



IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COLONY OF MONTSERRAT
(CIVIL)
A.D 2014

CLAIM NO: MNIHCV2012/0012

BETWEEN:

BRENDA OSBORNE

Claimant

and

[1] AUDITH OSBORNE
[2] JOHN PATRICK OSBORNE
(as Administrators of the Estate John Alfred Osborne [deceased])

Defendants

Appearances:

Mr. Emile Ferdinand Q.C for the Claimant
Mr. Jean Kelsick with him
Mr. David Brandt for the Defendants
Ms. Jean Dyer with him

2014: January 27, 28
2014: April 04

Judgment

- [1] **Redhead, J. (Ag):** The Claimant Brenda Osborne, a Medical Doctor, is the daughter of John Alfred Osborne deceased. John Alfred Osborne was a politician and was Chief Minister of Montserrat for many years. He died on 11th January, 2011. John Alfred Osborne was married twice. By his first marriage he had four children Joan, Shirley, David and the Claimant who was the youngest child of the first union.
- [2] In the early 2000, John Alfred Osborne was married to the First Defendant, that union produced another four children John, Anderson, Tuyen and Tarique.

[3] Mr. John Alfred Osborne made a will dated 11th July, 2010. The first and second Defendants are administrators of the estate of John Alfred Osborne.

[4] By his last will and testament he devised as follow:-

“From my estate including are money, land wherever i.e. maybe to be distributed as written.

My daughter Brenda Osborne is to be given \$1,500,000.00 EC dollars because of her special interest in me.

Joan, Shirley, Shadie, Ruthlyn, is to be given \$1,000,000.00 dollars each. David \$1,000,000.00.

All other monies and land as far as my other four children John, Andison, Tuyen and Tarique for their education and support after account debts are paid whatever is left of my entire estate is to be given to my wife Audith Osborne for her maintenance of herself and her four children.

Monies are invested in Bank of Montserrat, Anguilla National Bank, Caribbean Commercial Bank, Bank of Anguilla, St. Patrick Credit Union, Barclays Bank of London, Clico Bank Barbados, Republic Bank of Kentucky.”

[5] The Claimant claims that apart from the bequest to her by her father in his will that during his life time the property in Old Towne described as Block 12/6 Parcel 50 was given to her by her father during his life time. It is in respect of this property that the Claimant has brought this claim against the Defendants as administrators of the Estate of John Alfred Osborne, seeking inter-alia a declaration that the property is vested in fee-simple in equity to her.

[6] The Claimant in her Statement of Claim alleges that she and her father enjoyed an exceptionally close and trusting relationship throughout their joint lives.

[7] The Claimant therefore is relying on certain assurances which she says were made to her by her father in relation to the said property and the monies she expended on the property in reliance on the assurances in support of her claim.

- [8] The Claimant alleges that in or about the year 1991, her father, John Alfred Osborne told her that he intended to give the said property to her and that she would thereafter regard the property as belonging to her.
- [9] The Claimant alleges that in or about the year 2008, John Alfred Osborne told her that several persons had approached him wanting to buy the property but the property was not his to sell, as it was Brenda's house.
- [10] In about 2008, John Alfred Osborne told the Claimant that she had to decide what she was going to do with the property since people were starting to move back into the area (with the advent of the eruption of the Soufrier Hills Volcano, there was wholesale evacuation of residents from that area).
- [11] The Claimant alleges that in or about the year 2008 in the State of Kentucky, U.S.A. (where the Claimant resides) John Alfred Osborne presented her with a Transfer of Land Instrument that had been prepared by the law firm of Messrs Kelcisk & Kelsick and asked her to sign the said instrument which the Claimant did as transferee in respect of the property. The instrument named John Alfred Osborne as transferor.
- [12] An unsigned document was exhibited by the Claimant [BO13]. This document shows a purported transfer of Land from John A. Osborne to Brenda Osborne of Registration Section Beachettes Block 12/6 Parcel 50 that is the said property which is in dispute. The document is undated and unsigned by either the transferee or transferor.
- [13] On the morning of the trial, i.e. 27th January, 2014, Learned Counsel Mr. Ferdinand Q.C. made application to have admitted in evidence a similar document as BO13. That document was signed by the Claimant, the transferee but not by the transferor. The Claimant testifies that she has a home in Kentucky. Three Sundays ago i.e. prior to the trial, that would be about the 5th January, 2014, she woke up early, went to her study, she looked at a box of pictures which she had in her study, she then began to tidy up the bookshelf, she pulled down a picture of her father , her daughter and herself. She then went to put the picture back in the bookshelf. She says that she

then felt something under her hand. It was a folded piece of paper. She opened up the paper. It was a copy of the land transfer which she had signed.

[14] The Claimant explains that she made a copy after she had signed it. Her copy machine was not working properly so the document had dark lines across it. She further explains that the document was in the house where she does not normally live. Ms. Osborne says that after she found the document she contacted her attorney in Montserrat. She travelled to Montserrat on Friday 24th, January. She brought the document with her. She gave the document to her attorney on Saturday 25th January, 2014.

[15] Mr. Brandt, Learned Counsel, for the Defendants resisted Learned Counsel's application to have the document admitted in evidence. Mr. Brandt argues that the document was neither disclosed nor produced so on that basis it should not be admitted in evidence.

[16] In my judgment that document could not be produced because it was not available when it should have been produced or disclosed. In my view the Claimant signed the document then forgot about its existence or where it was. In the circumstances, I admit the document and will decide what weight if any I should give to this document.

[17] The Claimant says that after she had signed the document John Alfred Osborne told her that he intended and expected to obtain a waiver from the Government of Montserrat for the land transfer taxes [fees] that would ordinarily be payable on the said instrument of land transfer.

[18] In her Witness Statement the Claimant says that on the 8th February, 1990, her father had held legal title to a dwelling house in Old Towne purchased from Robert Muller and Jane Muller. The said property has since been and is still registered in her father's name. She says that the property was badly damaged in 1989 by hurricane Hugo. After which the Claimant says that her father told her he was going to sell the other Old Towne Property and asked her whether she thought he should sell the Old Towne property. She told him not to sell the property as they can fix it up.

I make the observation that Hurricane Hugo was indeed in 1989. So if indeed this Old Towne house was purchased in 1990 it would have been purchased after Hurricane Hugo. In cross-examination the Claimant says that she was not aware that when her father bought the property that it was in a damage condition. She also said that her father was in possession of the property before he got the legal title on 8th February 1998. In fact when the witness was cross-examined extensively by Learned Counsel Mr. Brandt and apart from not being able to produce receipts for many things which she said she purchased and expenses incurred, she was not shaken; she gave an explanation why she was unable to produce the receipts. I accept her explanation.

[19] The Claimant says that she came home from Trinidad and worked in Montserrat for three months after hurricane Hugo. She lived in the property but it was extensively damaged. In 1991, she moved back to Montserrat after medical school, she says that she then decided that it was time to renovate the property.

[20] Alford Dyett, an architect prepared a plan at her father's request. She hired one Leroy Gerald to carry-out the reconstruction which she and her father oversaw. A southern-side was added to the structure which included a new washroom and a patio to the master bedroom.

[21] According to the Claimant, after the major building work was done, she and her father went to Puerto Rico to choose the tiles, light, fixtures, toilet, windows and doors for the property.

[22] She says once the work was completed her sisters Joan, Shirley and her moved into the property which they furnished. She says that she has had possession of the property ever since. She moved abroad but she stayed there when she came home from time to time.

[23] Dr. Osborne says during the reconstruction of the house she personally engaged Orville Payne to do the tiling work, painting, general repairs and landscaping. She paid him for his services. Dr. Osborne says that in or about 1991, her father told her that he intended to give the property to her and she should regard the property as belonging to her.

- [24] In reliance of what her father told her she did the following:-
- a) She spent money on repairing, refurbishing and maintaining the property and in up-keeping of the garden.
 - b) She dedicated her time towards managing and improving the property.
 - c) She paid the insurance premium on the policy on the property with United Insurance Company Limited under which both the house and its contents were insured in about 2009 pursuant to her father's instruction to the insurance company.
- [25] In this regard, the Claimant has exhibited two receipts from United Insurance Company Limited in favour of Brenda Osborne for period of 29th January, 2010 to 29th January, 2011 (BO2) in respect of premium due on policy covering building and contents located in Old Towne. The sum paid was for insurance for the building \$7,020.43, premium on contents \$280.82 total sum \$7,301.25.
- [26] Another premium on insured building \$7,020.43 with contents.
- [27] Dr. Osborne says on 28th April, 2009 her father went to the Montserrat Utilities Ltd. instructing it that the utility bills in respect of the property should be sent to her. She has exhibited a copy of that letter from her father to the Montserrat Utilities Limited. Utility Bill in the sum of \$287.21 payable by 27th August, 2010 (B.06) and two other Montserrat Utility Bills dated 24th August, 2011 (B.07). The Claimant says that in or about 1990 her father called her and told her that he needed to move in the property because of the volcano. He stayed there for about a year or two.
- [28] In her Witness Statement, Dr. Osborne says between 1991 and 2012 she spent in excess of US\$100,000.00 on the property i.e. completely reroofing the house, buying locks, putting in air conditioners, replacing refrigerators, the dishwashers, the stove, the washing machine, the dryer, the oven, ceiling fans, beds, chairs, doors, mirrors, lights, towels, curtains, sheets, dishes, paying the pool cleaner, paying for cleanups after volcanic explosions, paying for the electric repairs and for buying beds, extending the driveway, fitting windows and cutting the tress, maintaining the lawn, fixing toilets, fixing the heater, water leaks, paying property taxes and paying for pest control. The Claimant gives dates on which she carried out the above activities.

[29] Dr. Osborne says that between July and December 2009, she rented the property to Rodney Molyneaux and Bossun Ajilowara. Rodney Molyneaux was initially there for about a month, after which they rented the property on a long-term basis. The rental agreement was between Brenda Osborne and the tenants. She says that she never obtained the consent of her father to rent the house. The rental agreement came to an end in 2009 when Old Towne had to be evacuated because of volcanic activities. The Claimant has exhibited a copy of the rental agreement (B.09). The rental agreement speaks in part to:-

"AGREEMENT FOR TENANCY OF HOUSE IN OLD TOWNE, MONTSERRAT

THIS AGREEMENT made the 29th day of July, 2009 between Brenda Osborne, owner of house in Old Towne, Montserrat (hereinafter called the "Landlord") and Bosun Alijowura/Rodney Molyneaux (hereinafter called the "tenant")."

I have no doubt that notwithstanding that the rental agreement did not describe the property which was rented which should have been so described, that the property rented was the property which is in question.

[30] Dr. Osborne explains that because of the close relationship between herself and her father she did not think that it was necessary to keep records of transactions in relation to the house. She says that she and her dad enjoyed an extremely close and loving relationship. He visited her in Kentucky, U.S.A. two or three times, sometimes four times a year. Many times he would come to Kentucky just to rest and get away from it all and they would speak once or twice per week when he John Alfred Osborrie was in Montserrat. He would be upset if she missed talking to him for a week.

[31] The Claimant says that she and her father had an understanding. They spent money freely on or between each other. For example if he was in Kentucky and he needed medical care, she would pay for it. Sometimes, if it was a large sum like hospitalization bill he would later reimburse her. If he needed something to be bought, in the US, she would buy and send it to him. She would pay for and send his medication for him. If she wanted something in Montserrat sometimes he would pay once he gets to Kentucky, they would sought it out.

[32] Dr. Osborne in her Witness Statement asserts that in or about 2008 she was buying a house in Louisville, Kentucky. As a doctor she did not keep large amounts in liquid assets because of the possibility of law suits. The rules had changed concerning mortgages due to the 2008 housing bubble and because she owned 25% of the medical practice she was considered as self employed. She needed to show the authorities that after making her down payment on the house that she would still have 6 months to a year on living expense available. She says that as a result of this predicament her father agreed to lend her US\$75,000.00 which she agreed to repay by the August, 2010. In her Witness Statement, Dr. Osborne explains that she was closing on the house by the end of July and only needed to be able to show that on the day of closing she had those liquid assets. The Claimant says that her father later told her that he did not want her to pay him back the US\$75,000.00.

[33] On the 13th July, 2010, he signed a gift letter to that effect which the Claimant exhibited (BO14). The gift letter says in part:-

I John Osborne do hereby certify the following:-

"I have made a gift of \$75,000.00 to Brenda Osborne whose relationship is my daughter. The gift to be applied toward the purchase of a property at Abercorne Terrace kg 40241. No repayment of the gift is expected or implied in the form of cash or by future services."

Both Mr. John Osborne and Brenda Osborne signed the gift letter.

[34] Mrs. Audith Osborne in her Witness Statement says that she first met John Alfred Osborne, her husband in 1985. He was at that time Chief Minister of Montserrat. They began an intimate relationship in or about March, 1985. At that time John Osborne was still married to his former wife May Elizabeth Osborne who is the Claimant's mother. John Osborne and his wife were at that time separated and living apart.

- [35] In December, 1985, Audith Osborne moved into a house in Plymouth with John Osborne and they lived together until 1995 when the volcanic activity began. John Alfred Osborne and Audith got married in December, 2000.
- [36] Audith Osborne says in her Witness Statement that John Osborne bought two houses in Old Towne in 1990. He took a loan from Barclays Bank in order to purchase the houses. Both houses were damaged by hurricane Hugo in 1989. He repaired and sold one. The other house which is the subject of this action he kept. The house was unoccupied for sometime because according to Audith it was not repaired. Audith says in her Witness Statement that in or about 1991 her husband gave permission to his daughter Joan to stay in the Old Towne house. David, John Osborne's son from his first wife moved into the house after Joan and sisters took up residence in the U.S.A.
- [37] After the volcano erupted in 1995, John Osborne and his family moved into the house at Old Towne and lived there until 2001/2002 they moved because of the increased volcanic activity and Old Towne was considered to be in the unsafe zone. The Osborne family was relocated to a house in Providence which was paid for by the Government of Montserrat, John Osborne being the Chief Minister at that time.
- [38] Mrs. Audith Osborne says that most of the furnishings at the Old Towne house were left back in the house. She and her husband went to the Old Towne property from time to time and arranged for persons to move the ash from the roof and the surroundings. Mrs. Audith Osborne says that her husband's children from the first marriage stayed in the Old Towne house from time to time whenever they returned to Montserrat.
- [39] She and her husband continued to pay all the utility bills and insurance premiums in respect of the Old Towne house after they stopped living in the house. They paid the bills up to 2009 when her husband then decided that it was unfair for him to pay the utility bills at the Old Towne house when it was occupied by his adult children and they were not paying him rent.

- [40] On the instructions of her husband, she wrote a letter to Montserrat Utilities Limited (M.U.L) dated 28th April, 2009 requesting that all water, electricity bills be sent to Brenda as from time to time she would visit for vacation and would ask to "stay in my husbands' Old Towne home". She states that at no time did her husband say or hint that he had given the Old Towne house to Brenda.
- [41] Mrs. Audith Osborne explains that the reason for asking Brenda Osborne to pay the insurance and utility bills is that she occupied the house rent free at Old Towne frequently and her father felt that it was fair that she should pay the insurance premium and utility bills.
- [42] Mrs. Jacqui Ryan, the manager of Jacqui Ryan Enterprises Ltd., local agent for United Insurance Co. Ltd in her Witness Statement says she knew John Osborne who was her cousin. Mrs. Jacqui Ryan says that the Old Towne house was owned by John Osborne and was insured with United Insurance Co. Ltd. at a value of ECC\$995,000 for building and contents.
- [43] Sometime in July, 2007 when they called on John Osborne to pay the outstanding premium, he told her that he had given the house to his daughter Brenda Osborne and complained that she should be paying all the expenses for the property. Mrs. Ryan advised John Osborne to register the property in Brenda's name and have her responsible for her own insurance protection. The following year he complained again about paying the premium and insisted that they look to Brenda Osborne for payment.
- [44] Jacqui Ryan in her Witness Statement says "Audith Osborne the widow of John Osborne has been to my office on some occasions before her husband's death to pay premiums and in the course of normal conversations has remarked to me that she had told John Osborne many times that having given Brenda Osborne the aforesaid house at Old Towne he needed to transfer the property in her name and let her take care of her bills."
- [45] Mrs. Audith Osborne says that she received a reminder from United Insurance Co. informing her and her husband that the premium was due for the Old Towne house. Based on conversation with her husband, she decided that she would stop paying the insurance premium for the Old Towne House since they were not receiving the rent. She attended the office of United Insurance Ltd at

Brades and informed Ms. Williams, with whom she had dealt with on several occasions, that she would not be paying premium for the Old Towne house and that she (Ms. Williams) should send the bills to her husband's son David. Mrs. Audith Osborne says that was the only conversation she had with Ms. Williams about the Old Towne house. Mrs. Jacqui Ryan was not present when she spoke to Ms. Williams. She further states that on no occasion has Jacqui Ryan who is the manager of Jacqui Ryan Enterprises Ltd. which is the local agent for United Limited Insurance Ltd. and with whom her husband's Old Towne home and its contents were insured dealt with her. She has always dealt with Ms. Williams and on one occasion with Ms. Roisin Toal.

[46] I accept Mrs. Jacqui Ryan's testimony as truthful. She is, in my view, an independent witness who in my opinion has no motive to be untruthful. I therefore find as a fact that Brenda Osborne was made to pay the insurance premium not because she regularly stayed at the Old Towne house, whenever she visited Montserrat, but so far as John Alfred Osborne was concerned he had given the house to his daughter Brenda Osborne and he felt that Brenda should pay the premiums because it was Brenda's house.

[47] I am fortified in this view having regard to Mrs. Jacqui Ryan's Witness Statement which I accept. She says that sometime in 2009 John Osborne spoke with Brenda Osborne on the telephone from the office telling her that she needed to pay the insurance in her own name so that the bills could be sent to her.

[48] Mrs. Ryan says that she could hear when Brenda Osborne told her father that he never complained to her about paying the expenses and that she would send in her brother, David to transfer the insurance to her name and would forward funds to him to pay the required premium.

[49] John Osborne subsequently cancelled the insurance policy in November, 2009. Brenda Osborne arranged to establish cover in her name in January, 2010. Since then all correspondence and communications with Jacqui Ryan's office have been conducted with Brenda Osborne and her brother David Osborne and all premiums have been regularly paid by Brenda Osborne.

- [50] In response to Dr. Brenda Osborne's assertion that she was given a loan of US\$75,000.00 by her father to acquire a house in Kentucky and that her father subsequently made her a gift of that sum; Mrs. Audith Osborne says in her Witness Statement that Brenda telephoned her father, she heard the entire conversation because her husband was using the speaker phone. Brenda asked her father to lend her US\$75,000.00 to buy a house in Kentucky. She had a fixed deposit which she did not want to touch because it was nearing maturity and that she would repay him on 18th August, 2010.
- [51] According to Mrs. Audith Osborne her husband said that he had a feeling that Brenda was up to something but he would wait and see if she paid back the US\$75,000.00 as he had also loaned her some money to buy her first house which she never repaid. However, he asked her to wire the US\$75,000.00 which she did the same day.
- [52] Mrs. Osborne says that before she wired the funds she questioned her husband about the balance on the account. Mrs. Osborne says her husband told her not to worry because Brenda had to give him back his money on 1st August as he had already helped her to purchase a house before. She denies that her husband told Brenda that she did not have to repay him the US\$75,000.00 and that she should treat it as a loan. Brenda is yet to repay the loan of US\$75,000.00 Mrs. Audith Osborne says [paragraph 34]. In the face of the gift letter referred to above, I do not understand why the first Defendant would deny that the US\$75,000.00 from John Osborne was a gift to his daughter, Brenda Osborne. In view of "the Gift Letter".
- [53] Brenda Osborne in her witness statement says that she spent in excess of US\$100,000.00 on the Old Towne property between 1991 and 2012. She completely re-roofed the house in 2010, bought locks, bought air conditioners and carried out many other repairs and replaced many fixtures and fittings.
- [54] Mr. Orville Payne in his witness statement says that after hurricane Hugo struck Montserrat in 1989, he carried out repairs to "Brenda Osborne's House" at Old Towne, Montserrat as the entire roof of the house was blown off. The repair work started in or about 1990. Brenda Osborne spoke to him about the repairs while she was in Montserrat and asked him to do the tiling, painting and

general repairs to her house in addition to landscaping and the gardening which he carried out over a nine month period. Brenda Osborne paid him for his work.

[55] He saw John Alfred Osborne at the property on a regular basis while he was working there. While at the property, John Osborne would often say to him "you are taking care of your cousin Brenda" and "This is Brenda's House".

[56] Sylvester Dyer says that he knows both Dr. Brenda Osborne and her brother David Osborne. In 2010 at David Osborne's request he worked with Jason Lee on Brenda Osborne's house at Old Towne Montserrat repairing the roof of the house.

[57] He re-placed wooden boards and asphalt shingles. It took about three weeks to complete the job. David Osborne paid him EC\$125.00 per day for the work.

[58] He says that at David Osborne's request he also replaced winders in the house and repaired toilets and one face basin. He also assisted in the extension of the driveway to the house. David Osborne paid him for doing the work. At David Osborne's request he has, for some time now, along with Jason Lee, looked after the garden of Brenda Osborne's property twice a month, David Osborne pays him.

[59] The late John Alfred Osborne visited Brenda Osborne's house when he was doing the repairs to the roof. Jason Lee also gave a witness statement in which he confirms and supports the evidence of Sylvester Dyer.

[60] Mr. Kelsick in his written submissions argues that the Claimant's evidence and that of her supporting witnesses, have established well beyond a balance of probability that she has satisfied the elements which entitle her to equitable relief based upon the principles of proprietary estoppel, to wit:-

(a) John Alfred Osborne at material times was the registered legal owner of the Old Towne property.

(b) Assurances were given to the Claimant by her father, in or about 1991, that he intended to give her the Old Towne property and that she "should now regard it as belonging to her".

[61] He buttressed his express promise and assurances by allowing the Claimant to exercise considerable control over and possession of the property for many years and by taking a formal transfer instrument in which John Alfred Osborne was named as the transferor and Brenda Osborne was named as the transferee to the property.

[62] I agreed with Learned Counsel that John Alfred Osborne allowed the Claimant "to exercise considerable control" but I would say that he allowed the Claimant to exercise exclusive control in that she was able to rent the property to tenants and in that tenant agreement describing herself as "Landlord", obviously with her father's knowledge.

[63] Learned Counsel for the Defendants in his Skeleton arguments submits on behalf of the Defendants that the legal and beneficial ownership of the property devolved to the Defendants upon the deceased's death.

[64] The Claimant now expects to inherit the property which according to her, she has been in control of since in or about 1991. He postulates that the Defendants are unable to make good her "expectations" because they were at material times unaware of any such alleged mutual understanding between the deceased and the Claimant.

[65] I have difficulty in accepting that the Defendants were at all material times unaware of the mutual understanding between John Alfred Osborne and the Claimant. From the evidence I accept that even if the Defendants were unaware of this mutual understanding between John Alfred Osborne i.e. he gave his daughter the assurance, and his daughter, once, that understanding existed the Claimant acted on it to her detriment that "unawareness" by the defendants has no effect and cannot affect the outcome.

[66] I think John Alfred Osborne made it known to everyone who had any dealings with the property, that the house at Old Towne was his daughter's, Brenda Osborne's.

- [67] For me not to accept this is for me to find that Jacquie Ryan colluded with Orville Payne, Jason Lee and Sylvester Dyer, in my mind, that is highly unlikely.
- [68] The Defendants contend that even if John Alfred Osborne made the assurances to the Claimant as she alleges, she has occupied the property in 1991 without paying any rent and has also rented the property for her own use and benefited. As such on balance the Claimant has positively benefited and the advantages which she enjoyed far outweighed the disadvantages she alleges she suffered in relying on the deceased's alleged assurances and actions.
- [69] While I accept that the Claimant by renting the property at Old Towne may have benefited financially, I say "May have benefited financially" because the Claimant says that the rent she received, she applied for the use of the house."
- [70] I am aware of no evidence put forward by the Defendants which will destroy this claim. On the flip side, however, by the Claimant renting the property and describing herself as the landlord in the agreement with the approval of her father; she is saying, in my judgment she is the owner of the property.
- [71] I say with the approval of her father because he was alive and presumably well at the time, so he would have been aware of that rental agreement.
- [72] Learned Counsel, Mr. Kelsick submits on behalf of the Claimant that the fact that the Claimant may have had some benefit does not prevent an equity from arising in her favour, nor does it disentitle her to the benefit of such equitable right. Indeed in **Theresa Henry, Marie Henry v Claitus Henry**¹ Lord Walker in discussing **Campbell v Griffin**² opined that the Claimants rent-free occupation of the property had not extinguished his equity.

¹ [2010] UK PC.3

² [2001] 82 PrcR DG23

Learned Counsel Mr. Brandt argues that paragraph (a) of the Statement of Claim alleges that in or about 1991 the deceased stated words to the effect "he intended to give the property to the Claimant and that she should thereafter regard the property as belonging to her."

[73] According to Mr. Brandt this incident is alleged to have occurred in San Juan, Puerto Rico. He also argues that the Claimant's evidence in chief was to the effect that in or about 1991 the deceased told her that "he intended to give the property to [her] and that [she] should now regard it as belonging to her".

[74] Mr. Brandt contends that the Claimant's evidence in chief was surprisingly less specific in that she gave no evidence as to the occasion on which this assurance was allegedly made by the deceased and the context in which it was supposedly uttered.

[75] Shirley Osborne's evidence in this regard is to similar effect, according to Mr. Brandt. Shirley Osborne testified that her father told her "In or about 1992/1993 that he had decided to give [her] sister Brenda Osborne the said house". Mr. Brandt Learned Counsel submits that even if this evidence is accepted by this Honorable Court it, at most, supports a mere statement of present (revocable) intention with respect to the property. It does not, he submits, support a finding that the alleged statement was tantamount to an assurance and commitment.

[76] I do not agree with the above submissions of Mr. Brandt. In the first place there is nothing in the evidence which remotely supports the view that John Alfred Osborne revoked that statement or intention to give his daughter the property at Old Towne.

[77] Far from any idea or suggestion from Claimant's father to revoke that statement of offer of the property or intention that the Claimant should have the property at Old Towne. He buttressed that Statement and intention that the Claimant should own the property, when on his visit to Kentucky, in or about 2008, he brought and presented to the Claimant a transfer of Land Certificate of the said property for the Claimant to sign and which she signed although John Alfred Osborne did not sign it.

- [78] I find up until that time the deceased had irrevocable intention that his daughter would own the property at Old Towne and there is nothing in the evidence to indicate that the deceased changed that intention at anytime thereafter.
- [79] I conclude therefore that John Alfred Osborne went to the Great Beyond still with that intention that his daughter Brenda Osborne is the owner of the property of Old Towne.
- [80] Mr. Brandt further submits that the alleged assurances need not detain this Honorable Court since it seems evident on the Claimants pleaded case and her evidence at trial she did not construe this statement as an assurance and commitment.
- [81] He argues that in the Claimant's witness statement, she did not rely on this deceased's alleged statement in this regard. Mr. Brandt contends that according to the Claimant's statement her alleged detriment in reliance was not until sometime in 2008. Learned Counsel accordingly submits that there cannot be said to be any link or any sufficient link between this alleged assurance and the conduct on which the Claimant now relies as supposedly constituting detriment.
- [82] He contends moreover, the important point to observe is the conduct in question "Is after the other alleged instances of assurances given by the deceased in 2008". By "Conduct in question" if the Learned Counsel means Claimant expenditure in relation to the Old Towne property, this would in my opinion, normally occur after the assurance was made by the promisor to the promisee.
- [83] Learned Counsel Mr. Brandt, in fact refers to the Claimant's expenditure in relation to the property at Old Towne. (see Paragraph 17 of Claimant's witness statement) The overwhelming weight of authority shows that the elements of proprietary estoppel is that, it is the Claimant's detrimental reliance on the alleged assurance which makes it irrevocable detriment therefore it gives completeness to the doctrine of proprietary estoppel; it supplies meat to the bare bones. **[See American Life Insurance Co. Sumintra].**
- [84] In my view, the detriment suffered by the promisee must be as a result of the promisor making or giving the assurance that the promisee will own the property.

- [85] Learned Counsel, Mr. Brandt in his skeleton submissions, submits that the authorities also establish that “the detriment need not consist of the expenditure of money or other financial detriment so long as it is something substantial. 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 ability, the detriment must be pleaded and proved” per Lord Walker in **Silette v Holt**³.
- [86] Mr. Brandt argues that the Claimant must not only allege [detriment] but the evidence advanced must be sufficient to prove that she in fact spent considerable sums of money, considerable time and energy on the improvement and upkeep of the property.
- [87] He contends that the evidence reveals: she lives in the United States permanently during the time she alleges she was repairing the house. She was a doctor working in the U.S. Learned Counsel submits that the Claimant’s case does not in any way contemplate or attempt to satisfy the requirement.
- [88] From the evidence I have no doubt that the Claimant spent substantial sums of money in improving the property at Old Towne.
- [89] In spite of the fact that the Claimant was working and residing in the United States of America, her brother and agent David Osborne under-took, supervised the repairs of the property on behalf of the Claimant and paid for work done on the said property by funds advanced by the Claimant.
- [90] In this regard I hold that she has spent considerable time and considerable sums of money on the improvement of the property at Old Towne. **Jennings v Rice**⁴ in my opinion is a very interesting case, in my analysis and determination of the issues and resolution of this matter. The facts in that case are:- Mr. Jennings spent a considerable amount of his time looking after Mrs. Boyle despite the fact that from the late 1980’s, Mrs. Boyle paid him nothing from 1994 until her death in 1997.

³ [2001] CL 210 of 232

⁴ [2002]EW CA 159

Mr. Jennings spent every night on a sofa in Mrs. Boyle's house to provide Mrs. Boyle with the security out of compassion for her and because Mrs. Boyle assured Mr. Jennings that she would "See him right".

- [91] It should be noted that there were no promises that she would leave him a share in any identifiable property, because in my opinion if there was an identifiable property the trust would be affixed to that property. Mrs. Boyle left nothing for Mr. Jennings. He brought a claim against the estate contending that he was entitled to the whole of Mrs. Boyle's estate. The trial judge having considered what Mr. Jennings might reasonably have earned in the way by arm's length remuneration for his services and such professional nursing care might have cost during the last eight years of Mrs. Boyle's life assessed the equity as £200,000.00 and ordered the estate to pay this to Mr. Jennings. This was upheld by the court of Appeal.
- [92] With respect, I would say justifiably so, because there was no property on which the equity could be attached because all Mrs. Boyle said was, "I will see you alright".
- [93] In **Henry v Henry** (Supra) the promisor made a promise to the promisee, that she would leave her share in the plot to him on her death if he cared for her until her death and cultivated the plot. The Privy Council found that by remaining on the plot, did so not only for his own benefit and that of his family but also for [The Promisor] benefit in that he provided for her and cared for her with food and cared for her (The Promisee) had opted for a hard life and had effectively deprived himself of the opportunity of a better life elsewhere and had effectively acted to his detriment. The Privy Council also found that the detriment was not outweighed by the advantages enjoyed by her.
- [94] The Privy Council declared that she was entitled to ½ of G's undivided share in the plot which had been sold to T. It is noteworthy that the Privy Council did not fully satisfy C's expectations by awarding him the share in the plot previously held by G.
- [95] The Defendants say that the Claimants claimed that she spent over US\$100,000.00 on the property. Mr. Brandt argues that the Claimant has failed to detail how she arrived at this sum.

- [96] Learned Counsel Mr. Brandt submits that the Claimant's evidence in this regard is deliberately vague so as to draw the court into speculation, that this amount was actually spent.
- [97] Learned Counsel Mr. Kelsick in his submissions argues that the Claimant in her testimony explained that this close familial bond with her family and the fact that she never expected to have to provide evidence in a court about her expenditure are reasons why she did not obtain, retain and produce more documentary evidence such as bills and receipts. Mr. Kelsick argues that in cross-examination the first named Defendant accepted that in family matters transactions are not always recorded or documented by receipts.
- [98] Mr. Kelsick submits that even without such an admission, the court in its experience will recognize it to be not an uncommon fact of life that family members who trust each other often, see no need to verify or document family transactions involving family matters.
- [99] I accept this submission in its entirety. First of all the Claimant testifies that she and her father had a close relationship. The claim of the Claimant that she had a close relationship with her father in my judgment is amply supported from the evidence in this case.
- [100] In his last will and Testament John Alfred Osborne left for the Claimant \$1,500,000.00 whereas he left for the other children \$1,000,000.00. John Osborne took time to explain his reasons that he was favoring the Claimant above the others, "because of her special interest in me".
- [101] The Claimant in her evidence says that if her father wanted anything in the US she would buy it for him. Likewise if she wanted anything in Montserrat her father would buy it for her, under these circumstances it is not expected in my opinion that receipts or bills would pass between the parties having regard to their close relationship.
- [102] I also accept that John Alfred Osborne told his daughter Brenda Osborne that the property at Old Towne was her property. In my view she accepted what her father told her. And having regard to the close relationship which existed between them, in my view, it is most unlikely that she would preserve every bill of expenditure item purchased or expense incurred in order to justify expenditure.

- [103] Moreover, if John Alfred Osborne told his daughter that “she should now consider or regard it (the property) as belonging to her”, I accept that he made that statement then, it is more understandable that she would not preserve receipts to justify her expenditure on her own property.
- [104] In Poscoe v Turner,⁵ The Plaintiff declared to the Defendant not once but on a number of occasions after he had left her “The house is yours and everything in it.” He told a Mrs. Smejkal and a Mrs. Green the same thing. So Mrs. Smejkal he said that he would put it in a Solicitor’s hands. Mrs. Green asked him at the end of 1973 if he had shown the Defendant the deed and he replied “He hadn’t yet but was going to see to it,” In fact he never did. There was no deed of conveyance, nothing in writing at all. The Defendant stayed on in the house, she thought it was hers and everything in it, in reliance on the Plaintiff’s declaration that he had given her the house and its contents. She spent money and herself did work on redecoration, improvements and repairs. It was held by the Court of Appeal, inter alia, that there was nothing on the facts from which a constructive trust could be inferred.
- [105] In the circumstances equity require the Defendant to be granted a remedy assuring her security of Tenure, quiet enjoyment and freedom of action in respect of improvements without interference from the Plaintiff. The Plaintiff would there on be required to give effect to his promise and the Defendant’s expectations and to perfect the gift.
- [106] In my Judgment as I have said above, I hold that the Claimant Brenda Osborne has spent a considerable sum of money on the said house at Old Towne described as Parcel 50 Block 12/6 Beachettes Registration Section in reliance of the promise made by John Alfred Osborne that the Old Towne house is her house.
- [107] In this case, having regard to the detriment suffered by the Claimant in this case, I do not think the Claimant’s equity could be satisfied in any other way other than an Order that the said house be conveyed to the Claimant in fee simple.

⁵ (1729 2 ALL ER 949 or 947)

[108] It is hereby Ordered that the Defendants as Administrators of the Estate of John Alfred Osborne, (deceased) are hereby ordered to convey the property known as Parcel 50 Block 12/6 to Brenda Osborne in fee simple forthwith.

[109] The Counter Claim of the Defendants is dismissed.

[110] Costs to be paid by the Defendants to the Claimant to be agreed, if not agreed, Costs to the Claimant to be assessed on a Prescribed Costs basis.


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Albert Redhead
High Court Judge