

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2007 – 04091

BETWEEN

AMRIT NOWBUT (Substituted for BACHAN NOWBUT, deceased)

CLAIMANT

AND

HEERAMAN NOWBUT

SANDRA LUTCHMAN-NOWBUT

DEFENDANTS

BEFORE THE HONOURABLE MR JUSTICE RONNIE BOODOOSINGH

Appearances:

Mr Lyndon Leu for the Claimant

Mr Jerome Herrera instructed by Mr Brian Camejo for the Defendant

Dated: 19 February 2013

REASONS

1. This is an unfortunate family dispute over the family's home. The original claimant, Bachan Nowbut, and the first defendant are brothers. The second defendant is the first

defendant's wife. The original claimant passed away during the course of these proceedings on 17 October 2009. This was before he was able to give a witness statement. His son, Amrit Nowbut, was substituted to continue this claim on behalf of his estate. Since Amrit is merely substituted to carry on the claim, and gave no evidence, and was, in any event, not born when the critical events took place, I will refer to Bachan Nowbut as the claimant.

2. The parties are from Brazil Village, Sangre Grande. The claimant and his brother, the first defendant, were two of eight children of Sookdeo and Jassodra Nowbut. There were four boys and four girls. The claimant was the eldest male. The first defendant was the youngest male. They all grew up together with the parents in a rural life. Over the years the children moved on, getting married and starting their own families. The parents owned land in the area. Among the lands was the land on which the family home stood. Sookdeo was a daily paid labourer with the Ministry of Works, and, as was common at the time, supplemented his income from farming and growing produce on the land. They lived in a modest home. It is common ground that in 1974 the home was rebuilt to a more permanent structure of bricks, concrete and wood. It was also extended later on.

3. In dispute is who was responsible for the construction of the family home. It is not in dispute that the claimant took a loan for the construction of the home. What is in dispute was the arrangement for the payment of the loan and the circumstances by which that loan arrangement came to be made.

4. The claimant's witnesses say the claimant built the home and paid for it. He expended his money on its construction. Sookdeo Nowbut, the father, a witness for the defendants said the loan was taken on his son's name, the claimant, because he had a better job and could obtain a loan, which he could not. But, that it was he, Sookdeo and his wife, who through his job and income they would get from the sale of produce, that he and his wife were able to pay the loan and build the house.

5. Two events seemed to have triggered the breakdown in the family arrangements. First, the death of Jassodra brought about conflict. Second, Sookdeo's transfer of the property, the family home and the one acre of land to his son, to the first defendant, created more trouble. These events caused some strife. Some of the unmarried siblings at the time were living in the family home. They say they were put out after the mother's death. This led the claimant to take action to try to remove his father from the home. Following these events, came this claim for an equitable interest to be found in the home and the property.

6. It is also not in dispute, and this in itself is an important fact, that the claimant was given by his father, Sookdeo, one acre of land on which he built his own family's home and which they continue to occupy undisturbed after his death.

7. There were rival contentions on both sides. Sisters and brothers lined up on the respective sides based, partly, on who they sided with and who felt aggrieved, after the events of some of the family members being put out and the attempts after that to remove the father from the home.

8. Given the nature of this case, much of the evidence of the claimant's witnesses was based on hearsay. The court's findings depend on what weight can be attached to the respective declarations. Of importance, however, was that Sookdeo Nowbut was able to give a witness statement and to give evidence himself.

9. The critical issue for the court to decide is who paid the loan for the construction of the house and who paid to build it.

10. The claimant's witnesses largely got their information from the claimant. Much of their evidence was based on what the claimant told them. This was the case of Leelawatee, Dieunarine, Tara Motilal, and Taran Persad Nowbut. There was little by way of their own knowledge. Rajmatee Persad gave evidence that she saw the claimant buy materials and bring it for the house. When questioned further, she said she saw him bring it home. What several of the claimant's witnesses noted, however, is that their father worked at the Ministry of Works, he reared animals and he planted the land, which was at least 5 ½ acres. Diernarine

gave evidence that his father had cocoa and coffee to sell. He said, with what he earned, he looked after his family. Leelawatee said he took care of his children with his income. Taran said his father and his eldest brother, the claimant, supported the household. None of these witnesses can give any specific evidence of the extent to which the claimant paid for the construction of the home. It is based more on what they were told by the claimant.

11. Sookdeo Nowbut, himself, gave evidence. He was approximately 85 years when he did so and 83 when he gave his witness statement. There were some answers, which seemed to be inconsistent. These included how much he paid for groceries in 1974 and how much he paid in electricity and water rates. I attributed this to his failing memory at his age. He was adamant, however, that he built the house. He said he was paid fortnightly. He said half went to the loan payment. He would give his wife the other half to run the house. He sent his children to school. He reared animals and made garden. He said all of this contributed to him paying the loan. He said the claimant paid the first instalment on the loan and he paid the balance. He had asked his youngest son, the first defendant, to carry the money in the bank at times to pay the loan. Taramatee Nowbut-Narace and Leelawatee Nowbut-Persad gave evidence in support of the defendants. They said their father paid the loan. He supported his family. Leelawatee Persad-Nowbut gave evidence that the claimant used to help out the family, helping to send the younger children to school.

12. Based on the rival contentions of who paid the loan, on a balance of probabilities, I preferred the evidence of the defendants and their witnesses. I accepted Sookdeo was being a truthful witness, although at times a mistaken one. The mistakes related to the details of how much he paid for all the specific expenses of the family. I found, however, that he supported his wife and children and cared for them. He also gave some of them portions of the land he owned including the claimant, who benefitted from one acre on which he built his home. I found I could attach very little weight to the evidence of what the claimant told these witnesses. There are also no independent records to support his contentions. I also did not find it unusual that applications for relevant approvals were made in the claimant's name. It would not be unusual for the working, better educated, elder son to assist his father with these matters, especially given his father's work and farming commitments.

13. The evidence of the parties is that the claimant moved out of the family home soon after he got married. He built his own house and started his own family. I find it unlikely that he would have expended such substantial sums as claimed to move out of the family home shortly after marriage. He also exercised no control over the family home until the unfortunate events when he tried to put out his father. What likely happened, and which would not be unusual for rural families in their position, is that the eldest son, who benefitted from education, would help out the family once he started to work. It is clear that Sookdeo took care of his family providing for them. This would no doubt include trying to improve the family dwelling and working towards the children going to school and improving themselves. It is

significant that the claimant's witnesses agreed that their father took care of the family with his earnings. They all agreed that he was engaged in farming. It is clear to me that he would have worked hard and invested in improving his family and the family dwelling. Even if it is accepted that the claimant contributed to the home to some extent, in any event, this is not an appropriate case for the grant of an equitable interest. For one, he lived there for some time after. He grew up in the previous house. He was also given an acre of land on which to build his own family home.

14. Given that the first defendant and his wife remained with Sookdeo it is not unusual that he would wish to pass his interest in the home and the property to him.

15. As indicated before, what triggered the claimant was the fallout from the attempts to put two of the adult children out of the home in the conflicts that arose after the mother's death. It appears from all of the evidence that she played a role to keep the parties together as a family, but that as one witness, Dieunarine put it, "as soon as [my] mother died, bacchanal start".

16. There must have also been some disagreement as to who benefitted from the transfer of the 5 1/2 acres of land.

17. In **Hamza Hassanali v Haffiza Mohammed and Sayeed Mohammed**, CV 2007 – 00058, **unreported**, 27 May 2011, **Tiwary-Reddy J.** summarised the principles applicable to cases like these as follows:

“39. Attorneys-at-Law for both sides addressed the principle of proprietary estoppel and cited several authorities including the well known cases of **Inwards v Baker 1965 1AER 446**, **Willmot v Barber 1880 15 Ch D 96** and **Taylor Fashions Ltd. v Liverpool Victoria Trustees Co. Ltd. 1982 QB 133**.

40. In **Inwards v Baker (supra)** a father had encouraged his son to build on land owned by the father. In an action brought by the trustees of the father’s will, the Court of Appeal of England upheld the right of the son to remain on the land. Lord Denning in his famous dicta, stated at page 448:

“It is quite plain from those authorities that, if the owner of land requests another, or indeed allows another to expend money on the land under an expectation created or encouraged by the landlord that he will be able to remain there, that raises an equity in the licensee such as to entitle him to stay. He has a licence coupled with an equity ... So in this case though there is no binding contract to grant any particular interest to the licensee, nevertheless the Court can look at the circumstances and see whether there is an equity arising out of the expenditure of money. All that is necessary is that the licensee should at the request or with the encouragement of the landlord, have spent the money in the expectation of being allowed to stay there. If so, the Court will not allow that expectation to be defeated where it would be inequitable so to do.”

41. In **Willmot v Barber (supra)** Fry J proffered five guidelines to be applied in determining a plea of proprietary estoppel. However, recent cases have doubted the need to apply all five tests in any particular case. The real test is said to be whether upon the facts of the particular case the situation has become such that it would be dishonest or unconscionable for the Plaintiff or the person having the right sought to be enforced, to continue to seek to enforce it.

42. **“The Equity**

*(a) The Rule. In **Taylor Fashions Ltd. v Liverpool Trustee Co. Ltd. (supra)** Oliver J provided the following statement of the elements of the doctrine:*

'If A, under an expectation created or encouraged by B that A shall have a certain interest in land thereafter, on the faith of such expectation and with the knowledge of B and without objection from him, acts to his detriment in connection with such land, a Court of Equity will compel B to give effect to such expectation. This remains the most important and authoritative modern statement of the doctrine although it must now be qualified by the position that the Court must be proportionate to the detriment suffered and that the Court is not always required to satisfy his or her expectation by awarding the promised or expected interest in land.'" **Snell's Equity 31st Edition Para 10-16.**

43. The main thrust of this case is whether or not equitable estoppel is applicable to the Claimant. Lord Denning in **Crabb v Arun District Council [1975] 3 AER** at p. 871 explained the basis of equitable estoppel, (i.e. proprietary estoppel and promissory estoppel) thus:

*"The basis of this proprietary estoppel – as indeed of promissory estoppel – is the interposition of equity. Equity comes in true to form, to mitigate the rigours of strict law. The early cases did not speak of it as 'estoppel'. They spoke of it as 'raising on equity'. If I may expand that, Lord Cairns said in **Hughes v Metropolitan Railway Co.**, '... it is the first principle on which all Courts of Equity proceed ...' that it will prevent a person from insisting on his strict legal rights – whether arising under a contract, or on his title deeds or by statute, when it would be inequitable for him to do so having regard to the dealings which have taken place between the parties."*

44. Both forms operate against a person seeking to enforce his legal rights, where it would be unconscionable to permit him so to do. According to the well established case of **Ramsden v Dyson [1886] LR 1HL 129/140** in order to invoke the doctrine, the litigant is required to prove the existence of four essential ingredients:

- Detriment;
- Expectation or belief;
- Encouragement; and
- The absence of any bar in equity."

18. Based on my findings on the evidence, the issue of a proprietary estoppel with an irrevocable license does not arise. I do not find there was any promise made to the claimant.

No expectation or belief was engendered. To the extent the claimant contributed to the home, that detriment cannot grant him relief here. It is significant that Sookdeo Nowbut was not a party to this claim, but a witness for the defendants.

19. The claim must therefore be dismissed. The claimant must pay the defendant's costs in the sum of \$14,000.

Ronnie Boodoosingh

Judge