SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

CIVIL APPEAL NO.4 OF 2006

BETWEEN:

RANDOLPH M. HOWARD

Appellant

and

AUBREY MONROE

Respondent

Before:

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| The Hon. Mr. Brian Alleyne, S.C. | Chief Justice [Ag.] |
| The Hon. Mr. Michael Gordon, Q.C. | Justice of Appeal |
| The Hon. Mr. Denys Barrow, SC | Justice of Appeal |

Appearances:

Mr. Stanley John and Mr. Rakin John for the Appellant
Mr. Joseph Delves for the Respondent

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2006: October 9 & 10;
2007: January 15

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JUDGMENT

[1] BARROW, J.A.: At issue is the minimum equity to do justice to the respondent who established a claim to proprietary estoppel against the estate of Agnes Bute, (the deceased), in relation to a parcel of land with a dwelling house on it situate at Ratho Mill (the property). Bruce-Lyle J ordered the fee simple to be transferred to the respondent. The appellant submits that an order compensating the respondent for the time and money he spent on the property, along with the one-fifth share in the property that the deceased devised to the respondent, would do justice to the respondent.

[2] In the course of argument Mr. Stanley John, lead counsel for the appellant, indicated he would not pursue the appeal against the judge's finding that there was a proprietary estoppel in favour of the respondent and we think counsel was right to take that course. The relevant facts can therefore be stated briefly.

[3] The respondent, who was about 78 years old at the time of trial, was the nephew and godson of Mr. Alexander Bute and called his uncle's wife, the deceased, his aunt. The Butes lived in Philadelphia in the United States of America and in about 1970 they built the house at Ratho Mill. The Butes would spend the colder months, October to April, in the house. The respondent used to visit them. Title to the land stood in the name of the deceased but the Butes apparently regarded it as their joint property. The respondent became their man of business and was put in charge of the property in about 1984. One year, probably in 1998, when the couple was in residence, the uncle became quite ill and the respondent moved into the property at the specific request of the Butes to assist in caring for the uncle and the deceased, who was also unwell.

[4] The Butes repeatedly told the respondent that they would give the property to him and after the death of the uncle, in October 1999, the deceased repeated the promise to the respondent that the property would be his. The last time the deceased told this to the respondent was when she was about to leave St. Vincent on 9th May 2000.

[5] A concrete expression of the promise to the respondent is found in the mutual wills that the Butes made in September 1997 in which they each devised the property to the respondent. In the will of the deceased appeared the following devise:

> "I give and bequeath my real estate situate in Rathomill, St. Vincent Island, British Caribbean Islands, together with all furniture, equipment, supplies and contents therein, along with any automobiles I may own on said island at the time of my death unto my nephew-in-law, AUBREY MONROE, or his issue, per stirpes, who survive such distributable event."

The executor sent a copy of the mutual wills to the respondent at the request of the uncle. When the Butes next came to St. Vincent after the wills had been sent they confirmed from the respondent that he had received the copies. The Butes told the respondent that he could do whatever repairs he wished to the house.

[6] Over the period 1998 to 2000, as the judge found, the respondent did the following works to the property:

> "(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 on the land.
>
> (4) Making good the driveway and yard area that had deteriorated and was in a state of [dis]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"

The respondent gave the cost of doing these works as $70,000.00 and the judge believed him.

[7] As a result of the promise the respondent left his own home and lived on the property from 1999 until 2004 when he was evicted. The respondent raised his 19 dogs there and kept them there even after the disconnection of the electricity, water and telephone services to the property forced him to move. As a result of the promises that the property would be his, the respondent paid the property tax annually beginning in 1998.

[8] After the uncle died in October 1999 the deceased remained in residence on the property until she returned to the United States in May 2000. According to the respondent, before the deceased left she told Alexander Laing, a great nephew who later became her attorney, and who had been spending time at the house, to leave the property and told the respondent "not to harbour him". The deceased

executed a new will, in Philadelphia, on 17th November 2000 (the later will) by which she gave the property to five persons including the respondent, in equal shares. One of those five beneficiaries was the said Alexander Laing, who was also named as one of two executors. On 2nd November 2001 the deceased executed a power of attorney in favour of Mr. Laing and another person giving them complete power over her affairs. In the exercise of that power, while the deceased was still alive, Mr. Laing sought by fixed date claim form dated 24th June 2002 to recover possession of the property from the respondent. The deceased died on 13th December 2002. The administrator of the estate (a donee of a power of attorney from Mr. Laing) was substituted as claimant.

[9] Mr. Laing accepted in cross examination that at the time the deceased executed the later will she was about 93 years old and was suffering from "age related dementia" but, he claimed, "for the most part, she was lucid and well aware of decisions that she was making on her own behalf." He reframed his testimony to say, "she wasn't suffering from dementia; she was treated for minor dementia, but capacity to make any decisions was not challenged." The judge described this change in testimony as a "somersault" and an attempt "to downplay the effect that this debilitating mental illness may have had on her mental capacity." The judge stated that he found it interesting that Mr. Laing moved 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 the events and circumstances in its totality, I find the role of Mr. Laing strange if not suspicious."

[10] Testamentary capacity was not in issue in these proceedings and therefore the validity of the later will does not arise for determination. However, the conscionability of the withdrawal from the promise is in issue and it cannot be pretended that there was no likelihood that Mrs. Bute was affected by her dementia and the influence of those around her. It would be farcical in examining the conscience of the deceased in relation to the breach of the promise to leave

the property to the respondent to ignore the possibility that that breach was not the action of the deceased but the action of those around her and the court should at least bear that possibility in mind.

[11] The appellant's challenge to the decision of the judge to order that the freehold of the property be transferred to the respondent was made upon the basis that proprietary estoppel gives rise to a wide range of relief and the judge misdirected himself in failing to consider that the appropriate order to make was for the minimum equity that would do justice to the respondent. A much cited treatment in Snell's Equity[1] identifies the range of relief that is available to the court as including merely dismissing an action brought by the owner (called O) to enforce his legal rights against the person entitled to the equity (called A), granting an injunction, charging the property with the repayment of the expenditure or the value of improvements made by A, ordering the perfection of an imperfect gift by conveying land to A, and granting a lease, or a life interest, or a licence.

[12] Once, as in this case, the equity is established the next step is to identify the extent of the equity. As stated in Snell's Equity, "The extent of the equity is to have made good, so far as may fairly be done between the parties, the expectations of A which O has encouraged." [2] This proposition is long established as is seen in the speech of Lord Kingsdown in the leading case of Ramsden v Dyson[3] in which he stated that if a man under a verbal agreement with a landlord for "a certain interest in land" or under an expectation, created or encouraged by the landlord, that he shall have "a certain interest", takes possession and "upon the faith of such promise or expectation" lays out money on the land, a Court of equity will compel the landlord to give effect "to such promise or expectation". In this case the deceased specifically promised the respondent absolute ownership of the property and it is clear that the respondent had an equity to that extent.

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[1] 30th edition (2000) at 39-19 to 39-22.
[2] At 39-18
[3] (1866) LR 1 HL 129 at 170

[13] The strength of the respondent's claim to relief may not have been sufficiently appreciated by the appellant. The appellant submitted that the property was valued at $1.3 million and that at most the expenditure by the respondent was $65,385.00. From this comparison the appellant argued that while "The respondent relies pivotally upon the alleged pecuniary detriment to prove that it would be unconscionable to deny him the entire beneficial interest in the property … clearly in all the circumstances it would be far more unjust to deny the testamentary wishes of the testatrix that the property should be shared among her relations including the Respondent in the proportions that she devised under her Will."

[14] A number of flaws are contained in the appellant's argument. It is not the case that relief is granted in a case of proprietary estoppel on the basis that by acting to his detriment, whether by spending money or otherwise, A purchases his equity or that the amount of money A spends determines the amplitude of the relief he should get. This is reflected in the following passage from Snell's Equity:

> "In many cases justice cannot be done by the mere use of the doctrine by way of defence, or by the recoupment of expenditure, *even where this is small*, but A must be granted some right. Thus if O has made an imperfect gift of land to A, as by merely signing an informal memorandum or uttering words of abandonment, the court will compel O to perfect the gift by conveying the land to A."[4] (Emphasis added).

Pascoe v Turner[5], for instance, shows that where O promised an outright gift and there was modest financial expenditure on repairs, improvements and redecorations by A in reliance upon that promise, that was sufficient in the circumstances to make it unconscionable that O should be allowed to breach his promise. Clearly in that case it could not in any sense have been said that A purchased her equity, and her expenditure of about L1,000 could not have bought

[4] At 39-22
[5] [1979] 2 All ER 945

her much relief, but the English Court of Appeal ordered O, at his expense, to convey the fee simple to A.

[15] Lord Denning MR stated the proposition in direct language in Greasley v Cooke[6] in the following passage:

> "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 of proprietary estoppel there has been expenditure of money. But that is not a necessary element. I see that in Snell on Equity (27th Edn, 1973, p 565) it is said that A must have incurred expenditure or otherwise have prejudiced himself. But I do not think that is necessary. It is sufficient if the party, to whom the assurance is given, acts on the faith of it, in such circumstances that it would be unjust or inequitable for the party making the assurance to go back on it (see *Moorgate v Twitchings* [1975] 3 All ER 314, [1976] 1 QB 225 and see *Crabb v Arun District Council* [1975] 3 All ER 865 at 871, [1976] 1 Ch 179 at 188)."

[16] Further, the appellant's argument also overlooks the fact that the question of "the minimum equity to do justice" to A will usually require full as opposed to implicit consideration only when there is a promise or an expectation of an imprecise interest in the property. In a straightforward case where there was a specific promise of a definite interest the extent of the equity will be clear and the relief will usually simply be to enforce the promise. None of the cases cited by counsel in which the question of the minimum equity was considered was a case in which there was a promise approaching the specificity and clarity of the promise in this case. Lord Justice Scarman appears to have coined the expression, the minimum equity to do justice, in Crabb v Arun District Council[7] where the issue was what relief to grant to the plaintiff – an easement or a licence - to satisfy the assurance

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[6] [1980] 3 All ER 710 at 713
[7] [1975] 3 All ER 865 at 880

given to him by the defendant that they would grant him a right of access over their adjoining lands. There was, in that case, no particular legal interest promised.

[17] That had also been the position in the earlier, leading case of Inwards v Baker[8] where no precise interest was promised; the father had simply encouraged his son to build on the father's land instead of on other land on which the son had been proposing to build. In that case the consideration of what order to make in favour of the son was necessary because the interest that the father intended that he should have (the father having died) was never expressed.

[18] The question of the minimum equity was fully considered in Pascoe v Turner where O had told A that the house was hers but had executed no transfer of title. A's claim for a constructive trust having failed the court was left to consider her alternative claim for a licence. As I understand the case, it was because the claim that remained before the court was only for a licence and not for the freehold (there had been no clear promise of the freehold) that the court found it necessary to fully consider the question of the minimum equity and to nonetheless decide that A should be given the freehold. In FBO 2000 (Antigua) Ltd v Bird[9] although there had been a promise to grant a lease for a specified term this court declined to order the grant of such an interest, which would have been a meaningless order, because the land was landlocked by other lands forming part of the international airport and it would have been practically impossible for the claimant to have used the land. In all of these cases the absence of a specific promise of a precise interest in the property or the existence of complicating factors gave rise to the need for the court to consider what relief to order.

[19] In relation both to the observation that A does not need to purchase his equity and that close consideration of the minimum equity to do justice to A will usually be required only in those cases in which there is no promise of a precise interest, it

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[8] [1965] 1 All ER 446

[9] Antigua and Barbuda Civil Appeal No. 30 of 2003, judgment delivered 10th October 2005.

should also be borne in mind that the fundamental doctrine that operates is estoppel. Lord Denning MR noted that the early cases did not speak of it as 'estoppel' but as 'raising an equity'.[10] However described, the principle is clear: O will be prevented from acting contrary to a promise that he made in circumstances where it would be unconscionable to allow him to do so. In this case the operation of the estoppel or the equity results in the straightforward position that O, the deceased, having promised A, the respondent, that she would leave the property for him in her will, she should not be permitted in the circumstances of this case to act contrary to her promise and to the expectation of the respondent. In that result the relief seems almost axiomatic; the disposition that the deceased made in the later will should be given no effect but instead O should be held bound to the disposition that she made in the earlier will.

[20] This brings me to the third flaw in the argument for the appellant. The appellant argued that the respondent's claim that it would be unconscionable to deprive him of the interest that was promised to him should be denied because it would be a greater injustice to deny the testamentary wishes of the deceased that the property be shared among the five beneficiaries that she named in the later will. A clear response to that submission is that there is no equity in favour of the other beneficiaries whereas there is clearly an equity in favour of the respondent. The respondent has a firm basis in law for claiming the property should go to him; apart from the provision in the later will, the appellant and the other beneficiaries have none. Beyond that, and putting it at its very lowest, it is at least possible that the testamentary wishes expressed in the later will were the result of the "minor dementia", as the appellant would wish to describe it, from which the deceased was suffering when she made that will. The suspicion with which the judge regarded the later will means that even if the testamentary wishes of the deceased were otherwise a relevant factor, which I doubt, there cannot be much concern that the court would be denying the genuine testamentary wishes of the deceased.

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[10] Crabb v Arun District Council [1975] 3 All ER 865 at 871 c

[21] In the end, I do not consider that the judge erred, as Mr. John submitted he did, in not considering the minimum equity to do justice in this case. Mr. Delves, counsel for the respondent, submitted that the judge addressed his mind to the proper question: "whether it would be unconscionable to allow the title holder to go back on [her] word."[11] As I have tried to show, this was the correct question in determining whether there was an equity in favour of the respondent. The equity having been determined to exist, and the extent of the equity having been determined to be ownership of the freehold in the property upon the death of the deceased, I do not see that any discussion or consideration of the minimum equity was necessary. The consequence of holding the deceased to her promise was that the only order that could be called for, in the circumstances of this case, was for the freehold to be transferred to the respondent.

[22] In the circumstances I would dismiss the appeal and award costs to the respondent of $5,280.00, being two thirds of the cost awarded below. I thank counsel on both sides for their helpful presentations.

Denys Barrow, SC
Justice of Appeal

I concur

Brian Alleyne, SC
Chief Justice [Ag.]

I concur

Michael Gordon, QC
Justice of Appeal

[11] At paragraph [22] of the Judgment.