

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Port of Spain

Claim No. CV2017-04196

Between

Marlene Sammy Riobe

First Claimant

Claude Riobe

Second Claimant

Jason Riobe

Third Claimant

Jessica Riobe

Fourth Claimant

And

Lisa Lalgie

First Defendant

Michael Lalgie

Second Defendant

Before the Honourable Madam Justice Donaldson-Honeywell

Delivered on 17 April, 2019

Appearances

Mr. Fulton Wilson, Attorney-at-Law for the Claimants

Mr. Lemuel Murphy, Attorney-at-Law for the Defendants

Oral Judgement

A. Background

1. This is a Claim for possession, damages for trespass and mesne profits at \$8000 per month in relation to a property at No. 49 Church Street, St James (“the subject property”) which

was purchased by the Claimants on August 24, 2006. The initial purchase agreement indicated the Defendants as purchasers however the eventual August 24, 2006 Deed indicated the Claimants as owners of the property.

2. The Claimants reside in the USA. Their case is that the Defendants (niece and nephew-in-law of the First Claimant) resided in a two or three bedroom apartment in the upstairs portion of the property under a Tenancy Agreement made in September 2006 for a rent of \$1,500 per month. An unsigned version of this agreement was attached to the Claimants' Statement of Case. The Claimants claim that after the expiry of the Tenancy in 2011 the Defendants held over as month to month tenants but did not pay rent.
3. Then, by letter dated 15th May 2017, the Claimants Attorney wrote to the Defendants stating that they had to vacate the property. This was refused in writing on the basis that the First Defendant had been told by the First Claimant that she could reside there for as long as she required or wished.
4. The instant claim was filed in November 2017, two months after receipt of the written refusal. The Claim seeks mesne profits at a rate of \$8000.00 per month from the date of the eviction letter. The said rental rate is based on documents attached to the pleadings indicating that other tenants at the property pay no less than \$8000.00
5. The Defendants' defence is that the First Named Defendant has obtained an interest in the subject property by way of contract and/or an equity in the property through promissory estoppel and that the Second Named Defendant is entitled as her husband to stay there with her. The Defendants' defence is based upon the reliance on an alleged oral contract with and/or promise by the First Named Claimant.
6. The alleged contract/promise was that the First Named Defendant would utilise a gift of US\$25,000 given to her by the First Named Claimant towards fees/costs associated with the purchase of a property which the First Named Defendant would be allowed to reside

in for as long as she wished or required. The said costs included alleged payment of stamp duty. The First Defendant believed she was promised that the property would be her home i.e. owned by her.

7. The Defendants deny that there was ever any tenancy agreement and argue that the unsigned document annexed to the Statement of Case was never agreed to or executed.
8. The Defendants claim that under an oral agreement, the First Named Defendant acted as agent for the First Named Claimant in finding the subject property, retaining an Attorney, negotiating the price down by \$400,000, managing the maintenance, paying utility bills and managing the collection of rent from the rented portion of the property.
9. The First Claimant's evidence confirms all of the above, save that she has no knowledge of the First Defendant securing a discount on the purchase price. No first hand evidence was led from the vendor as to the initial asking price for the property or whether he gave a discount based on the First Defendants efforts. There was no documentary evidence of the alleged discount.
10. As it relates to her claim in equity the First Named Defendant says that she resigned from her job at a spa because the First Named Claimant offered to convert a part of the subject property to a spa where she would operate as a sole trader. This spa was never established. The Claimants deny that any such promise was made. The Defendants also claim that they oversaw and/or paid for and/or performed various repairs and maintenance of the subject premises on their own.
11. The Defendants, in light of the foregoing, have counterclaimed against the Claimants for Specific Performance of the alleged Contract allowing continued occupation of the property for as long as the First Defendant continues to act as agent. In the alternative damages for breach of the contract is counterclaimed. The Defendants also seek a declaration that they are entitled in equity to exclusive possession of the upstairs portion

of the property. In the alternative a counterclaim is made for a lien on the property in an amount deemed fit by the Court plus damages, interest and costs.

12. The Claimants in refuting the Defendants' contention that they are entitled to reside in the property for life have pleaded in Reply and given oral evidence that the property was not bought for the First Named Defendant but for themselves. It was intended as an investment property which would be rented. The investment in the property was to be done through the First Defendant because she was trusted. She therefore acted for them in the purchase.
13. The Claimants say that the First Named Defendant and her family were allowed to stay in the upstairs apartment under certain conditions, including that they were to vacate when the Claimants were ready for the subject property. There was never any intention to give the First Defendant any more than the US\$25,000 gift. It was given out of concern for the First Defendant's financial situation. The source was from the proceeds of a settlement one of the Claimants received for injuries on a Carnival ride. The Claimants say they never took back that gift from her to pay costs on the purchase of the property.
14. They state that the Defendants had begun to pay rent in the amount of \$1,500 but stopped after a few months. The Claimants do not however annex any documentation to prove these payments. The Claimants deny that permission was ever granted to open a spa on the property. It is agreed by the Claimants however, that there was an arrangement for the First Named Defendant to act as agent for the First Named Claimant in relation to the downstairs rented rooms of the subject property. This was agreed to because the Claimants reside abroad and there was a good relationship of trust with the First Defendant. Initially the tenants paid rent into an account so there was no need for the First Defendant to collect it. Thereafter only one of the initial tenants remained and continued with this payment process. The First Defendant as agent sourced other tenants and collected the rent from them.

15. The Claimants deny that the US\$25,000 given to the First Defendant was used to pay stamp duty or legal fees on the property. I find as a fact that the Defendant has not proven she used the US dollar gift pay stamp duty. The onus is on the Defendants to prove this alleged payment. The First Defendant's oral testimony in this regard is unsupported by either documentary proof or corroborating evidence from the Second Defendant. It is denied by the First Claimant who said it made no sense to ask back for the gift. On a balance of probabilities, I can make no finding that the First Defendant was either asked to pay or paid the Stamp Duty using the US dollar gift or at all.

16. The Defendants have pleaded that any expenses relating to maintenance of the property were not paid by the First Defendant from her own money. The expenses were paid by the First Claimant through a joint account with the First Defendant in which rent paid by tenants of the lower rooms of the property were deposited. The First Claimant has not attached any bank records for this account, however the First Defendant admits that it existed.

B. Analysis

17. It is clear that the legal title to the subject property indisputably lies with the Claimants as evidenced by the deed attached to the Statement of Case. The Agreement for sale annexed to the Defendants' defence names the Defendants as purchasers but it is evident that the Deed was executed in the names of the Claimants.

18. The parties are ad idem as to the law governing the alleged oral tenancy and agency contracts. There is also no difference in their positions as to the law governing the equitable interest claimed by the First Defendant. Counsel for the Claimant cited the case of **Mills v Roberts C.A.Civ.T.243/2012** on the relevant principles while Counsel for the Claimant cited the cases of **Moze v Kalloo CV2016-01031** and **Fulchan v Fulchan CV2010-03575**. In addition, counsel for the Defendants cited **Laskar v Laskar 2008 EWCA Civ 347** in support of his submission that the obtaining of a discount can be taken into account

for finding an equitable interest in favour of his clients. However, based on my finding that no discount was obtained the said case was not applied in this decision.

19. The burden lies on the Defendants to prove their entitlement to an equitable interest in the property since the first limb of their claim to the property rests on proprietary/promissory estoppel. 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.”

20. Both types of estoppel operate against persons seeking to enforce their legal rights, as the Claimants in this case are, where it would be unconscionable to permit them to do so. In **Ramsden v Dyson [1886] LR 1 HL 129/140** it was held that in order to invoke the doctrine, the litigant is required to prove the existence of four essential ingredients:

- i. Detriment;
- ii. Expectation or belief;
- iii. Encouragement; and
- iv. The absence of any bar in equity

21. In **Taylor Fashions Ltd. v Liverpool Trustee Co. Ltd. 1982 QB 133** 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.”

22. Lord Scott, in **Thorner v Major [2009] 3 All ER 945** at 951 (j) – 952(a) further commented on the nature of the doctrine as follows:

“Lord Walker...identified three main elements requisite for a claim based on proprietary estoppel as, first, a representation made or assurance given to the claimant; second, reliance by the claimant on the representation or assurance; and third, some detriment incurred by the claimant as a consequence of that reliance. These elements would, I think always be necessary but might, in a particular case, not be sufficient. Thus, for example, the representation or assurance would need to have been sufficiently clear and unequivocal; the reliance by the claimant would need to have been reasonable in all the circumstances; and the detriment would need to have been sufficiently substantial to justify the intervention of equity.”

23. In the present case, even if the Defendants have succeeded in proving an encouraged expectation that the Claimants would allow them to live in the upstairs portion of the subject property as long as they needed or wished, they must also prove that they acted to their detriment in reliance on that encouragement.

24. With respect to encouragement or promise by the Claimants, the Defendants rely on verbal utterances purportedly made by the First Named Claimant that she would purchase the property for the First Named Defendant, that the price was nothing and that

the First Named Defendant could live there as long as she needed or wished. In my view the fact that the sale agreement was in the names of the Defendants as purchasers gives some credence to the Defendants belief that in the initial stages of the arrangements between the parties the First Defendant's aunt was buying the property for her to live in it as the owner.

25. On the other hand the eventual preparation of a Deed with the Claimants as owners should have disabused the Defendants of the belief the Claimants intended them to be the owners. Further, although the Defendants deny the existence of a tenancy arrangement and the execution of the tenancy agreement attached to the Claimants' Statement of Case, this document represents evidence of the Claimants' intentions regarding occupation by the Defendants of the subject property. There is however insufficient evidence from the Claimants establishing that the lease agreement was delivered to the Defendants for signing.
26. The rental price set out in that agreement of \$1,500, per month by admission of the First Named Defendant, would have been a concession as the general rental price of the upstairs portion would have been much higher in the range of at least \$5000.00. The First Named Defendant denies that she ever saw this agreement but states under cross-examination that they moved into the property before any documents were drawn up.
27. It is clear that the First Named Defendant accepted that the property did not belong to her as she agreed to act as agent for the First Named Claimant in relation to the rented downstairs portion of the property. Additionally, the First Defendant admits that despite the alleged promise she did realise that unlike the Sale Agreement which she and her husband signed the eventual conveyance was completed with the four Claimants as owners. Thus from the time of the transfer of the property it was clear that the Claimants were the owners.

28. Under cross-examination, the First Named Defendant admits that the First Named Claimant “changed her tune” when she failed to express the promised gift of a home by putting the Defendants names on the Deed. Further evidence of this changing of tune was that the First Named Defendant would perform the role of agent for her. The First Named Defendant also admits that she never took any formal steps to have her name included on the Deed for the subject property.
29. The Second Named Defendant stated under cross-examination that he is aware that the property was not purchased for the First Named Defendant or himself and that the property was purchased to give the First Named Defendant a place to live.
30. It appears from the actions of all parties concerned that although there may have been initial indications given by the First Named Claimant that the property was to be the First Named Defendant’s home, this simply meant that she would be allowed to reside there.
31. There were also many actions by the First Claimant that made clear that she never intended that the First Defendant would own the home. These included the drawing up of a tenancy agreement, the requirement that the First Named Defendant assume the role of agent to maintain the property and to collect rents, the input of the First Claimant in selecting the property to be purchased and her execution of the Deed of Conveyance in the Claimants’ names. These actions would, in my view, make it clear to the Defendants that the First Named Claimant never intended the First Named Defendant to own the property or to occupy it at her will.
32. Therefore, I do not find that the Defendants have proven on a balance of probabilities that there was a promise and/or encouragement from the First Named Claimant based on which the First Defendant could form the belief that she was either the owner of the property or entitled to occupy it as long as she wished. Certainly, any assurances that were alleged to have been given by the First Named Claimant that the First Named Defendant was to be the owner of the property must necessarily have been understood

to be withdrawn by their exclusion from being named as owners in the deed and her assignment to the role of agent.

33. However, even if the statements of the First Named Claimant were sufficient to be deemed a promise to the Defendants for purposes of proving proprietary estoppel, a further step is required in proving the Claim. It must be established that the Defendants acted to their detriment in reliance on the said promise.

34. The Defendants state that they did repairs to the downstairs portion of the property using money from the First Named Claimant's account but that they used their own money to fix "anything that needed fixing" in the upstairs portion. No receipts were produced in relation to these expenses. Thus this alleged detriment is not proven on a balance of probabilities.

35. The Defendants admit that the First Named Claimant purchased the property and they lived rent-free. The First Named Defendant also admits that the First Named Claimant sent down a fridge, purchased electrical stove, upright freezer, washer, dryer, king-size bed, stainless-steel refrigerator, gas stove, two bunk beds. She states that she used some but not all of these things. Some items were provided for an apartment downstairs for use of the Claimants on visits to Trinidad. She denies using that apartment but admits it was under her control. The Second Named Defendant, however, states that these items were purchased by the First Named Claimant for the Defendants use as a gift.

36. In her pleadings and witness statement, the First Named Defendant states that she resigned her job at the spa on the expectation that a spa would be set up at the subject property for her. This setting up of a spa would have been at a further cost to the Claimants. The Claimants would also lose the opportunity to earn rent from whatever part of the property they set up a spa for the First Defendant. It is difficult to see how not having a spa set up for her free of charge is the type of loss to the First Defendant based on which she can claim equitable relief.

37. In any event, the First Defendant admits under cross-examination that she resigned before the spa was set up, [and before moving into the property]. This suggests that she resigned for reasons unrelated to the alleged promise and/ or she willingly gave up this source of income for some other reason, without securing an alternate source of income. Further, the First Defendant admitted under cross-examination that she continued to operate her trade as a nail technician from the upstairs portion of the subject property. Accordingly, there would have been no loss of income. This aspect of detriment has therefore not been established on a balance of probabilities.

38. The First Named Defendant admits that the Claimants were extremely generous to her. She considers herself blessed. The Second Named Defendant agreed that he was able to save much more money than he would have expected in the time that he was in occupation of the subject property because he paid no rent. He further admitted that if he had to leave he had other options.

39. When asked what she lost the First Named Defendant stated that she went through depression and that she lost the opportunity to own her own home. She said that she wanted to use the gift given by the First Named Defendant of US\$25,000 to pay down on a home she located on another street in St. James. That home was available at a lower price which she claimed she and her husband could afford. She said she never wanted to purchase the subject property as it was too big but only gave up on the other location when she was promised that the property purchased by the First Claimant would be her home.

40. It is clear that the Claimant is experiencing disappointment having been asked to leave the home. This is so because of statements she says were made by the First Named Claimant at the time of purchase that this was to be her home.

41. However, the First Named Claimant denies that the gift of US\$25000 was used towards legal fees and stamp duties. There have been no documents produced by the Defendants in relation to this alleged expense. Furthermore, the Second Named Defendant states that he did not even know about the US\$25,000 gift. The burden of proving this expenditure is on the Defendants and they have failed to do so. In any event, the cost of purchasing another home would have had to have been borne by the Defendants and cannot therefore be viewed as a loss.

42. The Defendants have not proven any loss occasioned by their reliance on the expectation that they would live in the premises for as long as they wished that could justify the intervention of equity. It is admitted, in fact, that they benefited from gifts of furniture and appliances given by the First Named Claimant and from living rent-free for many years. It is also clear that the First Named Claimant paid for all repairs to the downstairs portion of the property. The Defendants failed to prove expenditure for any repairs effected to the upstairs portion. The Defendants therefore have failed to prove their defence and counterclaim for an equitable interest in the subject property based upon promissory/proprietary estoppel.

43. In relation to the Defendants' contractual claim, it is unclear from the pleadings and the evidence exactly what the terms of said oral contract would have been. The Defendants claim there was a binding agreement by the parties for the Defendants to reside in the subject property. The consideration, as set out in the counterclaim, was that the First Named Defendant would act as agent for the First Named Claimant in relation to the rented portions of the lower floor of the property. Essentially therefore this was a contract whereby the First Defendant would provide the service of being an agent in exchange for the payment of being permitted to reside in the property.

44. The termination process for this alleged oral agreement is not defined in the pleadings. It is clear however that the First Defendant was of the view that this was a contractual arrangement in perpetuity. The First Claimant's evidence on the other hand is that even

the duties involved in the First Defendant's functioning as agent fluctuated. For example the First Defendant played a role in sourcing some but not all tenants. She collected rent from some while others paid rent directly to the First Claimant's account.

45. The First Claimant's evidence is that both she and her husband are now ill and as such they need to sell the property. Clearly if the property is sold there will be no need for the First Defendant's assistance as an agent to manage the rental of the property.

Thus it ought to have been envisaged at the outset that the Defendants could be asked to leave the home if the First Named Defendant would no longer be performing the services as agent which formed the basis of the contract.

46. The only issue that may arise is as to adequate notice to the Defendants that this role as agent would be terminated. No evidence has been led as to the monetary value of the services, however if the floor occupied by the Defendants could have been rented for as at least \$5000 then that amount less the \$1500 rent referred to in the unsigned agreement may be a value that can be put to the service i.e. \$3,500 per month.

47. The Defendants have not succeeded in proving that there was a contractual entitlement that they remain in the home as long as they wish. Further as to the role of agent they have not proven that there was an enforceable contract between the parties, incapable of termination at the option of either party. On termination the most the First Defendant may have been entitled to is notice. However, the agreement being oral there is no indication as to the number of months' notice that should be given on termination.

48. On the other hand, the First Named Defendant has proven that her efforts in acting as agent for the First Named Claimant secured the purchase of the subject property. She claims this was achieved at a reduced price, equivalent to a \$400,000 discount. However, under cross examination the First Claimant disclaimed any knowledge of the discount. I find it is not proven that a discount was obtained.

49. The First Named Claimant under cross-examination admits that the purchase price is what is stated on the receipt i.e. \$3,100,000. The First Named Defendant therefore, would be entitled to reasonable remuneration for her service as agent. A reasonable quantum would be \$93,000 representing 3% of the purchase price, which I take judicial notice of as a prevailing rate for real estate agents.
50. As aforementioned, the First Defendant would also have been entitled to payment for her services as agent effectively earning \$3500 per month not in cash but in kind by way of accommodation for agency services.
51. Accordingly, on the Counterclaim for damages it is possible that the First Defendant may be entitled to a figure in compensation for her agency services i.e a percentage of the property conveyance price. However, this must be set off against the mesne profits claimed by the Claimants of \$8000 per month. No evidence was brought as to rental of the actual area occupied by the Defendants. Counsel for the Claimant conceded that only the amount of \$5,000 per month admitted to by the First Defendant under cross-examination as the prevailing rate, could be awarded for her continued residence in the premises from May 2017 to present. That amounts to approximately \$105,000.00 so in reality the First Defendant would be required to pay \$12,000 to the Claimants as rent owed to date.
52. Accordingly, on the Counterclaim, the Defendants have failed to establish a claim for either specific performance of a contract or for a declaration of an equitable interest in the property. A possible claim for damages is made out on the narrative presented in the pleadings. However, there is no specific claim as to a quantum of special damages for the agency services.
53. The estimate made by the Court based partly on information provided and partly on Judicial notice of prevailing rates for real estate agents will not entitle the First Defendant to sufficient damages to surmount the quantum of mesne profits owed. Accordingly, the

Counterclaim is dismissed. However, a nominal figure of \$93,000 [i.e. un-pleaded but in my view justified] for agency services will be deducted from the mesne profits owed to the Claimants.

54. The Defendants are to pay the costs of the Claimants on the Claim. However, in light of my taking into account the First Defendant's entitlement to a nominal sum for agency, they will not be required to pay costs on the Counterclaim.

C. Determination

55. The submissions of Counsel for the Claimants in propositions of law filed before the Trial usefully sum up the position regarding the parties' legal entitlements. Essentially, any equity the Defendants may have been entitled to for the agency work done has been exhausted by their rent free occupation.

56. Therefore, the Claimants are entitled to the following reliefs sought in their claim:

- a. Possession of All and Singular that certain piece or parcel of land together with the building standing thereon situate in St James in the City of Port of Spain in the Island of Trinidad (being portion of the Guthrie Estate) comprising FOUR HUNDRED AND FIVE POINT NINE (405.9) SQUARE METRES or (4,369 s.f.) and known and assessed as No. "49" Church Street delineated and coloured pink on the plan marked "X" attached to the Deed of Conveyance registered as No. 21407 of 1986 and bounded on the North by Church Street on the South partly by Salazar Street and partly by No. 94 Salazar Street on the East partly by Church Street and partly by Salazar Street and on the West partly by Church Street and partly by Lot No. 51 Church Street to be delivered up on or before 31st July 2019.
- b. Mesne profits in the sum of \$12,000.00 being \$5,000 per month from the date notice was given on July 30, 2017 amounting to \$105,000 less \$93,000 nominal damages for agency services provided in the terminated contract;

- c. The Defendants' counterclaim is dismissed with no order as to costs;
- d. The Defendants are to pay the costs of the Claim in the amount of \$14,000 to the Claimant.

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Eleanor Joye Donaldson-Honeywell

Judge

Assisted by: Christie Borely JRC 1