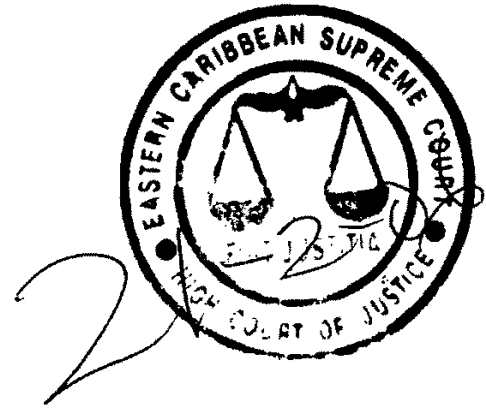


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 285 OF 2002



BETWEEN:

RANDOLPH M. HOWARD
(Administrator in the Estate of Agnes Bute, deceased)

Claimant

V

AUBREY MUNROE

Defendant

Appearances:

Mr. Stanley John for the Claimant
Mr. Joseph Delves for the Defendant

2005: March 1
2006: February 21, 2006

JUDGMENT

- [1] **BRUCE-LYLE, J --** The Claimant is the legal personal representative of Agnes Bute, deceased, who died testate on the 13th day of December 2002. By a document deemed to be her last will dated the 17th day of November 2000 she devised her residential property situate at Ratho Mill to five beneficiaries including the defendant, in equal shares absolutely. The claimant alleges that the defendant is a licensee in occupation of the said property and claims against the Defendant for Damages in Trespass, for Possession of the Property and for an injunction to restrain the defendant whether by himself his servants and/or agents or howsoever otherwise from remaining upon the disputed property.
- [2] The defendant denies that he is a bare licensee. He asserts that the understanding between Agnes Bute, her husband and himself was that he, the defendant, would stay at

the home for as long as he liked, do what he thought was best to maintain the premises and further that upon their death, the premises would legally pass to him. Both Agnes Bute and her husband gave effect to this arrangement by leaving the said property to him in their respective and mutual wills. The defendant for his part and in pursuance of this arrangement expended monies fixing up the said property.

- [3] The defendant further asserts that it was always the stated intention of both Butes to give the subject premises to him; and that as a result of the aforementioned promises and assurances he conducted a series of repairs to the said premises at considerable expense.
- [4] The Defendant therefore sought a declaration that he is entitled to remain in possession of the said premises and an order that the claimant transfer the legal and equitable interest in the said property to him. In effect the defendant's defence and counterclaim are grounded in equity.

ISSUES OF LAW

- [5] The issues of law that this Court is now called upon to resolve are:
- (a) Did the testatrix and her spouse promise to give the property to the Defendant and if so under what circumstances?
 - (b) Did the testatrix put the defendant in occupation of the property and under what circumstances?
 - (c) Did the putting of the defendant in occupation of the property establish an equity and if so what is the extent of the equity and the relief appropriate to satisfy the equity?
- [6] There is no dispute that the legal title in the disputed property was vested in Agnes Bute prior to her death, as by then her husband Alexander Bute was deceased. The mutual wills of both Alexander Bute and Agnes Bute as exhibited as "A.M. 1" and "A.M. 2" attached to the witness statement of the defendant are essentially identical. There is no doubt that both Alexander Bute and Agnes Bute each called the other's property their own.

The defendant's evidence is that both together and separately told him the property would be his. Is this the case?

[7] Having examined the evidence of the claimants, no witness has been produced by them to refute this assertion made by the defendant. In fact, it was not suggested to the defendant or his witness that no such promise was made. The defendant asserts in paragraph 2 of his defence the nature of the promise made to him. Again at paragraphs 11, 12, 13 and 14 of his counterclaim the defendant again avers as to the nature of the promise made to him and what he did to the property on occupying it. Then in his witness statement the defendant makes the same assertion. None of these were rebutted under cross-examination of the defendant by the claimants.

[8] To go further, it is interesting to note that both Alexander Bute and Agnes Bute in their mutual will dated September 9, 1997 purported to give the defendant the property in issue. The executor of that will, a Mr. Williams Lord ensured that the defendant had a copy of the wills, by way of a letter exhibited in Court. This letter strengthens the defendant's assertion that he was very close to the Butes.

[9] Enter Alexander Laing. There is no dispute that the Butes and the defendant Aubrey Munroe had a close relationship for a long time from since the 1970's. There is no dispute that he was like their aide-de-camp if I may use that phrase to describe the defendant. In fact, he had been so since 1984. But then Alexander Laing has in no way been mentioned as being a part of the Butes life up until the death of Alexander Bute in October 1999. From the evidence Mr. Laing was not an important part of the Bute's affairs or life. Even on examination of the mutual wills of the Butes' Alexander Laing was given no important role in the Butes' affairs, rather a Mr. William Lord was appointed as executor and also their respective trustee. Again on further examination of the will Laing was given no specific item of personality. Various sums were bequeathed to specific members of the Butes family. No similar sum of money was left for Mr. Laing. All Laing was given was a mere ¼ share of the residue of the estate. There was no specific share given to him in either the Pennsylvania or Ratho Mill properties.

[10] From the evidence Laing's modus operandi strikes me as strange. He never visited St. Vincent even when Alexander Bute was ailing for a long period of time before his death. There is strong evidence from both the defendant and his witness Vashti Coombs that sometime in May 2000 before Agnes Bute left St. Vincent, after the death of Alexander Bute, Agnes Bute told Mr. Laing to leave the Ratho Mill property or house. Having denied this under cross-examination, he then admitted that he left the house at Ratho Mill and stayed elsewhere in St. Vincent for a period of time before returning to the USA. If he was so close to Agnes Bute why would he have to leave Ratho Mill and stay elsewhere, and then be given a power of attorney by her and also substantial gifts in her will of 17th November 2000. The defendant's evidence is that the Butes' chased Laing from their Ratho Mill house and told him not to return. From the above analysis I am more inclined to believe the defendant's version.

[11] But most important of all, and which struck me as very crucial in determining the role of Mr. Laing is in his evidence where he admitted that at the time of the execution of her "last" will Agnes Bute was suffering from "dementia". In one vein he said she was being treated for dementia. Then he somersaulted and said, even though she was being treated for dementia, she was not suffering from Dementia to the extent that she did not know what she was doing. What he tried to do to my mind was to downplay the effect that this debilitating mental illness may have had on her mental capacity. Interestingly, Laing moves from one having no role in the mutual will or substantial gift under the will to being a co-executor of the estate and to becoming co-beneficiary in both the St. Vincent and Pennsylvania properties. Looking at all the events and circumstances in its totality, I find the role of Mr. Laing strange if not suspicious. I am more inclined to believe the defendant when he states that he was promised the Ratho Mill property by the Butes before their demise as evidenced by their mutual will sent to him by Mr. William Lord by letter exhibited in this case.

[12] To go further, one needs to examine the evidence of Mr. Randolph Howard, the administrator in the Estate of Agnes Bute and now the new claimant, as against my finding

earlier in this judgment that the evidence of the claimant and his witness in no way contradicts the defendant's assertion that certain promises pertaining to the property in issue were made to the defendant by both Agnes and Alexander Bute.

[13] Mr. Howard himself does not speak to this issue, and cannot address any relevant fact. I agree with counsel for the defendant in his submissions where he states that the evidence of Mr. Howard was comprised greatly of hearsay and must be treated accordingly. Neither was this issue addressed by witnesses for the claimant Alexander Laing and Elsie Jones. This evidence of these promises or assurances by the Butes as asserted by the defendant remain un rebutted.

[14] It seems to me from the evidence of the claimant and his witnesses that even though they concede that the defendant did spend money on the premises, the expenditure was not substantial. This is borne out by paragraph fourteen of Mr. Laing's witness statement where he stated:

"The defendant was not given permission by the testator nor her late spouse Alexander Bute to make any improvements to the property nor has he to my knowledge made any significant improvements thereto."

Elsie Jones at paragraph 15 of her witness statement also states:

"During the period 1998 and 2000 the only improvement was the gate and walkway."

Mr. Laing then takes this issue even further when he states by way of a letter to the defendant dated 21st February 2001 and marked Exhibit "A.L 1" that –

"What particularly concerns me is the erection of walls and fences as well as other non-essential changes and improvements to the Agnes' property without written permission. I insist that all permanent structures currently under construction be ceased until such time that its purpose and need is determined and approved in writing. It is not the intent for Agnes to pay for any improvements that was not approved in writing."

[15] By these statements contained in the claimant's witness statements and letter mentioned (Exhibit "A.L. 1") one can only conclude that the claimant has conceded or admitted that the defendant constructed permanent, non-essential improvements to the premises in issue. And this is what the defendant submits in his case. Therefore, to my mind, the

exercise pertinent for me to conduct is to examine if these admitted improvements were substantial or not.

[16] It is strange that the claimant spent the most part of this trial trying to establish the quantum of money spent by the defendant on these "improvements" to the property in issue. In a nutshell the defendant's evidence was that he did the following works:

- (1) Constructed a chain link fence with fencing poles
- (2) Constructed another fence by using galvanize
- (3) Constructed a concrete base with concrete and using three hundred and twenty-four 6-inch concrete blocks at another point of the land.
- (4) Making good the driveway and yard area that had deteriorated and was in a state of repair.
- (5) Putting in place a metal gate and concrete columns thus securing the entrance to the dwelling house
- (6) Replacing ten sheets of ten feet galvanize to the roof of the building.

[17] The defendant also itemized the cost of materials and wages thus –

(1)	Chain link wire and fencing poles -	\$10,000.00
(2)	Galvanize sheeting	\$ 3,000.00
(3)	Concrete base and blocks	\$ 5,000.00
(4)	Driveway and yard paving	\$ 7,000.00
(5)	Repairs to roof	\$ 5,000.00
(6)	Transportation	\$ 5,000.00
(7)	Cost of wages	<u>\$35,000.00</u>
	TOTAL	<u>\$70,000.00</u>

[18] Under cross-examination, the defendant was unable to provide specific documentation by way of bills and receipts and other like documents to substantiate the above mentioned itemized costs. The questions I ask myself are whether in view of the alleged assurances from the Butes, and the longstanding and strong relationship the defendant said he had with them that he was led into believing or assuming that it was not necessary to keep

documents or track of his expenses. Did the defendant in view of these assurances not anticipate a recant by the Butes or maybe litigation?

[19] This is a matter or issue of credibility for the court to consider. In short, was the defendant truthful or untruthful in his evidence? From the evidence I find the defendant to be telling the truth. First of all the claimant concedes that improvements were made and also concedes that the defendant spent money on these improvements. Having so found, can the claimant admit the defendant made permanent non-essential improvements to the subject premises and then simultaneously assert that these improvements were not substantial? Is it unconscionable and inequitable to disregard them? I would answer these questions in the negative.

[20] To go further, I find it inconceivable that the defendant would spend money on a premises that is not his, unless he has some assurance or belief that the premises is or will become his own. Besides, the defendant not only did what I have just mentioned above, but spent his money paying the taxes and actually moved onto the subject premises.

[21] What is "substantial"? Even in pecuniary terms the word "substantial" does not necessarily mean a lot of money. In the case of Greasley v Cooke [1980] 3 ALL E.R. 710 at 713 Lord Denning MR did not even think that spending money was important:

"The second point is about the need for some expenditure of money – some detriment – before a person can acquire any interest in a house or any right to stay in it as long as he wishes. It so happens that in many of these cases there has been an expenditure of money. But this is not a necessary element ... It is sufficient if the party, to whom the assurance is given, act on the faith of it – in such circumstance that it would be unjust and inequitable for the part making the assurance to go back on it."

I also agree on this score with the learning in the case of Errington v Errington [1952] 1 ALL E.R. 149 and also the case of In Re Basham, which is on all fours with this case at hand. In that case there was no quantified pecuniary detriment at all. The claimant worked for many years looking after her mother and stepfather. She helped them run their business and spent a lot of time and money caring for her stepfather after her mother's death. She did so in reliance on his promise that she would inherit his house. The claimant was granted a declaration that the house belonged to her, on the basis that her

stepfather was estopped from denying here entitlement since he had encouraged her expectation and she had relied on his assurances.

[22] But then one has to remind oneself that the test is not one of the quantum of money spent or not spent, but whether it would be unconscionable to allow the title holder to go back on his word. The relative amount of money spent is neither here nor there – see the Modern Law of Estoppel by Elizabeth Cooke. It seems to me that the representation made to the defendant by Agnes Bute was strong and clear. Otherwise why would he have expended that amount of money, time and energy on the property? His detriment to my mind is sufficient and that the estoppel is established.

[23] The evidence of Vashti Coombs takes this whole issue further. Ms. Coombs was employed by the Butes as a housekeeper or maid. She stopped working for the Butes in 1999 after Mr. Bute died. A couple of days before Mrs. Bute left for the USA, she stopped working for the Butes. But she would visit the property in issue whenever her husband Joel Coombs went there to prune the trees. The defendant had employed her to clean the house two days in a week. Her evidence is that even before Mrs. Bute left, the defendant had already started making repairs to the said house – and this was also when Mr. Bute was alive and this related to the fencing and concreting of the driveway and repairs to the roof. By and large her evidence was to the effect that some of the repairs were done when the Butes were alive and some after their deaths.

[24] I found this witness to be very jittery in the delivery of her evidence. She did not strike me as an intelligent person on the average, but this did not detract from her credibility. It seems to me that she was more overwhelmed with being in the precincts of a court and therefore her difficulty in rendering her evidence. She struck me as a believable honest witness. When taken through all the repairs done on the property she intimated which ones were done when Mrs. Butes was in the USA. There is no doubt in my mind that the defendant did substantial works on the property which would have involved a considerable amount of money.

[25] Of considerable importance in her evidence is when she stated under cross-examination quite forcefully that she used to have discussions with Mrs. Bute who on one occasion told her that she had given the property to the defendant, and this was when both Mr. Bute and Mrs. Bute were alive. She maintained she still cleaned the property two days in a week at the request of the defendant, and saw all the works on the property carried out by the defendant and some workers. She could not say exactly how many workmen worked on the house, but what I gleaned from her evidence was that different workmen worked on various aspects of the property. She further stated that her husband Joel Coombs was employed to trim the trees in the yard five days a week and was employed after Mrs. Bute died. Her evidence basically supported the defendant's evidence pertaining to all the works done on the property by the defendant and more importantly that Mrs. Bute had told her that she had given the property to the defendant. As I have said before I believe the witness Vashti Coombs and by extension the defendant's evidence and position.

[26] Again I would say that there can be no doubt that the representation made to the defendant by Agnes Bute was strong and clear for him to have expended the money, time and energy he did on the property. It is clear from the amount of work done on the property as put forward by the defendant and Mrs. Coombs that the defendant has suffered sufficient detriment as a result and therefore the estoppel is established.

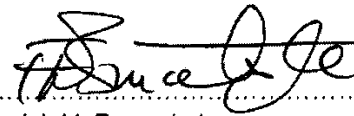
[27] To my mind, having accepted and found as a fact that the defendant was told and expected that the subject property would be his, then by reason of law he should be entitled to the fee simple and not a life interest in the property – see *Dillwyn v Llewellyn* [1862] De F.G.& J at 517.

ORDER

[28] Having said what I have intimated in the above judgment, I hold that the claimant's case has not satisfied me on a balance of probabilities and I hereby dismiss it. I find the defendant on a balance of probabilities has put forward a more cogent and believable case. I am more than satisfied with his case. I believe his evidence and that of his witness. Judgment is therefore entered for the defendant as follows:-

- (a) A declaration that the defendant is entitled to remain in possession of the said premises.
- (b) An order that the claimant transfer the legal and equitable interest in the said property to the defendant and alternatively;
- (c) A declaration that the defendant is a beneficial and legal owner of the said property

The Claimant will also pay the defendant's costs in the sum of \$8,000.00.



.....
Frederick V. Bruce-Lyle
HIGH COURT JUDGE