

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2010 – 03575

Between

HARRY FULCHAN

Claimant

And

NARESH FULCHAN

Defendant

**BEFORE THE HONOURABLE MR. JUSTICE PETER A.RAJKUMAR**

**APPEARANCES:**

Mr. R. Boodoosingh for the Claimant

Ms. V. Badri-Maharaj for the Defendant

**REASONS FOR DECISION**

**Background**

1. The claimant, now 51 years old, claims an equitable interest in the original family home known at No. 22 Cashew Park, Abercromby Street, St. Joseph, where he resided with his parents and his siblings, together with consequential relief for the protection of that alleged interest.

2. The original family home was owned by his father and mother. His father died and his mother became the sole owner. She transferred it by deed dated 10<sup>th</sup> September 2007 to the defendant, his younger brother.

3. The claimant has several brothers and sisters. Many of them testified at trial. Some testified in support of his claim, some against. They are not all on speaking terms with each other and their evidence was contradictory. This appears clearly from the highlighted portions of the notes of their evidence in cross examination.

### **Issue**

4. Whether the claimant established a sufficient factual or legal basis to found a claim to any equitable interest in the subject property, binding on the defendant.

### **Conclusion**

5. I find that the claimant has failed to establish either in fact or in law sufficient basis for his claim to any interest in the subject property.

### **Disposition**

6. **IT IS HEREBY ORDERED** that:-

a. The Claim filed on the 27th day of August, 2010 is dismissed.

b. The Defendant is granted possession of the downstairs property known as No. 22 Cashew Park, Abercromby Street, St. Joseph in the Ward of Tacarigua, in the island of Trinidad comprising All and Singular that certain piece or parcel of land situate in St. Joseph, in the Ward of Tacarigua, in the island of Trinidad, comprising One Lot more or less and bounded on the North formerly by lands of P. Andrews but now a Road Reserve Ten Feet Wide; on the South by lands of J. Lewis; on the East by lands of Seetal and on the West by lands of Dookat or howsoever otherwise the same may be butted bounded or known (hereinafter called “the said property”).

c. The Claimant to pay Defendant's costs in the sum of Fourteen Thousand Dollars (**\$14,000.00**) as prescribed by the Civil Proceedings Rules 1998 as amended.

### **Analysis and Reasoning**

7. The basis of his claim is set out in the claimant's witness statement as follows:

*That I have lived at No. 22 Cashew Park, Abercromby Street, St. Joseph all my life save and except for a 3-4 month period a long time ago when I did not live at home.*

*Over time, the said property was developed by my father, Reynold Fulchan, as he was working and **I contributed with labour**. I also worked with his father (sic) transporting goods for Lever Brothers. At that time, the father of Claimant (sic) had a truck. My father would give me on average about \$20.00 per week as a stipend. **My other brothers including the Defendant also worked with my father. These brothers including the Defendant also worked with my father. Those brothers would be paid by my father.***

*The entire house on the said property was rebuilt by my father with labour from myself and my other brothers save and except the Defendant. At present the house is 2 storey with three bedrooms upstairs and I live downstairs in an apartment. The re-built house is about 40 years old and the claimant (sic) has been living there since that time.*

*My father died about 14 years ago and just before he died, he told my mother that I must stay on the property and that I should not go anywhere and he made my mother promise.*

*I built the shed at the back of the house which is used mainly as a storage area and for **hanging clothes**. This was really to be a flat house but was not completed. The shed was built by Selwyn Bethlemy. **I cannot recall the cost of building same.***

*I maintain the entire downstairs area at my sole expenses. I used to give my mother \$100.00 every 2 months for **water rates**. I paid the **light bill** for downstairs, which has a separate meter. I would paint and clean downstairs save and except the 1<sup>st</sup> and 3<sup>rd</sup>*

*rooms. My eldest brother was living in the 1<sup>st</sup> room and the defendant was living in the 3<sup>rd</sup> room and he moved upstairs with our mother when our father died.*

*I used to take care of my mother until about a year ago. The Defendant brought a female person to purportedly take care of our mother but she would come in between. My mother did not like to eat from this lady. My mother did not like her to be around her. Our mother died on the 12<sup>th</sup> June 2010. ... ..*

*That by letter dated the 5<sup>th</sup> August 2010, the Attorney at Law for the Defendant wrote to me in which the said Defendant purported to revoke the permission granted to me to occupy the said house and gave me 14 days to vacate the said house...*

*Based on the promise of my parents **I have remained living on the said property. I have built the shed, downstairs bathroom, tiling, installation of hot and cold, maintained, cleaned and looked after our mother until she died. I have spent most of my life on the said property. I have acted to my detriment based on the promise of my parents.***

8. He therefore claims an interest in the family home based upon the following:-

a. his **labour**;

b. his **indirect contribution** by his work with his father;

c. a **promise**;

d. **care of his mother**;

e. the assertion that that he **cleaned and painted** his room downstairs – (not the downstairs rooms occupied by his other brothers);

f. the assertion that he **paid the light bill and water bills** for the downstairs portion of the property;

g. the assertion that he **constructed a shed , downstairs bathroom, tiling, installed hot and cold water.**

9. He claims that as a consequence of the promise and these contributions he is entitled to an equitable interest in the property notwithstanding that before the death of his mother she transferred the family home by deed dated 10<sup>th</sup> September 2007 to the defendant - his younger brother.

## Law

10. For the Defendant to succeed in his claim he must establish an equitable interest. It is therefore necessary to examine the basis of the claimant's claim to ascertain whether any interest was created by virtue of:

- (a) Proprietary estoppel
- (b) Promissory estoppel.

### 11. 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 emphasis mine ” **Snell’s Equity 31<sup>st</sup> ed. 2005 Para 10-08***

12. I find, that there is no evidence that any such clear and unequivocal promise or assurance was made.

### 13. 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 31st Ed. Para 10-16 to 10-17*

14.

**1. Promise**

The claimant must establish that the defendant or his predecessor in title, had represented that he 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 claimant to believe that she will obtain such interest by words or conduct ... or by encouraging the claimant's belief passively by remaining silent. It is not necessary for the claimant to prove that the defendants agreed that the promise or assurance would be irrevocable since it is the claimant's detriment which makes the assurance binding and irrevocable provided that it was clearly intended to be acted upon. See” Snell's Principles of Equity 31st Ed.*

I find no one represented to the claimant that he would obtain any **interest** in the subject property.

**2. 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. See” Snell's Principles of Equity 31st Ed. ibid**

I find that the claimant has failed to establish that he financed any construction on the said property, and /or has failed to prove that any construction he undertook on the said property was not exceeded in value by the several years of rent free occupation that he enjoyed there by the permission of his parents.

**3. Expectation or Belief**

**He must have acted in the belief either that he already owned sufficient interest in the property to justify the expenditure or that he would obtain such interest. Snell's (ibid) Para. 10-18 See” Snell's Principles of Equity 31st Ed. ibid**

I find that the Claimant was granted the right to occupy rent free a room only in the house, and no period was specified. Even if his expenditures within his apartment were permitted and not objected

to I find any such expenditure was primarily for his own benefit, in part for maintenance, or for consumption of utilities, and in any event was not based on belief at the time of such expenditure that he already owned or would obtain an interest in the chattel house. See” **Snell’s Principles of Equity 31st Ed. *ibid***

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

*See” Snell’s Principles of Equity 31st Ed. *ibid*.*

The law as set out in Snell’s Equity (*ibid*) is clear. It will recognize such an interest in circumstances where a party asserting such interest was led to act to his detriment, and it would be inequitable not to recognize such an interest.

15. It appears that the misconception has developed that any purported contribution – no matter how tenuous, trivial or remote, can give rise to an equitable interest. In recent times this court has had to consider, for example,

- a. payment of land and building taxes,
- b. painting,
- c. purchase of chattels – for example furniture and air-conditioning units,
- d. cleaning of the yard and surroundings,

and the assertions that these either singly or in combination with other matters, gave rise to an equitable interest which had to be recognized by the holder of legal title. Such payments may be ancillary to other contributions but would rarely suffice on their own to create an equitable interest in real property.

16. Further such an interest can be given effect in many ways, and the benefit that such party has already enjoyed from the subject property can be taken into account, in assessing alleged detriment, to determine whether it is necessary to recognize and declare any further interest.

17. Routine maintenance activities on property that is occupied by such a claimant, such as cleaning or painting, would not usually fall into the category of detrimental actions that require compensation by the award and recognition of an equitable interest in property. This is activity to be expected of anyone who occupies and has the benefit of occupying property.

18. Payment of water and electricity bills would similarly not be examples of such detrimental reliance. This is again activity expected of anyone who enjoys the benefit of those services.

19. Payment of land and building taxes is equivocal as these can be paid by anyone, and are accepted from anyone who tenders payment.

20. Purchase of furnishings and chattels for the better enjoyment of premises cannot in most if not all cases, give rise to any benefit in land or real property. Apart from not being an expenditure that can constitute detrimental reliance, these are removable and severable, by definition, from the subject property.

21. It would appear from the multitude of matters in which these very claims are repeated, that it is necessary that this be restated.

22. This claim turned to a large extent upon issues of fact, and the findings of fact to which the law above was applied were based upon a consideration of the evidence as follows:-

## **The Evidence**

### **The alleged promise**

23. As to the alleged promise, the evidence of the witnesses varied. The claimant testified that it was made **before his father's death** when he was present together with one sister. The

statement that he described as having been made to him does not sound like a promise, far less a binding promise on which any one would rely.

24. The claimant's brother Harry also asserted that there was a promise made and that he was aware of it. However that promise was that his father wanted all his boy/male children to live at the property, though all the children could visit the home. The statements were made several times. He made those statements in the rum shop. Presumably he made them on other occasions also. He was equally adamant that the shed was built while his father was alive.

25. Several brothers and sisters testified in this matter, each contradicting the other, and it became increasingly clear that this family was divided, with factions supporting one brother or the other. Their evidence, and recollections in many cases, reflected whose cause each favoured. Those siblings, who were even aware of this alleged promise, differed considerably in their understanding or recollection of what it was.

26. The claimant's sisters averred that the promise that they were aware of was that all their father's children – male and female – would always have a place to stay at the said property.

27. I have highlighted in the notes of evidence of the several siblings their evidence with respect to the promise, and with respect to when the shed was built and who paid for it. In light of all the contradictions in the evidence of even the claimant's own witnesses, I find that there was no promise as alleged, and certainly no clear and unequivocal promise.

28. Such statements as may have been made over the years have been elevated into, and exaggerated to fall within the description of a promise. However there is no consistency with regard to what this promise was, and who witnessed this promise being made to the claimant.

29. I find that the line between expressions of intent, general statements, statements made in the rum shop, and statements that were selectively recalled is extremely blurred. In fact many of the siblings who testified seem to be under the impression that promises were also made to them.

30. I find the claimant's evidence was not reliable. His version of the promise that he says was made to him was unique, and not corroborated by the evidence of any of the other witnesses. Further, in cross examination he stated that the alleged promise was made almost 20 years before his father died, in 1976. In his witness statement he claimed it was made just before his father died. He claims to have built the shed **after his father died**. This is refuted by his own witness Hillary, as well as the contractor, and some of his other siblings.

### **The alleged expenditure on the shed / foundation**

31. The claimant was adamant that he constructed the shed / foundation **after** his father died. His witness, his brother Harry, was clear in his evidence that it was constructed before their father died.

32. This is important as other witnesses for the defendant testified that this construction was not even paid for by the claimant but was financed by the claimant's father while he was alive.

### **Findings**

33. I find, on a balance of probabilities, that the construction took place during the lifetime of the claimant's father. He claimed he could not recall how much that construction cost. I accept the evidence of the contractor as an independent witness.

34. I consider that claimant was not truthful about this. I consider that in all probability, the reason why he testified to the contrary was that, as his sister testified, his father wouldn't have

allowed anyone to spend money on his house when he was alive, and in fact his father, while alive, financed any such construction.

35. If the claimant purchased materials, I find that he would have done so with money supplied by his father. If he had financed it himself he would have had at least an idea of the approximate cost. I accept the evidence of his sister that the claimant did not himself have extra resources to have done so as he claimed.

36. He claimed that he also constructed a downstairs bathroom, did tiling, and installed hot and cold water. I find that there is no independent evidence that he did do. I do not accept the claimant as a witness of truth. I find that in cross examination he did attempt to be accurate but it was revealed that his witness statement was replete with exaggerations and inaccuracies. I find that in any event, if he did so he did so at all, it would have been for his own benefit, to enhance the occupation that he enjoyed rent free by the permission of the then owners.

37. In any event I find that neither expenditure would have sufficed to create any equity in the property capable of surviving the transfer to the defendant, as the claimant enjoyed rent free occupation of a room on the premises for several years.

38. I find that to be more than adequate compensation for any alleged contribution (which I do not accept) to the construction of the shed / foundation.

39. If I had accepted his evidence of contribution by way of the alleged expenditures I would have declined to assess any equitable interest as requiring anything further than the rent free occupation previously enjoyed.

## **Other alleged expenditures**

### **Payment for utilities**

40. He claimed that he paid the light bill and water bills for the downstairs portion of the property. Even if he did it cannot be the case that payment for utilities, that he consumed, can create for him an equitable interest in property. He paid his mother a contribution to the water rate. There is no evidence that that was even in full compensation for the consumption of water attributable to him.

### **Maintenance of Part of the Premises**

41. He claimed that he cleaned and painted his room downstairs – (not the downstairs rooms occupied by his other brothers). This normal maintenance can never give rise to an equitable interest in land.

42. I consider this alleged expenditure to be irrelevant. He was occupying a room at the property and he would be expected to pay for electricity that he consumed. Even if he paid for the electricity that his other brothers utilized for the rooms that they also occupied at the property, this cannot be sufficient to create any proprietary interest in the property.

### **Working with father**

#### **His indirect contribution by his work with his father**

43. There was a suggestion, though not fully expressed as such at trial, that in some way, as he worked with his father for a stipend, his efforts contributed to the income of his father which went into the construction of the house by his father. However he accepts that all his brothers also worked with his father when they were younger, save for the defendant. The defendant says they all did. The fact is they were paid and they had the benefit of living in the home. No special contribution has been demonstrated by virtue of his labour with his father that would elevate the

claimant's contribution over that of other family members. Further, such labour, for which he was compensated, does not suffice to create an interest by him in the family home.

### **Construction of the property by his labour**

44. He claimed that he contributed to the construction of the house with his physical labour. However he was around 11 years old at the time of that construction. This claim is an obvious exaggeration and cannot be taken seriously.

### **Care of his mother**

45. He claimed that he looked after his mother in her illness up to one year prior to her death. It turned out on the evidence of the claimant himself that he was not on speaking terms with his mother for over a year before her death. He did not attend her funeral. His contributions to looking after her did not extend to buying medicines for her, or meeting her medical expenses or nursing care. After his cross examination it became clear that in fact he did not make any significant contribution to her care, and this evidence was also an exaggeration.

46. I find that the claimant did not look after his mother or contribute in any significant way to her menial expenses. The defendant did. His mother transferred the property to him.

47. There is no basis for any equitable interest arising as asserted by the claimant. I reject his evidence as it consisted of exaggerations, and attempts to fit the actual facts into a legal framework that would create an equitable interest in the claimant. The facts do not support this, even on the claimant's own case. The transcript of the evidence reveals this in striking terms. I have no hesitation in finding that the claimant has not even come close, either in fact or in law, to establishing any interest in the subject property.

**Conclusion and Disposition**

- a. The Claim filed on the 27th day of August, 2010 is dismissed.
  
- b. The Defendant is granted possession of the downstairs property known as No. 22 Cashew Park, Abercromby Street, St. Joseph in the Ward of Tacarigua, in the island of Trinidad comprising All and Singular that certain piece or parcel of land situate in St. Joseph, in the Ward of Tacarigua, in the island of Trinidad, comprising One Lot more or less and bounded on the North formerly by lands of P. Andrews but now a Road Reserve Ten Feet Wide; on the South by lands of J. Lewis; on the East by lands of Seetal and on the West by lands of Dookat or howsoever otherwise the same may be butted bounded or known (hereinafter called “the said property”).
  
- c. The Claimant to pay Defendant’s costs in the sum of Fourteen Thousand Dollars (**\$14,000.00**) as prescribed by the Civil Proceedings Rules 1998 as amended.

**Dated this 3<sup>rd</sup> day of April 2012**

.....

**Peter A. Rajkumar**  
**Judge**