

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2015-00823

Between

ALPHEUS CHARLES

Claimant

AND

GEEWAN RAMDEEN

Defendant

BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

APPEARANCES

Mr. O. Kerr for the Claimant

Ms. K. Prince-Wilson for the Defendant

ORAL JUDGEMENT

The claims

1. The claimant seeks possession of premises occupied by the defendant, his step son. He claims that the defendant began occupying the premises under a lease agreement and using it as a roti shop, but had ceased paying rent.

2. The defendant claims that he never paid rent and there was never any lease agreement, though, as the roti shop was profitable, he did voluntarily pay to the claimant a monthly sum as a “contribution”. The defendant claims that he had been living at the premises since 1983, and that he had reopened a roti shop which had previously been operated by his mother. The defendant

also claims that he had, with the knowledge and approval of the claimant, expended sums on the construction of an annex in which he lived.

Background

3. After the separation of the defendant's father and mother, the defendant's mother went to live with claimant. The claimant was later married to the defendant's mother. The defendant refers to the claimant as his stepfather.

4. At one point they lived at a quarry at accommodation provided by the claimant's employer. Later the claimant and the defendant's mother decided to construct "the premises". The premises were constructed on an empty lot of land next to a school. In 1983 or thereabouts the defendant claims that he came to the premises to live with his mother and two other siblings. This is denied by the claimant. What is not in dispute is that a roti shop was set up in the premises and that his mother was involved in its operation to a substantial extent. What is also not disputed is that the premises were the matrimonial home of the claimant and the defendant's mother. (see paragraph 17 of the witness statement of the claimant).

The conversion

5. The premises were later converted into a concrete structure. The claimant claims that the conversion took place in 1982 and the roti shop was also opened in 1982. Given that:-

- i. the defendant's mother Amiran went to live with the claimant in **1980**,
- ii. the claimant accepts that there was a parlour operated by him at the time,
- iii. Amiran went to live with the claimant carrying with her both her children and nephews,
- iv. the claimant was then employed as a watchman at a quarry at a minimal wage,
- v. that it is not disputed that it was the defendant's mother Amiran who was primarily responsible for the cooking of the roti and other food at the roti shop (whenever it opened)

it is far more likely than not that, given the limited income of the fairly large family, Amiran would have had to put her cooking skills to use in the parlour sooner rather than later.

6. It is therefore more likely than not that the operation of the roti shop in the parlour predated the renovation/conversion of the original wooden premises to a concrete structure, and probably helped to finance it. In this regard I therefore accept the evidence of the defendant.

7. The defendant suggests that he provided some labour but it does not appear that he is seeking to claim an interest in the whole of the structure on the land, or the entirety of the premises, as a result of that alleged contribution. In any event he has provided insufficient evidence that his alleged contribution of labour then was, or could have been, sufficient to establish any such interest, or that the elements necessary for the creation of such an interest in the entire premises could have arisen, as it is clear on the evidence that:

(i) The **materials** utilized in the conversion of the premises to a concrete structure were sourced from the hardware nearby, and were derived, wholly or in part, from sales of roti. The materials were therefore **financed** from:-

a. the roti shop – then operated by either his mother, or, far more likely, his mother **and** the claimant, and

b. the earnings of the **claimant** as a watchman.

(ii) Even on the defendant's own evidence the **labour** for the conversion was also provided by others.

The Roti Shop

a. The defendant claims to have contributed to the running of the shop. There is a dispute as to whether the defendant lived there continuously since 1983 or whether he ever left and resided elsewhere. It does not matter. The defendant worked as a truck driver and as a taxi driver. His own witness Mr. Juman does not claim to have seen him operating the roti shop prior to his mother's death. The evidence is clear that the defendant's mother was primarily involved in the running of the roti shop, possibly with assistance from the claimant.

b. The defendant's mother passed away in 2007.

c. In 2009 or 2010 the defendant decided to reopen the shop. It is undisputed that the claimant gave him permission to do so. It is also undisputed that the defendant paid a monthly sum to the claimant, whether \$2000.00 per month or \$2500.00 per month. It is disputed whether that sum was paid as rent, as alleged by the claimant, or whether, as alleged by the defendant, it was a “contribution” given by the defendant without obligation, on the basis that the business was making a profit and the claimant was not working by that time.

The claimant’s claim

8.

i. The claimant is seeking a **declaration** that he is the owner of and **entitled to possession** of premises comprising a concrete structure measuring 20 feet by 18 feet consisting of one **bedroom**, toilet and bath, **kitchen** and customer reception area situate at Cantaro Extension, Cantaro Village, Upper Santa Cruz.

ii. An order that the Defendant deliver up **vacant possession** of the said premises.

iii. The Claimant is also seeking an order that the Defendant pay him arrears of **rent** in the sum of Thirty-Four Thousand Dollars (\$34,000.00).

9. On the pleadings the defendant claims:-

i. A Declaration that the Defendant is the lawful **owner** of a **concrete structure** of hollow clay and concrete blocks measuring 20 feet by 20 feet by 9 feet by 10 feet by 8 feet by 8 feet comprising **two rooms** and **one kitchen** situate at Light Pole No. 82 Cantaro Extension Road also known as L.P No. 85 Cantaro Extension Road, Santa Cruz in the Island of Trinidad;

ii. A Declaration that the Defendant by virtue of **his occupation** of the said premises since in or about the **1983**, his **mother’s previous occupation** of same and his **financial contribution to the improvement** of the concrete structure measuring approximately 12 feet by 18, has an interest in the said premises;

10. The claim is in relation to i. the roti shop and the area it occupies, and ii. in relation to an annex which the defendant alleges he built and paid for, and in which he lives.

11. In relation to the roti shop it appears that the roti shop was being conflated with the roti shop **business**. The defendant claims that his mother owned **the roti shop**. However the roti shop was part of a main building which in fact was the matrimonial home of the claimant and the defendant's mother.

12. The defendant claims that he has an interest in the premises, and specifically to the part of the building which housed the **roti shop**, based on:

- i. **his occupation** of the said premises since in or about the 1983,
- ii. **his mother's previous occupation** of same, and
- iii. **his financial contribution to the improvement of the concrete structure measuring approximately 12 feet by 18 feet.**

13. His claim to the **annex** is based on the allegation that he built it, without objection by the claimant.

Issues

14.

- i. Whether the defendant is entitled to an interest in the property **comprising Concrete structure** of hollow clay and concrete blocks measuring 20 feet by 20 feet by 9 feet by 10 feet by 8 feet by 8 feet comprising two rooms and one kitchen (the annex) by virtue of his **financial contribution to its construction**.
- ii. Whether the defendant is entitled to an interest in that portion of the property consisting of **concrete structure measuring approximately 12 feet by 18**
 - a. by virtue of a. **his occupation** of" since in or about the 1983.
 - b. **his mother's previous occupation** of the said premises.
 - c. **his financial contribution to the improvement of the concrete structure measuring approximately 12 feet by 18.**

- iii. Whether there was a lease/tenancy arrangement under which the defendant had agreed to pay **rent** to the claimant for the use and occupation of the above premises.
- iv. If so whether the defendant owes the claimant the sum of \$44,000.00 or any other sum representing claimed rent.

Findings of Fact

The roti shop

Claim based on defendant's financial contribution

15. The defendant came to the premises and reopened the roti shop with the claimant's permission. The defendant "told" the claimant that he was reopening the roti shop. The claimant says that he gave permission.

16. The Claimant allowed the defendant to make improvements to the roti shop. He describes tiling at a cost of \$368.00, installation of lattice work and countertop at a cost of \$990.00, and painting. Those improvements were with a view to the operation of the roti shop and the generation of a profit.

17. The roti shop did generate a profit which has far exceeded the minimal expenditure described by the defendant in paragraphs 19 and 20 of his witness statement.

The claim based on the defendant's own occupation

18. According to his own disputed evidence the defendant went to live on the premises in 1983. He was 18 years old at the time. He alleges that he assisted in the roti shop every day from 1983 to 1988 until he began working in 1988. He does not particularise what form this alleged assistance took, or whether it was paid or unpaid. His contribution is left to the imagination as it is undisputed by him that all the cooking was done by his mother, and that on occasion persons were hired to assist in the kitchen and with sales.

19. The roti shop was run from at least 1983 (and probably before) to 2003. His mother died in 2007. On his own evidence his alleged assistance in the roti shop, whatever form that might have taken, lasted 5 years. Although he claimed, vaguely, to have assisted from time to time **after** he began working, this evidence cannot possibly be sufficient to establish any continued interest by him in the premises occupied by the long defunct roti shop business, last operated there by his mother in 2003.

20. It is undisputed that the roti shop was forced to close after the defendant's mother became ill. This itself confirms that the defendant was not actively involved in the roti shop as if he were significantly involved in its operation then he would have been able to ensure its continued operation despite her illness.

Claim based on mother's previous occupation

21. He claims to have an interest by virtue of his **mother's** previous **occupation**. Even if he wishes the court to infer therefrom alleged ownership by her, the defendant has at least two other siblings. Any interest of his mother would have devolved to her spouse, the claimant, and to all the siblings of the defendant upon the grant of Letters of Administration, **if even** such a grant were obtained in relation to his mother's estate. He has provided no evidence that he ever sought such a Grant.

22. Further, the case for the defendant conflates, and in any event, does not differentiate among:-

- i. His mother's **occupation** of the **portion of the premises** on which the roti shop was operated,
- ii. The roti shop **business** itself operated there, and
- iii. The **entire premises**.

23. As to his mother's occupation of the portion of the premises on which the roti shop operated:-

a. the evidence is clear that that roti shop closed down out of necessity when the defendant's mother became ill. There was no roti shop there until the defendant reopened a roti shop in 2009-10.

b. even if the defendant's mother had acquired an interest in the **entire** premises by reason of her contributions, direct and indirect, together with the claimant, in the construction or improvement of **the premises**, any link between such ownership by her and the acquisition of similar rights by the defendant by devolution or succession, has not been clearly pleaded. If such rights formed part of her estate the fact is that her estate has not been administered and the defendant is merely one potential beneficiary on intestacy, if she left no will. There is no evidence as to whether she in fact died testate or intestate.

24. However a great deal of evidence was led as to the operation by Amiran of the roti shop, her substantial involvement therein, and its contribution to the financing of the conversion to concrete of what became the matrimonial home. It was conceded by counsel for the claimant that Amiran would have acquired an interest in the matrimonial home by virtue of her undisputed contributions, not least from her significant involvement in operating that roti shop. That interest, whatever its **quantification**, would have devolved to the claimant as well as to her children, of whom the defendant is one.

25. It is not necessary to quantify what that interest would have been, especially as the case for the defendant did not explore such quantification. What is important however is that once Amiran had a beneficial interest in the matrimonial home, however quantified, this could have justified and explained the defendant's belief that his mother's long occupation had led to her acquisition of a beneficial interest in the matrimonial home which somehow devolved to him.

His expenditure on a. the roti shop portion of the premises and b. the annex are explicable in light of such a belief.

26. This was not clearly explained by him as he claimed to be relying on his mother's long occupation simpliciter without it having been clearly expressed that it was **not only** her **occupation** but **her contributions which allegedly** led to her acquisition of her **beneficial**

interest which devolved to him. It is clear however after the evidence was explored at trial and in his affidavit filed on April 20th 2015¹ that his stance stems from the belief that his mother had acquired an ownership interest in the matrimonial home of which he was a beneficiary, and in respect of which he was asserting his share to be the roti shop and the right to occupy the annex which he built.

27. The link between his mother's operation of a long defunct roti shop on a **portion of the premises** and the acquisition of some right in the physical structure of that **portion** of the entire premises, which somehow devolved to the defendant, can be understood in that light.

28. It may be noted however that the extent of any such interest would be by the fact that Amiran's interest, if any, would probably not have exceeded one half. Given that she left the claimant spouse, as well as 3 children, after dividing such a possible one half share among these on an intestacy according to the rules of succession, any possible beneficial interest of the defendant must be limited to that extent. It could not therefore exceed a one twelfth share in the premises and the value of the entire premises is unknown.

The annex

29. The Claimant allowed the defendant to construct the annex. I find that the defendant did harbor a self induced belief that because of his mother's occupation and contributions to the premises that this somehow translated, even in the absence of administration of her estate, into an interest in him, allowing him to occupy the premises. I find that the claimant allowed that construction without protest, and in fact those premises were occupied by the defendant.

30. I disbelieve the claimant when he said that he provided the money for the construction of the annex. That could not be true given:-

- a. the evidence of Mr. Ferreira that the construction was new;
- b. that the claimant had no receipts – alleging feebly that these were stolen, and claiming that he gave money to the defendant to purchase the materials – in an attempt to explain any receipts produced by the defendant;
- c. the defendant did have such receipts.

d. that according to Mr. Ferreira the work that the **claimant** himself claimed that he did did not correspond to the work that was actually done on that annex.

31. The amount expended was alleged by the defendant to be \$40,377.00. The amount at which the annex and roti shop were valued in June 2015 was \$66,000.00.

32. Mr. Ferreira indicated that that figure would have been approximately 40 % less when constructed in 2011 -2012. This coincides with the defendant's evidence of the amount that he expended. The defendant's alleged expenditure is therefore accepted.

33. In these circumstances the defendant would have acquired an equitable interest in the annex. It would be the current replacement value of the annex and improvement to premises occupied by the roti shop.

34. I have considered the occupation enjoyed therein by the defendant, and the benefit derived therefrom, as well as from the profits of the roti shop. Notwithstanding that, given the possible but unquantified beneficial interest in the premises that he would have obtained had his mother's estate been administered, (an arguable explanation for his occupation of these portions of the premises), I decline to offset these benefits enjoyed from his occupation of the premises to date. The defendant's equitable interest in these specific circumstances is valued at the amount that he would have to expend to duplicate and replace similar expenditure on similar premises. The evidence of Mr. Ferreira is accepted, valuing the annex and the improvements to the roti shop at \$66,000.00. The defendant's equitable interest is accordingly quantified in that amount.

The claim for rent

35. There was no formal written lease agreement but there was an arrangement between the parties under which the defendant paid monthly sums, increasing to \$2500.00 per month when last paid. Those payments stopped in October 2013 when the claimant sought possession of the premises.

36. The claimant eventually accepted that there was no rental arrangement. In cross examination the claimant vehemently denied that there was a lease/rental agreement despite this expressly being part of his case.

37. The defendant denied that he ever received receipts. One of the receipts – for 6 months rent – allegedly – was for the sum of \$12,500.00 yet allegedly for 6 months “rent” at the rate of \$ 2000.00 per month.

38. On the evidence of the claimant himself it is clear that there were no such genuine receipts or any written lease agreement. In fact the claimant vehemently denied these matters before realizing that they were part of his own case and witness statement.

39. **I expressly find that:**

a. there was no written lease agreement

b. The purported receipts allegedly for rent were not issued to the defendant.

40. What is common to both parties is that a sum of money was paid every month. The claimant characterizes it as rent. The defendant characterized it as a voluntary contribution, but was adamant that that sum was not paid as rent as he never considered himself to be a tenant. In fact it is clear that he believed that he was entitled to operate the roti shop as an extension in some way of his mother’s operation of a roti shop previously, and that he was entitled to continue to live on the premises in the annex as he had constructed it.

41. It is also clear that he was alert to the impact that payment of rent and his characterization as a tenant would have on his belief in, and possible subsequent claim to, a. ownership of the roti shop, and b. ownership of the annex -which I expressly find that he built. It is clear from the evidence that any attempt to have characterized that payment as rent or to claim it as rent as has now happened, would have precipitated these proceedings.

42. Any claim based on an alleged rental agreement must fail as there was no such agreement. The defendant would not have paid such rent as he believed that he was entitled to outright ownership of both the annex and the roti shop. The attempt to fabricate the existence of receipts

and the existence of a lease agreement to bolster this aspect of the case merely serve to confirm the implausibility and the non existence of a bona fide lease agreement or of an actual agreement for rent, as opposed to the voluntary contribution alleged by the defendant.

Orders

43.

- (i) The claimant's claim for rent is **dismissed**.
- (ii) The claimant is to pay costs to the defendant in the sum of **\$14,000.00**.
- (iii) It is declared that Defendant has an **equitable interest** in:-
 - a. the **concrete structure** of hollow clay and concrete blocks measuring 20 feet by 20 feet by 9 feet by 10 feet by 8 feet by 8 feet comprising **two rooms** and **one kitchen** situate at Light Pole No. 82 Cantaro Extension Road also known as L.P No. 85 Cantaro Extension Road, Santa Cruz in the Island of Trinidad (the annex);
 - b. the concrete structure measuring approximately 12 feet by 18 feet in the said premises currently utilized as a **roti shop**;
- (iv) It is further declared that the equitable interests aforesaid are valued at \$66,000.00.
- (v) **Provided that the claimant first pay** to the defendant the sum of **\$66,000.00** the defendant is to deliver up to the claimant vacant possession of the premises occupied by him comprising both the **annex** and the **roti shop** premises situate at Light Pole No. 82 Cantaro Extension Road also known as L.P No. 85 Cantaro Extension Road, Santa Cruz in the Island of Trinidad **within 60 days of such payment**.
- (vi) No order is made as to costs of the defendant's counterclaim.

Dated the 24th day of March, 2016

Peter A. Rajkumar
Judge