THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2016-00359

BETWEEN

SUSAN SAMAROO

Claimant

AND

EUGENE WILLIAMS

Defendant

<u>Before the Honourable Mr. Justice Frank Seepersad</u>

Appearances:

1. Ms R. Sagramsingh-Sooklal and Mr R. Warner for the Claimant
2. Ms A. Mohammed and Mr B. Hallpike for the Defendant

<u>Date of Delivery: July 11, 2017</u>

DECISION

1. The Claimant filed an Amended Claim Form and Statement of Case on May 17, 2016. The Defendant filed his Re-Amended Defence on July 04, 2016 and the Claimant filed a Reply to the Re-Amended Defence on July 29, 2016. The Defendant's witness statements and a supplemental witness statement and witness statements of the Claimant were filed and exchanged. Propositions of law and evidential objections were also filed and the trial was heard on May 22, 2017 and the witnesses who signed witness statements appeared for cross-examination.

2. In her Amended Claim Form and Statement of Case filed on May 17, 2016, the Claimant claimed as follows:
   i. A declaration that the Defendant is in the unlawful occupation of the premises situated at No. 78 Tumpuna Road, Guanapo Arima;
   ii. An order for possession of the premises situated at No. 78 Tumpuna Road, Guanapo, Arima;
   iii. Damages for trespass;
   iv. Costs; and
   v. Such further and/or other relief as the nature of the case may require.

3. The issues that arose for the Court's determination are as follows:
   i. Whether the Claimant is the sole owner of the premises situated at No. 78 Tumpuna Road, Guanapo, Arima and if so, is she entitled to a declaration to give effect to same. Further, whether the Claimant is entitled to an order for possession of No. 78 Tumpuna Road, Guanapo, Arima.
   ii. Can the Deed of Gift Deed of Gift 15545 of 1983 which provided for a joint tenancy be treated as tenancy in common?
   iii. Has the defendant established a sufficient factual or legal basis so as to entitle him to an equitable interest in the subject property?
   iv. Were there any contributions made to the subject property by the Claimant?

v. Did the Defendant trespass unto the subject property and is the Claimant entitled to an award of damages?

4. The Claimant premised her case on Deed No. 15545 of 1983 and Deed of Assent No. 5328 of 85 and contends that she is the sole owner of No. 78 Tumpuna Road Gunapo comprising 21,680 sq. feet.

5. The said property however comprises two separate portions. There is a plot measuring 11,055 sq. feet (referred to as Plot A) upon which primarily stands the structure that was a supermarket and another structure built as a warehouse.

6. By a Deed of Gift, the Defendant and his deceased wife Vetia obtained a 10,625 sq. feet portion of land which formed part of the 21,680 sq. feet parcel from the Claimant's brother Hubert Lee Seyon. No evidence was adduced by the Claimant to dispute this fact and accordingly the Claimant has no authority to assert ownership over the entire 21,680 sq. feet portion of land known as 78 Tumpuna Road as her interest has to be restricted to that portion above described as plot A.

7. In a claim for possession against an alleged trespasser, the Claimant has to prove her documentary title and her assertion that she is the sole owner by virtue of the death of her sister Vetia, the former joint tenant, has to be considered.

8. By virtue of Deed of Gift No. 15545 of 1983, the Claimant's mother vested one half share interest in the said property in the Claimant and the Claimant's sister as "joint tenants" and by virtue of Deed of Assent No. 5328 of 1985, the Claimant's mother (in her capacity as the Legal Personal Representative of the Claimant's father's estate) vested the remaining one half share interest in the said property in the Claimant and her sister as joint tenants (these Deeds were collectively tendered into evidence as "S.S.3").

9. Vetia died and the Claimant's mother has also died.

10. The Claimant stated that the structure (or a portion thereof) known as the 'Breadbox' also stands on Plot A. At paragraph 13 of his witness statement, the Defendant stated that he and Vetia bought from her brother Hubert the bakery, which he operated, and the structure known as the bread box was also sold to them. The front part of the bakery was used as a residence and the Defendant's evidence is that the bakery is still functional.

11. The Claimant adduced no evidence to contradict the Defendant's evidence as it relates to the ownership of the 'Breadbox'. Both Plot A and Plot B were family lands and various structures were erected including the 'Breadbox'. No issue was ever taken with Herbert's erection of the breadbox, nor was any issue taken relative to the Defendant's and Vieta's acquisition of same. As a result, if the 'Breadbox' or a portion of same stands on Plot A, then the Defendant would have an interest and entitlement to the portion of land upon which the structure stands and he cannot be viewed as a trespasser.

12. The Defendant contends that the Claimant is not "the rightful owner" of the said property as the Deed of Gift mistakenly conveyed the property to the Claimant and her sister as "joint tenants". The Defendant stated that the Claimant's mother's true intention, when executing Deed of Gift No. 15545 of 1983 was to convey the said property as "tenants in common".

13. Deed of Gift No. 15545 of 1983 and Deed of Assent No. 5328 of 1985 conveyed the said property to the Claimant and her sister as "joint tenants", subject only to their mother's life interest.

14. Where a party seeks rectification of a Deed and/or a declaration that a Deed does not reflect the true intention of the parties thereto, that party can only succeed if he adduces "clear and convincing" evidence that that instrument does not record the true agreement of the parties thereto. This onerous burden was succinctly stated by the learned editors of **Seddon on Deeds, The Federation Press, 2015** as follows:

"The case law imposes a rigorous onus on the party seeking rectification to show by clear and convincing proof that the document does not truly reflect the agreement that was reached by the parties before execution. It is common that this rigorous standard of proof is not attained."

15. Having considered the evidence, or lack thereof, the Court cannot conclude that Deed No. 15545 of 1983 did not embody the true intention of the claimant and Veita's mother. At paragraph 18 of his witness statement the Defendant stated that he had no knowledge of any of the Deeds which were prepared by his mother in law's Attorneys and no evidence was adduced from the Attorney who prepared the Deed of Gift, nor was any evidence adduced from the alleged maker of the non-executed Deed of Rectification.

16. The paucity of evidence in support of the Defendant's contention must be juxtaposed with the following unchallenged facts, which clearly illustrate that the Claimant's mother intended to convey the said property as "joint tenants".

    a. Subsequent to the execution and registration of Deed of Gift 15545 of 1983, in the year 1985, the Claimant's mother executed yet another Deed (Deed of Assent No. 55328 of 1985) which again conveyed an interest in the said property to the Claimant and her sister as "joint tenants";
    b. The Claimant's mother lived for thirty years after the execution of Deed of Gift 15545 of 1983 and never occasioned a rectification of the said Deed; and
    c. In the thirty three (33) years since the execution of the said Deed, no Court action was taken by anyone.

17. On the evidence it is clear that it was Vetia who embarked on the venture to rebuild and operate the supermarket on Plot A and to replace the shop that her mother ran in the 1960's. The Claimant accepted that Vetia spear headed the said venture and as she was working in the bank it is highly probable that she made all the arrangements in relation to the mortgage which was taken.

18. At paragraphs 10, 11, and 12 of his first witness statement, the Defendant outlined the renovations which were undertaken and stated that he and Vetia repaid the mortgage. The Defendant invited the Court hold that Vetia's clear intention was to unilaterally treat with the property and it was pleaded at particulars g, h and k of the Defence that he has an equitable interest in the buildings that are erected on the lands.

19. In **Ramsden v. Dyson (1866) LR 1 HL 129 at pages 140 and 141**, Lord Cranworth said

> *"If a stranger begins to build on my land, supposing it to be his own and I, perceiving his mistake, abstain from setting him right and leave him to persevere in his error, a court of equity will not allow me afterwards to assert my title to the land on which he had expended money on the supposition that the land was his own."*

20. The Defendant, during his cross examination, contradicted himself in relation to the following matters:
    a. Whether he left his employment in the year 1982 to build the grocery;
    b. Whether there was an agreement that the supermarket was to be passed to and operated by Vetia and Susan;
    c. Whether he expended any money on the construction of the warehouse;
    d. Why and when the mortgage/loan was taken;
    e. Whether he took the mortgage with his wife; and
    f. Whether he always considered himself as the owner of the entire parcel of land;

21. Contrary to what was contained in his witness statement, the Defendant, in cross examination, accepted that he had no part to play in the registration of the supermarket and that he worked in same from 1989. At paragraphs 9-11 of his witness statement he deposed to the fact that his wife took the mortgage to assist with the works which were effected, but in cross examination he said he was not very certain when the loan was taken and for what purpose. At paragraph 6 of his supplemental witness statement, the Defendant stated that the warehouse

was built at his and Vetia's expense. During his cross examination he accepted that the warehouse was built with loan monies and stated that there was a family agreement that Susan and Vetia would operate the grocery and that the overhaul was done so as to include Susan but he later disagreed that the grocery was to continue as a family endeavour. That latter position contradicted the position outlined in exhibit SS11 where he had referred to an intention for the property to remain as a family enterprise between Susan and Vetia. At the time of the trial the Defendant was 85 years old and he was questioned on events that occurred 30 years prior. The Court found that his demeanour and directness instilled in the Court the feeling that he was a frank, honest and credible witness and his evidence did not appear to be rehearsed. The Court formed the view that the inconsistencies in his evidence were due to his age and the passage of time.

22. In cross examination, the Claimant accepted that she was unaware of the particulars of the renovation/construction of either the supermarket or of the warehouse and she stated that since 1986 she made no contribution to the repayment of the mortgage. On a balance of probabilities the Court found that it is inherently more plausible that Vetia bore the yoke of all the financial and actual construction/renovation responsibilities and she primarily serviced the mortgage payments and made decisions in relation to the supermarket and the construction of the warehouse which did not involve or include the Claimant.

23. The mortgage was for $100,000.00 and in her witness statement the Claimant said she paid half the share of the mortgage for 4 years and asserted that she paid about $2,000.00 per month. This figure could not be accurate since it would mean that the mortgage instalment was $4,000.00 and, over the 15 year term of mortgage, the sums paid based on a monthly instalment of $4,000.00 would far exceed the principal and interest that could be reasonably charged on a mortgage for $100,000.00. The Claimant produced no documentary evidence in support for her alleged contribution but she testified that at the time she worked in the bank and she stated that she "left it all up to Vetia". The Court was disinclined to accept the Claimant's evidence as to her alleged mortgage contributions and felt that her version was not plausible or probable.

24. The common law has acknowledged the harshness that could be occasioned by virtue of the operation of the "right of survivorship" that is inherent in a joint tenancy and consequently has recognised that certain acts or events can serve to sevcr same. A Joint Tenancy could be severed by a course of dealing sufficient to intimate that the interests of all were mutually treated as constituting a tenancy in common as per **Williams v. Hensmen (1861) 70ER 862**. Given Vetia's course of dealing with the said land, the fact that she was, in many instances the sole decision maker and given the fact that she bore the brunt of the financial responsibility for the erection of the warehouse and the supermarket, her course of dealing was sufficiently clear so as to intimate to Susan that their respective interest on the land was to be treated as a tenancy in common. The Court found as a fact that both the warehouse and the supermarket were erected as a result of the foresight and directive of Vetia and with the assistance of the sums generated by the mortgage. Vetia's actions sufficiently demonstrated an intent to treat with her share in the property as being subject to a tenancy in common as opposed to a joint tenancy. Susan acquiesced to this course of action as she played no active role and she permitted Vetia to act unilaterally. In the circumstances, both Susan and Vetia mutually treated their interest as constituting a tenancy in common. It would also be unfair and unjust if the Claimant, who made no financial contribution, never worked and/or assisted in any material manner with the operations of the supermarket, can now rely on the principle of survivorship and lay claim to the entire Plot A together with all the buildings thereon.

25. An objective analysis of the evidence leads this court to conclude on a balance of probabilities, that by her inaction, Susan demonstrated that she understood that by Vetia's conduct, Vetia was exercising dominion over the property which signalled that her intention was to treat same as a tenancy in common and she asserted her rights over the property and made significant financial investments in a manner which also signalled that same was an investment that would benefit her, her husband, and their family and that her interest in the lands would continue beyond her death.

26. In **Theresa Henry, Marie Ann Mitchell v. Calixtus Henry PC App 0024 of 2009 (2010) UKPC 3** the Board of the Privy Council restated a passage from Grays's Elements of Land Law (5th Ed.) as follows:

> *"Of course, the mere fact that, in one or other way, an inchoate equity survives a registered disposition is not, in itself, determinative of its actual impact on the disponee of the registered title. The newly recognized status of the inchoate equity certainly marks an important acknowledgment that third parties are not immune from the requirements of conscionable dealing: the mandate of conscience is no respecter of persons. But the binding effect of the inchoate equity simply means that third parties must discharge the burden of showing that their proposed assertion of strict legal entitlement is not, in its own turn, unconscionable. The call of conscience requires to be measured de novo in the light of the circumstances in which each disponee takes title. The ultimate effect of the inchoate equity is tailored specifically, in the discretion of the court, to the particular disponee whom it is sought to affect. The mere fact that an equity of estoppel might command a particular remedial outcome as against one estate owner in no way precludes the possibility that another estate owner remains free, without injury to conscience, to enforce his strict legal rights or to proffer only some limited money compensation as the precondition for doing so. The question of overriding conscientious obligation arises afresh on each occasion and may well admit of divergent responses on different occasions."*

27. In V**. Nithia v. Buthmanaban s/o Vaithilingam and Another (2015) SGCA 56** the Court of Appeal in Singapore said at paragraph 5 stated:

> *"It is essential in a claim based on proprietary estoppel that any supporting allegations have to be pleaded with sufficient detail and with sufficient particulars of the substance of the representations, the reliance alleged to have been placed on the representations and the detriment suffered by the party in relying on the representations."*

28. At paragraphs 36 and 37, the Court went on to state that:

> *"…pleadings delineate the parameters of the case and shape the course of the trial. They define the issues before the Court and inform the parties of the case that they have to meet. They set out the allegations of fact which the party asserting has to prove to the satisfaction of the Court and on which they are entitle to relief under the*

law…Parties are expected to keep to their pleadings because it is only fair and just that they do so – to permit otherwise is to have a trial by ambush. Every litigant is entitle as a matter of procedural fairness to be informed of his opponent's case in advance and to challenge his veracity in cross examination at the trial."

29. Further at paragraphs 43 and 44 the Court said:

"the Judge was of the view that the words "proprietary estoppel" did not have to be specifically pleaded. We agree, except that if such a cause of action is to be relied on, the pleadings should at the very least disclose the material fact which would support such a claim, so as to give the opponent fair notice of the substance of such a case, especially in a claim based on proprietary estoppel…proprietary estoppel should be pleased expressly and the facts relevant to each element should be pleaded specifically. The Defendant should not be left to guess at what the Plaintiff was really asserting. This is particularly important in an area of law where there are fine distinctions between a purchase money resulting trust, a common intention constructive trust, promissory estoppel and proprietary estoppel."

30. The Defendant did not plead a reliance on a proprietary estoppel and did not expressly plead any representation or an express reliance on same. However, at the time of the construction of the warehouse and the supermarket Vetia was a co-owner of the land and she made unilateral decisions which excluded Susan. By her actions she operated on the basis that they were tenants in common and treated her interest in the land as being separate and distinct from Susan's interest and she made significant financial investments on same, which should endure to the benefit of her heirs and it would be unconscionable to permit the Claimant to lay claim to the buildings or to the entire plot A. It would be plainly wrong and unjust on the facts of this case to permit the Claimant to enforce the principle of jus accrescendi and there is an overriding conscionable obligation that necessitates the Court's intervention to hold that the Vetia's interest in the Plot A survived her death and that her ½ share and interest in Plot A should devolve to her estate. This mandate of conscience also requires the Court to declare

that Vetia was the owner of all the buildings standing upon Plot A and that her interest in these buildings should also devolve to her estate.

31. In the circumstances the Court declares that the Claimant is entitled to a half share and interest in the piece or parcel of land referred to as Plot A being that 11,055 sq. feet which forms part of the large piece of land described in Deed 15545 of 1983 and the Court further declares that the Claimant has no interest in the buildings that stand thereon

32. Each party shall bear their respective legal costs.

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FRANK SEEPERSAD

JUDGE