

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016–00809

BETWEEN

**GLENN ROY STEPHEN
(by his Lawful Attorney Franklin Kuarsingh)**

Claimant

And

LA VAUGHN GONZALES

Defendant

Before The Honourable Mr. Justice Robin N. Mohammed

Date of Delivery: Monday 8th April, 2019

Appearances:

Mr. Chanka Persadsingh instructed by Mr Dipnarine Rampersad for the Claimant

Mr. Haresh Ramnath for the Defendant

**DECISION ON
EVIDENTIAL OBJECTIONS**

I. BACKGROUND:

[1] The Claimant has brought this claim essentially seeking ownership of a dwelling house and lands situate in Siparia (the “Property”). His claim to this Property is by virtue of a Memorandum of Transfer No. 60 dated the 12th November, 1991, whereby his father, Raymond Stephens, transferred the Property to himself and his wife, Pearl Stephen, for life with an endorsed provision that upon his death, the Property would be transferred to the Claimant.

- [2] Upon the death of his wife, the said Pearl Stephen, in March, 2003, Raymond Stephen permitted his granddaughter, the Defendant, to stay at the Property. It is the Claimant's case that at no time the Property was ever transferred to the Defendant nor was any promise ever made to her that she would eventually be given same.
- [3] The Claimant emigrated to the United States in August, 1995. However, upon his father's death in September, 2013, he returned to Trinidad to attend the funeral. It was at this point that, on his version, he was first informed by the Defendant that he had no rights to the Property as it now belonged to her and further, he was from thereafter, denied entry.
- [4] In an effort to prevent the Defendant's continued occupation and/or repairs and renovations to the Property, numerous letters were sent by the Claimant's lawful attorney, Franklin Kuarsingh, however no resolution was arrived at between the parties.
- [5] In the circumstances, this claim was brought seeking, *inter alia*, a declaration that the Claimant is the owner of the Property in addition to an injunction restraining the Defendant from her occupation as well as her activities on the Property. Damages for trespass and for loss of mesne profit were also sought.
- [6] In denial of this claim, the Defendant pleaded that, contrary to the Claimant's case, she had been in occupation of the Property since her birth. More importantly, she had been promised the Property, not only by both her grandparents, the said Raymond and Pearl Stephen, but also by the Claimant himself in July, 1990 at a family gathering.
- [7] In reliance on this promise, she claimed that she has acted to her detriment by conducting various repairs and renovations. In addition to the monies expended, the Defendant claimed that she had been the sole caretaker of her grandparents particularly during the period immediately preceding their deaths. It was partly for this reason that her grandfather allegedly expressed his intention that the Property go to her upon his death notwithstanding that it was, on paper, to be transferred to the Claimant's name.
- [8] Despite the obvious elements of proprietary estoppel, the Defendant counterclaimed, instead, for *inter alia*, a declaration that she had acquired a "licence coupled with an interest" to occupy the Property attendant to an Order that the Claimant, as the paper title owner, convey the Property to her.

[9] In Reply, the Claimant denied (i) that the Defendant occupied the Property since her birth; (ii) that any promise was made to her by her grandparents or himself concerning the Property at any family gathering; and (iii) that the Defendant ever took care of the grandparents.

[10] Further, with respect to the renovations effected, the Claimant pleaded that any monies expended after the first warning letter was sent by his attorney on the 10th October, 2013 was done with notice and therefore, at her own risk.

[11] In support of its case, the Claimant filed witness statements of Franklin Kuarsingh, his brother-in-law, Agnes McIntosh, a family friend and himself. The Defendant, in response, filed statements of herself, Terry Woods, her brother-in-law, Rohan Mungal, a close friend of herself and her grandfather— the deceased Raymond Stephens, and finally, Cassandra Woods, her sister.

[12] A Hearsay Notice was filed by the Claimant on the 28th June, 2017, giving notice of his intention to admit various written statements and documents into evidence in the absence of their maker. No grounds were given for the Notice save for the fact that the Claimant had no intentions of calling these witnesses unless so required by a Counter Notice or by the Court. The documents he intended to admit in the Notice were as follows:

- i. A copy of the Crown Grant;
- ii. A copy of the Certificate of Title;
- iii. A copy of the appointment of Franklin Kuarsingh as Power of Attorney;
- iv. A copy of the death certificate of Pearl and Raymond Stephen;
- v. Copies of several letters;
- vi. Photographs; and
- vii. A copy of the Claimant's passport

[13] The Defendant then filed its Hearsay Notice on the 23rd June, 2017, whereby it indicated its intention to adduce several statements made by the said Raymond and Pearl Stephen.

Further, a Bank Statement made pursuant to a joint bank account of the Defendant and Raymond Stephens, along with several receipts evidencing the renovations and monies expended on the Property by the Defendant were included. The ground for admitting these receipts was that the Defendant was unable to find or identify their makers.

No grounds were stated for not calling the maker/s of the Bank Statement.

[14] In response, the Claimant filed several Notices and/or Applications on the 7th July, 2017 challenging the Defendant's Hearsay Notice of the 23rd June, 2017 as well as other evidence attached to the Defendant's witness statement as follows:

- i. A Counter Notice challenging the admission of the receipts, the police report and the bank statement at trial and requiring that they be proved;
- ii. An Application to Strike out the Defendant's Hearsay Notice of the 23rd June, 2017 on the grounds that (i) it does not contain any reason why the persons who issued the documents listed in the said Hearsay Notice would not be reasonably expected to have any recollection of the matters; (ii) it does not include any description of any measures taken to identify or find the witnesses; and (iii) that these witnesses would, in the usual course of their business, keep such documentary records; and
- iii. An Application to strike out and/or suppress the Compact Discs with Video Recordings attached to the witness statements of the Defendant at "G" and Terry Woods at "A".

[15] Thereafter, a second Hearsay Notice was filed by the Claimant on the 19th June, 2017 seeking to admit various statements made by Raymond and Pearl Stephen into evidence on the grounds that they are deceased and therefore, cannot be expected to attend trial.

[16] No Counter Notice was ever filed by the Defendant.

II. DEFENDANT'S EVIDENTIAL OBJECTIONS:

The Defendant filed its evidential objections to the Claimant's witnesses on the 11th July, 2017 as follows:

To the Witness Statement of Glenn Roy Stephen:

[17] Paragraph 8, line 1 from the words “my father allowed the Defendant to temporarily reside at the said property” and line 4, from the words “Nor did he promise to give the said property to her but merely agreed to her staying there with him temporarily”

Grounds: Inadmissible hearsay and/or unqualified to give such evidence as the source of his belief has not been disclosed. No probative value to the Court.

Law: Hearsay is defined both in legislation, by way of **Section 36 of the Evidence Act, Chap 7:02**, and at common law¹ as any statement made other than by a witness in proceedings, which would be admissible as to the fact that it was said but not otherwise:

“In any civil proceedings a statement other than one made by a person while giving oral evidence in these proceedings is admissible as evidence of any fact stated therein to the extent that it is so admissible by virtue of any provision of this Part or by virtue of any other statutory provision or by agreement of the parties, but not otherwise.”

Finding: In his statement, the Claimant is giving evidence about what his father, Raymond Stephen, did with the Property immediately after his mother’s death in March 2003, when he allegedly gave the Defendant permission to stay on the Property.

The Court notes that the Claimant has attempted to adduce this evidence by way of Hearsay Notice filed on the 29th June, 2017, and this, coupled with the learning which states that such evidence is admissible as to the fact that it was said but not as to its truth, would mean that these statements are not inadmissible hearsay.

However, while not raised in the objection, the Court views that at no time in his evidence-in-chief did the witness disclose how he became aware of what promises and/or conditions his father gave to the Defendant with respect to her occupancy of the Property to qualify him to give such evidence.

For instance, it was not stated whether the witness overheard a conversation or whether his father told him directly of what he promised the Defendant. Most importantly, no

¹ Subramaniam v Public Prosecutor (PC) (1956) 1 WLR 965 at 970

background was given to convince the Court that the witness was even in the Property when the Defendant would have moved in.

In fact, to the contrary, he specifically pleaded and gave evidence that he currently resides out of the jurisdiction² and that he emigrated since August, 1995³ and returned to Trinidad for Raymond's funeral⁴, which considering that Raymond died on the 18th September, 2013⁵, meant that the witness did not return to Trinidad before September, 2013. It was also pleaded, on his case, that the Defendant entered the Property by his father's permission sometime around March, 2013, after Pearl Stephen died.

In an attempt to rectify this contradiction no doubt, the witness introduced the evidence that he visited his father prior to his death⁶--a fact that was not pleaded.

Even if the Court were to accept this novel evidence and therefore, agree that the witness had visited the Property at a time when the Defendant was living there, he still has not disclosed the source of this evidence.

Such a failure to provide the proper context would, in this Court's considered opinion, disqualify him from giving evidence concerning the father's permission given to the Defendant to occupy the Property.

Accordingly, this objection is sustained and the words *"my father allowed the Defendant to temporarily reside at the said property"* and *"...nor did he promise to give the said property to her but merely agreed to her staying there with him temporarily"* will be struck out.

[18] Paragraph 11, in its entirety

Grounds: Inadmissible hearsay.

Finding: The witness is giving evidence about his Aunt Viola's actions surrounding the purchase of the Property and what she told him concerning her intentions for same.

² See para 1

³ See para 17

⁴ See para 21

⁵ See para 7 of the Statement of Case

⁶ See para 19

While the witness stated earlier that the said Aunt Viola first acquired the Property in 1947, which is also evidenced by the Certificate of Title attached as “C” to this statement, he has provided no background evidence that he was alive around that time so as to be competent to speak on the financial assistance she may have rendered to her father around 1947, when the Property was first purchased. Further, he merely states that he is “*aware*” that his Aunt assisted his father throughout the years without disclosing how he became aware of this fact. Thus, he fails to disclose the source of this information.

With respect to what his Aunt told him about the Property as contained in the final sentence, this evidence would normally be admissible as to the fact that he was told this information by his Aunt but not admissible as to its truth.

However, the Court also considers that (i) no evidence as to the dates of this conversation was given; and more importantly (ii) this evidence was simply not pleaded. In fact, no mention of his Aunt Viola is made in his pleaded case.

Most importantly, the Claimant did not include this evidence in its Hearsay Notice. Given these factors, the Court finds the evidence contained in this paragraph to be inadmissible hearsay.

Accordingly, this objection is sustained and paragraph 11 will be struck out.

[19] Paragraph 12, line 4 from the words “*This shows the intention of my father which is consistent with what he told me throughout my life while he was alive*”

Grounds: Inadmissible hearsay.

Finding: The witness is commenting on the effect of the endorsement on the Certificate of Title that purports to transfer the Property to him upon his father’s death.

The Court does not agree that the first part of the sentence that reads “*This shows the intention of my father*” is inadmissible hearsay. It is however, his opinion and/or interpretation of the effect of the endorsement on the Certificate of Title. Considering that the said endorsement is adduced into evidence and further, that he has referred specifically to the transfer of the Property in the preceding sentence, the witness has,

in this Court's opinion, laid proper foundation for his belief and/or opinion on what the endorsement means.

Further, the remainder of the sentence concerning what his father told him throughout his life is admissible as to the fact that it was said but not as to its truth.

This objection is therefore overruled.

[20] Entirety of paragraph 14

Grounds: Inadmissible hearsay and/or unqualified to give this evidence.

Finding: This paragraph comments on the intentions of his parents as well as their alleged conversations to the witness.

The Court agrees that the witness is not qualified to comment on what he perceives to be the intentions of his parents as it pertains to their disposition of the Property without more background. In fact, this could not be even considered as admissible hearsay because he has not given evidence that this evidence was told to him by his parents. To the contrary, he specifically stated that his parents did not give him any instructions as it related to the Defendant's occupancy.

In any event, the issue of whether the intentions of his deceased parents were indeed contrary to the endorsement on the Certificate of Title, is the source of this litigation and the material issue to be decided solely by the Court.

However, the evidence contained in the last sentence about what his parents told him is admissible as to the fact that it was stated and not to its truth.

Accordingly, this objection is sustained in part and the words "*My parents never intended and/or anticipated the Defendant getting any share and/or interest in the said property*" will be struck out.

[21] Paragraph 16 in its entirety

Grounds: Inadmissible hearsay and/or unqualified to give this evidence.

Finding: the witness is giving evidence about events that occurred immediately after the Memorandum of Transfer occurred in 1991 concerning his parents' secretive nature

about the transfer and their acrimonious relationship with the witness' sister, Angela Phillip.

This evidence is irrelevant. Neither their relationship with his sister, the said Angela nor their reason for keeping the transfer a secret affects the material issue in this matter.

Further, there is merit in the argument that the witness has not properly disclosed how he came to know of his parents' secrecy about the transfer. Did his parents specifically tell him their intention to keep it quiet?

This objection is sustained and paragraph 16 will be struck out.

[22] Paragraph 18 from the words "Throughout the years after I came to the United States of America I would send money for the father for his support"

Grounds: Inadmissible hearsay and/or unqualified to give this evidence.

Finding: This is not inadmissible hearsay evidence. The witness is merely describing his actions with respect to his father after he emigrated. The fact that his father is not alive to confirm whether it is true simply means the Court will have to determine what weight to place on this evidence.

Accordingly, this objection is overruled.

[23] Paragraph 27 in its entirety:

Grounds: Issue for the Court to determine.

Finding: The Court agrees that the witness is not qualified to state, as a fact, that he is entitled to the Property and that the Defendant is not. However, he is well within his rights to make the request of the Court contained in the second sentence of this paragraph.

Accordingly, the Court partly sustains this objection by striking out the first sentence or the words "*I am entitled to ownership and possession of the said property and the Defendant is not so entitled*".

To the Witness Statement of Franklin Kuarsingh

[24] Paragraph 23, line 1 from the words *“In fact, it would not be difficult to prompt Raymond to say particular things and video tape him in the days and months before his death.”*, line 3, from the words *“I knew that he was not as fluent and sharp as before nor was he as consistent or sensible.”* and line 5 from the words *“...it would be easy for her to influence him and make him say things which he may not mean.”*

Grounds: Vexatious/frivolous/ Inadmissible opinion evidence.

Finding: The witness is giving evidence about Raymond Stephen’s mental state immediately preceding his death.

While this is, indeed, opinion evidence and the witness is not medically qualified to given an assessment of Raymond’s mental health, the source of his opinion has been, sufficiently disclosed by (i) paragraph 22, where he stated that near his death, the said Raymond became forgetful and, as an example, would ask *“who is you?”* and that it was difficult to carry out conversations with him; and (ii) in paragraph 23 itself, the witness stated that he cannot speak to Raymond’s mental condition but from *his observations and personal interactions with him*, he did not find Raymond to be as sharp as he was. Thus, while admissible, the Court will determine what weight to ascribe to same considering that the witness is not professionally qualified to give such evidence.

Accordingly, this objection is overruled.

III. DISPOSITION:

[25] Having considered the pleadings and witness statements along with the Defendant’s Evidential Objections and the Claimant’s Response, the Court Orders as follows:

1. The words *“...my father allowed the Defendant to temporarily reside at the said property”* along with the words *“nor did he promise to give the said property to her but merely agreed to her staying there with him temporarily”* contained at paragraph 8 of Glenn Roy Stephen’s witness statement be and are hereby struck out.

2. The entirety of paragraph 11 of Glenn Roy Stephen's witness statement be and is hereby struck out.
3. The words "*my parents never intended and/or anticipated the Defendant getting any share and/or interest in the said property...*" contained at paragraph 14 of Glenn Roy Stephen's witness statement be and are hereby struck out.
4. The entirety of paragraph 16 of Glenn Roy Stephen's witness statement be and is hereby struck out.
5. The words "*I am entitled to ownership and possession of the said property and the Defendant is not so entitled*" contained at paragraph 27 of Glenn Roy Stephen's witness statement be and are hereby struck out.
6. The remainder of the Defendant's Evidential Objections are overruled.

Robin N. Mohammed
Judge