

The first and third named Plaintiffs are the sister and the daughter respectively of the Defendant. When this action was commenced the Defendant's mother was the second named Plaintiff but she has since passed away.

The Plaintiffs acknowledge that the Defendant was granted permission to occupy those premises rent free in January 1998, but they sought to recover possession of the premises from her when in 1998 she constructed a concrete structure at the back of the dwelling house and subsequently in 1999 a garage, allegedly without consent. To this end they had a letter dated January 19th, 2001, and subsequent letters, issued to the Defendant.

The Defendant contends that she was told by her mother that she could live at the subject premises as long as she wished and that nobody could put her out.

The Defendant testified to the arrangement as follows:

“She gave me the key. She (my mother) said I could live there. Nobody to put me out. Nobody to tell me anything. I could live there as long as I want. Those were her exact words.”

Undisputed Facts

1. The Defendant's father owned property including the subject premises.
2. He died in 1993 leaving everything by will to his wife the second named Plaintiff Popo Ramkissoon who was the mother of both the first named Plaintiff, Raj and the Defendant Radhika.
3. On November 19, 1994 the second Plaintiff Popo Ramkissoon transferred the subject premises, that is, the whole of the property at Percy Street jointly to herself and the other 2 Plaintiffs, namely Raj, her daughter and Savitri, her granddaughter. Savitri, the 3rd named Plaintiff is the daughter of the Defendant.

4. Before her death, the second named Plaintiff together with the other Plaintiffs, had several letters written to the Defendant namely:
 - (i) letter dated December 11, 2000 – (not in evidence but referred to in other letters).
 - (ii) letter dated January 19, 2001.
 - (iii) letter dated February 8, 2001 and
 - (iv) letter dated May 21, 2001.

5. In or around January 1998 Popo, with the acquiescence of the other Plaintiffs allowed the Defendant to occupy an upstairs apartment on the subject premises rent free. Her occupation commenced from February 1998.

6. It is not disputed that the Defendant carried out some construction on the property in 1998 shortly after moving in, and expended sums of money thereon, though it is disputed whether concrete structural additions thereon including a shed and a garage were authorised.

Issue

What were the terms of the arrangement under which the Defendant went into occupation of the subject property?

The evidence of the first named Plaintiff - Raj

The effect of her evidence was that in February 1998 Radhika the Defendant moved into the premises having been allowed to do so by her mother Popo. No rent was required from her. When she saw Radhika was putting up a concrete structure in July 1998 Raj told her verbally not to do so. Raj also spoke to her mother about it and her brother did something. Raj was already a part owner of the property by that time having acquired her interest in 1994. In 1999 Radhika started to extend further to make a garage. Raj protested but to no avail. In 2001 Raj, Savitri and her mother

went to a lawyer about recovering possession. Her mother went with her and in fact it was at her mother's behest.

The Court assessed this witness as a witness of truth, who was not prone to exaggeration or overstatement.

Much was made in cross examination of the first Plaintiff as to the fact that the Defendant's brothers and sisters all shared in the estate of her mother while the Defendant did not, and an attempt was made to portray the Defendant as someone who worked in her father's rumshop and before that, in her family's parlour while the other siblings completed their secondary education.

The fact that provision was made for all her brothers and sisters, was apparently put forward as the basis for inviting the court to infer that provision would have been also made for the Defendant in some form, in view of the difficult circumstances that life imposed on the Defendant.

The Court finds that this was of marginal relevance to the issue, though it helped explain the motivation for the Defendant's mother to have provided rent free accommodation for the Defendant in view of the Defendant's limited education and earning ability, compared to her brothers and sisters. It may well be that these factors contributed to the Defendant's perception and belief that her mother intended her to have the whole of the subject property.

The evidence of the third named Plaintiff

She gave evidence of a telephone conversation – or at least one side of it that she overheard, and remembered years later, between her grandmother and her mother.

While counsel commented on the ability of this witness to remember this and other conversations years later, I do not consider it remarkable that such a conversation would be remembered. It related to this Plaintiff's mother and to property that she was a part owner of.

In any event however I find not much turns on it. I do not accept that the memory of a one sided conversation can be of much assistance in relation to the intention of the Defendant's mother at the time that she let the Defendant into possession. That is because it is not known what the Defendant was saying at the other end of the telephone conversation, as this witness freely acknowledged, or whether there were other conversations that she was not privy to that related to the arrangement.

Fortunately I did not have to extract what is of relevance if anything from this conversation, and if I did, I would have assigned it minimal weight.

I find however there is sufficient evidence of the intention of the Defendant's mother from other sources, as will be referred to.

She also testified that the Defendant had permission to put up a temporary shed in 1998. Instead the Defendant began to put up concrete posts. This Plaintiff protested about the posts and in 1999 when the Defendant began to make a garage she went with Raj to speak to the Defendant about it. The Defendant did not have permission to build the shed or garage or to stay at the subject premises indefinitely.

The Defendant's evidence

She testified in cross examination "In February of 1998 I was given permission to occupy the upstairs of the property of Percy Street, Chaguanas. Downstairs was rented to other people. After I had lived in the house for several years, and in view of the fact that I was told to live there for the rest of my life with my family, I believed that the property was going to be mine in accordance with my father's wishes.

According to her Witness Statement -

"When I continued living in the said property my common-law husband and I built a concrete washroom and laundry facilities at the premises. We then painted the upstairs portion of the said building and installed two water tanks, improved the electrical works and re-wired the premises. We installed a water pump and improved the plumbing works in the building, all these works were done in or about 1998-1999 with the full consent and approval of my mother and the other Plaintiffs since they lived close-by. (Copies of receipts for the said works were annexed). Whilst these works were in progress, no objection of any kind, whether oral or written ever came from any of the Plaintiffs. Further, my mother told me that nobody could put me out of the property since my father had left a shelter for all his children. In addition, I pay all utility bills for the premises which I occupy and I had cable television and telephone services brought in the building."

The receipts attached support the expenditure in 1998 on water tanks, electrical works, plumbing and painting. They also support expenditure on concrete blocks, cement, gravel, sand and galvanise.

I turn to consider what is the real and objective evidence of the intention of the Defendant's father and mother.

Undisputed Matters

1. The will of the Defendant's father

The Defendant's father left all his property by Will to the Defendant's mother.

The Defendant testified that her father in or around 1978 had told her he had six (6) children and six (6) properties which he intended to give to everyone. In fact however he died leaving a Will in which he left everything to his wife and nothing to the Defendant. He thereby made his position clear.

2. The deed of conveyance from the deceased second Plaintiff to the Plaintiffs.

In 1995 by Deed of conveyance 5170 of 1995 dated November 14, 1995 the Defendant's mother conveyed the property at Percy Street to herself and the two surviving Plaintiffs as joint tenants.

The issue arises as to whether the Defendant's mother by herself was in a position to convey any equitable interest to the Defendant .

The Defendant testified that none of the other Plaintiffs promised her anything about the apartment. Only her mother gave her the keys and promised her. At paragraph 18 of her affidavit filed on November 15 2002 she saidmy sister and my mother told me in no uncertain terms that I am to remain there....". In cross-examination, however she was adamant that her sister Raj did not tell her anything about the property and that this Statement in her affidavit was not true.

She later said she assumed that she was going to be given the whole property, but she did not try to collect the rent from the tenants downstairs.

3. The letters written by attorney for the Plaintiffs

Further it is clear that all Plaintiffs including the Defendant's mother approached an attorney in 2001 with the aim of recovering possession of the subject premises from the Defendant.

It is not true that the Plaintiffs did not object to the Defendant's construction activities as the letters clearly demonstrate. The Defendant's mother could not demonstrate any more clearly her intention to terminate the permission she had granted to the Defendant.

Findings of fact

I found the Defendant to be an evasive witness and not always truthful. I did not believe her evidence of the alleged arrangement with her mother under which he entered into occupation, in view of the inconsistencies in her evidence and the shifting basis of

- (a) her alleged right to remain (-whether it was her father's wish, or her mother's alleged promise, or her mother's and sister's alleged promise, or her expenditure in the property without objection or all of the above.
- (b) the property which she was claiming -(whether the whole property, upstairs and downstairs, and the land on which it stood, or just the upstairs apartment.)

I find as a fact that

- (1) The Defendant's mother, on a balance of probabilities did not agree to do anything more than to let the Defendant occupy the premises rent free until she found a place.
2. That her intention which the other Plaintiffs acquiesced in ,was to assist her daughter who had faced a great deal of hardship in her life. One of the reasons for that assistance was the Defendant's handicapped child, who unfortunately died within weeks of her moving into those premises.
3. That the Defendant did expend sums on works at the premises, but raised concerns when she began construction work of a permanent nature including construction of a shed and a garage, which exceeded the ambit of her permission to occupy the upstairs apartment.
4. That precisely in order to avert the raising of the type of claims that are now raised by the Defendant, of some type of equitable interest being created, steps were taken by the Defendant's mother and the other Plaintiffs in approaching a lawyer and seeking to regain possession of the premises, including by offering to compensate her for monies expended.
5. I also find it exceedingly unlikely that the Defendant's mother would unilaterally confer upon the Defendant a right to remain in the subject premises or the upstairs apartment for life , knowing that she had recently transferred legal title to herself and the other Plaintiffs.
6. The letters in reply by the Defendant's attorneys make absolutely no mention of any agreement to confer a right to occupy the premises for life or to confer upon her any equitable interest. I find that that is an afterthought by the Defendant and is completely inconsistent with her subsequent claim to this effect.
7. As to the Plaintiff's assertion that a contract came into being under which the Defendant's lawyer on her behalf offered to

vacate in return for payment to the Defendant of \$25,000 compensation for improvements made, I find that no such contract came into being. I would be inclined to the view that it is unlikely that the Defendant would have agreed to give up possession in return for a payment of \$25,000 if she believed rightly or wrongly that she was entitled to some share of her father's and mother's estate. I conclude that she did hold such a view but it had no basis whatsoever, and certainly was not based on anything her mother or the plaintiffs or her father told her.. On a balance of probabilities I accept the Defendant's evidence that she "just tell him (her lawyer) how much they spend" but did not agree [or intend to agree] to vacate.

In any event however I find that the first response to the Defendant's lawyer's letter of January 23, 2001 introduced new terms, namely:

- (i) the necessity for agreement upon a valuator
- (ii) The sharing of the costs of such valuator and therefore amounted in law to a counter offer and not an acceptance.

I hold that the letter dated January 23, 2001 does not constitute an agreement that the Defendant vacate in return for the payment of \$25,000 as the letter dated February 8, 2001 constitutes a counter offer. It is unnecessary therefore to determine whether the letter dated January 23, 2001 fully reflected the Defendant's instructions or whether the Defendant fully approved its contents before issue. If I did I would conclude that on a balance of probabilities the letter did not fully reflect the Defendant's intentions, given the Defendant's failure to take any step in furtherance of the alleged agreement, or to even respond to further communications on this issue.

The law

For the Defendant to succeed in her Defence to the Plaintiffs' claim for possession she must establish an equitable interest that entitles her to maintain that possession against the legal owners – the surviving Plaintiffs. I turned therefore to consider whether a promissory or proprietary estoppel arises.

Promissory Estoppel

“Where by his words or conduct one party to a transaction freely makes to the other a clear and unequivocal promise or assurance which is intended to affect legal relations between them (whether contractual or otherwise) or was reasonably understood by the other party to have that effect , and , before it is withdrawn, the other party acts upon it , altering his or her position so that it would be inequitable to permit the first party to withdraw the promise , the party making the promise or assurance will not be permitted to act inconsistently with it.” Snell’s Equity 31st ed.

2005 Para 10-08

I find , for the reasons set out hereinafter, that no such promise was made.

Proprietary Estoppel

“ 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 31stEd.
Para 10-16 to 10-17

1.Promise

The defendant must establish that the plaintiffs or their predecessor in title had represented that she will obtain an interest in property “either by making an express promise ..as .. where .. a mother assures her daughter that she will have the family home for life .. or by encouraging the defendant to believe that she will obtain such interest by words or conduct .. or by encouraging the defendant’s belief passively by remaining silent . It is not necessary for the defendant to prove that the plaintiffs agreed that the promise or assurance would be irrevocable since it is the defendant’s detriment which makes the assurance binding and irrevocable provided that it was clearly intended to be acted upon.” **Snell’s Principles of Equity 31stEd.**

Para 10-17

I find the Defendant to not be a truthful Witness. I do not believe her version of the arrangement with her mother in view of the inconsistencies in her evidence referred to previously. I find the arrangement was that the Defendant was to be permitted to live rent free on the premises comprising only the upstairs apartment for an indeterminate period.

I find that no right to occupy the subject premises for life, or even the upstairs apartment for life has been established. I conclude that the Defendant appeared to be under the self created misapprehension that she, like her siblings should have benefitted from her father’s, and then her mother’s estate. The evidence is clear

however that neither of them intended to convey interests in their property to the Defendant It is not for this Court to override their wishes.

I find no one made any promise to the defendant that she had the right to occupy any part of the premises for life.

2. **Her 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.**

I find that there is an element of this in relation to the upstairs apartment – for example a water pump and water tanks were purchased and painting was done. However the attempt to build a shed and make structural additions was responded to by the Plaintiffs' issuing a letter via their Attorney, and [I find] by making verbal protests. I find that no protest was likely to have made when the Defendant installed for example, water tanks, water pump, some electrical works or painted the apartment.

3. **Expectation or Belief - She must have acted in the belief either that she already owned sufficient interest in the property to justify the expenditure or that she would obtain such interest.** Snell's (ibid) Para. 10-18

I find that the Defendant was granted the right to occupy the upstairs apartment rent free and though no period was specified it was not for life. She was not granted any right to enlarge her occupation or extend it to the downstairs of those premises whether by constructing anything downstairs or otherwise.

Her expenditures within the apartment were permitted by the Plaintiffs and not objected to. However there was no basis whatsoever for her belief that she would be

given a right over the whole building at Percy Street. Any belief in such entitlement was entirely unjustified..

She was not entitled to collect rent from the tenants downstairs and she herself never claimed to be able to do so.

Her expenditures on the downstairs portions of the premises were not authorised or encouraged by the Plaintiffs. In fact they protested, albeit ineffectively when they learned of construction of the structural additions downstairs.

It was suggested that they took no legal action until 2003. This is understandable- the Plaintiffs and the Defendant were family and litigation would have been a last resort. Certainly the Plaintiffs who gave evidence gave the clear impression that they did not relish the prospect of giving evidence against a sister in the case of the first named Plaintiff and a mother in the case of the third named Plaintiff.

I find in the circumstances that nothing turns upon any delay in instituting legal action.

4. She must have incurred expenditure or otherwise acted to her detriment.

I find that she has incurred expenditure on the entire premises in the vicinity of the \$25,000 referred to in letter dated January 23, 2001 from her then lawyer. This is corroborated by her receipts in approximately this amount. Some of those sums were for structural works downstairs. She cannot claim to be compensated for these expenditure.

The effect of expenditure on the upstairs apartment

I find that she has expended sums on the upstairs apartment. That expenditure is difficult to quantify, but it would be less than the \$25,000 spent on both the apartment and the structural additions. From the attached receipts it appears to be less than \$13,000.00, the remainder being for cement ,blocks, gravel, galvanise and other structural type items .

I do not consider that any level of expenditure however minimal would give rise to an equitable right to remain in possession for life, especially expenditure outside of the terms of her initial permission. Some expenditure was for the purpose of making the apartment more comfortable for example, a water pump and water tank. Taking into account the fact that she occupied it rent free I find it reasonable for her to have made such expenditures

.In so far as it comprises expenditure on painting, water tanks and water pump, electrical and plumbing work,. it was for the purpose of enhancing the Defendant's occupation and she has had the benefit of that expenditure since February 1998 – 10 years.

I balance the Defendant's expenditure on the apartment against her rent free occupation of premises for (10) ten years.

. I do not find that such expenditures were sufficient to create any equitable interest.

5. There must be no bar to the equity

I find that her knowledge that her action in constructing permanent additions to the property, and not confining her occupation to the upstairs apartment constitute bars to any equity arising. I find that the Defendant well knew that she had no rights conferred on her to the whole of that property, that the downstairs tenanted portion

was none of her concern, and that her actions in construction of additions to the premises were in defiance of the protests of the true owners including her mother who allegedly gave her the permission to occupy the upstairs apartment rent free in the first place.

I assess any interest of the Defendant in the premises to have been a personal licence to occupy only the upstairs apartment free of rent. I find that that licence was terminated when she began to assert rights (inconsistent with that licence) approaching full ownership of the entirety of the premises.

I also find that her actions in exceeding her initial licence disentitle her from asserting any equitable interest arising in respect of her expenditure on the upstairs apartment. I decline therefore to order reimbursement of the Defendant for her expenditure on the upstairs apartment as I have also held that she has had the benefit of such expenditure for (10) ten years. If I had found an equitable interest to have arisen I would have assessed it at the level of the defendant's expenditures on the upstairs apartment and I would have been inclined to value it at no more than \$12500.00 bearing in mind that some of the items comprise chattels not affixed to the land, for example the water pump ,and the ten year period of use that the Defendant would have obtained from such items/expenditure.

Order:-

- (1) There will be an Order in terms of paragraph 2 of the amended Statement of Claim filed on October 22, 2007.
- (2) The Defendant is to deliver up possession of the property described in the summons dated May 10, 2002 on or before April 22, 2008.

- (3) The Defendant is to pay the Plaintiff's costs fit for advocate Attorney at Law.
- (4) Liberty to Apply.

Dated the 22nd day of February, 2008.

Peter A. Rajkumar,
Judge.