

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2012 – 01248**

**BETWEEN**

**RICKY GUERRA**

**CLAIMANT**

**AND**

**LENOR NORAY FRANCIS**

**RICHARDO BAGGOO**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**DEFENDANTS**

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr B. Charles and Ms S. Charles for the Claimant

Mr F. Peterson for the first Defendant

Dated: 15 October 2015

**REASONS (Edited Version of Oral Decision)**

1. The evidence in this case was heard along with the claim of John Millette v Lenor Noray Francis and Others (CV 2012 – 01249) but it remained a separate claim in which the incident happened about the same time as the other claim but the factual circumstances vary somewhat. The claim was pursued only against the first defendant, Lenor Noray Francis.
2. This claim is based on a contractual licence and/or a licence coupled with an interest and/or a proprietary estoppel by licence in respect of a property. There is also a claim for damages for trespass.
3. The claimant was married to the first defendant's daughter in 1992. About one month after the claimant and his wife began living on the premises. They had a one year old son at that time. The claimant says the first defendant gave them the premises as a wedding present and told them the premises was for them to build their house and that her grandson would inherit the premises.
4. The claimant says they took a loan of \$10,000.00 to build a house. He was to pay the loan. He was unable to complete paying and his sister Arlene Guerra De-Coteau took over and paid it off. This loan was used to lay down the foundation of the house.
5. He says his father and family assisted him in building and financing the house.

6. The claimant and his wife got divorced in 2006. By this time they had 3 children, the son and two girls aged 16 and 19. He says they agreed the children would inherit their property. There was no property settlement since his wife had a home acquired from the HDC.
  
7. On 15 March 2012 he says the first defendant's agent removed the roof of the house and transported it away. Other items were destroyed. A valuator valued the damage to the house, television and refrigerator at 65,000.00.
  
8. The first defendant denied any promise to her daughter and the claimant. She said she built the house with the assistance of her husband around 1990 and financed it from her grocery business and proceeds of her LOTTO gaming machine.
  
9. She said the claimant is a licensee.
  
10. On behalf of the claimant he gave evidence and called witnesses. The claimant spoke of how they had lived in a little room. He stated how the land was cleared and how the trenches were dug for the foundation and by whom. He spoke of the assistance given by his father and family. He said after the separation with his wife the first defendant offered him \$60,000.00 to leave the house which he refused. He spoke of items destroyed when the roof was removed.

11. He also called his sister Arlene De Coteau. She supported his version of the construction of the house. She spoke of the loan and how it was arranged and her role in paying it off.
  
12. The claimant's father Venice Guerra also gave evidence. He spoke of a discussion between himself and the first defendant. The first defendant called him and said she wanted to give his son a piece of land to build. He said he was happy. He worked at National Quarries as a supervisor. He was able to purchase materials at a discount. He spent about \$6,000.00 in materials and he also worked on the house.
  
13. This witness was cross examined. I found this witness to be impressive. He spoke of the discussion and was able to give a clear account of the discussion. At one point he categorically pointed out that if counsel was in doubt about the arrangement he could ask the first defendant who was sitting at the back of the courtroom.
  
14. The defendant's evidence as noted before was that she and her husband built the house. What was interesting is that although her husband is still available he did not come forward to give evidence in support of her. Had he been involved in the construction of the house one may have expected him to come forward to advance his own interest. His absence can be seen as significant.

15. On the other hand the claimant's former wife did not come forward either. She now lives abroad. It is more understandable that she may be unwilling to come forward given that it is her mother and former husband involved in the case.
  
16. She also said she used money from the lotto game to help with the house. It was put to her that in 1990 lotto was not in existence here and she answered she was not sure. This undermined her assertion that the funding for the house construction came from her.
  
17. I preferred the evidence of the claimant and his witnesses. They were more detailed. It seems far more plausible that the first defendant having given the land that they would have been involved in the construction of the house, it being a joint venture by the family to help out a young couple. It is to be noted that the claimant's wife was then about 19 years old.
  
18. It also seems plausible that the promise would have been made with the condition that grandson will inherit the premises so it would be kept in the family.
  
19. To establish his case the claimant must show there was a promise; reliance on the promise in expending money into the property and acted to his detriment having relied on the promise.

20. The court has to look at reliance and detriment in the round considering all the evidence.

What happened here was that based on the promise of land in contemplation of the marriage between the claimant and the first defendant's daughter a promise was made of the land on which they could build and in the expectation that the grandson will inherit it. The claimant and his family then acted based on this expending money and labour in building a house.

21. There was clearly agreement with the arrangement. For the first defendant things turned sour with the end of the marriage. It was then that she sought to go back on the promise.

22. The equity of the claimant in this case will be satisfied with giving a life interest to him with the remainder interest to his son as this was a condition of the gift.

23. Accordingly I declare that the claimant is entitled to a life interest in the subject property including the building as described in the claim for and statement of case with the remainder interest to his son born of the marriage between himself and Hilary Noray, the daughter of the first defendant.

24. An injunction is issued to restrain the first defendant, her servants or agents from interfering with the claimant's occupation and use of the subject lands and building.

25. In respect of the trespass to the house, in my view, the claimant needed to do more to establish his actual damage. The valuation report in my view is not sufficiently detailed as to how the figures were arrived at. Further how did the claimant mitigate his loss. However the removal of the roof must have caused some significant detriment to the claimant to have to restore the property. Taking account of the evidence of the damage done but without sufficient evidence of the full extent of the losses occasioned by the trespass I will order nominal damages to be paid by the first defendant to the claimant in the sum of \$30,000.00.

26. The first defendant must pay the claimant his costs in the sum of \$14,000.00.

27. The first defendant to pay the costs of the injunction proceedings assessed in the sum of \$14,000.00. The counterclaim is dismissed with no order as to costs.

28. The claims against the second and third defendants are dismissed. No order as to costs.

Ronnie Boodoosingh  
Judge