

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2017 - 01239

Between

Champa Divi Bharath

Claimant

And

Seeram Bharath

Defendant

Before Her Honour Madam Justice Eleanor Donaldson-Honeywell

Appearances:

Ms. Shontel Hinds Attorney-at-Law for the Claimant

Mr. Rajeer Rickhi holding for Ms. Desire Sankar Attorney-at-Law for the Defendant

Oral Ruling

The Application

1. In this matter the Claimant seeks to recover exclusive possession of her home from her adult son. During case management the issues were identified and certain weaknesses in the Defence were discussed with the parties. Parties herein were encouraged to utilise alternative dispute resolution methods with a view to possibly reconciling the family relationship. However, all efforts thus far have borne no results. On the Court's suggestion the Claimant filed the application for summary judgment being determined in this Ruling.

The Law

2. **Part 15.2 of the CPR** provides that:

“The court may give summary judgment on the whole or part of a claim or on a particular issue if it considers that-

(a) On an application by the Claimant, the defendant has no realistic prospect of success on his defence to the claim, part of the claim or issue;”

3. In **Swain v Hillman and another - [2001] 1 All ER 91** Lord Woolf MR at p.94 stated:

“Under CPR 24.2, the court has the power to dispose summarily of claims and defences which have 'no real prospect' of being successful. The word 'real' directs the court to the need to see whether there is a realistic as opposed to a fanciful prospect of success. It is important that judges in appropriate cases should make use of the power contained in Pt 24. In doing so, they will give effect to the overriding objectives contained in Pt 1. It saves expense, achieves expedition, avoids the court's resources being used up on cases where that serves no purpose and is in the interests of justice. If a claimant has a case which is bound to fail, it is in his interests to know as soon as possible that that is the position. Likewise, if a claim is bound to succeed, a claimant should know that as soon as possible. (p 92 j, p 95 a b, and p 96 a c.)”

4. Further regarding conditions for proceeding, Judge LJ stated as follows in **Swain v Hillman at p.96** - *“If there is a real prospect of success, the discretion to give summary judgment does not arise merely because the court concludes that success is improbable. If that were the court's conclusion, then it is provided with a different discretion, which is that the case should proceed but subject to appropriate conditions imposed by the court.”*

5. In **Western United Credit Union Co-operative Society Ltd v Corrine Ammon C.A.CIV.103/2006** Kangaloo J.A used the UK authorities in interpreting the local CPR Part 15. Kangaloo J.A at p.2 stated as follows:

i. *“The court must consider whether the defendant has a "realistic" as opposed*

- to a "fanciful" prospect of success: Swain v. Hillman [2001] 2 All E.R. 91:*
- ii. *A "realistic" defence is one that carries some degree of conviction. This means a defence that is more than merely arguable: ED & F Man Liquid Products v. Patel [2003] E.W.C.A. Civ 472 at [8]:*
 - iii. *In reaching its conclusion the court must not conduct a "mini-trial": Swain v. Hillman:*
 - iv. *This does not mean that the court must take at face value and without analysis everything that a defendant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: ED & F Man Liquid Products v. Patel at [10]:*
 - v. *However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: Royal Brompton Hospital NHS Trust v. Hammond (No. 5) [2001] E.W.C.A. Civ 550;" [Emphasis added]*

6. **Halsbury's**¹ on Civil Procedure (Vol. 12 (2015)) at [549] *"Where it appears to the court possible that a claim or a defence may succeed but improbable that it will do so, the court, under its general case management powers, may make a conditional order that the claimant or the defendant pay a sum of money into court or take a specified step in relation to his claim or defence and providing that, if he fails to do so, the claim will be dismissed or his statement of case be struck out."*

7. The General Case Management power to make conditional orders under the CPR in Trinidad and Tobago is at Part 26.1(2) and (3).

¹ Halsbury's Laws of England/Civil Procedure (Volume 11 (2015), paras 1-503; Volume 12 (2015), paras 504-1218); Volume 12A (2015), paras 1219-1775)/14. Disposal of Proceedings without Trial/(4) Summary Judgment/549. Power to decide a claim or issue without a trial.

Consideration of the pleadings and evidence reasonably expected to be available at trial

8. This is a claim for possession by a mother against her middle aged son who has lived with her all his life. He also runs a business on her premises and his wife lives with him there. The Claimant seeks to have him removed and pleads the following in support:
 - a) He has subjected her to domestic violence and she has had to seek protection at the Magistrates Court
 - b) He has never paid rent
 - c) He keeps the premises, particularly in running his car service business, in a deplorable condition.
9. The Defendant failed to attend Court on the first hearing date and Judgement was awarded against him.
10. He quickly applied to set the Judgment aside. The Judgment was set aside on his prompt application and his very good explanation for non-attendance on the hearing date i.e. being caught in a traffic road-block. Additionally, he presented an Affidavit that assured the Court that he had a Defence with a realistic prospect of success. The Defendant's Affidavit in support of his application to set aside the Judgment raised the following points that he would have to plead in a Defence and eventually prove:
 - a) That he was promised by his mother the Claimant that the property would be his after her death;
 - b) That he invested resources to improve the property, paid certain utility bills and maintained the premises without objection from the Claimant; and
 - c) That he would have nowhere to live or run his business if dispossessed.
11. At the time when I set aside the Judgment I was of the view that there was a realistic prospect that the Defendant could make out a Defence of Proprietary Estoppel. As correctly submitted by Counsel for the Defendant citing Lord Walker in **Thorner v Major [2009] 1 WLR 776** in the opening paragraph [29] of his judgment the doctrine is based on three main elements:
 - (a) *a representation or assurance made to the claimant*
 - (b) *reliance on it by the claimant*
 - (c) *detriment to the claimant in consequence of his (reasonable) reliance.*

12. However, as explained by Counsel for the Claimant citing **CV 2010–03575 Harry Fulchan v Naresh Fulchan** it is not every action of a Defendant that can be accepted by the Court as the type of detrimental reliance that will allow for the Defendant to be treated as having an equitable interest. Rajkumar J explained in that case that that;

“The Defendant must have acted in the belief either that he already owned sufficient interest in the property to justify the expenditure or that he would obtain such interest. Snell’s (ibid) Para. 10-18 See” Snell’s Principles of Equity 31st Ed.

*He must have incurred expenditure or otherwise acted to her detriment. See” Snell’s Principles of Equity 31st Ed. ibid. The law as set out in Snell’s Equity (ibid) is clear. It will recognize such an interest in circumstances where a party asserting such interest was led to act to his detriment, and it would be inequitable not to recognize such an interest. **It appears that the misconception has developed that any purported contribution – no matter how tenuous, trivial or remote, can give rise to an equitable interest. In recent times this court has had to consider, for example, a. payment of land and building taxes, b. painting, c. purchase of chattels – for example furniture and air-conditioning units, d. cleaning of the yard and surroundings, and the assertions that these either singly or in combination with other matters, gave rise to an equitable interest which had to be recognized by the holder of legal title. Such payments may be ancillary to other contributions but would rarely suffice on their own to create an equitable interest in real property.***

Further such an interest can be given effect in many ways, and the benefit that such party has already enjoyed from the subject property can be taken into account, in assessing alleged detriment, to determine whether it is necessary to recognize and declare any further interest.” [Emphasis Added]

13. Since succeeding on the application to set aside the initial Judgment, the Defendant has now filed a Defence fleshing out the proprietary estoppel contention. There has also been the intervention of an agreed valuation on the premises which must be taken into account when looking at what evidence could possibly be brought in support of the Defence.

14. That Valuation quantified the alleged improvements done by the Defendant which the Claimant denies he was responsible for in full. The quantum is so minimal that it could not support an equitable interest in ownership or possession of the whole home by way of proprietary estoppel. At most, if there is such an interest, it could be met in another way e.g. by repayment.
15. Moreover, the Claimant's case is that the Defendant has paid no rent for use of the house for residence and business purposes. This is not denied in the Defence. Any maintenance he did must have been for his own rent free use and enjoyment of the property as well. He does not share any business profits with the Claimant. Any interest he has by way of equity from improvements will have to be set off against the benefits of rent free accommodation and business that he and his wife received for many years.
16. The submission of Counsel for the Claimant does not underscore the minimal value of the contribution as much as she focusses on the nature of the alleged promise. She points out that the defendant says it is evidenced by a Will. However a will is ambulatory and the bequest is not just for the Defendant but his brother as well. As such she says the Defendant cannot prove the first element of proprietary estoppel- an unequivocal assurance by relying on a Will alone.
17. Furthermore she points out that the Defendant owns other property – 2 acres of land in Arouca - since 2011. Hence, it is not true that he will suffer lack of residence or a place for business if ordered to leave her home.
18. The Defendant informed the court that he has now moved from the Claimant's property. However, according to the Claimant he has left his belongings in place.

Decision

19. In my view it is highly improbable that the Defendant can establish his defence of an equitable interest such that proprietary estoppel prevents the Claimant from dispossessing him. I cannot go so far as to say there is no real prospect at all of success.

I will not grant summary judgment. However, based on the improbability of success of this Defence I will make a conditional order as follows:

- a) The Defendant must pay prescribed costs of \$14,000.00 into court on or before June 28, 2018.
- b) Parties are to file and exchange witness statements on June 28, 2018.
- c) Parties are to agree that Valuator, Bertrand Sookoo is the sole expert witness herein and that the reports dated October 4, 2017 are entered into evidence without the valuator being required to attend the trial.
- d) In default of agreement on expert evidence the court hereby appoints Bertrand Sookoo as an expert witness and the Defendant is to bear the costs for same. In the event of a failure by the Defendant to meet conditions 1 (a) or (b) Judgment will be entered forthwith upon the application of the Claimant.
- e) The Defendant is to point out alleged improvements he made to the property at a site visit to be held on a date to be determined.
- f) The Pre Trial Review is set for July 27, 2018.
- g) An expedited trial date is set for September 27, 2018.
- h) No order as to costs will be made for this Summary Judgement Application.

Delivered on 11th day of June 2018

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Eleanor Joye Donaldson-Honeywell
Judge.