

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV. No. 00171-2010



BETWEEN

GLEN PIERRE

CLAIMANT

AND

**TREVIS PIERRE-SMITH
TREVIS PIERRE-SMITH (As Executrix of the Estate of Lawrence Pierre)**

DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE JONES

Appearances:

Mr. Y. Ahmed for the Claimant.

Mr. J. Herrera for the Defendant.

Reasons

This is the story of a family divided over a house. Two issues are raised by the pleadings: (i) is the claimant entitled to the front house by virtue of a promise made by the deceased; and (ii) was the will of the deceased procured by the undue influence of the defendant over the deceased. Quite appropriately the Claimant has abandoned the claim of undue influence.

Insofar as (i) is concerned the claimant seeks relief in equity. In this regard the claimant has to prove that a promise made to him by the deceased and that in reliance on that promise he expended his time and money on the repairs and renovations to the front house and that in the circumstances, it is inequitable for the deceased or his estate to now resile from this promise. In this regard while there is some corroboratory evidence of the work done to the front house by the claimant, the only evidence of the promise made is from the claimant himself.

Handwritten notes on the right margin: 'Chrono', 'PIERRE-SMITH', and other illegible scribbles.

At the time of his death the statutory tenancy of the land upon which the buildings stand was vested in the deceased as to 4/6s share and the claimant and the defendant as to 1/6 share each. It is not in dispute that the claimant is the owner of the back house or that the deceased was the owner of the front house. From the pictures of the front house put into evidence by consent it is clear that the house is in an extremely dilapidated condition. There is no evidence of its value.

I accept the evidence led on behalf of the claimant that in or around the year 2001 the claimant did some repairs to the front house to make it habitable. The claimant's evidence is that from his knowledge of the prices now and prices at that time he spent approximately \$4,500 on materials. He says that from his knowledge of labour charged at the time the labour would have cost about \$4000. I am not sure exactly what the claimant means by the statement "from his knowledge of the prices now and the prices at that time". It would seem to me that he either spent a certain sum on materials or he did not. His knowledge of the prices now has no relevance to the actual cost to him of the materials used. Neither am I satisfied that the claimant is entitled to value his and his son's labour as though it was a commercial transaction. While I accept that some value must be put on the labour expended on the job it must be borne in mind that this was at all times a family arrangement.

At the end of the day, however, the case in promissory estoppel turns on the evidence of the character of the deceased. In my view the evidence of the claimant that from the 1980s his father used to tell him that when he died he wanted the front house to stay with him, but he did not take him seriously is indicative of the nature of the deceased. In this regard the evidence of the defendant is also instructive.

According to the defendant she provided the money which paid their mother for her interest in the premises and allowed the statutory tenancy to be transferred to their father, the claimant and herself. According to her evidence the agreement between them was that the premises would thereafter be assigned to her. I accept her evidence in this regard. In addition it seems to me that the dispositions made by the deceased in the will and the timing of the will accord with this evidence. The deed of transfer was registered in March 2000. The deceased gave instructions for the will in August 2000. By the will the deceased appointed the defendant the executrix; declared that he was the owner of the front house and gives the front house to the defendant and

the deceased's granddaughter. The residue of the deceased's estate was also devised to the defendant and the granddaughter.

At the end of the day, it seems to me that even if the evidence of the claimant is to be believed, with respect to the promise made by his father it is clear that the father was in the habit of making promises which he did not keep. This, it seems to me is in accord with the claimant's evidence that he did not take the promises made to him in the 1980s seriously. In any event, we are faced with a situation where there are two promises made by the father with respect to the same property and acted upon by both the claimant and the defendant. Although there is no counterclaim in this regard by the defendant the claimant's claim is in equity. In all the circumstances an order that the front house be vested in the Claimant will not on the facts before me achieve an equitable result.

The Claimant has not succeeded in setting aside the grant of probate. The effect of this is that not only does the defendant remain the legal personal representative of the deceased's estate but she and the deceased's granddaughter are entitled to the deceased's interest in the statutory tenancy.

It would seem to me that in the circumstances the equitable way to feed the estoppels is to order the repayment by the estate of the deceased the monies and time expended on the front house by the claimant. As already indicated I am not entirely satisfied with the evidence of the claimant in this regard. This dissatisfaction is bolstered by the photographs of the front house in evidence. To my mind the present condition cannot be explained away, merely by disuse for the last five years. Indeed, it can be said that the fact of this disuse is further evidence that the claimant did not take the promises made by the deceased seriously. If he did why then would he let a house now owned by him fall in such disrepair.

In all the circumstances of the case I award the claimant the sum of \$6000 for the repairs done to the front house. Even if I accept that the Claimant expended other monies to assist the deceased, and the evidence in this regard is suspect to say the least, there is nothing to suggest that this was for any reason other than the usual affection of a son for his infirm father.

The defendant seeks possession of the front house. According to the claimant while the house is unoccupied he uses it to store odds and ends. The defendant was entitled to an order for possession with respect to the front house.

My order therefore is, on the claim, that the defendant as the executrix of the estate of the deceased pay to the claimant the sum of \$6000; on the counterclaim, that the claimant deliver to the defendant possession of the front house. It would seem to me that in all the circumstances of this case there should be no orders to costs. In my view sufficient damage has been done to this family by virtue of court proceedings.

Dated the 3rd day of February, 2011.

Judith Jones
Judge