

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2015-02125

BETWEEN

SAVITRI LALLA

Claimant

AND

SINANAN LUTCHMAN

CHRISTOPHER LUTCHMAN

Defendants

Before The Honourable Madam Justice Margaret Y Mohammed

Dated the 7th February, 2017

APPEARANCES

Mr. Raphael Morgan Attorney at Law for the Claimant.

Mr. Brent Ali Attorney at Law for the First Defendant.

JUDGMENT

1. The Claimant became the owner of the dwelling house (“the house”) and the land situated at LP #994 Eastern Main Road Manzanilla (“the property”) by Deed of Assent dated 7th July 2014 and registered as DE 201401705171 (“the Deed of Assent”). Although she has the paper title for the property she has not been able to obtain possession of the property since the Defendants have been in possession. She has instituted the instant proceedings seeking possession of the property; damages for trespass; costs and further or other relief.

2. The First Defendant has challenged the Claimant's right to possession of the property on the basis that he has an equitable interest in it. The First Defendant's Defence is that the Claimant derived her title from the previous owner of the property, Mrs. Elizabeth Baboolal ("the Deceased"). However, the Deceased repeatedly promised him that the property would be his after she passed away and based on those promises the Defendant expended funds to repair, maintain and improve the property. Based on his Defence he has asserted that the Claimant's right to possession is estopped and that he has acquired an equitable interest in the property based on his financial contributions. Having asserted a Defence grounded in proprietary estoppel the onus was on the First Defendant to prove the elements to establish his claim in equity for the property. The claim against the Second Defendant, who is the son of the First Defendant, was not pursued.
3. The sole issue for determination was whether the First Defendant has established a sufficient factual basis to prove his equitable interest in the property which is binding on the Claimant.
4. At the trial the Claimant gave evidence on her own behalf. The First Defendant gave evidence in support of his case and he also called two witnesses: Mr. Satyanand Maharaj and Ms. Kamini Sookdeo. By hearsay notice he also sought to rely on the statement of Chan Flory Sookdeo.
5. The law of proprietary estoppel is well settled. In **Fulchan v Fulchan**¹ Rajkumar J (as he then was) cited the following learning on 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" – *Taylor Fashions Ltd v*

¹ CV 2010-03575

*Liverpool Victoria Trustee Co. Ltd per Oliver J cited in Snell's Principles of Equity 31st Ed. Para 10-16 to 10-17*².

6. The elements are therefore, a promise or encouragement by the owner of the property, acting upon such promise or encouragement with the expectation and belief of the promise and thereby acting to the detriment of the promisee and that there is no bar in equity preventing the remedy. In determining whether a party can successfully mount a Defence in proprietary estoppel the approach by the Court should be as advocated in *Snell's Equity* as:

*"It has been stated that the elements of proprietary estoppels cannot be treated as subdivided into three or four watertight compartments and that the courts' task is to look at the matter in the round. Nonetheless, in every case, the courts analysis will benefit if the particular questions that may arise in a proprietary estoppels claim are approached in a systematic way. This can be done by considering in turn each of the three main elements of proprietary estoppel: "...a representation or assurance made to the claimant; reliance on it by the claimant; and detriment to the claimant in consequence of his (reasonable) reliance."*³

7. In **Crabb v Arun**⁴ Lord Denning described the basis for the equitable doctrine of proprietary estoppel as:

"The basis of this proprietary estoppels – as indeed of promissory estoppels – is the interposition of equity. Equity comes in, true to form, to mitigate the rigours of strict law...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."

8. It was not in dispute that the assurances relied upon by the Defendant in this case were made orally. In the House of Lords judgment of **Thorner v Majors**⁵ their Lordships, in reversing the Court of Appeal's decision and finding in favour that a proprietary estoppel had been

² Supra at paragraph 13

³Snell's Equity,33rdEdn., Sweet & Maxwell at para.12-038

⁴ DC (1976) 1 Ch 179

⁵(2009) UKHL 18

established, focused on the quality/nature/character of the assurance or representation required before the proprietary estoppel can be established. Lord Hoffman in paragraph 8 of his judgment gave consideration to the:

“...close and ongoing daily relationship between the parties” as “Past events provide context and background for the interpretation of subsequent events and subsequent events throw retrospective light upon the meaning of past events.”

9. Lord Neuberger of Abbotsbury stated at Paragraph 80 that *“...the meaning to be ascribed to words passing between parties will depend, often very much, on their factual context.”*
10. According to the First Defendant, he is 72 years old and he is a medical doctor. He knew the Deceased for his whole life since he lived and grew up next door to her and he considered her akin to a mother. He was the Deceased’s medical doctor from 1977 until her death in July 2001. In 1981 the Deceased suffered a “heart attack” when she was 75 years old. Thereafter he looked after her until her death on the 20th July 2001. The Deceased husband died on the 27th June 1983 and on the night of her husband’s funeral the Deceased told him that she considered him as her son and that he would inherit everything. She also requested him to perform the funeral rites. After the Deceased husband’ death, the deceased’s house was in a state of disrepair due to wear and tear, decay and poor planning and structurally unsound.
11. After the heart attack, the Deceased often spoke about the property and what will happen after her death and she told him to “check Roger Boynes”, attorney at law whom she said had documents concerning her property. She constantly told him that the house was his. It was based on these oral assurances by the Deceased and knowing that she had no children he expended substantial repairs to the house. In 1985 he changed the entire roof which cost him approximately \$20,000.00. Some years later he caused the entire floor to be replaced. He also incurred the costs for rewiring the entire electrical system of the house, afterward he replaced all the plumbing and pipes and treated the substantially wooden house for termites.

12. The First Defendant also stated that ten days before the Deceased died she was critically ill and she required 24 hours nursing care which he paid for. He also paid for all her funeral expenses, customary procedures after her death and he ensured her wish that she be cremated on the same day she died were honoured.
13. Subsequent to the Deceased's death he secured the house which was unoccupied. He observed it being vandalized therefore he permitted his brother and his son to occupy it to prevent it from being overtaken by homeless persons. Thereafter, he made efforts to contact Mr. Roger Boynes who eventually advised him to apply for a Waiver of State Rights. Subsequent to the death of the Deceased, one Mr. Patrick Gonzales gave him copies of what appeared to be draft and unsigned wills of the Deceased in 1991 and 1994 ("the unsigned wills"). In the latter the property was given to him. He applied for the Waiver of State Rights. He also indicated that the Deceased never referred to a niece and he never heard of the Claimant.
14. The First Defendant remained unshaken in cross examination which focused on his love and affection for the Deceased, his failure to have any receipts for the expenditure he incurred on the property and the failure by the aforesaid draft wills to give to him what he alleged was promised. I will address these concerns later.
15. In support of his case, the First Defendant called two other witnesses. One witness was a pundit and the other the daughter of Chan Flory Sookdeo, whose hearsay statement is being relied upon by the First Defendant. Their evidence is again consistent with the promise made to the First Defendant by the Deceased.
16. According to Mr. Satyanand Maharaj, a pundit who is 56 years old and lives in Guaico, he had known the Deceased for approximately 20 years prior to her death since she was a Hindu and she lived adjacent to the Hindu temple. He also knows the First Defendant. He became her spiritual adviser and he did prayers or puja for the Deceased and as her spiritual adviser she confided in him. He visited the Deceased regularly at her home and they held discussions. During those discussions the Deceased always indicated to him that the First Defendant took good care of her and that he was the only person who cared for her. She also

told him that she wanted the First Defendant to have all her assets. She also told him that she had gone to Mr. Roger Boynes to have a will prepared where she left everything she owned to the First Defendant. As far as he was aware the Deceased had no family members visiting her. He was aware that Chan Sookdeo and her daughter Kamini Sookdeo visited the Deceased at home and assisted her. When the Deceased died he performed the rituals for her funeral and prayers and during that time there were no family members of the Deceased just people from the community.

17. In cross examination he admitted that he knew the First Defendant prior to knowing the deceased and that he knew the deceased through the First Defendant. He admitted that although the Deceased indicated to him that she was going to give all her property to the First Defendant there was no written record of her promise and he was unable to give specific dates and times when she said so.
18. In my opinion Mr. Maharaj shared a close relationship with the Deceased and as her spiritual adviser she confided in him. I therefore accept that the Deceased confided in him that she wanted the First Defendant to have all her assets after she died. In my view his failure to give specific dates and times when she indicated to him was understandable since this took place between 1981 to 2001 which was more than 15 years ago.
19. Ms. Kamini Sookdeo stated that she is the daughter of Chan Sookdeo and they were the tenants of the Deceased. She knew the Deceased as a child since she lived close to them and her mother cooked food for the Deceased. She would often, on her own or accompanied by her mother, take food to the Deceased. She also knows the First Defendant whom she would often see by the Deceased when she visited. On one occasion the Deceased told her that the land where she and her mother lived was theirs and that everything she owned was for the First Defendant. After the Deceased died she observed that the First Defendant took control of the property and his son the Second Defendant moved into it.
20. During cross examination, Ms. Sookdeo stated that she was 42 years old and in 2001 when the Deceased died she was 21 years old. She took food to the Deceased in the late 1980s and

she and the Deceased were friends. Although she and the Deceased had several conversations each week it was only on one occasion she recalled that the Deceased told her that everything she owned was for the First Defendant and he was not present when that conversation took place. She admitted that when the Claimant acquired the property she asked her for rent.

21. I accept that Ms. Sookdeo was well acquainted with the Deceased. However I do not accept that she and the Deceased were friends since it was highly improbable given their vast age difference, the Deceased was in her 70s and Ms. Sookdeo was a child. In my view given their vast age difference it was improbable that the Deceased would have confided to Ms. Sookdeo that she had promised the First Defendant the property. In any event, her evidence that the Deceased promised the First Defendant the property and that after she died the land on which her mother lived on was theirs was not consistent since Ms. Sookdeo and her mother lived on part of the property which she said was promised to the First Defendant.

22. Chan Sookdeo's witness statement was tendered into evidence via a hearsay notice on the basis that due to ill health she was unable to attend Court. According to her statement she is about 70 years old and she was a tenant of the Deceased. She lived close to the Deceased. In the 1980s the Deceased asked her to cook for her and that she would pay her. She agreed to cook for her but she refused to accept payment. She cooked for her until the Deceased died. In addition to cooking for the Deceased she also started to look after her assisting her in bathing as she got older. She visited the Deceased about three times a week and they would talk. She also knows the First Defendant and she would see him at the Deceased's home. After the Deceased's husband died the First Defendant performed the funeral rites. On one occasion the Deceased told her that she wanted the First Defendant to have the house and land after she died and that the land where she lived she did not have to pay any rent since she told her it was hers.

23. I have attached little weight to Chan Sookdeo's evidence as it was self-serving. She stood to benefit if the Claimant did not succeed since she said the Deceased told her not to pay rent. Further, her evidence was not tested in cross examination which prevented the Court from determining the veracity of her assertions.

24. Therefore based on the evidence of the First Defendant and Mr. Satyanand Maharaj, I find that the First Defendant shared a close relationship with the Deceased for a long period of time, and the Deceased made it known to them that she wanted the First Defendant to have the property after her death.
25. The Claimant's evidence did not dispute the oral assurances made by the Deceased to the First Defendant promising him the property after her death. According to the Claimant she is the niece of the Deceased. The last time she saw the Deceased was in January or February 1999 before her husband died in June 1999. After her husband died she was so lost in grief that she lost touch with the Deceased. She was appointed the Legal Personal Representative of the estate of the Deceased by the Grant of Letters of Administration on the 10th January 2014 and she became the owner by the Deed of Assent.
26. Prior to obtaining the Grant of Letters of Administration she visited the property and she realized that someone was living in the house and operating a motor shop. Upon obtaining the Grant of Letter of Administration she began to look after the property by collecting rent and paying the respective duties owed by the Deceased. She wanted possession of the house so that it could be converted into apartments to bring in some income to help maintain it and the property in general since she does not have a source of income and would not be able to finance it on her own.
27. She wrote the First Defendant asking him to remove himself from the property and he refused, instead he offered to purchase it. However, she is unwilling to sell it as it has sentimental value to her because it was the last place the Deceased lived before she died. She stated that she had seen the First Defendant's affidavit filed on 18th September 2015 where he alleged that certain promises were made to him by the Deceased and he relied on those promises to his detriment in expending money on the property and that she was unaware of any will that the Deceased has signed or given instructions for.

28. Therefore, in the Claimant's evidence in chief she did not deny that the Deceased made oral assurances to the First Defendant promising him the property and he acted upon them to his detriment by expending money on repairs to it. While the Claimant stated that she did not see the Deceased for a two year period between the period February 1999 until July 2001 there was a notable lack of knowledge by the Claimant of the Deceased. In my opinion if the Claimant had a relationship with the Deceased, based on the First Defendant's evidence she would have been aware of him given his close relationship with the Deceased who would have either spoken about him or the Claimant would have seen him when she visited the Deceased. Indeed there was no positive evidence by the Claimant in respect of the facts that support the proprietary estoppel and she offered no explanation for such failure. In my opinion this was important since she knew of the First Defendant's claim and she failed to adduce any evidence to contradict and to expressly deny it.
29. Under cross examination, the Claimant confirmed that she was aware of the case for the First Defendant in particular she admitted that she was aware that the First Defendant was asserting that the house was promised to him, that he spent money on it based on the promises made and that she was a stranger to him. She also admitted that she knew that the First Defendant stated that the Deceased never mentioned having a niece. Her response to the First Defendant's claim was that she was unaware of any will or instructions for a will.
30. The Claimant also confirmed in cross-examination the evidence in her witness statement that she wanted possession of the house so that she can convert it into apartments to bring in an income to maintain it as she has no source of income. She was married on 5th May 1974; and her occupation was stated as a proprietress. She was 33 years old and her husband was Charles David Lalla, a proprietor who was 60 years old at the time and he inherited his properties. She collected rent from the property and she retained an attorney privately. Based on the admissions made by the Claimant in cross examination, it was not entirely accurate for her to assert that she has no source of income which she stated in her witness statement.

31. The Claimant also admitted that she knows that the First Defendant was named in the death certificate of the Deceased. She denied knowing he was her doctor or that he looked after the house. She admitted that she understood that he said he did so and she read his affidavit and that her first conversation with the First Defendant was to ask him to leave.
32. In my view, it was more probable that the Deceased made the promises to the First Defendant that he would own the property after her death and it was based on these promises the First Defendant expended funds to improve the house. I have arrived at this conclusion for several reasons. Firstly, there was no evidence by the Claimant to dispute the evidence from the First Defendant and Mr. Satyanand Maharaj that the Deceased promised the First Defendant the house after her death.
33. Secondly, it was undisputed that the Deceased and the First Defendant shared a very close relationship during her lifetime. Although, the First Defendant admitted in cross examination that he made repairs to the house out of love and affection in my view this admission did not undermine his evidence that the improvements were done based on the promises to him by the Deceased.
34. According to **Snells' Principles of Equity** ⁶

“His belief must have been encouraged by the titleholder or his agent or predecessor in title. This may be done actively or by passively looking on while the person spends money on one's land”

35. The First Defendant's belief that he would own the house after the Deceased passed away must have been encouraged by her since in 1985 when he changed the entire roof for the house the Deceased was living in the house. Similarly, the Deceased was living in the house when the First Defendant replaced the entire floor, rewired the electrical system and replaced all the plumbing.

⁶ 31st Ed

36. Thirdly, the lack of the oral promises being reduced into writing was immaterial. The First Defendant was questioned about the failure by the Deceased to reduce the oral promise into writing. In my view, having regard to the close relationship between the First Defendant and the Deceased, which was not disputed by the Claimant it is hardly surprising that nothing was put into writing.
37. Fourthly, the First Defendant provided a satisfactory explanation for the lack of bills and receipts for expenses he incurred on repairs and improvements to the house. According to the First Defendant's evidence in his witness statement he simply did not have them. In my view this explanation is entirely reasonable since he started to expend funds on the repairs from 1985 some 30 years ago. In any event, it was not disputed that improvements were done to the house.
38. Lastly, the unsigned wills were not valid and cannot alone be relied on as reflecting the Deceased's intention. During cross examination, a great deal was made of the fact that the unsigned wills did not correspond with the promises made to him. The First Defendant was questioned on the basis or presumption that unsigned wills were valid. However, there was no evidence of their authenticity and whether they contracted what the Deceased promised him during her lifetime is irrelevant to the instant claim. The whole basis of an equity is to rectify the strictures of law. The First Defendant made it clear that the unsigned wills only came to his attention after the death of the Deceased and not during her lifetime when he was handed those by Patrick Gonzales. In my view, at best the unsigned wills suggest or infer that the Deceased had retained someone or was in the process of retaining someone to prepare testamentary documents for her which supports the First Defendant's assertion that the Deceased always told him to "check Roger Boynes". However from the absence of the unsigned wills being executed by the Deceased, it is equally possible that she changed her mind as reflected in the unsigned wills.

Order

39. In light of the aforesaid reasons, I dismiss the Claimant's action.

40. The Claimant to pay the First Defendant costs of the action in the sum of \$14,000.00.

/S/ Margaret Y Mohammed
High Court Judge