

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

(Sub-Registry, Tobago)

Claim No. CV2020-04328

Between

SILMA ROBERTS

Claimant

And

ROGER BROWN

Defendant

Before the Honourable Mr. Justice R. Rahim

Date of Delivery: Thursday May 20, 2021

Appearances

Claimant: Ms. C. A. Bernard instructed by Ms. S. John

Defendant: Ms. D. Moore Miggins

DECISION ON APPLICATION FOR AN INJUNCTION

1. This is a decision on an application for injunctive relief in a claim for a declaration that the claimant has acquired an equitable interest in the matrimonial home at Pentland Trace Plymouth Tobago by virtue of financial and other contributions. The claimant was married to the deceased Hector Roberts on September 26, 2015 but they had by then lived together since 1994 in Trinidad until they moved to Tobago in 2008. In 2009 they began construction of the matrimonial home on a parcel of land assented to both the deceased and his son the defendant by virtue of a gift from the mother of the deceased under her last Will and Testament. On the claimant's case the deceased was unaware of the Deed of Assent and the fact that he was seized of a one half undivided share with his son the defendant.
2. The deceased died on October 28, 2020. By that time the claimant had sourced financing for the construction of the house over the several years of occupation. The source of financing included proceeds of her salary as a Geriatric Nurse and grant from the Land Settlement Agency Tobago. On October 30, 2020, the defendant attempted to evict the claimant and it is alleged that he gave instructions to the Water and Sewerage Authority to disconnect the water supply and to the Trinidad and Tobago Electricity Commission to disconnect the electricity supply.
3. On December 16, 2020 the defendant undertook not to evict the claimant or interfere with her occupation until determination of the present application for an interim injunction filed December 11, 2020.

4. The court's remit is not to make any findings of fact and it makes none. The court must consider whether there is a serious issue to be tried. If so then whether damages are an adequate remedy and in whose favour the balance of justice or balance of convenience lies. In so doing the court may consider what appears to be the competing strengths of the respective cases.
5. The well-established and well-known principles for consideration of the court when treating with interim injunctions are set out in the cases of **American Cyanamid v Ethicon** (1975) AC 396, **Jetpak Services Ltd v BWIA International Airways Ltd** (1998) 55 WIR 362, **East Coast Drilling and Workover Services Ltd v Petroleum Company of Trinidad and Tobago Ltd** (2000) 85 WIR 351, **National Commercial Bank Jamaica Ltd v Olint Corp Ltd (Jamaica)** [2009] UKPC 16 and **Chief Fire Officer and Others v Felix Phillip and Others** (C.A. CIV. S.49/2013) (Unreported). These principles are widely accepted and not in issue so that the court does not propose to traverse them in these reasons but directs itself in terms of the cases.

Serious issue to be tried

6. From the facts of the case as set out in the several affidavits filed and in particular in the affidavit of the claimant filed December 11, 2020 it can be gleaned that the mother of the deceased, Baby Roberts also called Christiana Roberts bequeathed one lot of land to the deceased by her last Will and Testament. It does not appear to be an issue that the rule of survivorship applied when the deceased passed on, he having been vested with a one half undivided share in the lot of land. However, by Deed of Assent DE201000198122D001, the Legal Personal Representative of the estate of Baby Roberts, having been granted probate of the said Will, assented the property not only to the deceased but to both the deceased

and the defendant for valuable consideration paid by the defendant to the deceased in the sum of \$50,000.00.¹ To that end the lands were purportedly transferred to both the defendant and the deceased as joint tenants. It must be noted that there is no challenge to the Deed of Assent in this case or to the payment of the consideration by the defendant for the half share save and except that the claimant has deposed that the deceased said he had no knowledge of any such thing and had never received any such money. Indeed, no suitable relief in that regard has been sought.

7. In passing the court observes that there may be a valid argument otherwise that the conveyance by way of the Assent was insufficient to pass the property to the deceased as the Assent was done to convey the property to the defendant to hold unto the use of the deceased and the defendant. No conveyance appears to have been made to the deceased. Either way this appears not to be an issue in this case.
8. The effect of the deed in law assuming that it was effective in vesting the property in both the defendant and the deceased is of course that upon the death of the deceased the defendant became the absolute owner of the whole by operation of the rule of survivorship.
9. The real issue in this case therefore is whether the claimant having contributed to the home is entitled to an equitable interest and/or a life interest in the home. It is the evidence of the claimant that the deceased was a builder by trade and they completed a one bedroom house in 2010. The grant of \$7,500.00 was obtained in 2012 and the first story of the home completed in 2014. The deceased and the claimant planted fruit

¹ See recital in exhibit "D" annexed to the affidavit of Silma Roberts filed December 11, 2020.

trees and maintained the land undisturbed. The Deed of Assent was discovered when the deceased gave instructions for a power of attorney to be prepared upon his health beginning to fail in May 2020.

10. There has arisen another issue in this case that now forms part of the historical context of the case and has not been pleaded as an issue to be tried in the claim. That issue was whether the deceased executed the Deed of Assent with the full knowledge and intention to transfer the property to his son. Prior to his death, a pre action protocol letter was sent to the defendant on behalf of the deceased alleging that the deceased was unaware of the Deed. These allegations were refuted by letter on behalf of the defendant. The deceased subsequently passed away without having instituted a claim. Those issues are not pleaded in this case and no relief has been consequently sought in respect thereof. So that while those facts appear to provide context, they go no further.

11. The evidence in opposition to the application comes from several affidavits. Firstly, there is that of the brother of the deceased Arthur Joseph who makes the claimant out to be someone with whom Baby was not very pleased. He also painted the deceased as being someone with bad smoking and drinking habits. It is his evidence that the labour for the house was provided mainly by the defendant and his two brothers. Other family members also assisted. The claimant had no role in the construction of the house as she was not around at the time. Also the deceased had serious injuries at the time which prevented him from so doing. It is his evidence that the deceased told the siblings at a family meeting that he wanted the defendant brought on the Deed when Elizabeth, the Executor of Baby's Will was ready as he had not supported them when they were children and wanted to leave it to the defendant as his eldest child. He was pleased that

the property would remain in the family. As a result, the Deed was prepared and the four siblings attended the office of the Attorney at law where the Deed was read over and it was executed after the deceased repeated what he had said earlier. This of course does not explain the fact that the transfer was done for valuable consideration the receipt of which was acknowledged in the Deed and appear to be evidence that must be approached with caution and subject to scrutiny upon trial. It is however not the duty of this court to give weight to or assess evidence at this stage so the court does no such thing. The substance of the evidence on the material issue was the same by the sisters of the deceased Audrey Johnson and Elizabeth Neptune.

12. The defendant denied that the claimant lived with the deceased for twenty years and deposed that she attended on several other male companions during that time. He provided the majority of the labour together with his brothers. The deceased was injured and could not supply any labour. He denied that the claimant applied for the grant and deposed that the grant was applied for by the brother of the deceased for the deceased. He denied the improvement by the claimant. He speculated as follows:

“I do not know whether he (the deceased) was thinking of my inputs into the property (which was ongoing) when he acknowledged receipt of the said sum of Fifty Thousand Dollars”.

13. There is also the affidavit of Terrance Williams filed in support of the defendant. Williams deposed that he knew everyone associated with the case as he has resided at Pentland Trace for some forty five years on land situated some 100 feet away from the subject property. He also knows the deceased and would see him every day at the home. The essence of his affidavit is that the claimant did not reside at the home of the deceased

continuously. She was rarely there according to him, about once per month for a day or two. He accepted that her son Keinel Garraway lived with the deceased for 10 years at the address before his death. He Garraway began living there when the house was built in 2009 at which time he was about 9 years old.

14. There is therefore in the court's view, a serious issue to be tried as to whether the claimant spent any sums on the home, applied for and obtained the grant (not a material issue as a grant is not repaid) and whether she contributed in any way to the house whether in cash or by actions. This is the sole basis upon which the claimant grounds her claim for a life interest. On the affidavits before the court, there is dispute as to the facts that would lead to a successful claim. The evidence of those disputed material facts must be tested on cross examination. Suffice it to say that the claimant seems to be in no better position than the defendant as far as supporting documents are concerned to prove contribution. The respective cases therefore appear to be more or less of even strength at this stage in the court's view. The factor that appears to tip the scale somewhat in favour of the claimant is that although she and the deceased were only married in 2015, they appear to have been in a live in relationship with each other for over 20 years.

Damages adequate remedy

15. The essential question to be considered is whether damages would be an adequate remedy should the court not grant the injunction and the claimant be ultimately successful in the claim. The answer is plainly no. Damages would not be an adequate remedy as the claimant uses the subject property as her residence so that to deprive her of her place to live without more would be to do a grave injustice at this stage of the

proceedings. Further, the claimant's claim is not only one for an equitable interest but is also one for a life interest. Should the claim have been solely that of one for an equitable interest a reasonable argument may have been made that such an interest is capable of quantification. However, the rights accompanying a life interest goes beyond that in the view of the court. An interest in property until death in the circumstances of this case where the claimant is dependent on the property for residence inherently means that damages will not be adequate to compensate the claimant. It should be noted that in so saying the court makes no general statement of principle but so finds in view of the circumstances specific to this case.

Balance of Convenience/Justice

16. The court must determine where the balance lies. In other words, does the hardship or prejudice likely to be suffered by the claimant should the injunction not be granted and the claimant be ultimately successful on the claim outweigh the hardship or prejudice likely to be suffered by the defendant should the court grant the injunction against him and he be ultimately successful on the claim. To consider the balance, the court must look at the relative cases set out by the parties.
17. The claimant has deposed that the family of the deceased always disapproved of her relationship with him and so this is the foundation of the problem. She has deposed that she contributed to the building of the house and planted trees (this is disputed and is a matter for trial). When her evidence is taken at its highest however, she is likely to suffer tremendous hardship by being evicted from the house that she has lived in for many years. In the context of eviction, the court infers that she having been treated for acute chest and stomach pains eviction may have a deleterious effect on her well-being.

18. On the other hand, the defendant does not reside in the premises. At the highest on the evidence he owns the property (which is still the subject of proof at trial). So that at the highest he will be deprived of the use of the premises until the case is completed at the highest. He deposed that he does not own a home otherwise and lives in a small wooden one bedroom home in his mother's yard with his wife and three children ages 17, 18 and 6. He says it is cramped accommodation which they have outgrown. He wants to finish the house at Pentland and occupy the property.
19. He has further deposed that the claimant has a home at Toco and that she lives there. That house was built by the deceased for the claimant. He has said that he has not given instructions to either WASA or T&TEC to discontinue the respective services.
20. It is clear to the court that as inconvenient as it may be, the defendant does in fact occupy a house with his family. As to his assertion that the claimant lives in a house in Toco. The claimant has not filed an affidavit in reply to refute this. However, the affidavit in support sets out that her residence is Pentland so that there remains a dispute in this regard that will only be resolved at trial.
21. When the balance is weighed it is clear that the claimant is likely to suffer greater hardship so that the balance lies in her favour and the court so finds.
22. Before disposing of the application the court must treat with one final point. The defendant has submitted that the claimant has not come to equity with clean hands and so the application should be dismissed. In so doing the defendant has submitted that the claimant has failed to answer

many questions and issues raised about her behavior for example whether she lived with another man during the marriage and whether her son is the son of another man amongst others. In the court's view the submission is mis-conceived as these matters (in so far as only some of them may be relevant to the case) are all matters in dispute which must be determined at trial. Should the court take it upon itself to find at this stage of the proceedings that the claimant has not been truthful or has hid information or has refused to disclose information it would be averring onto itself functions that are clearly outside the remit of a court hearing an application for an interim injunction. The court will therefore decline the invitation of the defendant so to do.

Disposition

23. The order is as follows;

- i. The Defendant is restrained whether by himself or through his servants and/or agents howsoever from harassing the claimant or interfering in any manner whatsoever with her occupation or enjoyment of the property situate at Pentland Trace Tobago until determination of the claim.
- ii. The costs of the injunction shall be assessed by a Registrar in default of agreement upon determination of the claim and paid by the unsuccessful party to the claim to the successful party.

Ricky Rahim

Judge