

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2006-03871**

**BETWEEN**

**IRMA ALFRED**

**THELMA WELCH**

**IVA WELCH**

**CLAIMANTS**

**AND**

**ANTHONY ARMSTRONG**

**WAYNE ARMSTRONG**

**DEFENDANTS**

**BEFORE THE HONOURABLE MR JUSTICE R. BOODOOSINGH**

**APPEARANCES:**

**Mr F. Petersen and Mr F. Wilson for the Claimants**

**Mrs G. Persad for the Defendants**

**REASONS**

1. Irma Alfred, Thelma Welch, Iva Welch and Janet Armstrong are sisters. Iva Welch and Janet have died. Janet Armstrong was married to Anthony Armstrong. Wayne Armstrong is their son. Janet and Anthony were divorced.
  
2. At issue in this case is a property located at #38, Sixth Street, Barataria.
  
3. This property was owned by the parents of the four sisters. The land on which it stood was owned by Aranguéz Estates Limited which went into liquidation.
  
4. Before they were divorced, Janet and Anthony bought the land on which the property stood from Aranguéz Estates.
  
5. It is to be noted that Iva Welch, the third claimant, died before the trial and no one was substituted for her. The second defendant gave no evidence, even though a defence and counterclaim was filed on his behalf.
  
6. The claim is for a declaration that the claimants have an equitable interest in the property, and they are entitled to remain on the land for as long as they wish.

7. They also seek an order defining their interest in the property and an injunction preventing the defendants from selling the property.

8. On the other hand, the defendants seek an order for possession.

9. The contention of the remaining claimants is that the property is family property. Their parents always intended it to remain as family property. Janet, their sister, told them they could remain on the property.

10. It is to be noted that the property consists of a main house and a concrete structure. Thelma Welch lives in the main house and the first claimant lives in the concrete annex which consists of two (2) rooms, kitchen and bath. It is not in dispute that the defendants are the paper title holders to the property. The issue is, can the claimants be removed from it or what if any equitable interest they have in the property.

11. In deciding cases such as this, the court must examine the evidence of the claimants carefully. The claimants bear the burden of proving the claim. They must show:

(1) Some assurance was made to them – some promise or benefit.

(2) That they relied on that promise; and

(3) They acted to their detriment in respect of that promise.

12. Where acts are done in the face of a landowner it is expected that the landowner will take some steps to stop them if he does not wish those acts to happen.

13. The second claimant is now very old. She did not give any evidence of any acts done by her - in the sense of expenditure on the property. Her case is that her sister, Janet, allowed her to live on the property. She also does not give evidence of any detriment she had. The evidence is that she moved back into the property after her marriage broke down and she had lived there since. She is now 86 years old.

14. Her evidence is she was given permission by her father to build a one room dwelling on the property and she spent approximately \$3,000.00. That was her evidence in the witness statement.

15. There is nothing else that supports her case. Her cross examination showed some loss of memory and general unreliability. I was in doubt about whether she was sufficiently cognisant of the events to give the version contained in her witness statement. The statement did not appear to me to be entirely her words.

16. In these circumstances there was insufficient reliable evidence to justify her claim on a balance of probabilities.

17. Irma Alfred gave evidence that Janet had encouraged her to come to live on the property. She says she constructed a 2 room concrete structure and she paid approximately \$40,000.00 to build it. This was about 1989. The structure she built was without toilet and bath and kitchen.

18. She produced receipts in the name of her nephew, Damien Jones, also called Speedy, who was a mason/builder. There was nothing put forward from Damien Jones to support this. No explanation was provided for this omission.

19. There is some support, however, for her contention that Janet had given her permission to build the structure.

20. In a letter from Janet's attorneys dated 5 January 2001 to one Donnalyn Jones it is stated:

"Our client [Janet Armstrong] has always resided and still resides in the said dwelling house but around the year 1998 she allowed her sister Irma Alfred to put up two rooms

on the vacant portion of the said land and sometime after the two rooms were erected she allowed another sister Jean Kerr to add a kitchen, toilet (sic) and bath to the two rooms and to enter into occupation thereof.”

21. Irma Alfred says she left her home and moved into the property on that basis. She says Janet promised her she could live there. The promise was on the basis that she would take care of the mother. Irma says she then allowed Jean to add the toilet and kitchen later and to live there.

22. The first defendant strongly disputes the first claimant’s version. The attorney’s letter does, however, give support to a promise by Janet. The receipts she put forward amount in all to under \$4,000.00. She says they were in Speedy’s name because he did the work for her. She estimates she spent \$40,000.00. But her evidence is just that. She does not set out how she got to that figure - how it was calculated.

23. This case also had a paucity of expert evidence. A valuation report regarding the structure would have been able to assist the court bearing in mind the claimant must prove her claim. None was provided. The court is left only with her estimate, no details for it and with receipts only for approximately \$4,000.00.

24. I do, however, accept the first defendant's evidence that he was mainly responsible for the payments regarding the purchase of the property. The claimants, with no basis, suggest otherwise. However, in cross examination, Irma Alfred accepted that Janet did not work at the time the property was purchased. This suggests that her husband, the first defendant, who was employed in the Trinidad and Tobago Regiment would have likely been the main source of the funds to purchase the property as he contends.

25. In other respects, I found the first claimant's evidence to be unreliable. Her case falls short when it comes to supporting how much she invested in the property.

26. The approach of the courts in **Unity Joint Stock Mutual Banking Association v King (1858) 53 ER 563** and in **Seymour v Ebanks [1980-1983] CILR 252** per Rowe JA was to consider how much was spent on the property (see **G. Kodilinye, Commonwealth Caribbean Property Law**, at p. 115).

27. That approach is appropriate in the case like this where there is another dwelling on the property and division would not be a viable option.

28. The claimant would have expended money on labour as well. Given the lack of evidence of the value of the property, I can do no more than make a conservative award for compensation. An earlier valuation report put the property as valued at \$200,000. A reasonable sum in this respect for her contribution is \$15,000. This takes account that she did not complete the structure. She essentially had built a couple of rooms. The toilet, bath and kitchen was built by someone else.

29. Other than on the issue of the claimant partly building the concrete structure, I accepted the first Defendant's evidence on a balance of probabilities regarding:

- His contribution to the property.
- That he gave the Claimants the opportunity to remain on the property until he needed it - supported by the letter of Ms. Julien, attorney at law, dated 18 August 2003.
- He has been excluded from the property by the claimants.

30. My order is therefore as follows:

- On payment by the Defendants to the first claimant of the sum of \$15,000. 00 the first claimant is to vacate and give up possession of subject premises at 38, Sixth Street, Barataria.
- The second claimant's case has not been proved. It is dismissed. The second claimant must give up possession of the premises.
- The Defendants are entitled to an order for possession.
- The second Claimant is to vacate the premises on or before 31 March 2012.
- The first Claimant is to vacate the premises on or before 31 March 2012 provided the sum of \$15,000.00 is paid to her by the Defendant.

31. Given the order made, the circumstances of the second Claimant and that both the first Claimant and the Defendant each partially succeeded, I would order that each party bear their own costs. There is a stay of execution of 28 days.

Ronnie Boodoosingh

Judge

14 November 2011