

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2014-03776

MARK CASTILLO

Claimant

AND

NICKY COUTOU

Defendant

BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES

Appearances:

For the Claimant: Mr. Abdel Ashraph

For the Defendant: Mr. Shivan Sieunarine

Date of Delivery: 23rd June 2017

JUDGEMENT

THE CLAIM

[1] The Claimant claimed against the Defendant:

- a) a declaration that he is the registered owner of and entitled to the use, enjoyment, occupation and possession of a parcel of land comprising two acres three roods and five perches described in the second parcel in Certificate of Title Volume 2461 Folio 179 (the said lands);
- b) damages for trespass to a portion of the said lands measuring 100 feet by 50 feet located on the south eastern corner of the said lands and bounded on the north by the other part of the Claimant's lands, on the south by Lot 43 and on the east by lands now or formally of Huggins Trust Limited and on the west by other parts of the Claimant's lands (the subject land);
- c) possession of the Subject Land;
- d) a mandatory order compelling the Defendant whether by himself, his servants/agents within 7 days of an Order being made break and remove any structure or thing whatsoever from the subject land;
- e) an injunction restraining the Defendant, his servants/agents from entering/remaining on the subject Land.

[2] The Claimant pleaded that he is the registered proprietor of the said lands by virtue of Certificate of Title Volume 2461 Folio 179. He exhibited a survey plan of the said land annexed to the Memorandum of Transfer.

[3] The Claimant also pleaded that in 2008 the Defendant wrongfully entered the subject lands and took possession of same; he committed a trespass thereby and continues to trespass upon the subject lands. The Claimant averred that despite his protests the Defendant built a dwelling house on the subject lands.

[4] A Pre Action Protocol Letter dated 14th August 2014 was sent to the Defendant demanding that he cease his trespass and deliver up possession of the subject land; however, he ignored said letter and demand.

THE DEFENCE

[5] The Defendant pleaded that he could neither deny nor confirm the Claimant's title and pleaded that the lands that he occupies is not part of the subject land.

[6] The Defendant denied that he wrongfully entered the Claimant's lands in 2008 and averred:

- a) the Defendant's father David Coutou resided on the subject land with the 'express consent and/or permission of the Claimant' as caretaker;
- b) David built a board and concrete house on the subject lands and resided therein while performing his duties as caretaker. David also cleaned the said lands and prevented other persons from trespassing on same. His family, comprising the Defendant's stepmother and siblings lived there with him.
- c) the Defendant, who was born on the subject lands in 1986, assisted his father in maintaining the subject lands and planting crops in his father's garden since the age of ten. The Claimant was normally resident in the United States and stayed in the Defendant's father's house when vacationing in Trinidad;
- d) that in or around 1996 the Claimant agreed with the Defendant's father to give to the Defendant the subject lands measuring 100 feet by 50 feet located at LP 671 Johnson Road, Erin. The Claimant told the Defendant that this gift of one lot to the Defendant was for

the purpose of the Defendant building a house eventually for his family and himself;

- e) The Defendant denied that he constructed a house on the subject lot despite the Claimant's protests. He pleaded that since the Claimant's promises above, he had maintained one lot of the subject lands and has treated the said lot as his own by maintaining it and planting crops thereon until he earned enough money to commence construction of a dwelling house on it.

[7] The Defendant pleaded and relied on a written agreement between the Claimant and David Coutou, in which the parties reduced into writing the terms of the agreement relative to the said land. The agreement provided that in consideration of caretaker duties performed by David, should 'something happen' to the Claimant, the former was entitled to survey the land which he occupied and excise three lots for himself. The job of caretaker was agreed to be voluntarily undertaken by the Defendant and provision for the termination of the agreement upon one month's notice was included.

[8] He pleaded that acting on the Claimant's promise and/or assurance, in or around 2006, he commenced construction of a 25 feet by 30 feet one storey concrete dwelling house and a 25 feet by 35 feet garage attached thereto. He spent some \$140,000.00 in labour costs and \$93,232 for construction material. He hired one Anil Ramlogan to build the house and assisted him on a part-time basis. He also planted crops on an acre of the subject land behind the house from which he earned his income.

[9] The Defendant pleaded that the Claimant acquiesced in his occupation of the lot and one acre parcel of land.

[10] He denied threatening the Claimant or trespassing on his land.

COUNTERCLAIM

[11] By way of counterclaim, the Defendant sought:

- a) a declaration that he acquired an equitable interest coupled with an/or an irrevocable licence to remain upon and occupy that parcel of land situate at LP 671 Johnson Trace, Rancho Quemado, Palo Seco, Erin comprising one lot (50 feet by 100 feet) and one acre of the subject lands described in Certificate of Title Volume 2461 Folio 179 by virtue of the doctrine of proprietary estoppel.
- b) on Order directing the Claimant to transfer to the Defendant the above described parcels of land within 28 days from the date of the Court's Order and in default the Assistant Registrar be empowered to execute same.

DEFENCE TO COUNTERCLAIM

[12] The Claimant admitted that the Defendant's father was caretaker of the said lands and erected a dwelling house thereon in which he lived.

[13] He pleaded that the Defendant's father was a close family friend and they shared a close relationship; further, that the written agreement contained all the terms of the caretaker's arrangements between them, including the provision for termination of the arrangement by one month's notice by the Claimant. The Claimant's letter dated 26th August 2014 to David Coutou constituted a termination of the caretaker's agreement, therefore neither the Defendant nor his father is entitled to possession of the lands on which David built his house and garage.

[14] He denied that any promise/assurance was made to the Defendant that he would give him a lot of land. It was also denied that pursuant to that said promise the Claimant built a house and garage on the subject lands.

The Claimant averred that the Defendant's father moved out of the house that he had built on the subject lands while he was caretaker and the Defendant now lives in it.

[15] The Claimant asserted that the Defendant unlawfully entered the subject lands in 2008, and constructed a house thereon which he has now tenanted to other persons. He averred that the expenditure incurred by the Defendant in constructing a house on the subject lands did not vest any title/interest in the subject lands in the Defendant.

[16] The Claimant asserted further, that if the Claimant cultivated one acre of land, this amounted to a further trespass. He had not been on the subject lands since the Defendant commenced construction of a house thereon because of threats issued to him by the Defendant.

[17] As noted by the Claimant in his submissions¹ the evidence of both sides on the issue is diametrically opposed and it is a question of fact as to whether the Defendant has acquired an equitable interest in the subject lands. In the circumstances, I am guided by the Privy Council decision of **Reid v Charles & Another**² with respect to my approach to determining this case.

¹ Claimant's Submissions filed on 7th February 2017 para 4

² PC App No 36 of 1987 pg 6 "...where the wrong impression can be gained by the most experienced of judges if he relies solely on the demeanour of witnesses, it is important for him to check that impression against contemporary documents, where they exist, against the pleaded case and against the inherent probability or improbability of the rival contentions, in the light of the particular facts and matters which are common ground or unchallenged, or disputed only as an afterthought or otherwise in a very unsatisfactory manner."

EVIDENCE OF THE CLAIMANT

[18] The Claimant gave evidence on his own behalf and called no other witnesses.

Witness Statement of Mark Castillo

[19] This witness testified that he knew the Defendant's father, David, since the latter was a child. In 1979 he cleared a house spot on the subject lands and gave David permission to occupy the said spot and David built his house thereon.

[20] The Claimant stated that before he migrated to the United States in 1984, he and David agreed that the latter would remain on the subject lands and prevent squatters from entering thereon. When the Claimant returned in 1998, David was still in occupation of the house spot but had built a shed at the front of the house which he used as a mechanic garage. The Claimant did not object to this addition.

[21] The Claimant testified further, that in 2005, and at the insistence of David, who wanted to secure his occupation in the event of the Claimant's death, he entered into a written agreement with him relating to his occupation of the subject lands. The agreement provided, inter alia, that if the Claimant died, he, David, could survey the land where he lived and take three lots for himself (the said agreement).

[22] The said agreement was terminated in accordance with clause 6 thereof, by letter dated the 26th August 2014 from the Claimant's attorney to Mr. David Coutou. The latter responded by letter dated the 11th September 2014 in which he stated that:

- a) In addition to the said agreement, the Claimant promised him that he (the Claimant), will execute a deed in his favour for three lots of

land that he was in occupation of since 1979 in consideration for the 'work that he did for him'.

- b) David constructed and reconfigured his house on the subject lands.
- c) The Claimant has since reneged on his promise.

[23] The Claimant related that he returned to Trinidad for a visit in 2007. There was no construction on the subject lands. However, when he returned in 2010 he observed a building being erected about 150 feet east of where the David had built his house. There was a foundation and approximately six rows of blocks on the site. Upon inquiry, he discovered that the Defendant had built the foundation. He spoke to the Defendant and demanded that he stop the construction that he had started. The Claimant also observed that the Defendant's father no longer occupied his house on the subject lands.

[24] When the Claimant next returned to Trinidad and visited the subject lands, he discovered that the Defendant's house was being completed. The roof was up and he had a supply of electricity. Mr. Castillo spoke to the Defendant reminding him that he had advised him (Nicky) to build on his father's three lots and not on that spot. The Defendant replied that he was not moving and that David would 'deal with' the Claimant.

[25] The Claimant complained to the Trinidad and Tobago Electricity Commission (T&TEC) about the Defendant being given an electricity supply to lands belonging to the Claimant. He was asked by an employee of the Commission to bring his title deed and he did so. He also wrote to T&TEC by letter dated 7th October 2013 formally complaining about the Defendant's connection without his consent. By letter dated 8th October 2013, T&TEC replied indicating that they had two different deeds relative to the same parcel of land and in the circumstances will maintain the status quo.

[26] The Claimant, upon his return to Trinidad in 2014, caused his attorney at law to write to the Defendant on the 26th August 2014 demanding that he vacate the subject lands.

[27] The Claimant denied that he ever promised the Defendant, his father or any other ten year old, that he would give to the Defendant a parcel of land. Further, he stated that until 2007, whenever he came to Trinidad he stayed at David Coutou's house which he shared with his common law wife Marlene Smith and their three children. He stated that the Defendant was not one of these children and he never met him at David's house.

Cross Examination of Mark Castillo

[28] In answer to counsel, Mr. Castillo revealed that after he migrated in 1984, the next occasion that he returned to Trinidad was in 1998.

[29] He related that the relationship between himself and the Defendant's father became troubled in 2005 when David asked him to put in writing his promise to him about the land that he occupied. Both parties agreed to put into writing an agreement to give David three lots should something happen to the Claimant. The Defendant was not mentioned in the agreement. The Claimant stated that he did not know the Defendant. He insisted that only two boys and a girl lived with David on the subject land during the times that he stayed in David's house on the subject lands.

[30] He asserted that T&TEC informed him that there were two deeds for his land. He then went to his lawyers.

He agreed that in 2008 there were crops behind the Defendant's house but asserted that there were no crops there from 2013 onwards.

[31] He categorically denied that he encouraged the Defendant to build his own house or plant crops behind that house. He also denied that he made an agreement with the Defendant's father for the Defendant to get one lot of the subject lands. He further denied that he had a verbal arrangement with the Defendant for him to get one lot of the subject land.

EVIDENCE OF THE DEFENDANT

[32] David Coutou, the Defendant's father, was a witness for the Defendant and they both filed witness statements in the matter.

Witness Statement of David Coutou

[33] This witness admitted that the Claimant was a very good friend. He testified that, with the Claimant's consent, he moved onto the subject lands in 1977 and built a board and concrete house in which he lived with his wife and six children including the Defendant. The Claimant promised him that if he acted as caretaker of the subject lands, that he, together with his three sons would receive land to build their respective houses.

[34] It was this witness' evidence that he acted as caretaker and planted short crops on the land and maintained it, assisted by his sons, including the Defendant from a very young age. On one occasion, while on the said lands, the Claimant pointed to a lot and told the Defendant in David's presence, that he would give it to him when he was ready to start a family. At the time, the Defendant was 10 years old. The Claimant also promises two lots to his other two sons but 'this never materialised'.

- [35] On the occasions when the Claimant returned to Trinidad he stayed at this witness' house.
- [36] David Coutou asserted that the Defendant commenced construction of his house in 2006 on the lot promised him by the Claimant. The Claimant, on the occasion that he stayed on David's house, 'would also oversee and check up on the construction of the Defendant's home'³. The Defendant, while living in his house, planted short crops from which he earned his livelihood. It was also his evidence that the Defendant began cultivation of the one acre parcel in 2006 and the Claimant was well aware of the said cultivation since he checked the plants during his visits with the Defendant.
- [37] Mr. Coutou also stated that it was only since the institution of these proceedings that he left his home as a result of threats issued by the Claimant. He alleged that the dispute over the Defendant's occupation of the subject lands arose out of a dispute between the parties over a truck.

Cross examination of David Coutou

- [38] This witness also stated that he could not remember when the Claimant promised to give his three sons, ages 10, 6 and 4 one lot of land each.
- [39] He agreed that in 2005 he insisted that the Claimant put in writing the arrangement that he had with him. They went to a lawyer and they both gave him instructions with respect to their arrangements. The lawyer put the arrangements in writing and they signed. He stated that he wanted the arrangement in writing in case something happened to the Claimant.
- [40] The Defendant's father stated that the Claimant gave him three lots of land but his home was not on these lots. He asserted that the

³ Witness Statement of David Coutou filed on 3rd March 20116 para 8

Defendant's house is on the three lots of land. He refused to answer the question as to whether he occupied three lots of land.

[41] He too stated that the Claimant made accusations against the Defendant with respect to a truck.

Witness Statement of Nicky Coutou

[42] This witness testified that in 1996, when he was 10 years old, the Claimant 'made an arrangements with my father to give me one lot of the subject lands located at LP 671 Johnson Road, Erin.⁴ The Claimant told him that he was giving him one lot of land, 50 feet by 100 feet so he could eventually build a house for himself and his family. The Claimant pointed out the exact lot to him in his father's presence. The Claimant also promised his father that he would give to his two brothers' two lots of land for themselves.

[43] The Defendant asserted that based on the representations and promises of the Defendant, he maintained one lot of the subject lands and treated it as his own and planted crops on it to earn enough money to build his house. He began construction of his house in 2006 on the lot that the Claimant had promised to give him. In 2006 he also planted one acre of the Claimant's land with crops to finance the construction of his house. He obtained the Claimant's consent to plant crops and trees on the one acre parcel⁵.

[44] It was testified by this witness that two years ago, (2014), the Claimant told him to move into his house and to commence fencing the area. He also graded another parcel of land adjacent to his house in order to install a cesspit tank.

⁴Witness Statement of Nicky Coutou para 8

⁵ Witness Statement of Nicky Coutou para 15

- [45] One month before the claim was filed, the Claimant came to his home and argued with him, saying that he did not give him permission to build or plant crops on the subject land. The Defendant stated that the Claimant also alleged that his father David was a thief, referring to a transaction with a truck.
- [46] Since the claim was filed he moved into father's house and rented his own to earn an income; he also stated that that he did so out of fear while this case is ongoing. His crops have also been vandalized/destroyed.

Cross examination of Nicky Coutou

- [47] This witness testified that he did not have permission from the Claimant to have an electricity connection to the house that he built on the subject land. He also stated that he obtained electricity in 2014. He confessed that he got a T&TEC connection by fraudulent means – by falsely representing to T&TEC that his friend's deed was the title deed for the subject land on which he had built his house. He testified that he informed T&TEC that his house was on land belonging to Mr. Johnson's brother.
- [48] The Defendant asserted that it was only one month before the Claimant instituted this claim, (September 2014) that the latter informed him that he had not given him permission to build the house. He insisted that prior to this, the Claimant encouraged him to build and gave him permission to do so. Contradicting this evidence, the Defendant also stated that when he sought the Claimant's permission in 2013 to get electricity connection to the completed house, he refused to give it.
- [49] When counsel put to the Defendant that the Claimant was not in Trinidad in 1996 but had returned in 1998, the Defendant replied that

he could not recall the date when the Claimant pointed out the land that was promised him, just the fact that he had done so. He had earlier stated that the Claimant pointed out the lot he was giving to him when he (the Defendant) was ten years old. Strangely, he could not say how old he was in 1996 although he knew that he was born in 1986.

[50] The Defendant also testified that he was not present when the Claimant promised to give a lot of land to his brother ages 6 and 4 and himself age 10 but he was present when the Claimant pointed out his lot.

[51] He admitted in cross examination that in 2010 the blocks started going up on his house – it could have been more than 6 rows of blocks. The Defendant claimed that he did not know that his father and the Claimant had reduced their arrangement into writing. He denied that the Claimant ever told him to build on his father's three lots when he saw his (the Defendant's) foundation for his house.

[52] This witness stated that he never had any transaction with a truck with the Claimant but the Claimant accused him about a truck – he did not accuse of him of stealing the truck however. The Defendant asserted that the Claimant wanted him off the land because of an issue with a truck which he raised with him in 2014 when he installed electricity in his house.

[53] Mr. Coutou also stated that the Claimant put into the written agreement the promise to give his two younger brothers a lot each. He later admitted that this was not included in the agreement in writing. He also acknowledged that the written agreement represents the arrangement between the Claimant and his father.

ANALYSIS

[54] The Defendant relied on the defence of proprietary estoppel in answer to the Claimant's claim for possession of the subject lands. The sole issue that falls for my determination is whether the Defendant has acquired an interest in the subject lands based on this principle. The Defendant had to establish on a balance of probability that he had acquired an interest in the subject land based on the doctrine of proprietary estoppel.

[55] This doctrine operates in the following circumstance:

“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.”

[56] Acquiescence may also form the basis of a claim in proprietary estoppel, and the Defendant in this case also relies on the acquiescence of the Claimant as a basis for his claim that he is entitled to an equitable interest in the subject lands⁶.

[57] If the Defendant is able to establish these elements of the doctrine on a balance of probability then I must make an appropriate Order to avoid an unconscionable result⁷.

[58] An analysis of the evidence follows.

⁶ Snell's Principles of Equity 31st Ed paras 10-16

⁷ **Nester Patricia Ralph & Others v Malyn Bernard** CV 131 of 2011 (CA)

The representation/assurance

[59] The Defendant pleaded that in 1996, when he was ten years old, the Claimant made an arrangement with the Defendant's father to give to the Defendant one lot of the subject lands.

[60] I should state at the outset that having heard and seen the parties, including the Defendant's father give evidence on this issue, I did not believe the Defendant and his witness. I accepted the Claimant's evidence that he made no such promise to the then 10 year old Defendant. It is incredible, in my view, that the claimant would make such a promise to a ten year old. Significantly, the Claimant and the Defendant's father, at the latter's insistence put into writing their arrangement/agreement with respect to the subject lands. The Claimant's alleged 'arrangement' with the Defendant's father to give to the Claimant one lot of subject lands was not included in this written agreement, despite the fact that both David and the Claimant instructed the lawyer about the contents of the written agreement. I also noted that David Coutou had no complaints about the terms of the written agreement; it is reasonable to conclude therefore, that it represented the entirety of the arrangement/agreement between himself and the Claimant.

[61] It is the Defendant's case that in 1996 the Claimant told the Defendant that he was giving him one lot (approximately 50 feet by 100 feet) so that the Defendant could eventually build a house for himself and his family. The Claimant pointed out this lot for the 10 year old Defendant and his father. The Claimant denied this and stated that he was not in Trinidad in 1996. In cross examination, interestingly, the Defendant and his father were suddenly not sure whether the Claimant made the promise to them in 1996.

This departure from the Defendant's pleading on this issue is significant since it goes to the heart of a material aspect of his case – the fact of the representation and when it was made. Both the Defendant and his father had testified quite clearly in their witness statements that the promise/representation had been made by the Claimant when the Defendant was ten years old in 1996. The Defendant also testified that he was born in 1986. Their sudden inability to recall the year when this promise was made served to undermine their credibility on a material aspect of the Defendant's case. In the circumstances, I did not accept their evidence that the Claimant made such a promise/representation to the Defendant in 1996 or at all. The Defendant and his father's evidence on this point is rendered all the more incredible when I take into account the Claimant's unchallenged evidence that he was not in Trinidad in 1996 but returned in 1998 for the first time after he had migrated in 1984.

[62] Also of note is the fact that the Defendant pleaded that the land he occupies is not part of the subject land belonging to the Claimant. If the Defendant truly believed this, then he could not have relied on the doctrine of proprietary estoppel since the Claimant could not promise to give to the Defendant what did not belong to him; moreover, there could no question of the Claimant's acquiesce in his building a house and cultivating crops on the subject land. The Defendant appeared to move away from this plea during the course of the trial without any explanation as to why he had pleaded this issue. In any event, the plea contradicts the basis upon which the Defendant advanced his case and served to weaken the Defendant's case by rendering it unreliable.

Reliance/Detriment

- [63] The Defendant claimed that he began construction of his house in 2006 in reliance upon the Claimant's promise/assurance of a gift of one lot of the subject land for this purpose. At the same time he planted one acre of land with food crops which he sold to earn a living. It was his evidence that the Claimant knew about his construction, encouraged him from 2006 until 2013 when it was completed and he obtained an electricity supply⁸. The Claimant also told him in 2014 to move into his house and encouraged his cultivation of crops on the subject lands.
- [64] The Claimant testified that he was in Trinidad in 2005 but did not return in 2006 or 2007. He observed the house going up in 2010. In cross examination he admitted that he saw a foundation in 2008 but insisted that he told the Defendant to stop and move back to his father's lot.
- [65] I disbelieved the Defendant's evidence on this point also. The Claimant testified that the relationship between himself and the Defendant's father started to deteriorate in 2005 and he stopped going to the house in 2008. He did, however, observe crops planted behind the house that the Defendant had started. In cross examination the Defendant admitted that in 2010 approximately six rows of blocks and the foundation were in place.
- [66] The Claimant testified that when he visited Trinidad in 2013 he observed that the Defendant had completed the house and had an electrical supply. Inquiry at T&TEC revealed that the Defendant had submitted a false title deed for the subject land.
- [67] The Defendant admitted to submitting another's person's deed to T&TEC and fraudulently representing to the utility company that this was the title deed for the Claimant's land. This act of dishonesty served to destroy

⁸ Witness Statement of Nicky Coutou para 15

the credibility of the Defendant and his case. He claimed that the Claimant actively encouraged him in 2013 and 2014 to build and move into his house, but this was not the case since sometime before 2013 he had to obtain an electricity supply by dishonest means for the house that he claimed the Claimant gave him permission to build. The Claimant's correspondence with T&TEC in 2013 is independent objective evidence that supports the Claimant's case that he never gave permission to the Defendant to enter his land or build on it and indeed told him to stop work on the house at a time when only the foundation and six blocks had been laid.

- [68] The Defendant clearly trespassed onto one acre of the Claimant's land and planted crops thereon. He is neither a credible nor a reliable witness and I did not accept his evidence that the Claimant gave him permission to encroach on his one acre parcel or that the Claimant knowingly stood by and allowed him to do so.
- [69] In his witness statement and in cross examination the Defendant asserted that it was only one month before the claim was instituted that the Claimant told him that he had not given him permission to build. This was clearly contradicted by the Claimant's letters to T&TEC, his letters to the Defendant and his father David dated 26th August 2014.
- [70] I came to the conclusion that the Defendant has not established on a balance of probability that he acquired an equitable interest in the subject land on the basis of a proprietary estoppel. I am of the view that he engaged in a land grab well knowing that the Claimant had not give him permission to occupy the subject land nor approved his occupation of the subject lands and one acre parcel.

CONCLUSION

[71] In the circumstances I do not consider it unconscionable that the Claimant recover possession of his land.

[72] I therefore Order:

- a. Possession of the subject land be granted the Claimant;
- b. The Defendant's counterclaim is dismissed;
- c. The Defendant to pay the Claimant's costs on the counterclaim in the sum of \$14,000.00;
- d. The Defendant to pay the Claimant's costs on the claim in the sum of \$14,000.00;
- e. The Order for possession is suspended for three months from the date of the Order.

Joan Charles

Judge