

THE EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHCV2012/0273

BETWEEN:

[1] OCENA THERESA WILLIAMS

Claimant

and

[1] MICHAEL RICHARDSON
[2] CARMEN FREDERICK

Defendants

Appearances:

Ms. Rochelle Forde for the Claimant

Ms. Lakeisha John and Ms. Vilette Benjamin for the Defendants

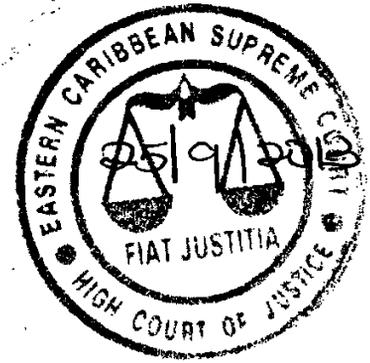
2013: April 16
September 25

JUDGMENT

[1] **THOM, J:** The Claimant and the First Defendant are the children of Arnold and Olga Richardson (both now deceased, Arnold preceding Olga). The Second Defendant is the common-law wife of the First Defendant.

[2] Arnold and Olga Richardson owned a property situate at Carriere (the disputed property). The Defendants resided on the property with Arnold and Olga Richardson prior to their death and they continue to do so.

[3] The Claimant alleges that Mrs. Olga Richardson by Deed of Gift dated 30th June, 2010 conveyed title to the disputed property to her.



[4] On the 20th October, 2010 and 1st November, 2011 the Claimant gave the First and Second Defendant notice to quit and deliver up possession of the disputed property. The Defendants having refused to vacate the disputed property, the Claimant instituted these proceedings in which she seeks an order for possession of the disputed property, damages for trespass and mesne profit in the sum of \$500.00 per month until the Defendants deliver up vacant possession of the disputed property.

[5] The Defendants in their defence contend that the First Defendant has been in possession of the disputed property for over twenty-two (22) years. He was promised by his parents that once he took care of them he would be entitled to occupy the property as his own. Acting on this promise he looked after his parents, he treated the disputed property as his own by renovating it and assisting with renovations to it. The Claimant is therefore estopped from asserting title to the property.

[6] The Second Defendant does not claim any interest in the disputed property. For convenience, I will refer to the First Defendant as the Defendant.

EVIDENCE

[7] The Claimant testified and called two (2) witnesses being Mr. Valentine Richardson and Ms. Letiear Thomas. The Defendants testified and called no witnesses.

[8] The evidence on behalf of the Claimant is that on the 30th day of June, 2010, Mrs. Olga Richardson by Deed of Gift No. 2212 of 2010 conveyed the disputed property to the Claimant. Prior to 2010, Mrs. Olga Richardson made known to her children including the Defendant that she would give the disputed property to the Claimant. After the Deed of Gift was executed, Mrs. Olga Richardson continued to live on the disputed property. The Claimant also permitted the Defendant to live on the disputed property since the Claimant was residing in Barbados.

- [9] From 2009 to the date of Mrs. Olga Richardson's death in April 2012 the Claimant paid Ms. Thomas to take care of Mrs. Olga Richardson. All expenses for the upkeep of Mrs. Olga Richardson were met by the Claimant and two other children of Olga Richardson being Sobina Joseph and Valentine Richardson. The Defendant did not take care of Mrs. Olga Richardson or pay any of her expenses, but occasionally he purchased some food items for her.
- [10] The repairs to the house were made by the Claimant, Sobina Joseph and Valentine Richardson. The Defendant did not contribute to the repairs of the house.
- [11] In 2010, the relationship between the Claimant and the Defendant broke down. On 20th October, 2011 and 1st November, 2011, the Claimant through her solicitor gave notice to quit to the Defendant who refused to vacate the disputed property.
- [12] The evidence of the Defendant is that he lived on the disputed property for over twenty-two (22) years. Around 1991 his parents promised him that he could occupy the property as his own if he took care of them. The house was in need of repair. Acting on the promise the Defendant effected substantial repairs to the house. Sobina Joseph assisted him with the financial cost of repairing the roof.
- [13] When Mrs. Olga Richardson became ill in 2007, it was difficult for him to take care of her. With her permission, his common-law wife Ms. Carmen Frederick joined him in residing at the disputed property and she took care of Mrs. Olga Richardson.
- [14] In 2008, Mrs. Olga Richardson became senile and her general health began to decline.
- [15] In 2009, the Claimant visited their mother and they discussed the health of their mother. He agreed that the Claimant should take her to Barbados for medical treatment. Her health did not improve and the Claimant brought her back to Saint Vincent and employed Ms. Thomas to take care of her. Himself, his common-law wife and Ms. Thomas took care of his mother. Very often Ms. Thomas was away from the house.

His siblings Beresford, Eslyee and Sobina assisted in paying Ms. Thomas' salary.

- [16] Having regard to the prolonged illness he is convinced that his mother was not in a sound state of mind when she signed the Deed of Gift on 30th June, 2010. He admitted that he received the notice to quit but in view of his interest in the disputed property he did not vacate the disputed property and he caused his solicitor to write to the Claimant setting out the basis for his claim to the disputed property.

ISSUE

- [17] The issue to be determined by the court is whether the Defendant has an interest in the disputed property and if yes the nature of the interest.
- [18] The Defendant in his witness statement and his submissions stated that his mother did not have the mental capacity in 2010 to execute the Deed of Gift to the Claimant.
- [19] It is settled law that parties are bound by their pleadings. Part 10 of CPR2000 requires a defendant to set out all the facts on which he relies to dispute the claim. Part 10.7 provides that a defendant cannot rely on an allegation or factual argument not set out in the defence unless the court grants permission, or the parties agree. No permission was sought by the Defendant to rely on allegations not set out in the defence, nor was there agreement by the parties. I find the Defendant cannot rely on incapacity to seek to deem the Deed invalid. Further the onus is on the person alleging a deed to be invalid due to mental incapacity to prove so on a balance of probabilities. The evidence of the Defendant falls way short of doing so.

SUBMISSIONS

- [20] Ms. Forde submitted that the Defendant cannot rely on the doctrine of proprietary estoppel since it was not properly pleaded.

- [21] Ms. Forde also referred to the case of Cyril Archibald Capton v Government of the Turks and Caicos Island¹ and submitted that there are three elements which a defendant who relies on proprietary estoppel must prove, being a promise, reliance on the promise and detriment.
- [22] Ms. Forde urged the court to reject the Defendant's evidence that his parents made a promise to him. Ms. Forde also submitted that based on the Defendant's evidence he has failed to prove detriment as a result of reliance on the promise. The evidence led by the Defendant relates only to benefits that he has received.
- [23] Ms. John in her response referred the court to a number of authorities including Midland Bank Plc v Cooke², Lynn Abbott v Dane Abbott³, Grant v Edwards⁴, and Lloyds Bank Plc v Rosset⁵ and submitted that the court should consider whether there was a constructive trust in favour of the Defendant. The onus was on the Defendant to prove common intention, reliance and detriment.
- [24] Ms. John further submitted that it was the common intention of the parents and the Defendant that the Defendant would take care of them and he would have the property. In reliance of this common intention the Defendant conducted substantial repairs to the property and paid the taxes. Ms. John also submitted that the Defendant's testimony was not contradicted.

FINDINGS

- [25] In the matrimonial cases referred to by Ms. John the courts have stated that the doctrine of constructive trust is the more appropriate tool of analysis.
- [26] The doctrine of constructive trust which arises out of an express agreement overlaps with the doctrine of proprietary estoppel. Under both doctrines the Claimant must have acted to

¹ [2010] UKPC2

² [1995] 27 HL 733

³ P.C No. 142 of 2005

⁴ 1986 EWCA CIV 4

⁵ [1996] UKHL 14

his detriment in reliance on the assurance that he would have an interest in the property. The difference in the doctrines is that in proprietary estoppel the remedy is discretionary while in the case of constructive trust the Claimant is entitled to the agreed beneficial interest.

[27] While the Defendant's submissions were based on the principles of constructive trust the pleadings and evidence of the Defendant were based on proprietary estoppel. I will therefore consider the doctrine of proprietary estoppel.

[28] The doctrine of proprietary estoppel has been explained in the case of **Thomas v Major** as being based on three main elements:

"a representation or assurance to the Claimant, reliance on it by the Claimant and detriment to the Claimant in consequence of his (reasonable) reliance."

[29] It has been recognized by the legal authorities that although there are three (3) main elements, they must be looked at together. Lord Robert Walker explained how the court should apply the doctrine in the following manner:

"But although the judgment is for convenience divided into special sections with heading which give a rough indication of the subject matter, it is important to note at the outset that the doctrine of proprietary estoppel cannot be treated as subdivided into three or four watertight components. Both sides are agreed on that, and in the case of the oral argument in this court it repeatedly became apparent that the quality of the relevant assurances may influence the issue of reliance that reliance and detriment are often intertwined, and that whether there is a distinct need for a mutual understanding may depend on how the other elements are formulated and understood. Moreover the fundamental principle that equity is concurred to prevent unconscionable conduct permeates all the elements of the doctrine. In the end the court must look at the matter in the round⁶."

[30] In other words the doctrine of proprietary estoppel applies when it would be unconscionable to allow a person who has given an assurance to another and the person has acted on the assurance to allow the person to resile from his assurance.

⁶ **Gillet v Holt** [2007] 1 ch 210 at p.225

[31] In the case at bar, the Defendant contends that he was promised by his parents that he would have the house if he took care of them. Acting on that promise, he renovated the disputed property and took care of both parents until they died.

[32] The Defendant's testimony of the assurance given to him is at paragraph 2 of his witness statement, where he states as follows:

"My parents promised me in or about 1991 that I can occupy the property as my own if I took care of them."

[33] The Claimant admitted under cross-examination that she was not aware of a promise made to the Defendant. The Claimant testified that her mother had on several occasions discussed with her children including the Defendant that she would give the disputed property to the Claimant and the other parcel of land at Ackers would be for the sons including the Defendant.

[34] Having seen and heard the witnesses and having reviewed the evidence, I believe the evidence of the Claimant that their parents had two (2) portions of land being the disputed property where the family home is situate and form lands at Ackers. I believe the mother divided the lands giving her daughter the land with the family home and her sons the farming land. The Defendant admitted under cross-examination that after he returned from Barbados he was farming those very lands. I do not believe the evidence of the Defendant that on his arrival from Barbados his parents promised to give him the house if he took care of them. The Claimant was very candid in her evidence. The Claimant readily admitted expenses for the upkeep of her mother including payment of Ms. Thomas were met not only by her but also by her other siblings. Similarly she testified that her other siblings contributed to the repairs to the house.

[35] Assuming that an assurance was given to the Defendant that the disputed property would be his and on reliance of that assurance he continued to reside there from 1991, the court must consider the issue of detriment.

[36] What constitutes detriment has been discussed in a number of cases including Gillet v Holt⁷ and Theresa Henry, Marie Ann Mitchell v Calixtus Henry⁸. The common principle emerging from the authorities is that detriment does not consist only of expenditure of money or other means which can be quantified in financial terms, but it is sufficient, if the detriment is something substantial.

[37] In considering whether a person acted to his detriment Lord Parker in the Theresa Henry case stated:

"the requirement must be approached as part of a broad inquiry as to whether the repudiation of an assurance is or is not unconscionable in all the circumstances."
Lord Parker continued: *"Whether the detriment is sufficiently substantial is to be tested by whether it would be unjust or inequitable to allow the assurance to be disregarded, that is again the essential test of unconscionability⁹."*

[38] In determining whether a party acted to his detriment the court is required to weigh the disadvantages against the advantages if any.

[39] In the case at bar, the Defendant's evidence on detriment is that he remained living at his parents home, he took care of them, he made renovations to the home. He changed the windows, main door and toilet. He installed pipe-borne water to the home. His sister Sobina assisted him with some money to repair the roof of the house. When his mother took ill he and his common-law wife took care of her. They assisted her caretaker Ms. Thomas. He did not dispute that his siblings paid the expenses for the caretaker.

[40] It was not disputed by the Claimant that the Defendant paid the utility bills and the taxes. The Claimant denied that he took care of their mother or made renovations to the house. I believe the testimony on behalf of the Claimant. Mr. Valentine Richardson's testimony that he was hired by his sibling to do the repairs to the house was not contradicted. His testimony is that he was paid by his siblings other than the Defendant. The Defendant only purchased a lock for the main door which Valentine installed. I also believe the testimony of Ms. Thomas that the Defendant did not provide for the upkeep of his mother, it was on

⁷ [2001] 1 ch 210

⁸ [2010] UKPC 3

⁹ Gillet v Holt [201] 1 ch 210 at p.232

odd occasions that he bought some grocery. The utility bills are the normal expenditure that the Claimant would have paid had he lived elsewhere. Also his installation of pipe-borne water to the home and changing of toilet would have been for his own convenience. The fact that he paid the taxes which amounted to no more than eighty-two (\$82.00) per annum must be weighed against the advantage that he lived rent free. There is no evidence to show that he has suffered any disadvantage by residing in the house for a number of years. There is no evidence of lost opportunity as a result of him doing so. There is no evidence that he turned down the opportunity of living elsewhere, or of constructing his own home.

- [41] When the evidence is looked at in the round assuming that the Defendant was given the assurance that he would get the disputed property, the evidence is such that it is not unconscionable for Mrs. Olga Richardson to have gone back on the assurance.
- [42] In view of my findings of fact the outcome would have been the same under the principle of constructive trust.
- [43] In conclusion I find that the Claimant has proved her case on a balance of probabilities that she is entitled to possession of the disputed property.
- [44] The Claimant did not lead any evidence of damage suffered, nor in relation to mesne profit.

[45] It is ordered that:

- (i) Judgment is entered for the Claimant.
- (ii) The Defendants shall quit and deliver up vacant possession of the property situate at Carriere and more particularly described in Deed number 2212 of 2012 on or before the 30th day of November, 2013.
- (iii) The Defendants shall pay the Claimant prescribed costs.


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Gertel Thom
HIGH COURT JUDGE