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ID vLex: 793328033
http://bz.vlex.com/vid/bedran-v-benner-793328033

Bedran v Benner

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Jurisdiction: Belize

Judge: Legall, J.

Judgment Date: 18 May 2010

Reported In: BZ 2010 SC 27

Court: Supreme Court (Belize)

Docket Number: 443 of 2005

Date: 18 May 2010

PDF

Supreme Court

Legall, J.

443 of 2005

Bedran
and
Benner

Appearances:

Ms. Yogini Lochan for the claimant.

Mr. Nigel. O. Ebanks for the defendant.

Real property - Landlord and tenant — Lease agreement — Claimant landlord instituting proceedings dying and present claimant substituted — Rent due and owing unpaid — Title dispute — Deceased landlord failing to produce proof of ownership of property — Tenancy be estopped — Defendant estoppel from disputing title — Defendant building permanent structures on property with permission of deceased landlord — Proprietary estoppel — Equitable interest in defendant — Order that defendant pay rents due and owing — Claim for mesne profits and possession against defendant dismissed.

Legall, J.

THE CLAIM AND LEASE

1 Louis Ernest Reyes Jr., (Reyes) filed this claim against the defendant on 5th December, 2005. On the 25th September, 2006, Reyes died. By court order dated 22nd December, 2009 the claimant was substituted for the deceased for the purposes of the claim.

Prior to his death, Reyes made a lease agreement on 29th March, 2001 with the defendant. The agreement was signed by both parties.

2 The lease agreement states as follows:

LEASE AGREEMENT

The following Lease Agreement is between the following parties. The Lessor, Mr. Luis Reyes, Jr. and the Lessee, Ms. Jessie Benner, to be signed on Mar. 29 2001.

The property is located at #13 Front Street on **Caye** Caulker and is duly surveyed and registered in Belmopan.

The length of the Lease Agreement is ten (10) years. The fee being One Thousand U.S. dollars ($1,000.00 U.S.) per month. The first year to be paid in full.

All structures will be removed upon payment of the first year's fee.

The Lessor will pay property taxes until construction commences. Any increase thereafter will be the responsibility of the Lessee.

> Signed and Accepted
>
> Luis Reyes Jr., Lessor
>
> Witness
>
> Signed and Accepted
>
> Jessie Benner, Lessee
>
> Witness
>
> Sworn and subscribe before me in **Caye** Caulker on this 29 day of March 2001.

Below the lease agreement, on the same sheet of paper, is printed the words "Purchase Agreement" followed by words purporting to confer on the defendant an option to purchase the property mentioned in the lease; and stating that payments made by the defendant during the term of the lease were to be deducted from any agreed purchase price. This so called purchase agreement was not signed by Reyes or the defendant; and therefore is not legally enforceable as an agreement to purchase or sell the land.

LEASE AGREEMENT

3 Reyes put the defendant in possession and occupation of the property in March, 2001 in compliance with the lease. The defendant paid the required rent for the property of US $1000 per month to Reyes from March, 2001 to 1st April, 2005 when the defendant stopped the payment of the rent. The claimant brought a claim dated 5th December, 2005, and an amended claim dated 1st March, 2010 claiming:

1. Possession of the premises. 2. $120,000 being arrears of rent for the period 1st April, 2005 to 1st March, 2010. 3. Mesne profits. 4. Interest.

4 The defendant said that the rent was not paid because Reyes failed to produce proof that he had title and ownership of the property. Clause 2 of the defendant's defence states as follows:

> "There has not been an outright refusal by the defendant to pay the rent. The defendant has been requesting that the claimant shows her proof of his ownership of the property the subject of the lease. By letter of 4th April, 2005, the claimant was informed about the defendant's concerns regarding ownership of the lot and the fact that the rents were being deposited into a savings account at Atlantic **Bank**. All the claimant needs to do is show the defendant proof of his ownership of the property and the rents can be paid over to him. The defendant feared that the claimant was not the real owner and that the real owner to lot 13 would one day show up and make demands."

5

The defendant also submitted in her written defence that the claimant was not entitled to possession of the premises because of non-compliance with section 15(1) of the Landlord and Tenant Act, Chapter 189. This section deals with re-entry and forfeiture of a lease and requires the claimant to serve a notice on the defendant. I have not found any evidence that any such notice was served on the defendant by the claimant. The submission under section 15 was not however pursued by the defendant in her closing written submissions.

QUESTION OF TITLE AND OWNERSHIP

6 In support of the claimant's evidence that Reyes owned the property leased, an Indenture was tendered which states that Isabella Veronica Stephens sold on 15th April, 1961 property to Reyes. The property sold to Reyes was described in the indenture as "all that piece or parcel of land situate at **Caye** Caulker and bounded and described as follows." Given thereafter are the boundaries of the land on the east, west, north and south. But significantly absent from the indenture is the lot number or parcel number of the parcel of the land mentioned in the indenture, so as to prove the nexus between lot 13 mentioned in the lease, and the parcel of land mentioned in the indenture.

7 Moreover, in support of ownership of the property by Reyes, the claimant disclosed receipts that Reyes paid property taxes to the **Caye** Caulker Village Council in relation to lot 13 mentioned in the lease, and that he had been in occupation of the lot since 1974 — more than thirty years. The said village council also wrote in a letter disclosed dated 16th February, 2006 that Reyes was the owner of the said lot 13. But on what basis the council came to the conclusion that Reyes owned lot 13 was not stated in letters. It is however indisputable that the council in its correspondence to Reyes treated him as the owner of lot 13.

8 The claimant also relied, as proof of Reyes' ownership, on a title search conducted on 27th October, 2005 by Marie Escalante. In her search report, Escalante describes a piece of land under the heading "Schedule" and made the following comments: "A search was conducted at the Land Title Unit and it was determined that Louis Ernest Reyes Jr., was the proprietor of the first schedule above referred to…." The factors or evidence that informed that determination were not given. Moreover, the piece of land, described in the said schedule does not mention a lot number nor parcel number so that the nexus point again arises.

9 The defendant, in support of her submission that Reyes did not have title or ownership of the property, contacted title researcher Mark Mahmud to conduct a title search in respect of the property. Mahmud was not called to give evidence, but in his title search report, he said he found no record of transfer of lot 13 from Matthew Stephens to Reyes who had claimed, by declaration dated 23rd August, 1996, that he bought the said lot from Matthew Stephens. The defendant submitted, based on Mahmud's report, that Reyes was not the owner of lot 13. As a result, the defendant wrote a letter dated 4th April, 2005, as follows:

> "I am writing to you today to notify you that until the determination of ownership is made by the Lands Department I am suspending monthly lease payment to you as of 1st April, 2005. Pending their decision, I will be depositing your monthly lease payments starting today into a saving account at Atlantic **Bank** in **Caye** Caulker until ownership of the lot is determined."

Around August, 2005, the defendant contacted yet another title researcher, Frances Griffith, to investigate the title for the property. Miss Griffith said at paragraph 4 of her witness statement that as a result of information she uncovered during her investigation she determined that Reyes was not the owner of any interest in the leased property. Miss Griffith said that the persons entitled to hold the freehold interest in the property were the beneficiaries of the estate of Matthew Stephens.

11 This witness prepared a report which was tendered in evidence. The purpose of her report was to ascertain the legal status of a piece of land purportedly being lot 13 situate at **Caye** Caulker Village. In carrying out her research, she found that only one piece of land was conveyed to Reyes; and it was situated across the street from lot 13 which was being investigated. The piece of land conveyed to Reyes was the land described in the said Indenture dated 13th April, 1961, according to Griffith, which was later sold by Reyes in 1999 to two persons Phillip R. Alldritt and Alicia R. Bomhoff.

12 The history of lot 13, according to the report of Griffith, is that it was conveyed in July, 1904 from William Mayford to Matthew Stephens who died 26th May, 1917. By his will the lot was given for the life of Ellen Stephens, and on her death to her daughter and son Ella Blanche Stephens and Matthew George Stephens respectively. Ella Blanche Stephens died in May, 1939 and the estate was granted to Matthew George Stephens who died in November, 1939. Griffith concluded in her report that "no information was found that lot 13 under the lease agreement was conveyed, sold, deeded or granted through probate to any of the Stephens family members or other individuals. Griffith also concluded that: "No lease reference, no grant reference or old tax records exist to prove that the said lot was leased, granted or conveyed to Reyes."

13 The defendant said she knew that one Marie Stephens and one Harold Stephens are descendents of Matthew Stephens. None of these persons came forward to make any claim to lot 13, nor were they called to give evidence. The defendant remains in possession of lot 13, undisturbed by any adverse claim by any title paramount. The defendant's possession of the property has not been, or is not being disturbed by being evicted by any title paramount, or the equivalent of it by anyone. Nor has the defendant acknowledged any title to lot 13 by a third person. The defendant's evidence is that she wanted a title determination from the Lands Department whether Reyes or anyone else was the owner of lot 13. If it was not Reyes, the defendant was not sure specifically who the owner was; and that was why I believe she wanted a determination of the matter by the Lands Department.

14 The defendant did in cross-examination, testify that somebody came and told her that lot 13 belonged to their family. But who the person was, and why the person told her so were not given in evidence. I do not consider this as evidence of an adverse claim by a third party with title paramount for the property. There is no eviction or attempt to evict the defendant by a third party with a paramount title. There is no evidence that a third person who owns lot 13 came forward and made any adverse claim to lot 13.

TENANCY BY ESTOPPEL

15

Reyes was in possession and occupation of lot 13 for about thirty years. In March 2001 he leased and put into possession, property located at lot 13, to the defendant who paid the monthly rent to Reyes for about four years until 1st April, 2005, when she stopped paying the rent on the grounds mentioned above. Since this date she has been and continues to be in possession and occupation of the said lot 13.

16 The claimant, in response, pleaded tenancy by estoppel — that a tenant is estopped from disputing his landlord title. The claimant says that on the facts and circumstances of this case, the defendant, a tenant in possession of property located at lot 13, and who paid rent to Reyes for years, and who is still in possession of the property, is estopped from disputing Reyes title. Let us consider what the authorities say about tenancy by estoppel.

17 The earliest authority is *Cuthertson v. Irving* 1859 4 HCN 742 where a tenant paid rent to his landlord on an agreement of tenancy which included covenants to repair during the term of the tenancy; and to deliver up the premises in repair at the end of the term. The tenant, at the end of the term, delivered up the premises to the landlord; but in a bad state of disrepair.

18 The landlord sued the tenant for damages for breach of the covenant to repair. The tenant argued at the trial that the landlord had no legal estate or title in the rented premises. The court held that the tenant was estopped, on the facts of the case, from denying the title of the landlord. Martin, B. said at page 757:

> "If the lessor have no title, and the lessee be evicted by him who has title paramount, the lessee can plead this and establish a defence to any action brought against him .... but so long as the lessee continued in possession under the lease, the law would not permit him to set up any defence founded upon the fact that the lessor nil habuit in tenementis...." (had nothing in the tenements) (translation added).

19 It seems that the law as stated by His Lordship Martin, B. above is not only important for the enforcement of contracts of tenancy between persons, but it promotes what is right and just. The lessee has enjoyed everything which his lease authorized, and in that sense it ought not to concern him what the title of the lessor is. The lessee has received the full consideration for the contract he had entered into, and he should on his part perform what he agreed to under the contract, such as paying the rent: see Martin B in *Cuthertson v. Irving* above at page 758.

20 *In Industrial Properties Ltd. v. A.E.I* . [1977] Q.B. 580, the plaintiff company who did not obtain title or conveyance for the property, granted a lease to the defendants. A covenant of the lease was for the defendant to keep the property in tenantable repair and condition, and to so yield it up at the determination of the term. At the determination of the term, the defendants yielded up possession of the property in disrepair. The plaintiff company brought an action against the defendants for breach of the covenant to repair. The defendants contended that since they were not, at the time of the action, in possession of the property, they were entitled to deny the plaintiff company title to the property; and consequently their liability under the covenant to repair.

21 The Court of Appeal held, overruling *Harrison v. Wells* [1967] 1 Q.B. 263, a previous decision to the contrary, that the rule that a lessee was estopped, during the currency of the lease, from disputing his lessor's title continued to operate after the expiry of the lease, unless after the expiry of the lessee's possession, a claim was made against

him by a title paramount. The court therefore found that the defendants were estopped from disputing the title of their landlord — the plaintiff company — and were liable under the covenant to repair.

22 Where a landlord lets a tenant into possession of premises under a lease, then so long as the tenant's possession is undisturbed by any adverse claim, then the tenant cannot dispute the landlord's title. The tenant, in such a case, is estopped from doing so. Where also a tenant, not having been disturbed by any adverse claim of a paramount title, goes out of possession of the premises, and the landlord sues the tenant for rent or for breach of the covenant to repair, the tenant cannot dispute the landlord's title. He is estopped from doing so: see *Industrial Properties Ltd. v. A.E.I.* per Denning, L.J. at page 596 above.

23 To the same effect is *Lucius White v. Carlos Cotterell* [1971] 12 J.L.R. 387 where it was held "that a landlord who had no estate in land which he let to a tenant, so that the tenancy thereby created passed no actual estate, the tenant is estopped from denying that the grant was effective to create the tenancy that it purported to create, there having been brought into being a tenancy by estoppel with a right in the landlord to distrain for rent, there being no suggestion that the payment of rent was made through a mistake or in consequence of any misrepresentation by the respondent or a paramount title in anyone else.".

24 But there are exceptions to the general rule that a tenant is estopped from disputing his landlord's title. For instance, where a tenant is disturbed by being evicted from the rented premises by a third person with title paramount or the equivalent of it; or if the tenant is turned out of the premises by a third person, or acknowledges the title of a third person by attorning to him; or if there is anything else done which is equivalent to an eviction of the tenant by title paramount, then the tenant is no longer estopped from denying the landlord's title: see *Industrial Properties Ltd. v. A.E.I.* above at page 596 per *Denning, M.R. and Wilson v. Anderton* (1830) 1 BC ad 450, at page 457, per Littledale, J.

25 Denning, M.R. in Industrial Properties LTD. above at pages 596–597 gives the reason for the general rule with immaculate clarity:

> "Short of eviction by title paramount, or its equivalent, however, the tenant is estopped from denying the title of the landlord. It is no good his saying: "The property does not belong to you but to a third person unless that third person actually comes forward and successfully makes an adverse claim — by process in the courts or by the tenant's attornment; or acknowledge of it as by the tenant defending on an indemnity. If the third person, for some reason or other, makes no adverse claim or is debarred from making it, the tenant remains estopped from denying the landlord's title. This is manifestly correct: for, without adverse claim, it would mean that the tenant would be enabled to keep the property without paying any rent to anybody or performing any covenants. That cannot be right. That was the reasoning adopted by the Court of Queen's Beach in *Biddle v. Bond* (1865) 6 B.C.S. 225, a case of bailor and bailee, but the court treated it as the same as landlord v. tenant."

26 There is no evidence before me that any person, including the Stephens mentioned by the defendant, with a paramount title who came forward and successfully made an adverse claim to the property. Griffith's evidence, as shown above, is that she found no information that lot 13 was conveyed to any of the Stephens family members or to anyone else. But the defendant relies heavily on the decision of *National Westminister **Bank** Ltd. v. Hart and Another* [1983] Q.B. 774 in support of her submission that she is not estopped from disputing the title of the Reyes, and that she is entitled to withhold the payment of the rent.

27 In National Westminister **Bank** the defendant tenant had been in possession of tenanted premises, paying a rent to the long leaseholder of the premises — C.P. and C.W. Cowles — for a number of years. The long lease, which the Cowles held, expired on March 25, 1967. Cowles died on 4th August, 1978, and the defendant discovered that the long lease had expired in 1967. The defendant then wrote the **bank**, who was the executor of the Cowles, and withheld paying the rent until the **bank** showed proof of title to the rented premises. The defendant put the rent aside so that it would be available if the **bank** was entitled to receive it. In proceedings by the **bank** to recover the arrears of rent, the judge, at first instance, held that since there was no adverse claimant making a claim for the rent; and nobody appeared to claim a better title, the defendant was estopped from challenging the title of the **bank**; and he ordered the defendant to pay the rent owing.

28 On appeal by the defendant, the Court of Appeal allowed the appeal and held that "although on a grant of a lease a tenant who had entered into possession was estopped from disputing the validity of the landlord's title, a tenant was under no obligation to continue to pay rent after the landlord's title to the property determined; that once that title determined, there was no requirement that a third party should have claimed the title before the tenant could withhold rent.". The court held that the "defendants having paid rent without knowledge of the determination of the lease holder title, were not now estopped from relying on that determination to withhold payment of rent": see National Westminister **Bank** above at p. 773.

29 Walter, L.J. in his judgment accepted the principle of tenancy by estoppel and expressed reasoning to justify the principle as follows:

> "The landlord cannot derogate from his grant and the tenant cannot dispute the landlord's title. When the parties have acted in their transaction upon the agreed assumption that a given state of facts is to be accepted between them as true, then as regards that transaction each will be estopped against the other from questioning the truth of the statement of facts assumed": see National Westminister **Bank** above at page 778.

30 Thus having agreed to the above general principle of tenancy by estoppel, the Court Of Appeal proceeded to acknowledge, by virtue of impressive precedents, that there was an additional exception, to the exceptions mentioned above by Denning, L.J. in Industrial Properties Ltd., to the effect that a tenant may dispute his landlord's title, if the title had expired or determined. The Court of Appeal quoted, with approval, the words of Best, C.J. in *Fenner v. Duplock* 2 Bing 10:

> "According to the case of *England and Syburn v. Slade* 4 TR 682, a tenant, though he cannot dispute the right of his landlord to demise, may show that his title has expired and the rule is founded in good sense and justice; because if it were otherwise, the tenant might be called upon to pay his rent twice over."

31 So the principle of National Westminister **Bank** is in agreement with the general rule that a tenant cannot deny that the person who let him into possession had title at the time. But the tenant may show, as an exception to the general rule, or to avoid the rule, that the landlord's title had expired or determined; and he paid the rent without knowledge of the expiration of the title. National Westminister **Bank** is therefore distinguishable from the case before me because there is no evidence in this case of any title of Reyes being expired or determined; and that the defendant paid rent without knowledge of any such expiration or determination.

32

Moreover, in this case before me, there is no evidence of any adverse claim made by any third party possessing paramount title to the property or its equivalent. As Denning MR points out in Industrial Properties above, that the tenant cannot say to the landlord, the property does not belong to you but to a third person — unless that third person actually comes forward and successfully makes an adverse claim. There is no evidence of any such third party who owns the property, that came forward and successfully made any such adverse claim to the property.

33 For the above reasons, I hold that the defendant is estopped from disputing Reyes title; and the defendant is liable for the arrears of rent claimed.

RENT AND PERMANENT STRUCTURES

34 As shown above, the claimant also made a claim for possession of the property on the grounds of non-payment of rent; that Reyes did not have title, and that the defendant built permanent structures on the property contrary to the lease. The defendant admitted that she did not pay the agreed rent since 1st April, 2005, not because she did not have the financial resources to pay the rent, but because of her belief that Reyes, the landlord, was not the owner of, and had no title for, the property. She instead said to Reyes in a letter dated 4th April, 2005 that she would deposit the monthly rent in an account at Atlantic **Bank** until the issue of ownership or title is determined by the Lands Department. But the fact remains that she did not pay the rent as she contracted to do.

35 In relation to the alleged breach by the defendant for constructing permanent structures on the property, the parties disagreed on the nature of the structures agreed to be built. The claimant states that the defendant was permitted by Reyes to build structures on the premises, such as tents, and little platforms upon which things can be put, but not to build permanent structures on the land. Giving evidence to this effect was the substituted claimant, and not Reyes as he was deceased. The defendant states that she had permission from Reyes to build permanent structures on the land.

36 The said claimant testified that Reyes told the defendant not to build permanent structures on the land; and that Reyes never consented to the defendant building permanent structures on the land. It is not known whether the claimant and the defendant were present together when Reyes allegedly told the defendant not to construct permanent structures on the property. From the evidence of the said claimant, the defendant constructed cement foundations and columns for the buildings while Reyes was alive; yet Reyes did not try to stop the construction by any application to the court for injunctive relief.

37 The defendant testified that Reyes gave her permission to construct permanent structures on the property; and he facilitated the process by actually purchasing the materials for the construction from his nephew's company named “Pine Lumber.” The defendant, from her evidence, constructed between 2001 to 2006 about five buildings on the property — not large buildings, it appears — one being a laundry room and another an office. She testified that in July, 2001 Reyes wrote her a letter to cease construction. At that time she had only constructed one building; but she also swore in her witness statement that in the said month of July she met and spoke with Reyes concerning drafting a new agreement which he agreed to, and he gave her permission to continue with her

building. It was after this date that she constructed the other buildings on the land she occupied which she described as lot 13A. She said that Reyes lived at 13B. Witnesses for the claimant Adler Castillo and Kenrick Sampson gave evidence that lot 13 was subdivided into 13A and 13B.

38 A letter in reply, dated 21st August, 2001 from the then attorney-at-law for the defendant to the claimant's attorney states that the defendant was advised to cease construction on the property, "pending your motion to the Supreme Court as you stated in your correspondence of July 24, 2001." The correspondence from both attorneys would give the impression, with good reason, that objection was at some time made by Reyes concerning building permanent structures on the property; but this does not necessarily mean that Reyes did not, at some prior time, give permission to the defendant to construct permanent structures or to continue such construction on the property.

39 The question is who is speaking the truth? The claimant testified that as far as he knew he could not say lot 13 was subdivided. He said he did not know of any subdivision of lot 13. But the claimant also said, contrary to the above, that Reyes divided the land into two portions 13A and 13B; and Reyes lived at 13A and the defendant at 13B. It was suggested to him in cross-examination that he was not familiar with the facts of the case, which he denied. The contradiction clearly raises questions concerning the credibility and frankness of the claimant.

40 There are, as well, discrepancies with respect to the testimony of the defendant. For instance, she said was afraid someone may come and claim the property. But she also testified that somebody came and told her that the property belonged to their family.

41 I saw the defendant give her evidence. I observed her demeanour. I also saw the claimant gave his evidence and I observed his demeanour. I believe the defendant when she said that Reyes gave her permission to build permanent structures on the property. I also believe that the parties initially intended the purchase of the property by the defendant, and that is why Reyes gave her permission to build permanent structures on the property.

42 In my judgment, the defendant built the permanent structures on the property with the permission and consent of Reyes. The defendant incurred expenditure to construct the buildings which are still on the property. Reyes, by granting to the defendant the permission which caused the defendant to incur expenditure in constructing the buildings, may have created a proprietary estoppel in favour of the defendant in relation to the property. Denning MR explained the principle:

> "Estoppel is a principle of justice and of equality. It comes to this: when a man by his words or conduct has led another to believe in a particular state of affairs he would not be allowed to go back on it when it would be unjust or inequitable for him to do so": see *Morgate Mercantite v. Twitchings* [1975] 3 All E.R. 322, at page 323."

43 *In Narine v. Sukwah* No. 4169 of 1999 (unreported) Desiree Bernard, C.J., as Her Honour then was, said:

> "Proprietary estoppel may confer a right of action and arises when one party encourages another by words or conduct to incur expenditure or otherwise to his detriment on the expectation or belief that he would acquire an interest in property."

This question of proprietary estoppel was not argued before me; and I do not decide the point. I wish only to suggest that the defendant may have, on the basis of proprietary estoppel, some equitable right or interest in the property, and therefore, for this reason, I would not grant an order for possession.

APPROBATE AND REPROBATE

44 The claimant also submitted that the defendant had, by implication, in a previous Action No. 398 of 2002, consented that the claimant had title for the property; and therefore the consent cannot be withdrawn in these proceedings. The defendant cannot approbate and reprobate, it was submitted, and the decisions of *R v. Taylor*, *R v. Amendt* [1915] 2 K.B. 593 and *Hoystead v. Commission of Taxation* [1926] A.C. 155 were cited in support of the submission. But in the light of my finding above that the defendant is estopped from denying the title of his landlord on the claim for rent, I do not find it is necessary for a decision to be made on this point.

THE COUNTERCLAIM

45 The defendant filed a counterclaim against the claimant for:

> "(1) Loss and damages of $120,000.
>
> (2) In the event of possession is granted to the claimant then the defendant claims the good will and full market value of the business "De Real Macaw.
>
> (3) Expenses associated with investigation of claimant's title being $2,725.00.
>
> (4) Interest and costs."

46 In support of (1) of the counterclaim, the defendant claimed that she was to have possession of the entire lot 13 by March, 29th 2001. She said she did not get possession of the entire lot, and therefore was unable to develop fully her business and suffered loss of $131.308 for the period 1st February, 2003 to April 30th, 2004 based on a financial forecast by Cedric Flowers, which was disclosed by the defendant. The defendant claimed that the claimant admitted in a letter dated 3rd June, 2004 the sum of $120,000 which is the amount claimed in the counterclaim. I have not found any letter tendered in evidence to this effect in this case. Such a letter may have been tendered in the previous action between the parties; but not tendered in this case.

47 Moreover, the lease agreement states, as we saw above, the property rented, namely "the property is located at #13 Front Street." The agreement does not say that the property is located at the entire lot 13. As we saw above the property was subdivided into 13A and 13B and the lease simply states that the property is located at lot 13.

48 Moreover, the amount claimed is based on future events which may or may not have occurred. In fact, the author of the forecast, Cedric Flowers, said that the forecast was "intended to reflect the result of a hypothetical situation." Judgment cannot properly be granted on the basis that the amount claimed would be realised sometime in the future. It may; but the court has to be satisfied, on a balance of probabilities, that it would be realised in the future; and I am not so satisfied.

49 In relation to the alleged expenses of $2,725.00 for the investigation, there is no evidential basis in contract or otherwise to found liability in the claimant for the amount. For the above reasons, the counterclaim is dismissed.

CONCLUSION

50 The defendant is estopped from disputing the title of her landlord and is liable for the outstanding rent. The defendant by building the permanent structures on the land with the permission of the landlord may be entitled, on the basis of promissory estoppel, to an equitable interest or right in the property; and therefore an order for possession would not be granted. The defendant has failed to prove the counterclaim.

51 I therefore make the following orders:

1. The defendant shall pay to the claimant for and on behalf of the estate of Louis Ernest Reyes Jr., the sum of BZ$124,000 being rent owing for the period 1st April, 2005 to 1st May, 2010 for property located at lot 13 Front Street, **Caye** Caulker, Belize. 2. The claims for mesne profits and for possession against the defendant of property located at lot 13, **Caye** Caulker, Belize are dismissed. 3. The defendant shall pay interest on the said sum BZ$124,000 to the claimant for and on behalf of the estate of Louis Ernest Reyes Jr., at the rate of 6% per annum commencing from 1st April, 2005 until the said sum is fully paid. 4. The counterclaim is dismissed. 5. The defendant shall pay costs to the claimant for and on behalf of the estate of Louis Ernest Reyes Jr., to be agreed or taxed.

Oswell Legall

Judge of the Supreme Court