim of Christopher Jones and Allyson Jones for them against Magdalena Marin for the sum of $18,115.20 damages for misrepresentation which caused the Joneses to surrender the 33.3 acre portion of the farm-land to Lucille Diaz on 21.6.2007.

64.7 Judgment is also entered for Christopher Jones and Allyson Jones against Magdalena Marin, for

$8,805.99 damages for the loss of money paid to release the 33.3 acre portion from a claim by Barclays Bank.

64.8 Judgment is entered in the ancillary claim of Magdalena Marin against Christopher Jones and Allyson Jones for $45,284.87, rent arrears upto 1st June 2008.

64.9 the Joneses are liable to pay mesne profit at the rate of $2,231.54 per six months (or $371.92 per month) to Magdalena Marin from 1st June 2008, until they vacate the farm.

64.10 Christopher Jones and Allyson Jones must forthwith quit the 96.7 acre portion of the farm that they still occupy, for failure to pay rent after notice had been given.

65.11 Costs between Magdalena Marin, Christopher Jones and Allyson Jones, shall be borne by each party.

65. Delivered this Friday the 10th, day of October 2008
At the Supreme Court of Belize
Belize City

Sam Lungole Awich
Judge
Supreme Court