

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON MONTSERRAT

CASE NO. MNIHCV2017/0037

**In the estate of William Anthony Tuitt,
deceased, and an action for possession of
land and in trespass**

**Between: TERRANCE WADE (as the sole executor
of the late William Anthony Tuitt)**

Applicant

and

JAMES WEEKES

Respondent

Appearances

Mr Jean Kelsick for Terrance Wade.

Mr David Brandt for James Weekes.

2017: December 20

December 21

JUDGMENT

- 1 **Morley J:** The applicant (Wade) ¹ wants possession of the home at Judy Piece of his deceased father (William), who died on 25.08.15, leaving by his Will of 26.11.14 his property to Wade, but currently controlled by the defendant (Weekes), who is William's nephew, meaning Wade and Weekes are cousins. In answer, Weekes claims that William verbally promised him the home.
- 2 Wade has applied for an interim injunction restraining Weekes from entering or renting parcel 14/15/071, and wants the keys. He is sole executor of Williams' Will. By a fixed date claim form filed on 20.11.17, he is suing Weekes for a declaration he is a trespasser, for lost rent from the date of his father's death, and for damages for the building falling into dilapidation, particularly after Hurricane Maria in September 2017.
- 3 Wade is 37, in a wheelchair, living with his mother Maureen Tuitt (Maureen) in Judy Piece on Montserrat. William lived in England on and off from 2003. Weekes is a fisherman, and builder, and in 2003 William asked Weekes' ex-wife Rosanna Weekes to rent out the property, collect the rent, and to build a fund to repair the roof. She spent the money and was later sued. From 2011, Weekes then collected the rent, on the understanding that if hungry he could use some of the money².
- 4 On 20.01.16, Maureen showed Weekes the Will, and asked for the keys, which were refused. On 22.01.16, Maureen was challenged by letter from Counsel Brandt as to whether William really was Wade's father, and whether he really was dead. There has been trouble ever since.
- 5 The injunction application was called on for hearing on 30.11.17, there being filed on 20.11.17 an affidavit from Wade and Maureen, and was adjourned for lack of service to 08.12.17, when Weekes attended without a lawyer, but while in court then instructed Counsel Brandt. The application was heard on 20.12.17, by skype, mostly by audio after initial video, where I as the judge was on Antigua, Counsel Kelsick appeared in court, Wade appeared on skype owing to his disability, and Counsel Brandt attended in court with Weekes. In the interim between

¹ For the purposes of this judgment, the parties and others will be referred to as bracketed for ease of reading, and no disrespect is intended by not writing out on each mention full names and titles or the legalese as to whether claimants or defendants.

² See para 21 of the affidavit of James Weekes of 14.12.17.

08.12.17 and 20.12.17, Weekes has filed two affidavits, and Wade and Maureen filed each one more, and skeleton arguments were filed by both counsel.

- 6 Sadly, from 2013 William was losing the ability to use his hands and arms. Weekes says that William promised to give Weekes his home in 2013³ because they had a ‘*good relationship*’⁴ and asked in exchange for his house that Weekes care for him in his declining years when on Montserrat; and in particular Weekes did so in William’s last two weeks before he went to England in 2015 for medical care in his final days. The care involved cleaning his home, bathing him, feeding him, and assisting with his toilet (even at the airport as he left). Moreover, Weekes adds that on that final journey to the airport, William told him ‘*do not deliver the keys to anyone when I die. The house belongs to me*’ (meaning to Weekes)⁵.
- 7 In support of his claim, he refers to how, though it is not clear when, at the Inland Revenue Sarah Sweeney helped William to sign with an ‘x’ a form recording that Weekes should pay the taxes on the home. In support, he offers as exhibit JW(a)⁶ a receipt dated 03.09.15 in his name recorded against the property number, 14/15/071, paying \$1908.62ec ‘*on behalf of*’ William (on the document named ‘*Anthony Tuitt*’). Specifically in his supplementary affidavit of 19.12.17, prepared by Counsel Brandt, Weekes says ‘*The testator placed my name on the title [to the property] at the Inland Revenue⁷...I paid the taxes on the property after my name was put on the title⁸....He put my name on the title to his land at the Inland Revenue⁹*’.
- 8 There is no independent evidence, in writing or from any other witness, to show that William intended that Weekes should inherit the house. Instead, this is merely what Weekes says. Recording Weekes as the person who will be responsible for paying the taxes is not the same as putting Weekes’ name ‘*on the title to his land*’¹⁰. It is obviously an agency agreement, which makes sense as Weekes was collecting the rent, and so would receive the money to pay the taxes. To the court’s mind, it was misleading to characterise the agency agreement as putting

³ See para 15, *ibid*.

⁴ See para 3, *ibid*.

⁵ See para 6 of the affidavit of James Weekes of 19.12.17.

⁶ See para 5, *ibid*.

⁷ See para 4, *ibid*.

⁸ See para 5, *ibid*.

⁹ See para 10, *ibid*.

¹⁰ See para 10, *ibid*.

Weekes name on the title, three times, in an affidavit prepared by counsel, when it is clear, and it was conceded in the hearing, it does no such thing, being said by way of apology to be the wrong use of the word 'title'. There is no dispute that the title to the land currently at the Land Registry is recorded in the name of William, so that the house is property to devolve under the Will to Wade, unless Weekes can raise proprietary estoppel on the basis of what he has said, unsupported.

- 9 Weighing noticeably against what Weekes has said is an email dated 09.03.16, exhibit MT2¹¹, from the person who prepared William's Will in the UK, named Michael Lancaster of *Lancaster Wills and Trusts* of Palmers Green, London, (admissible under CPR 30.3(2) in an interlocutory hearing, such as this). In that email, he says that as he prepared the Will, William said, as specifically recorded in Lancaster's notes, '*with my heart and soul I want the property for my son*'. Of interest is that this is said on 26.11.14, long after Weekes has asserted that from 2013 William wanted the house to go to Weekes, and yet when making his Will, said nought to his benefit, and indeed to the contrary, naming Wade in paragraph 7¹².
- 10 Assessing the test for an injunction, in **Jipfa Investments v Brewley et al 2011** [BVI, ECSC], I must examine (1) whether there is a serious issue to be tried, and if so (2) whether damages would be adequate for the applicant, and (3) where the balance of convenience lies.
- 11 In my judgement, on the evidence provided, there is no serious issue to be tried. The issue has to be 'serious', and not just a punt at an argument. I find in my discretion that on the papers the argument raised by Weekes is both frivolous and vexatious, designed to frustrate the Will. The preponderance of the evidence is that Weekes is clutching at straws to keep the house which has become for him a source of income. In particular, I note that when argument began in January 2016 over his returning the keys, in letters from Counsel Brandt Weekes has not once asserted that the house is his as promised to him by William, notwithstanding pre-litigation letters from Counsel Brandt on 22.01.16¹³, 26.07.16¹⁴, and 11.08.16¹⁵. Instead, the argument

¹¹ Appended to the 'affidavit in reply' of Maureen Tuitt filed on 18.12.17.

¹² The Will is appended to the affidavit of Terrance Wade filed on 20.11.17, as exhibit TW1.

¹³ TW2, *ibid.*.

¹⁴ TW5, *ibid.*

¹⁵ TW7, *ibid.*

was that Weekes would not hand over the keys as he does not accept that Wade is William's son, or is a beneficiary under the Will. This is glaring. It beggars belief that Weekes was expecting to inherit the house and yet since early 2016 said nought, strongly suggesting that his assertion now of inheritance is just not true. Moreover, I recall that at court on 08.12.17, when representing himself, before instructing Counsel Brandt, Weekes was at first saying that he thought the Will a fraud, and so would not abide by it, which I had to point out to him was not correct, as its validity had been established by probate, sealed on 15.08.17. It was only then that the argument moved toward an assertion the house was his, at first as having been gifted to him, and then with assistance from Counsel Brandt, who happened to be in court on another matter, as having been left to him. The matter was adjourned to 20.12.17 for clearer exposition of this fresh position being offered by Weekes, in order for him to have a fair opportunity, with counsel's help, to marshal clearer argument, and on what has been filed, it quite simply lacks any weight.

- 12 On the one hand, it is well known from the judgment of Lord Diplock in **American Cyanamid v Ethicon 1975 1AER 504**, the leading case establishing the principles in adjudicating on interim injunction applications, that *'it is no part of the court's function at this stage to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed and mature considerations. These are matters to be dealt with at the trial.'*¹⁶
- 13 On the other hand, the Court must enquire robustly into whether the issue to be tried is 'serious', or else the floodgates may open for anyone at any time, through bare assertion, luminously inconsistent with other documents, to frustrate any Will, for years. On what has been presented, Weekes' position seems hopeless, and just because he wants to have a go should not mean he can keep control of the house the Will says Wade owns.
- 14 More simply, it seems irresistible that Weekes, being able bodied, has only ever been helping to collect the rent. Though he helped William in his final days, with some unpleasant duties, this would most unlikely be reason to suppose he gets the house, in the teeth of the Will, with

¹⁶ See p510e.

nothing in writing, and the common sense position that William would know Wade will need it as disabled. It is quite simply implausible to say William promised him the house in a way which is meaningful so as to give rise to proprietary estoppel, and therefore an exhaustive analysis of its doctrine is not required in this interim injunction application. As to suffering detriment, if any, Weekes has been compensated at all times by control over the rent which he has been able where needed to put to his own use.

15 Going further, if I have to, concerning the adequacy of damages, if Weekes does win at trial, then he can be compensated by the rent lost, which at \$1500ec per month, as pleaded in the fixed date claim form¹⁷, which, assuming the trial comes on within a year would be about \$18000ec, is a sufficiently modest sum for the court to be confident can be met. On the other hand, I assess that Wade cannot be so easily compensated, given the emotional feature, not merely financial feature, that the house is his late father's bequest, so that he should rightly and for peace of mind be in possession of it unless there is a serious issue to be tried, which on Weekes' bare assertions there is not.

16 For the same reason, the balance of convenience is in favour of Wade taking possession of his inheritance, rather than that it remains controlled by a person who is not a beneficiary, to whom it can be returned if Wade loses at trial.

17 I therefore order immediately, by midnight, today 21 December 2017, that Weekes give up the keys to Wade of his late father's home and ceases presence at it, pending trial. I suggest he give them to Counsel Brandt who will then pass them to Counsel Kelsick.

18 Insofar as this decision might be appealed, if I am able I express the expectation, or at least the hope, that the keys are not returned until after any appeal decision adverse to my finding. This is in order to avoid Wade being drawn into protracted litigation, where once the keys are back in the possession of Weekes, any appeal process then gets delayed possibly for years. In the meantime, I order that the trial is expedited with a view to it being heard in March 2018, and on delivering this judgment will discuss directions with counsel.

¹⁷ See fixed date claim form at para d filed on 20.11.17.

19 I further order that the defendant, as the losing party where I judge there is no serious issue raised by what has been filed, shall pay the costs of this application.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

21 December 2017