

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO: ANUHCV 2009/0045

BETWEEN:

STEVE JOSEPH

Claimant

and

(1) LEONA CORNELIUS

(2) ADDISON CORNELIUS

Defendants

Appearances:

Ms. Sherrie-Ann S. Bradshaw for the Claimant

Dr. David Dorsett for the Defendants

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2010: December 14

2011: June 14
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JUDGMENT

[1] **MICHEL, J.:** By Fixed Date Claim Form (with accompanying Statement of Claim) filed on 26th January 2009 the Claimant, Steve Joseph, claimed against the Defendants, Leona Cornelius and Addison Cornelius, the following relief:

1. Possession of land situate in Urlings Village in the Parish of Saint Mary in Antigua and Barbuda and registered and recorded in the Land Registry as Registration Section: South West; Block: 55-1382E; Parcel: 38 in the name of the Claimant;
2. An order that the Defendants do remove the house resting on the Claimant's land;
3. An order that the Defendants are trespassers on the Claimant's land;
4. Damages for trespass against the Defendants;
5. Interest pursuant to the Eastern Caribbean Supreme Court Act, Cap. 143;

6. Such further or other relief as this Honourable Court deems just;
7. Costs.

[2] By Amended Defence filed on 6th April 2009 (amending a previously-filed defence) the Defendants disputed the Claimant's claim and asserted their reliance on a proprietary estoppel and an overriding interest.

[3] After various interlocutory applications and orders and an unsuccessful attempt at mediation, the case came to trial on 14th December 2010.

[4] At the trial, the Claimant gave evidence on his own behalf and called two witnesses, Messrs Wigley George and Melville Greene, while the Second Named Defendant was the only witness for the defence.

[5] In his witness statement, the Claimant stated that he was the owner and entitled to possession of the parcel of land in dispute between the parties, having purchased it from the Antigua Trades and Labour Union (ATLU) in or about 2006. He stated that there are two chattel houses on the parcel of land, one owned by him and the other owned by the Defendants. He stated that his parents were tenants of the ATLU in respect of the portion of the land where their chattel house was located and paid the annual sum of \$120 to the ALTU by way of rental for the land. He stated that his father died in 1988 and his mother died in 2004 and he continued to rent from the ATLU. He stated that in 2005 and/or 2006 he approached the ATLU with a view to purchasing the parcel of land from the union and was advised by the President of the ATLU, Mr. Wigley George, that since the Defendants were on the land living in their mother's chattel house, it may be best to discuss the matter with the Defendants whose mother was a tenant of the ATLU prior to her death. He stated that he was subsequently approached by the Second Named Defendant who advised him that he (the Second Named Defendant) wanted to purchase the parcel of land, whereupon he told the Second Named Defendant that since they both had houses on the parcel of land they could purchase it jointly. He stated that the Second Named Defendant told him that he would get back to him, but he never did. He stated that months later he enquired

of the ATLU as to whether the land was still available for sale and he was advised by Mr. George that the Second Named Defendant had made no further attempts to finalize the purchase and that he (the Claimant) could purchase the land if he was still willing to do so. He stated that he agreed to purchase the parcel of land at a price of \$17,000, which amount was paid to the ATLU on or about 11th May 2006 and on or about 31st May 2006 he received title to the land. He stated that he then informed the Defendants of his purchase of the parcel of land and requested that they pay him rent of \$400 per year for their use of the land, which they did not agree to and so he caused a letter dated 1st March 2007 from Attorney John Fuller to be written to them giving them notice to quit and deliver up possession of his land. He stated that a further letter dated 20th August 2008 from Attorney Sherrie Ann Bradshaw was written and delivered to the Defendants giving them notice of revocation of licence and requiring them to deliver up vacant possession of the land by 21st September 2008. The Claimant stated that to date the Defendants have failed and/or refused to vacate his land and remain in wrongful occupation of the land by reason whereof he has been deprived of the use of the land and has suffered loss and damage.

[6] In his witness statement, Mr. Wigley George stated that he was the President of the ATLU for 14 years and was tasked, inter alia, with the sole responsibility of executing all documents for the union. He stated that the mothers of the Claimant and of the Defendants (the Defendants being siblings of each other) were tenants of the ATLU for a number of years. He stated that sometime around 2005 and/or 2006 the Claimant and the Second Named Defendant both approached the ATLU with a view to purchasing the parcel of land on which both of their houses stood. He stated that after discussions with the Claimant and the Second Named Defendant it was decided to sell the parcel of land to the Second Named Defendant, but then months went by without the Second Named Defendant attempting to finalize the purchase of the land and he was instead insisting on the ATLU dealing with the Claimant and the tenant on the land. He stated that negotiations with the Second Named Defendant towards the purchase of the land broke down and the ATLU sold the parcel of land to the Claimant. He stated that the ATLU had a tenancy agreement with the now-deceased mother of the Defendants for the rental of a

portion of land to her, but that there was no tenancy agreement with the Defendants or any tenancy agreement with an option to purchase the parcel of land.

[7] In his witness statement, Mr. Melville George stated that he is an executive member and trustee of the ATLU and has held these positions for over 15 years and that he was responsible for dealing with lands. His evidence, as per his witness statement, was substantially the same as that of Mr. Wigley George.

[8] In his witness statement, the Second Named Defendant stated that he is the brother of the First Named Defendant and that they are both children of Ms. Rachel Browne, who died in 2002. He stated that the land now in dispute is the site of his family home where he was born. He stated that his mother made an attempt to purchase the property from the ATLU many years ago, probably as far back as the 1960s, but she was hindered in her acquisition of the property. He stated that over the years he went to the office of the ATLU with his mother to pay the rent and to negotiate for the purchase of the property and that eventually there was a board meeting around 1997 or 1998 where the ATLU confirmed its decision to sell the property to his family. He stated that the Claimant got wind of the fact that the Defendants were trying to purchase the property and he then approached the Second Named Defendant and proposed that the property be purchased jointly. He stated that he told the Claimant that he didn't think it would be possible because the property was too small to be subdivided. He stated that after that he (the Second Named Defendant) came to an agreement with the ATLU with respect to the purchase price and met at the office of his lawyer. He stated that he signed a transfer document at his lawyer's office, as did Mr. Green, but Mr. George did not sign because he (the Second Named Defendant) questioned Mr. George about the status of the Claimant's chattel house that remained on the land. He stated that this was in 2005. He stated that sometime later he received a call from the Claimant informing him that he had bought the land and that he (the Second Named Defendant) should start to pay rent to the Claimant. He stated that he called Mr. George and asked him what was going on and Mr. George told him that he had sold the property to the Claimant. He stated that at all times the ATLU was aware of his family being on the land and their use of it, including the building of the bathroom in the 1970s,

the building of the kitchen in the 1980s and the reconstruction of the kitchen in 2003, all with concrete foundations and which attached the house to the land. He stated that all this was done with his family labouring under the understanding that they will obtain the land and it was just a matter of it being finalized with the union. He stated that at the time of the Claimant's purchase of the land the Defendants were in occupation of the land and he does not know why the Claimant failed to enquire of them what was their status and rights before finalizing the purchase. He stated that he cannot see how it is right for the Claimant to now seek to drive the Defendants out of their family home and away from their land and that the Defendants are still prepared to purchase the land at a fair price.

[9] At the conclusion of the trial both parties were ordered to file written submissions on or before 11th January 2011. None of the parties filed written submissions within the time stipulated, but written submissions were filed on behalf of the Defendants one month later on 11th February 2011. By Consent Order dated 15th April 2011 it was ordered that the closing submissions hitherto filed in the matter are deemed properly filed and the parties are relieved from sanctions for their late filing. Closing submissions were, however, then and even now filed on behalf of the Defendants only. The Court will accordingly determine the case based on the statements of case and the evidence and will consider the submissions and authorities filed on behalf of the Defendants.

[10] It is common ground between the parties that the Claimant is the registered proprietor of a parcel of land situate at Urlings Village in the Parish of St. Mary in Antigua and Barbuda, which parcel of land is registered and recorded in the Land Registry as Registration Section: South West, Block: 55 1382E, Parcel: 38; that there are two houses on the parcel of land, one owned by the Claimant and the other owned by the Defendants; that the parcel of land was owned by the Antigua Trades And Labour Union and the parties and their mothers before them were tenants of the ATLU in respect of the portion of the land on which their respective houses stood for several years; that in May 2006 the parcel of land was sold to the Claimant by the ATLU for \$17,000.

[11] The Defendants allege that at the time of the sale of the parcel of land to the Claimant the Defendants had had an equitable interest in the land arising from a contract between the ATLU and either the mother of the Defendants or the Defendants or the Second Named Defendant. The problem with this allegation is not just the uncertainty as to who the ATLU was supposed to have had a contract with for the sale of land but, more significantly, what were the terms of the alleged contract. It is clear that at some time between 1997 or 1998 and 2005 the ATLU had made a determination to sell the parcel of land to the mother of the Defendants or to one or both of the Defendants and that the mother of the Defendants and/or one or both of the Defendants had decided to purchase same. It is also clear though that there was never consensus ad idem as to what was supposed to have been bought and sold, with the ATLU apparently deciding to sell to the mother of the Defendants and/or to the Second Named Defendant the parcel of land with its tenant (the Claimant) and sub tenant in occupation thereof and the Second Defendant and/or his mother before him deciding to buy the parcel of land without the Claimant's dwelling house on it. This lack of consensus ad idem apparently explains the long delay in effecting the sale and purchase of the parcel of land by the ATLU to the mother of the Defendants or to either or both of the Defendants and certainly explains why when the parties reached in the office of a lawyer with a cheque for the agreed purchase price they could not effect a sale of the property.

[12] This lack of consensus ad idem between the land owner (the ATLU) and the intended purchaser (the mother of the Defendants or either or both of the Defendants) means that a valid contract of sale had never been concluded between the land owner and the intended purchaser and so no proprietary or equitable interest could thereby have been acquired by the Defendants.

[13] The next issue for determination by the Court is whether the Defendants are protected by section 28 (g) of the Registered Land Act, Cap. 374 of the Revised Edition of the Laws of Antigua and Barbuda ("the Act") as a party in occupation. Section 28 (g) of the Act provides that: "Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and

affect the same, without their being noted on the register – (g) the rights of a person in actual occupation of land or in receipt of the rents and profits thereof save where inquiry is made of such person and the rights are not disclosed.”

[14] The Defendants contend that they were persons in actual occupation of the parcel of land in dispute at the time of the purchase of same by the Claimant and that they are therefore protected by having an overriding interest in the parcel of land.

[15] The question of whether the status of the Defendants as tenants of a portion of the disputed land constitutes them as being in actual possession of the land for the purposes of section 28 (g) of the Act is open to some debate. But, even treating them as being in actual possession of the disputed land and as having an overriding interest arising therefrom entitles them only to the protection of their status as tenants of a portion of the land.

[16] In their Amended Defence, the Defendants admit that they were tenants of the disputed land, but assert that they were tenants in possession with an option to purchase, which option they had sought to exercise and were in the process of exercising when the land was sold to the Claimant. The Claimant, in his Reply to the Defence, denied knowledge of the Defendants having any option to purchase and put the Defendants to strict proof of their allegation of having an option to purchase the disputed land. The Defendants did not even address the issue of an option to purchase in the witness statement filed on their behalf or in the oral testimony given on their behalf or put in any documentary evidence of the existence of the option. In fact, the only evidence of the Defendants or their mother having an option to purchase the disputed property came from the Claimant's witnesses, all three of whom denied the existence of any such option. The Court therefore finds that there was no evidence in this case of the Defendants and/or their mother ever having an option to purchase the disputed land from the ATLU and so the status of the Defendants in relation to the disputed land – barring the issue of proprietary estoppel - never went beyond that of being tenants of a portion of the disputed land.

- [17] The other issue for determination by the Court is whether the Defendants can rely on proprietary estoppel to protect them from eviction from the land or even to give them rights to and interests in the land.
- [18] In the UK House of Lords case of *Thorner v Major*¹, Lord Walker outlined the general parameters of the doctrine of proprietary estoppel in the following terms - "most scholars agree that the doctrine is based on three main elements, although they express them in slightly different terms: a representation or assurance made to the claimant; reliance on it by the claimant; and detriment to the claimant in consequence of his (reasonable) reliance."
- [19] Counsel for the Defendants submitted that all three elements of the doctrine of proprietary estoppel are present, with the representation or assurance by the ATLU taking the form of its knowledge of and acquiescence in the Defendants attaching their house to the land of the union, the reliance put on it by the Defendants being manifested by their expenditure of funds on the improvement of the house and their attachment of it to the land, and the detriment to the Defendants being the consequence of their reasonable reliance on the ATLU's representation or assurance.
- [20] It was also submitted on behalf of the Defendants that the Claimant - as the successor in title of the ATLU - is bound by the proprietary estoppel and this submission is supported by the UK Court of Appeal cases of *Inwards v Baker*² and *E. R. Ives Investment Ltd. v High*³.
- [21] The Court accepts the submissions of Counsel for the Defendants that the doctrine of proprietary estoppel does avail the Defendants in this case and that the Claimant – as the successor in title of the Antigua Trades And Labour Union – is bound by the proprietary estoppel. The Court, however, does not consider that the estoppel entitles the Defendants to demand a sale to them by the Claimant of the disputed parcel of land at the price which they had agreed to purchase it from the ATLU up to 2005. The Defendants had the

¹ [2009] 1 WLR 776

² [1965] 2 Q.B. 29

³ [1967] 2 Q.B. 379

opportunity to purchase the parcel of land at that price, apparently until May 2006 when the ATLU sold the land to the Claimant upon the Defendants manifesting an intention not to go through with the purchase of the land under the terms on which the ATLU was willing to sell it. They have lost that opportunity and can only regain it by voluntary agreement with the Claimant, who is now the registered owner of the parcel of land. What the proprietary estoppel in their favour entitles the Defendants to, however, is a right to maintain their part wooden and part concrete dwelling house on the land and to either sell it to the Claimant, purchase the portion of the land on which it stands from the Claimant, if that portion can be conveniently separated from the portion on which the Claimant's dwelling house stands, or remain as tenants of the Claimant in respect of the portion of the land on which their house stands.

[22] The Defendants in this case are lessees of the portion of land on which their wooden and concrete dwelling house stands and are clearly not trespassers (as was the Defendant in the case of *Nimbrick Ltd v Reginald Halstead*⁴ referred to by the Claimant in his Pre-Trial Memorandum) notwithstanding the letter dated March 1st, 2007 from Mr. John Fuller written on behalf of the Claimant to the First Named Defendant and the letter dated August 20, 2008 from Ms. Sherrie Ann Bradshaw written on behalf of the Claimant to the Defendants; the Defendants remain lessees under a tenancy from year to year (based on the rental being a yearly rental) and are protected by a proprietary estoppel from being dispossessed of their dwelling house attached to the land with the knowledge and consent of the owners of the land at the time.

[23] Having regard to the factual findings and legal determinations made by the Court in this case and bearing in mind the dictum of Scarman L.J. in the Court of Appeal in the English case of *Crabb v Arun District Council*⁵ that the process of granting relief upon a finding of proprietary estoppel involves determining the minimum equity to do justice to the party entitled to the estoppel (in this case the Defendants) the Court makes the following orders:

⁴ *Antigua and Barbuda Civil Suit No. 21 of 2000*

⁵ [1976] 1 Ch. 179

1. The Claimant is hereby declared to be the owner of the parcel of land registered and recorded in the Land Registry as Registration Section: South West, Block: 55 1382E, Parcel: 38, having purchased same from the Antigua Trades And Labour Union in May 2006.
2. The Defendants are hereby ordered to cause a valuation to be done of their dwelling house within three months of the date of this Order and to sell the aforesaid dwelling house to the Claimant within a further three months if the Claimant shall agree to buy the house at its assessed value.
3. Alternatively to 2 above, the parties are hereby ordered to commission a land surveyor within three months of the date of this Order to view the Claimant's aforesaid parcel of land to determine whether it can be conveniently divided into two roughly equal portions, in which event the parcel of land shall be subdivided and the Claimant shall within a further three months sell to the Defendants the portion of the land on which their dwelling house stands at a price per square foot commensurate with the average price at which lands in the vicinity have recently been sold.
4. If the Claimant shall decline to buy the Defendants' dwelling house at its assessed value and if it shall be determined that the parcel of land cannot be conveniently divided, the Claimant shall cause a valuation to be done of the annual rental value of the portion of the land occupied by the Defendants, whereupon the Defendants shall pay to the Claimant within three months of being notified of the assessed rental value such amount as represents the rental of the aforesaid portion of land from 1st June 2006 to the date of payment and shall thereafter pay to the Claimant in advance the yearly rental for the portion of land occupied by the Defendants. The failure of the Defendants to pay the arrears of rent within three months as aforesaid or the failure of the Defendants at any time to pay the annual rental in advance one month after it has become due shall result in the immediate termination of the Defendants' lease of the portion of land, whereupon the Defendants shall remove their dwelling house on the Claimant's land and give vacant possession of the land to the Claimant.
5. The parties to these proceedings shall each bear their own costs.

[24] The following cases were cited and provided to the Court by Counsel for the parties and considered by the Court:

By Counsel for the Claimant –

1. Nimbrick Ltd v Reginald Halstead⁴;
2. Nicholas Lansiquot v Ignatius Leon et al⁶.

By Counsel for the Defendants –

1. British Guiana Credit Corporation v Da Silva⁷;
2. Crabb v Arun District Council⁵;
3. Davies v Sweet⁸;
4. E. R. Ives Investment Ltd. V High³;
5. Elias v George Sahely & Co (Barbados) Ltd⁹;
6. FBO 2000 (Antigua) Limited v Bird et al¹⁰;
7. Henry and Mitchell v Henry¹¹;
8. Inwards v Baker²;
9. Jarvis v Shoppers Pharmacy ¹²;
10. Nicholas Lansiquot v Ignatius Leon et al⁶;
11. Lim Teng Huan v Ang Swee Chuan¹³;
12. Lloyds Bank plc v Carrick et al¹⁴;
13. London and Southwestern Railway Company v Gomm¹⁵;
14. Lysaght v Edwards¹⁶;

⁶ Saint Lucia Civil Appeal No. 29 of 2005

⁷ [1965] 1 W.L. R. 248

⁸ [1962] 2 Q.B. 300

⁹ [1983] A.C. 646

¹⁰ [2008] UKPC 51

¹¹ [2010] UKPC 3

¹² [2010] UKPC 5

¹³ [1992] 1 W.L.R. 113

¹⁴ [1996] 4 All ER 630

¹⁵ (1882) 20 Ch.D 562

¹⁶ (1876) 2 Ch.D 499

15. *Pascoe v Turner*¹⁷;
16. *Plimmer et al v. Wellington Corporation*¹⁸;
17. *Ramsden v Dyson et al*¹⁹;
18. *Thorner v Major et al*¹;
19. *Siew Soon Wah v Yong Tong Hong*²⁰;
20. *Strand Securities Ltd v Caswell et al*²¹;



Mario Michel
High Court Judge

¹⁷ [1979] 1 W.L.R 431

¹⁸ (1884) 9 App Cas 699

¹⁹ (1866) LR 1HL 129

²⁰ [1973] A.C. 836

²¹ [1965] Ch. 958