

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. **CV2017-02470**

BETWEEN

ANN ALEXANDRIA JEMMOTT
Also called ANN JEMMOTT

CLAIMANT

AND

BELINDA ARLENE HELEN GEORGE
(Appointed Admin ad Litem of estate of LESTER JEMMOTT)

DEFENDANT

BEFORE THE HONOURABLE MR. JUSTICE K. RAMCHARAN

Appearances:

For the Claimant: Mr. Stefan A. H. Mungalsingh

For the Defendant: Ms Marvo K Harper

REASONS FOR DECISION

1. This is an application dated the 16th day of November 2017 in which the Defendant, the administrator ad litem to the estate of Lester Jemmott deceased has applied for the Claimant's Claim Form and Statement of Case to be struck out pursuant to

Rule 26(2) of the **Civil Proceedings Rules 1998** as amended as well as for Summary Judgement under Part 15 of the Civil Proceedings Rules (CPR).

2. The Claimant is claiming proprietary estoppel against the Estate of the Deceased, and more particularly, the beneficiaries thereof, in relation to certain state lands for which the deceased held a 25 year lease from 1973. This lease expired in 1998. The essence of the Claimant's claim is that she and her husband, who is the son of the deceased were encouraged by the deceased to occupy the said land and otherwise assist them, and in return, he promised that he would transfer the leasehold interest to them, whether by arranging to have it renewed in their names, or by assignment.
3. In 1999 the Deceased wrote to the Director of Surveys to have the Lease renewed in the Claimant and her husband's name however, this was never done. In fact, since the expiry of the lease in 1998, there has been no renewal of the lease.
4. The Claimant contends that the Deceased through his beneficiaries have reneged on this promise and are seeking to have the lease renewed in the name of the Estate of the deceased. In support of this, there is pleaded, that there is a letter in the file of the Commissioner of State Lands from the Attorney at Law for the administrator ad litem dated 2012. The contents of that letter are unknown to the Claimant. The

Claimant in her submissions submitted that because the Defendant did not either produce the letter, or indicate what the contents of the letter were then the court ought to draw an adverse inference as to the contents of the said letter.

5. For her part, the Defendant denies that there is any plot afoot to deprive the Claimant and her husband of any interest that they may have derived from the Deceased's representation, or their subsequent and consequent action. The Defendant indicates that she did in fact apply for Letters of Administration of the Estate of the Deceased in July 2017, but had subsequently given instructions to have the application withdrawn which was done. Further, the Defendant pleads that she has renounced her right to apply for letters of Administration against the deceased, and consented to the Claimant's husband applying for the same.
6. With respect to the striking out, the Defendant submits that there is not sufficient pleading on the part of the Claimant to establish that there has been unconscionable conduct on the part of the Defendant which is necessary for relief to be granted by the court. I do not agree, the Claimant has made this averment, and while it is devoid of particulars, these could be sought by the Defendant or ordered by the court.
7. Secondly, the Defendant submitted that the Amended Statement of Case ought to be struck out as it was filed without permission contrary to the provisions of Part

20 of the CPR. In her submissions in response the Claimant contended that the first Case Management Conference (CMC) had not yet begun, citing the recent case of **Estate Management and Business Development Company Ltd v Saiscon Ltd**, and the judgement of Jones JA at paragraph 84. It is to be noted that the formulation of when the first CMC begins was specifically formulated by Jamadar, JA, and endorsed by Breaux, JA. It was stated that the first CMC begins when there is an act of active judicial management by the court. The Claimant alleges that there was none at the hearing on the 23rd October 2017. A perusal of what transpired on that date reveals that while no order may have been made, there was definitive active judicial management in that the court examined the merits of the claim itself in light of the pleadings. In the circumstances, the first CMC had begun at the time that the amended statement of case was filed. It follows therefore that the Claimant would have required leave to file the amended statement of case.

8. Having said that, I am not of the view that the appropriate action would be to strike out the amended statement of case immediately, as it could easily be directed that the application be filed to have the amended statement of case stand.
9. With respect to the application for summary judgement, the court accepts the enunciation of the law as laid out in the Defendant's submissions at paragraphs 29 through 31 and in the Claimant's submissions at paragraph 2.24 as being the

position with respect to summary judgement. The parties are ad idem with respect to the relevant principles, but differ as how they are to be applied.

10. The main contentions of the Defendant is that the Claimant cannot show, and has not pleaded that there has been any insistence by the deceased, his administrator, or any of his beneficiaries on the strict legal rights of the deceased, nor is there any evidence apart from the fact that the Defendant applied for letters of administration and that there exists in the file of the Commissioner of State lands a letter from the Attorney at Law for the Defendant, the contents of which are unknown to the Claimant.

11. The Claimant contends that there is no need to show a reneging on the part of the deceased as an equitable right is only crystalized when an order is made. Further, he contends the actions of the Defendant in applying for Letters of Administration are consistent with them attempting to have the lease renewed in the name of the deceased and therefore a reneging of the promise of the deceased.

12. With respect to the Claimant's first contention, the court accepts the Defendant's submissions that the court will not usually grant relief if there has been no conduct by the promisor which suggests that he intends to renege from his promise. It would be impractical to allow every Claimant who has been promised something, relied on that promise and then acted to his detriment to come to the court for a

declaration of that interest where the promisor has not given any indication that he will not honour that promise. In my view there must be some indication that the promisor intend to renege from his promise before the promisee can approach the court.

13. Now, if it were the position that the Defendant had not withdrawn her application for Letters of Administration and renounced her right to apply, then the claimant would have had a significantly stronger case. However, in light of the withdrawal and renunciation, it is my view that the matter has to be considered in two (2) stages, firstly before the withdrawal and renunciation, and after.

14. The reason for this is that the clear act of the Defendant shows that she is not interested in having anything to do with the administration of the estate of the deceased. Therefore, while there may be correspondence and actions of the Defendant which would lend itself to an inference that she was intending to have the lease renewed in the Deceased's name, this changed markedly when she withdrew the application and renounced the right to apply. This illustrated that she was no longer going to take any steps to have the lease renewed in the deceased's name. This of course would include the 2012 letter which must also be cast in light of the withdrawal and renunciation, whatever inferences of its contents can be made.

15. The Claimant submitted that because the action lies against the estate, the renunciation is of no significance. This cannot be the case. As noted above, it changes the circumstances altogether. This is so for two reasons. Firstly, the acts which the Claimant complains of were committed by this Defendant, and one does not know the position which another applicant would adopt. It further evidences a change of attitude on the part of the Defendant. This is even more the case, as secondly, the person to whom the Defendant has consented to make the application is the husband of the Claimant who, from the Claimant's own pleadings is a joint promisee.

16. The Claimant suggested that the renunciation and consent is nothing but a ruse. This seems a remarkable suggestion as the person whom the Defendant is consenting to apply is the Husband of the Claimant, equally entitled to the equitable interest according to the Claimant. There is no suggestion that the Claimant's husband is unaware of this, nor that he is likely to act to the detriment of the Claimant, especially as the case for the Claimant is that she and her husband are the ones to whom the promise was made.

17. In light of that, and without any clear evidence of the renunciation being a sham, the court is unable to say that there is any evidence now, or likely to be available at trial which would show that the Deceased or his representatives would act to

renege on the promise by the deceased. It may be that future action might make such an intention evident, but as matters stand now, it cannot be said that the Claimant has any reasonable prospect of success.

18. In the circumstances, the Claim was dismissed with costs.

Dated the 16th day of April, 2018

Kevin Ramcharan
JUDGE