SAINT LUCIA

IN THE COURT OF APPEAL

HCVAP 2007/027

BETWEEN:

CALIXTUS HENRY

Appellant

and

[1] THERESA HENRY
[2] MARIE ANN MITCHEL

Respondents

Before:

The Hon. Mr. Denys Barrow, SC	Justice of Appeal
The Hon. Mr. Michael Gordon, QC	Justice of Appeal [Ag.]
The Hon. Mde. Indra Hariprashad-Charles	Justice of Appeal [Ag.]

Appearances:

Mr. Colin Foster for the Appellant
Mr. Alfred Alcide for the Respondents

2008: September 16;
October 27.

Civil Appeal – Land Law – proprietary estoppel – whether detriment was suffered – overriding interest – section 28 of the Land Registration Act, Cap. 5.01

The dispute concerns an undivided half interest in a piece of land ("the Land") held by Geraldine Pierre, now deceased. During her lifetime, Geraldine Pierre granted the appellant's grandmother permission to build on the Land, where she lived with the appellant for some 30 or 40 years until her death. The appellant has continued to live on the land. Geraldine Pierre promised to leave the Land to the appellant on her death on the condition that he continue to work the land. The appellant continued, not only to work the land, but to look after Geraldine Pierre. Shortly before her death in 1999, Geraldine Pierre sold her undivided half interest in the Land to the first respondent. The appellant claimed to be the rightful owner and/or to have an overriding interest in the Land and sought, among other things, a declaration to that effect. The claim was dismissed, against which decision the appellant appealed.

Held: allowing the appeal, declaring the appellant the owner of the Land and awarding costs to the appellant:

(1) The essential ingredients of proprietary estoppel had been established for it was shown that it would have been unconscionable for Geraldine Pierre to be allowed to act contrary to the promise made, on the faith of which, the appellant had acted to his detriment by continuing to work the land. It is unnecessary to ascribe a dollar value to the detriment, or to compare the advantage with the detriment, as one does not buy the equity.

Randolph M Howard v Aubrey Monroe Saint Vincent and the Grenadines Civil Appeal No. 4 of 2006 followed.

(2) Further, in accordance with section 28 of the Land Registration Act, Cap. 5.01, the appellant had an overriding interest in the Land being a person in actual occupation thereof. The first respondent had notice of the appellant's occupation of the land.

JUDGMENT

[1] GORDON, J.A. [AG.]: The outcome of these proceedings will determine whether the appellant is entitled to an interest in a half share in a piece of land shown as Block 0029B Parcel 23 on the Map Sheets of the Land Registry of Saint Lucia (hereafter "the Land").

[2] The Land was owned in common by Geraldine Pierre and her sister Etanise Prospere who are now both dead. It is the half share of Geraldine Pierre which is in dispute. During her lifetime she permitted Gladys Henry, the grandmother of the appellant, to put a wooden house on the Land where she lived with the appellant for some 30 or 40 years until her death. The appellant continues to live on the Land until now.

[3] By deed of sale dated 8th August 1999 Geraldine Pierre sold her undivided half interest in the Land to Theresa Henry, respondent No. 1 in this appeal. Geraldine Pierre died on October 14, 1999 at the age of 95.

[4] The appellant, as claimant, filed a claim form claiming, inter alia, (a) a declaration that the claimant is the rightful owner of an undivided share in the Land and/or possesses an overriding interest in the land; (b) an order that the deed of sale dated 8th August 1999 is null, void and of no effect; and, (c) that the deed of sale of 8th August 1999 be improbated.

[5] The learned trial judge found that the claimant's case rested on three bases:

[1] Proprietary estoppel

[2] Adverse possession

[3] Improbation of the Deed of sale

[6] Sensibly, only the issue of proprietary estoppel was argued before us. Neither the issues of improbation nor adverse possession was supported by the evidence put forward on behalf of the appellant in the court below.

[7] The facts as found by the trial judge and stated in his judgment[1] were as follows:

"1. The Claimant [appellant] has been living on the lands continuously for more than 30 years

"2. Geraldine Pierre promised to leave the lands to the Claimant on her death

"3. The Claimant relied on that promise

"4. Geraldine Joseph sold her interest in the land to the first Defendant"

[8] Learned counsel for the respondent based his principal argument on the following passage in the trial judge's judgment:

> "Unfortunately, I do not find I can rule in favour of the Claimant. There are two reasons. Firstly the Claimant cannot say he acted to his detriment. He has for decades resided rent free on land which belonged (in part) to the deceased. He testified that this had been the source of his livelihood in large measure. He has reaped the produce of the land. He was able to sell any surplus and retain all proceeds of such sales. I find that far from having suffered detriment because of his reliance on the promises of the deceased, the Claimant positively benefited."[2]

[9] In his written skeleton arguments, counsel for the appellant states, as one of his grounds of disagreement with the trial judge, that the trial judge failed to take into account the detrimental effects that would be suffered by the appellant if the land promised to him were

[1] Paragraph 7
[2] Paragraph 12

to be taken away. Such an argument is entirely without merit and must be disposed of peremptorily.

[10] Both counsel showed a touching faith in the court of appeal to do their research for them. Neither seemed to feel it necessary to research texts or even the judgments of this court on the subject of proprietary estoppel, of which there are many. One such case is Randolph M Howard v Aubrey Monroe[3] where Barrow JA had to deal with similar issues as are here presented. I can do no better than to quote from that judgment, at some length:

> "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 [FN1: 30th edition (2000) at 39-19 to 39-22] 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.
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> "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." [FN2: At 39-18] This proposition is long established as is seen in the speech of Lord Kingsdown in the leading case of Ramsden v Dyson [FN3: (1866) LR 1 HL 129 at 170] 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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> "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

[3] Saint Vincent and the Grenadines Civil Appeal No. 4 of 2006 (delivered 15 January 2007)

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."

"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.'[FN4: At 39-22]

Pascoe v Turner [FN5: [1979] 2 All ER 945], 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 her much relief, but the English Court of Appeal ordered O, at his expense, to convey the fee simple to A.

"Lord Denning MR stated the proposition in direct language in Greasley v Cooke [FN6: [1980] 3 All ER 710 at 713] 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).'

"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 [FN7: [1975] 3 All ER 865 at 880] where the issue was what relief to grant to the plaintiff – an easement or a licence - to satisfy the assurance 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.

"That had also been the position in the earlier, leading case of Inwards v Baker [FN8: [1965] 1 All ER 446] 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.

"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 [FN9: Antigua and Barbuda Civil Appeal No. 30 of 2003, judgment delivered 10th October 2005] 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.

"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 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'. [FN10: Crabb v Arun District Council [1975] 3 All ER 865 at 871 c] 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.

"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."

[11] With the benefit of the extant jurisprudence it is clear that the trial judge misled himself into attempting to ascribe a dollar value to the detriment, or to compare the advantage with the detriment. One does not buy the equity. In consonance with the finding of the trial judge, I find that Geraldine Pierre did promise to leave the Land to the appellant on her death, but, contrary to the finding of the trial judge, I find that the appellant did suffer a detriment in reliance on that promise. Geraldine Pierre made it clear that the promise of the land was conditional on the continued working of the land[4]. There is no doubt that the appellant continued, not only to work the land, but to look after Geraldine Pierre. It was his evidence that he always took food for Ms. Pierre.

[12] Once the equity is established, and I find that it has been, the next exercise is to determine its extent. As I have stated above, there is no power in the court to say that the promise (and the resulting benefit) is disproportionate to the detriment. In the circumstances I find that the appellant has established proprietary estoppel.

[4] Witness statement of Calixtus Henry, paragraph 6

[12] In the extract from the judgment of the trial judge quoted at paragraph [8] above the learned trial judge states that there are two reasons why he could not rule in favour of the appellant. The second reason he sets out at paragraph [13] of his judgment in the following terms:

> "But the second, more compelling reason is that the first Defendant [respondent] is a purchaser for value of the lands. There is no suggestion that the first Defendant made any promises to the Claimant. By her purchase she acquired legal title to the property. She has been registered proprietor since 1999. I do not find that there are any grounds upon which this Court should disturb that legal title."

[13] The appellant has appealed against this conclusion of the trial judge as well. Although addressed in the arguments of both counsel in the court below, the trial judge did not seem to take account of section 28 of the Land Registration Act, Cap 5.01 of the Laws of Saint Lucia. Section 28 reads, in part, as follows:

> "28. Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may subsist and affect the same, without their being noted on the register—
>
> (a) – (f) …
>
> (g) the rights of a person in actual occupation of land or in receipt of the income thereof save where inquiry is made of such person and the rights are not disclosed;"

[14] Implicit in the witness statement of the first respondent is an acknowledgment that she knew that the appellant occupied the Land. There is no evidence that any enquiry was made of the appellant as to the quality in which he occupied the Land. She may have come to certain conclusions on her own, but such conclusions do not bind the court. Having found that the appellant has established a proprietary estoppel combined with the finding that the appellant has an overriding interest in the Land the order of the court ineluctably follows that:

> (a) the appeal is allowed and the appellant is declared the owner of an undivided half interest in and to Block 0029B Parcel 23;

(b) the appellant to have his costs of this appeal and in the court below on the prescribed costs basis.

Michael Gordon, QC
Justice of Appeal [Ag.]

I concur.

Denys Barrow, SC
Justice of Appeal

I concur

Indra Hariprashad-Charles
Justice of Appeal [Ag.]