

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2014-00250

BETWEEN

GLORIA ALEXANDER

CLAIMANT

AND

PETER ALEXANDER
Also called PETER KHAN
Also called PETER KELVIN

DEFENDANT

Before the Honourable Mr. Justice R. Rahim

Appearances:

Mr. M. George instructed by Ms. K. Peters for the Claimant

Mr. G. Delzin instructed by Ms. T. Sylvester for the Defendant

Reasons

1. On the 27th May, 2015 the Court made the following order:
 - i. The property known as Lot No. 1 St. Michael Road, Blue Range, Diego Martin in the Ward of Diego Martin, in the Island of Trinidad in the Republic of Trinidad and Tobago comprising Seven Thousand One Hundred and Thirty (7130) superficial feet together with the houses thereon and the appurtenances thereto belonging and shown as Lot 1 on the survey plan attached to a Deed registered in the Protocol of Deeds as No. 17911 of 1978 shall be sold in lieu of partition.
 - ii. The proceeds of sale shall be divided between the Claimant and the Defendant as follows:
 - a) Half to the Defendant plus the sum of \$36,506.43 to be deducted from the balance of the proceeds of sale.
 - b) The balance remaining after deduction at paragraph ii. (a) above to the Claimant.
 - iii. The said property is to be valued prior to sale by a valuator to be agreed between the parties within 28 days of the date of this order, the cost of which is to be borne equally by both parties.
 - iv. In default of the parties agreeing to a valuator, the Registrar of the Supreme Court is to appoint valuator.
 - v. Following the issuance of the valuation report, the Defendant shall be given first preference to make a bid for the purchase of the property within 28 days, failing which the property is to be sold on the open market to the highest bidder for the best available price.
 - vi. The Defendant shall be entitled to bid at such a sale.

- vii. There shall be liberty to apply for further directions in relation to the conduct of the sale.
 - viii. The Defendant is to pay to the Claimant half of the prescribed costs of the claim in the sum of \$7000.00.
2. The following are the reasons for this decision.

Background

- 3. The undisputed facts of this case were that by Deed of Assent dated the 27th September, 1993, and registered as No. 16558 of 1993, Mr. Rufus Alexander, acting as sole executor of the estate of Mr. Bernard Luke Alexander (“the Deceased”) conveyed the lands known and assessed as No. 1 St. Michael Road, Blue Range, Diego Martin, with the house thereupon and shown as Lot 1 on a survey plan attached to a Deed registered in the Protocol of Deeds as No. 17911 of 1978 (“the property”) unto the Claimant and the Defendant as joint tenants.
- 4. The Claimant is the mother of the Defendant. The Deceased was the grandfather of the Claimant and the great grandfather of the Defendant.
- 5. Mr. Hector Alexander, the great uncle of the Defendant constructed another house on the property. As a result there are now two houses on the property.
- 6. The case of the Claimant in brief, was that the unreasonable, aggressive and violent behavior of the Defendant towards her caused a breakdown in their relationship. As a result, the Claimant is no longer able to use, enjoy and/or occupy any part or portion of the property and is therefore deprived of the benefit, entitlement and enjoyment thereof. Consequently, the Claimant sought to sever the joint tenancy in respect of her half share

in the property by an order for the partition or sale in lieu thereof of the property and the equal distribution of the proceeds of the sale.

7. The Defendant counterclaimed for a declaration that he is entitled to the sole ownership of the property on the basis that the Claimant promised to transfer her 50% interest in the property to him in 2007. It is the case of the Defendant in brief that in or around November, 2007, the Claimant and he attended Hugh Wooding Law School, Legal Aid Clinic (“HWLS”) to begin the conveyancing process. That the Claimant signed two documents, one entitled “Measure of Protection” and the other entitled “Transfer of Title” consequent to the said promise. According to the Defendant, the Claimant promised to gift her interest in the property to him on the following bases:
 - i. It was the Deceased wish that the property be left for the Defendant;
 - ii. The Defendant had expended a substantial sum in legal fees in the court action, CV2006-00258 Peter Alexander v Hector Alexander (“the case against Mr. Hector Alexander, the great uncle of the Defendant”);
 - iii. The substantial contributions the Defendant expended to maintain and upkeep the property since 1991; and
 - iv. As a measure of protection in the event future issues arose with Mr. Hector Alexander, the Defendant could act independently of the Claimant.
8. Thus, it is the case of the Defendant that in reliance on the promise and subsequent steps taken to convey the share of Claimant in the property to him, the Defendant expended substantial sums of money renovating the property between 2007 to early 2014. As such, the Claimant should be estopped from rescinding her promise to transfer her half share in the property.
9. In her affidavit in reply, the Claimant testified that the Defendant kept bullying her and insisted that she transfer her share of the property to him, that she accompanied the

Defendant to HWLS under duress. However, Counsel for the Claimant submitted that the issue of duress was not a live issue in this matter since the issue of duress was not pleaded in the Fixed Date Claim Form and Affidavit of the Claimant. Therefore, the main issues the court considered were the issues of proprietary estoppel and partition.

Proprietary Estoppel

10. An estoppel may arise where a property owner makes a representation to another party which is relied on by that other party and which leads that other party to act to their detriment. The representation usually relates to the current or future ownership of land or of interests in land. If the party to whom the representation has been made acts to their detriment in reliance on that representation, the representation cannot be revoked and the courts will enforce it despite the lack of a written agreement: **Halsbury's Laws of England Volume 23 (2013) paragraph 153.**

11. Rajkumar J in **Fulchan v Fulchan CV 2010-03575** at paragraph 13 stated as follows:

“ 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 Liverpool Victoria Trustee Co. Ltd. Per Oliver J. cited in Snell’s Principles of Equity 31st Ed. Para 10-16 to 10-17

12. The elements necessary to establish proprietary estoppel are (1) a representation made or assurance given to the Defendant, (2) reliance by the Defendant on the representation or assurance; and (3) some detriment incurred by the Defendant as a consequence of that reliance: **See Thorner v. Majors and others (2009) UKHL 18, [2009] 3 All ER 945 at 951** (Lord Walker identified and explained the three elements of proprietary estoppel which were then summarized by Lord Scott at paragraph 15). These three elements of the

doctrine of proprietary estoppel assisted the court in determining this issue. This issue was therefore determined by an analysis of the evidence.

The Evidence of the Defendant

13. It is the testimony of the Defendant that the property has been in his family for several generations. That the property has been his home from birth, save and except for fifteen years that he lived aboard. The Defendant lived at the property with the Claimant and the Deceased. Ms. Susan King, the half-sister of the Defendant also lived at the property for a short period when she was born.
14. The Deceased died in 1986 before the Defendant attained the age of majority. In his last Will and testament dated the 15th March, 1979, the Deceased bequeathed the property to the Claimant and the Defendant as joint tenants.
15. It is the evidence of the Defendant that he has always maintained the property financially. Even when he was living aboard, he would send financial assistance for the maintenance of the property to the Claimant as she was unemployed.
16. The Defendant returned to Trinidad in or around November, 2000 to find his great uncle, Mr. Hector Alexander occupying a second house which was built on the property. As a result there are now two houses on the property.
17. The Defendant testified that in or around 2004, the Claimant migrated to the United States of America (“USA”) to live with her daughter, Ms. King. The Defendant continued living in the property and maintaining the same.
18. According to the evidence of the Defendant, in or around early 2006, just before the court action against his great uncle, Mr. Hector Alexander was settled, the Claimant indicated to him that she had no intention of returning to live in Trinidad since she established a comfortable life for herself in the USA. The Claimant indicated that when she visited

Trinidad in 2007 they would discuss transferring her interest in the property to the Defendant.

19. The Defendant testified that in or around November, 2007 the Claimant visited Trinidad to attend a hearing in the court action against Mr. Hector Alexander. That the Claimant expressed her intention to transfer her interest in the property to him as a measure of protection, in light of the amount of money he spent on the legal fees in the court action against Mr. Hector Alexander and due to the money he expended for the maintenance and upkeep of the property over the years.
20. It is the evidence of the Defendant that he and the Claimant attended HWLS to begin the conveyancing process. The Claimant signed two documents, one entitled “Measure of Protection” and the other entitled “Transfer of Title” as evidence of her intention to convey her interest in the property to the Defendant.
21. The Defendant testified that in reliance of the express promise made by the Claimant to transfer her interest in the property, he commenced significant renovations to both houses on the property. In his examination in chief, the Defendant testified that he started spending significant sums of money on the property in 2007.
22. In or around August, 2009, the Defendant received an email from his half-sister, Ms. King, wherein she indicated that the Claimant wanted to sell her half share in the property to him and in another email, Ms. King indicated that the Claimant had expressed an interest in purchasing the share of the Defendant in the property. It is the evidence of the Defendant that he indicated to Ms. King that the Claimant had already promised her half share to him.
23. According to the evidence of the Defendant, he eventually spoke to the Claimant who indicated that she had changed her mind and that she wanted to have the property valued and that Ms. King would pay for the valuation.

24. The Defendant obtained two loans for the renovations of the property, one from RHAND Credit Union dated the 23rd March, 2012 and the other from AIC Finance Limited dated the 13th December, 2013.
25. During cross-examination, the Defendant testified that in 2011 he first became aware that the Claimant revoked her initial promise to gift her half share in the property to him. That he continued to expend money on the property even after he was aware that the Claimant had a change of heart as he was acting on the documents signed by the Claimant as well as far as he was concerned the Claimant no longer had any interest in the property. Further, that he continued to expend monies on the property even after he was served with the Fixed Date Claim Form for these proceedings.
26. In examination in chief, the Defendant testified that he was aware that a deed of conveyance was not executed to date and a conveyance was important to him since it would mean that the share of the Claimant would be vested in him. Further, that not having the deed executed meant that the share of the Claimant in the property was not vested in him to date.

The Evidence of the Claimant

27. According to the evidence of the Claimant, the Defendant suggested to her that her share in the property should be transferred to him because of the financial losses that he incurred due to the court action against Mr. Hector Alexander. The Claimant testified that the Defendant continuously informed her in a hostile manner that she was to blame for the financial losses as well as the physical and emotional stress that he had experienced.
28. It is the evidence of the Claimant that the Defendant put her on such a guilt trip that she started to believe that she was responsible for the problems that he, the Defendant was allegedly undergoing and as a result, when the Defendant kept bullying her and insisted that she transfer the property to him, she accompanied him to HWLS under duress in or about 2007. At HWLS, the Claimant was informed by the Legal Clinic that further

documents would be forwarded to her in the USA in order to finalize the agreement. However, the Claimant did not receive any further documents.

29. The Claimant testified that the Defendant informed her that if her share of the property was transferred to him, it would compensate him for the losses he incurred. Further, that the transfer would protect them both from Mr. Hector Alexander if future problems were to arise. That the Defendant was more capable than the Claimant in handling Mr. Hector Alexander without her involvement and without having to ask her permission to make decisions relating to the property. The Claimant signed the two documents mentioned above at HWLS. It is her evidence that she did not understand these documents and that no consideration was passed from the Defendant to her and thus it was legally unenforceable.
30. According to the evidence of the Claimant, she expressed to the Defendant very clearly her intention not to transfer her interest in the property to him in or about 2009 and despite informing the Defendant of such he chose to undertake the renovations of the property without her knowledge and/or consent and at his own risk. That the Defendant should not be allowed to rely on his unilateral renovations to the property since the Defendant was always aware of her position and chose nonetheless to go ahead with his actions and has over the years received tremendous benefit from rents collected from the rental of the property.
31. During cross-examination, the Claimant testified that it was not always her intention to gift her share in the property to her daughter, Ms. King. That she formed this intention sometime between 2009 and 2010. Further, that she changed her mind to gift the property to the Defendant in 2011.
32. It is the evidence of the Claimant that the Defendant never consulted her before applying for and/or receiving any loans for the purpose of the renovations of the property. Further that the loans were received after the Defendant was aware of the intention of the Claimant not to gift her share in the property to him.

33. It is the testimony of the Claimant that the Defendant was aware of her intention not to gift her share in the property to him prior to the letter dated the 28th June, 2013, which formally warned the Defendant of the intentions of the Claimant to have the property sold.

Findings

34. On an evaluation of the evidence the Court found that there was a clear promise by the Claimant to transfer her share in the property to the Defendant. That this promise is evidenced by the two bits of writing done at the HWLS. However, these documents are not agreements in the legal sense but they amount to evidence of a promise to transfer.

35. The said promise was made voluntarily and not under duress. In light of the evidence the reasons for the promise would have been a combination of the acknowledgment that the property was now the primary place of abode of the Defendant, the fact of his maintaining the property, and a sense of guilt over the fact that the Defendant paid the entire legal costs of the case against Mr. Hector Alexander. The evidence does not however amount to or even point to the Claimant acting under duress when making the promise or signing the documents. There was no overwhelming pressure from the Defendant which would have given the Claimant no choice but to act.

36. An expectation was created by the promise made by the Claimant and by the non-objection to the renovations and expenditure on the property until 2013, when the Claimant by letter dated the 28th June, 2013 formally warned the Defendant of her intentions to have the property sold.

37. The Court has no doubt that the Claimant was aware of the expectation of the Defendant and failed to object to the renovations and expenditure until 2013 some two years after the Defendant had spoken to her in 2011 and she had indicated to him that she had changed her mind. It is the evidence that despite her change of position, the Defendant informed her that he was nonetheless continuing to rely on her initial promise.

38. However, even if the Court takes into consideration the money expended by the Defendant, he did not act to his detriment in all of the circumstances. Detriment must be viewed in the context of a broad enquiry as to whether it is unconscionable to permit the Claimant to renege on her promise. It must be judged at the moment when the promisor sought to rescind her promise and it also must be substantial. In this case the court finds that the Claimant communicated her intention to rescind her promise in 2011 and not 2009 as she has stated in her evidence. The effective date would be the date that she communicated her decision to the Defendant which was sometime in 2011. Up to that point in time, the evidence shows that the expenditure amounted to roughly \$36,000.00. This is far from substantial in the view of the Court when considering what may reasonably be presumed to be the value of the property at 2011 prices and also the nature of the receipts which support those particular expenses. Therefore, no substantial detriment has occurred to the Defendant which would move this court to enforce the promise.

39. In those circumstances, equity will not assist the Defendant by awarding him the full beneficial interest of the Claimant's share. The Defendant ought to recover the sum expended up to 2011 as the Claimant acquiesced to this expenditure with the full knowledge of the fact that the Defendant was so doing. In relation to monies sent from the USA to the Claimant for the maintenance of the property no such sum has been proven.

Partition

40. **Section 3 of the Partition Ordinance Chap. 27 No. 14** ("the Ordinance") states:

"In a suit for partition, where, if this Ordinance had not been passed, a decree for partition might have been made, then if it appears to the court that by reason of the nature of the property to which the suit relates, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of some of those

parties, or of any other circumstance, a sale of the property and a distribution of the proceeds would be more beneficial for the parties interested than a division of the property between or among them, the Court may, if it thinks fit, on the request of any of the parties interested, and notwithstanding the dissent or disability of any others of them, direct a sale of the property accordingly, and may give all necessary or proper consequential directions.”

41. Moreover, Section 4 of the Ordinance states:

“In a suit for partition, where, if this Ordinance had not been passed, a decree for partition might have been made, then if the party or parties interested, individually or collectively to the extent of one moiety or upwards in the property to which the suit relates, request the Court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among the parties interested, the court shall, unless it sees good reason to the contrary, direct a sale of the property accordingly, and give all necessary or proper consequential directions.

Submissions

42. Counsel for the Claimant relied on the authority of **Pena v Pena HCA 258/ 9** where the Honourable Bereaux J (as he then was) at page 8 stated that *“one of the considerations of the Court under section 3 of the Ordinance is to have regard to the nature of the property and to consider whether a sale of the property would be more beneficial to the parties than a division of the property between them. If it is of that view, then it may grant the request in spite of the dissent or disability of other interested persons.”*

43. Further, at page 9, of **Pena** supra, the Honourable Bereaux J (as he then was) also stated that *“under section 4 of the Ordinance, the Court shall order a sale at the request of the party or parties holding one half share or more unless there is good reason not to do so. The onus is on the person seeking to prevent the sale of the property to show good reason.”(emphasis mine).*

44. Counsel for the Claimant submitted that the Defendant has not shown any such good reason. That the Claimant as a Joint Tenant owns one moiety of the property and is entitled to a one-half share thereof.
45. It was contended on behalf of the Claimant that due to the circumstances of this case, especially the hostile attitude of the Defendant, a partition may not be in the best interests of these parties.
46. Counsel for the Defendant argued that the property ought not to be sold. It was submitted that the property has been home to the Defendant since 2000 and he, the Defendant has expended considerable sums in renovations and refurbishments of the property. That the Claimant was aware of the works and never objected to same. Further, that the Claimant and the party for whose benefit she seeks the sale of the property, Ms. King, have established and settled lives in the USA, where they both reside and work.
47. It was contended on behalf of the Defendant that that the only party who will benefit from a sale of the property is the Claimant, and by extension Ms. King, who does not have a beneficial interest in the property. Further, that it would be unconscionable in all the circumstances to uproot the Defendant and his family from the property.

Findings

48. The Court was of the view that according to section 4 of the Ordinance, the Claimant does in fact own a half share of the property and so was entitled to ask for a sale and the Court must order the sale unless the other party shows good reason as to why such a sale should not be ordered. The court was equally entitled to enquire into the nature of the property and the circumstances of the parties and whether a sale would have been more beneficial than a division. The court considered the following factors:

- a) The Defendant and his family have resided at the property for several years while the Claimant has not.
- b) That the Defendant has expended money on the property.
- c) That a sale will cause some hardship to the Defendant but that this hardship can be curtailed by an order that he be permitted to bid at the sale.
- d) That is it impractical to partition the property consistent with each party's half share entitlement. The area of land is 662.7 square metres or 7133.24 square feet, roughly 2100 square feet more than one lot. One of the existing houses appears to be on a larger portion of the plot so that an even division is impractical. See survey plan attached at "GA 7" to the Statement of Case.
- e) That in any event, having regard to the high level of acrimony between the Claimant and the Defendant, a partition is likely to be of even more deleterious effect to the relationship of the parties.

49. Therefore, in the view of the Court, having regard to the nature of the property and the circumstances of the parties, it would be more beneficial to the parties to order a sale in lieu of partition in this case.

50. For these reasons, the Court therefore disposed of this Claim in the manner set out at paragraph 1 above.

Dated this 10th May, 2016.

Ricky Rahim
Judge