

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. 2011-02007

ANTHONY WHITE

Claimant

AND

DONNA VALENTINE

Defendant

BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES

Appearances:

For the Claimant: Mr. Prem Persad Maraj

For the Defendant: Mr. Haresh Ramnath

Date of Delivery: 21st January 2021

REASONS

On the 31st March 2017, I delivered an Oral Judgment in which I made the following Orders:

- (a) Judgment for the Claimant against the Defendant
- (b) Possession of the premises is hereby granted to the Claimant
- (c) The Defendant to pay to the Claimant costs in the sum of fourteen thousand (\$14, 000.00) on the Claim
- (d) The Defendant's Counter Claim is dismissed and the Defendant to pay to the Claimant costs in the sum of \$14,000.00 on the Counter Claim.

My Reasons are set forth below.

BACKGROUND

[1] By Deed dated 22nd December, 2005 and registered as No.2006/0025393, the Claimant became the fee simple owner of property situate at 14 Bobb Street, La Romaine, San Fernando (the said lands). He pleaded that the Defendant and her family had been in occupation of the lands previously through the permission of the Claimant's predecessor in title. However, since the Claimant's purchase of the said property the Defendant has been and continues to be in unlawful occupation of the said lands, her licence to occupy same having been terminated by the Claimant. He therefore sought orders for possession of the said lands, for trespass and mesne profits for use and occupation of the lands against the said Claimant.

[2] He also pleaded that the Defendant was in occupation because she had been involved in a relationship with the brother of his predecessor

in title (the deceased). He asserted that that relationship had been an unstable one, involving several periods of separation, including one occasion when the Claimant's predecessor in title purchased tickets in order to bring the Defendant back from Guyana, where she had gone after breaking up with the deceased. The Claimant asserted that subsequent to the Defendant's return, the deceased fell ill and died on the 22nd February 1999, whereupon Lavona Gabriel, who was the sister of the deceased to whom the latter had transferred the property in 1996, became owner. Lavona then offered the Defendant a licence to occupy the said lands until December 1999. Lavona prepared a written agreement granting the Defendant a licence to occupy the said lands for a period of six months until December 1999 but the Defendant refused to sign the same. Lavona then instructed the Claimant to demolish the house occupied by the Defendant and her children on the said lands, which he did on or around February 2000.

[3] It is the Claimant's contention that the Defendant vacated the premises for a few months in 2000, but returned and took possession of a garage which was on the premises. She blocked it up and has lived there with her family to present.

[4] He also pleaded that the Defendant had alternative accommodation where she normally resides but she has kept some of her belongings at the said lands.

[5] The Defendant filed a Defence and Counter Claim in which she denied that the relationship between herself and the deceased was unstable; she instead insisted that their relationship was a stable and committed one. She also denied having ever left the deceased or that there were several periods of separation. The Defendant averred that the parties had planned to move to Guyana where the Defendant intended to open a garage because he could no longer find work in Trinidad.

- [6] The Defendant claimed that sometime after she and her children had left for Guyana, she was informed that the deceased was ill whereupon she returned to Trinidad. She admitted that, after the death of the deceased, his sister – Lavona Gabriel, demanded that she vacate the premises and offered her a licence to occupy until December of 1999, but she refused to sign the licence agreement. She pleaded that Lavona had only indicated to her that she owned the premises but had not shown her a deed to substantiate that claim.
- [7] She averred that Lavona demolished the house in which she and her children were living on or about February 2000, destroying her family's personal effects. She denied vacating the home in 2000 and she said that when the house was demolished, the neighbours got together and assisted her in rebuilding and she constructed a concrete structure comprising two bedrooms, a kitchen, living room and outdoor toilet and bath.
- [8] Significantly, the Defendant pleaded that Lavona encouraged her to expend monies to rebuild a home on the said lands by sending gifts and money to her and her nephews from time to time. She also pleaded that the Claimant's father was fully aware of the construction of the new home, as was the Claimant, who was informed by said father. She outlined that she spent one hundred and fifty thousand dollars (\$150,000.00) to rebuild the house.
- [9] The Defendant further denied that the Claimant and his predecessor in title (the deceased's sister Lavona) were in possession or entitled to possession of the property, since she and the estate of the deceased were living on the property since 1989, with the consent of the deceased.
- [10] She went on to state that at all material times she believed that she was building on lands belonging to her and her children and not

infringing on the rights of Lavona and Donovan Harry; relying and acting upon the faith of this belief, she then expended one hundred and fifty thousand dollars (\$150,000.00) to build a new home.

[11] The Defendant contended that the Claimant, therefore, purchased the lands from Lavona and Donovan Harry subject to her interest in it, since at all material times he had notice of her presence on the land as well as her interest in the estate of the deceased since 2000, when she built the new home.

[12] She also pleaded that the Claimant refrained from exercising his right to the property since he bought it in 2005 and this action was brought six years later in 2011. She therefore counter claimed that she is entitled to an equitable interest in the property by reason of the representation of the Claimant's predecessor in title; she also sought an order for the re-conveyance of the property to her and the deceased's estate and injunctive relief.

[13] The Claimant filed a Reply and Defence to Counter Claim in which he pleaded that the Defendant was aware of the transfer of the property by the deceased to Lavona and that Lavona consented to the Defendant remaining on the property until the death of the deceased. He denied any acts of encouragement or acquiescence relative to the Defendant's expenditure on the premises and he denied that she expended one hundred and fifty thousand dollars (\$150,000.00) to rebuild a house on the said lands.

THE EVIDENCE

[14] The Claimant and Defendant each filed two witness statements on their behalf. The Claimant's witness statement followed the statement of case closely. It should be pointed out that the Claimant purchased

the home sometime in 2005; the evidence relative to the circumstances under which Lavona became owner of the said property and whether the Defendant had acquired an equitable interest therein would come primarily from the Defendant, and Lavona.

[15] Lavona testified that she bought the subject property from her brother at and for the price of fifty thousand dollars (\$50,000.00) in 1996. She stated that he had been in financial difficulties in that he had taken a private mortgage on the land, which he was unable to pay and that she paid that sum for him. She also indicated that he had had medical bills and that she also paid those medical bills. She asserted that she had agreed to allow the deceased and his common law wife (the Defendant) to occupy the property after her purchase since he had nowhere else to go and he was gravely ill. She also indicated that at the time she had had no immediate use for the property. Lavona also testified that she became aware that the parties had begun a common law relationship some eighteen months before the sale of the property, from her yearly visits and from information that she had received from her brother. Lavona testified further that she was also aware that the relationship was unstable. She related that, on one occasion when the Defendant and the children returned to Guyana, she bought the tickets in order to have them travel to Trinidad. Lavona relied on this incident in support of her contention that the relationship had been marked by several periods of separation.

[16] Lavona also testified that upon her brother's death in February 1999, she called upon the Defendant to vacate the premises. She prepared a written Licence to be signed by the Defendant allowing her to remain until December 1999, but the Defendant refused to sign.

[17] Thereafter Lavona caused a letter to be sent to the Defendant in February 2000, calling upon the latter to vacate the said lands; when the Defendant refused to vacate, Lavona then enlisted the assistance

of the Claimant's father, Oswald White, to remove the Defendant and he did so by demolishing the house on the said lands which the Defendant occupied. She too testified that the Defendant left the premises but returned and began to occupy same once more. She insisted that she had not agreed to the Defendant's occupation of the premises and she decided to sell it to the Claimant in 2005 at the price of one hundred and twenty five thousand dollars (\$125,000.00). Lavona also testified that she informed the Defendant of the sale. This witness asserted that the Defendant continued in occupation of the said lands after the demolition of the house, which she previously occupied with the deceased, by blocking off a garage on the said lands without her permission.

[18] In cross examination, Lavona admitted that she knew the relationship between the deceased and the Defendant had actually started in 1989 and not 1995 as she had pleaded. She also disclosed that she paid close to fifteen thousand dollars (\$15,000.00) for dialysis for the deceased. She denied that her brother ever told her that the property was to be left for his children and she also denied that the deceased and the Defendant had intended to go to Guyana to start a business. Lavona testified, to the contrary that the relationship had ended with the Defendant's departure to Guyana. She denied that the reason why the deceased had not accompanied the Defendant to Guyana was by reason of his ill health.

[19] The Defendant filed a witness statement in which she testified that she had been in common law relationship with the deceased since 1989. She also disclosed that the deceased did not tell her that he had transferred the said lands to his sister, Lavona.

[20] She asserted, further, that in 1996 they were not in financial difficulty requiring a large sum of money; the deceased had not mentioned that he had received fifty thousand dollars (\$50,000.00) nor did she see

any sign of the receipt of this sum. She could not understand why he would transfer the property, given that he had two young children and that was his only valuable asset. Ms. Valentine denied that she and the deceased had ever separated during their relationship.

[21] Ms. Valentine also denied leaving the premises after its demolition in February 2000 and insisted that she had rebuilt the house the same day. She related that she had rebuilt over a period of six months to a year the house that was previously there. Significantly, the Defendant testified that this house was rebuilt with Lavona's knowledge. She denied having alternative accommodation.

[22] In cross examination, the Defendant admitted that Lavona gave financial assistance to the deceased and his family by giving them gifts and money. She however denied that he had debts or he was in financial difficulty. Ms. Valentine did admit that he had taken out a mortgage of \$9,000.00 but asserted that she had assisted in the repayment of \$5,000.00 of that \$9,000.00. When pointed out by Counsel, she admitted that this was not stated in her witness statement. She was not aware that Lavona had paid his dialysis bills but she knew that at one time it had cost \$15,000.00. She admitted that Lavona told her that she was now the owner of the property and had demanded that she vacate but she said that Lavona did not show her a deed in proof of that fact.

[23] The younger son of the Defendant gave evidence but he would have been a child at the time that these events played out. The only aspect of his evidence that I will touch on here is that he said that he remembered when he was five years old, his father had told him that they should take care of the home because it would belong to them. He was six years old when the property was demolished.

ANALYSIS AND CONCLUSION

[24] The issue that fell to be determined was whether the Defendant had acquired an equitable interest in the said property by reason of promises or assurances given by the Claimant's predecessor in title as sister of the deceased (Lavona).

[25] The doctrine of proprietary estoppel was described in the leading case of **Gillett v Holt** as "*equity intervening to prevent unconscionable conduct.*"¹ It is concerned with the positive acquisition of rights and interests the land of another person.²

[26] For a promissory estoppel to arise there must be a clear and unambiguous promise intended to affect the legal relations between the parties and which is reasonably expected to be relied on by the person to whom it is made. In **Snells Equity 31st Edition 2005**³, the learned author states:

"Where by his words or conduct one party to a transaction freely makes to the other a clear and unequivocal promise or assurance which is intended to affect legal relations between them (whether contractual or otherwise) or was reasonably understood by the other party to have that effect, and, before it is withdrawn, the other party acts upon it, altering his or her position so that it would be inequitable to permit the first party to withdraw the promise, the party making the promise or assurance will not be permitted to act inconsistently with it."

[27] The principles of proprietary estoppel are neatly summarised in the recent Privy Council decision of **Henry v Henry**⁴. There must be

¹ Gillett v Holt a p. 304j

² Ibid. at p 308(k)

³ Paragraph 10-08

⁴ [2010] 75 WIR

representation, reliance and detriment. The element of each will vary with the circumstances of the case and the Court must take into account all of the circumstances and adopt a broad approach to these questions with the overriding test of unconscionability of conduct. Reliance and detriment are often intertwined. In **Henry v Henry**, Sir Jonathan Parker noted at paragraph 55:

“[55] As to the relationship between reliance and detriment in the context of the doctrine of proprietary estoppel, just as the inquiry as to reliance falls to be made in the context of the nature and quality of the particular assurances which are said to form the basis of the estoppel, so the inquiry as to detriment falls to be made in the context of the nature and quality of the particular conduct or course of conduct adopted by the Claimant in reliance on those assurances. Thus, notwithstanding that reliance and detriment may, in the abstract, be regarded as different concepts, in applying the principles of proprietary estoppel they are often intertwined...in the instant case, that is certainly so.”

[28] In determining the proprietary estoppel issue, the Defendant would have to establish that a promise or assurance was made to her such as to create legal relations, i.e. that if she remained on the said lands, or if she forebore from doing something, or expended monies in rebuilding the house, she would be given an interest in the property. Alternatively, the Defendant had to show that the Claimant and/or his predecessor in title sat back and allowed the Claimant to erect a two bedroom concrete house without objection and it would now be unconscionable for them to deprive her of an equitable interest in the said lands. The Defendant had to establish that she relied upon that promise and she relied upon it to her detriment. I note that the Defendant pleaded that it was her view that the property belonged to the deceased and thereafter to her and her children, and that when she proceeded to rebuild the premises, it was with that

understanding.⁵ This plea is clearly inconsistent with the entire concept or plea of proprietary estoppel which required that the Defendant establish that she was relying on the promise of another. This assertion, which undermined the Defendant's case was repeated in her witness statement.

[29] The Defendant also pleaded⁶ that Lavona Gabriel had encouraged her expenditure on the reconstruction of her house when she sent gifts and money to the Defendant and her nephews from time to time. The mere fact that the sister of the deceased sent gifts and money for her nephews, in my view, cannot form the basis of a reliance upon a promise that the Defendant would obtain an interest in the property. In fact Lavona, when cross examined, admitted that she sent money and gifts for her nephews; she explained, quite reasonably in my view that the Defendant's children were her nephews and the children of her brother. She was happy to assist when he was alive and even after he died. The Defendant's case is that she believed the property was hers at all times; if she believed this fact then she could not have relied upon any assurances given by Lavona.

[30] In the circumstances, as outlined above, I hold that no promise or assurance was given the Defendant by either the Claimant or Lavona that she would acquire an interest in the property. I also hold that the Defendant failed to establish that the Claimant or his predecessor in title encouraged and/or permitted her to expend monies on the said property without asserting their rights and that it would be unconscionable to deprive her of an equitable interest in the said lands. The facts upon which the Defendant relies as evidence of such promise or representation, cannot establish a proprietary or promissory estoppel.

⁵ Paragraph 14 of the Defense

⁶ Paragraph 9b of the Defense

[31] Having read the pleadings and having taken into account all the evidence in this case I conclude the following:

- (a) in 1996 the deceased sold the property to Lavona at and for the price of fifty thousand dollars (\$50,000)
- (b) upon the death of the deceased on 22nd February 1999 Lavona informed the Defendant that she was owner of the premises and offered the Defendant a licence to occupy said premises for a period of six months
- (c) the Defendant refused to sign the license agreement aforesaid whereupon Lavona demanded that she leave the premises by February 2000
- (d) when the Defendant failed to vacate in February Lavona caused the house to be demolished
- (e) some time later the defendant blocked off the garage area and occupied same
- (f) the Claimant purchased the property in 2005 and took steps to move the Defendant by instituting this claim.

[32] The Defendant asserted that she spent one hundred and fifty thousand dollars (\$150,000.00) to rebuild her house on the premises and annexed some receipts in support of this claim. The Defendant adduced no evidence from the contractor or workmen who effected works on the said house and produced very few receipts for material purchased in the construction of the said house. She had contended that the house was rebuilt over a one year period in 2000, however many of the bills submitted were dated 2000 and later. I also noted that those bills could not establish that a two bedroom house had been built. It would seem to me that the bills that were put before this Court do not substantiate the claim.

[33] I also concluded on the basis of the evidence before me that the Defendant and the deceased experienced financial difficulty and were

often cash strapped during the relationship necessitating financial assistance from his sister Lavona. I accepted Lavona's evidence that she paid his medical and other bills especially after he could not work. I also accepted her evidence that she paid him fifty thousand dollars (\$50,000.00) for the purchase of the said premises. The Defendant adduced no evidence before this court as to her source of income or how she was able to raise one hundred and fifty thousand dollars (\$150,000.00) in order to rebuild her house over the period of six months to one year. Although she stated that she was a geriatric nurse she did not disclose any proof of her earnings and savings. While the Defendant did say that she raised monies by selling food, again no evidence in proof of the profits from this venture was adduced before this court. In the circumstances, I did not accept that she either had the money to construct a two bedroom concrete house or indeed had constructed such a house.

[34] In the circumstances, I therefore Ordered:

- (a) Judgment for the Claimant against the Defendant
- (b) Possession of the premises is hereby granted to the Claimant
- (c) The Defendant to pay to the Claimant costs in the sum of fourteen thousand dollars (\$14,000.00) on the Claim
- (d) The Defendant's Counter Claim is dismissed and the Defendant to pay to the Claimant costs in the sum of fourteen thousand dollars (\$14,000.00) on the Counter Claim.

Joan Charles

Judge