

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2023/0540 (previously CLAIM NO. GDAHCV2012/0515)

BETWEEN:

**CHRISTOPHER FRANCO
(AS ADMINISTRATOR OF THE ESTATE OF AGATHA PURCELL)**

Claimant

and

JOHN FRANCO

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mrs. Winnifred Duncan-Phillip for the Claimant

Mrs. Daniella Williams-Mitchell for the Defendant

2025: February 18th;
March 21st.

RULING

- [1] **ACTIE, J.:** The parties before the court are brothers. The claimant obtained a Grant of letters of administration on 30th April 2012 in the estate of his mother, Agatha Purcell, who died intestate on 29th December 2011 (hereafter referred to as “the deceased”). The estate allegedly comprises of a three-bedroom house located in Vendomme, St. George, where the defendant presently resides, and a shop located near the dwelling house. The only issue in dispute is whether the shop forms part of the deceased estate.
- [2] The deceased at her death was survived by her five children, Glenna Purcell-Huby, Claire Sandy, Joycelyn Noel, the claimant and the defendant, each equally entitled to one-fifth share of the estate of the deceased.

- [3] The claimant claims ownership of the shop personally, in his own right. The claimant states that his uncle, Norris Purcell, caused the shop to be built on the property of the deceased, and accordingly the shop and the land on which it is erected does not form part of the deceased's estate.
- [4] The defendant denies that Norris Purcell built the shop in dispute and states that the shop was owned by the deceased and forms part of her estate. The defendant states that during the deceased's lifetime he assisted her management of the shop, and after her death he used his personal money to continue its operation.
- [5] The claimant in reply to the defence states that although there was no formal agreement between himself and the deceased, the deceased gave him the land for the shop to be built. He states further that over the years, he and the deceased operated the shop with occasional help from the defendant. The claimant asserts that since the death of the deceased, the defendant has exclusively occupied the shop without his permission.
- [6] At trial, it was the evidence that the deceased operated the shop and was assisted by both the claimant and the defendant. It is also the evidence that the shop was extended, and rooms constructed on the ground floor were occupied by both the claimant and the defendant. The claimant states that he contributed to the renovations of the shop as his deceased mother was in charge of his bank account. However, no evidence of the contributions and/or sums were stated in the pleadings.
- [7] Further at the trial, the two siblings of the parties gave contradictory evidence. Jocelyn Noel is the first of the five siblings. In cross examination, Ms. Noel said that she migrated out of Grenada in the year 1967. She said that she knew her mother was a trafficker and was very active in the shop until her illness in 2011. She said she was aware that her uncle built the shop for the claimant. However, in cross examination she said that her mother told her that the shop belonged to the claimant, and that she never met her uncle during his short visit to Grenada.
- [8] In addition, Claire Sandy, sister of the parties and one of the beneficiaries of the estate of the deceased, in her witness summary denied that the claimant was the

owner of the shop in his own right. However, she was unable to give verbal evidence at trial due to a speech impediment.

- [9] Further, it is the evidence of Florice Alexander and Lewis Owen Alexander, witnesses for the claimant, that the deceased and the two brothers at different times were all operating the shop.

Legal Analysis

- [10] The thrust of the claimant's contention is that the concrete shop which is built on the land occupied by the deceased belongs to the claimant personally and does not form part of the estate of the deceased.
- [11] The starting point is that the claim is brought by the claimant as administrator of the estate of his deceased mother and not in his own right. It is basic law that the Administrator of the estate of a deceased person is responsible for managing the assets of the deceased. The rights of beneficiaries of unadministered estates extend no further than a right that the estate will be properly administered¹.
- [12] Counsel for the claimant in submissions raises the issues of promissory estoppel, proprietary estoppel, and unjust enrichment as the basis in law on which the claimant is entitled to the spot on which the shop is built.
- [13] 'Estoppel' has been described as a principle of justice and equity which prevents a person who has led another to believe in a particular state of affairs from going back on the words or conduct which led to that belief when it would be unjust or inequitable for him to do so².
- [14] The principle of promissory estoppel is that, when one party has, by his words or conduct, made to the other a clear and unequivocal promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to

¹ Daphne Gumbs v Administrator of the Estate of James Fahie et al BVIHCV2013/0070

² Halsbury's Laws of England vol 47 (2021) para 301

revert to their previous legal relations as if no such promise or assurance had been made by him, but must accept their legal relations subject to the qualification which he himself has so introduced³.

- [15] Counsel for the defendant states that the claimant fails to meet the necessary requirements to establish the equitable interest of promissory estoppel and relies on the Trinidadian High Court case of **Rajkallia Bijoo-John v Dale Rajkumar**⁴. The court in **Rajkallia Bijoo-John v Dale Rajkumar**⁵ held as follows with respect to the satisfaction of a claim in 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.”

- [16] A party relying on the principle of estoppel must have acted in the belief either that he/she already owned sufficient interest in the property to justify the expenditure or that he/she would obtain such interest⁶.

- [17] In assessing the detriment allegedly suffered by the claimant, the court would consider any benefit and/or advantages enjoyed by the claimant from the subject property. It was held in **Fulchan v Fulchan**⁷:

“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] To satisfy proprietary estoppel, the claimant is required to demonstrate that a clear and unequivocal promise or assurance was made by the deceased to the

³ Combe v Combe [1951] 2 KB 215 at 220

⁴ CV 2012 03927

⁵ CV 2012 03927

⁶ Snell's Principles of Equity (31st edn., Sweet & Maxwell 2000) para 10-18

⁷ CV2010-03575 at para 17

claimant. In the claimant's pleadings he states that his uncle, Norris Purcell, financed the building of the shop on the deceased's land for the claimant's use and benefit, and that Norris Purcell made declarations to different persons that the shop belonged to the claimant. The claimant states that his uncle contracted Clement Bartholomew to build the shop in 1985.

[19] However, the evidence does not support the claimant's assertions. The survey plan dated 13th May 1989 and a statutory declaration recorded in 1990 both made after the purported construction of the shop in 1985 failed to exclude the shop and part of the land on which the shop was erected. There is also no evidence, not even of the claimant, that the claimant asserted to anyone conducting the said survey that the land on which the shop was erected was owned by him. In addition, the tax receipts in the name of the deceased list the land with the two buildings as forming part of the deceased's property.

[20] Promissory estoppel arises only out of a representation or promise that is "clear" or "precise and unambiguous"⁸. It is the court's view that any promise that may have allegedly been made by the deceased to the claimant with respect to his sole ownership of the shop was not clear. This becomes more evident by assertions made of the claimant himself that the deceased and the defendant were involved in the operation of the enterprise. The claimant states that from 2009, the shop was run by the deceased and that from 2011 it was run by the defendant, until 2012.

[21] Further, the doctrine of proprietary estoppel relied on by the claimant is based on three main elements, namely a representation or assurance made; reliance on said representation/assurance; and detriment in consequence of this (reasonable) reliance⁹. It was described by Byer J in **Cynthia Jones v Leroy Wilson-Jones & Ors**¹⁰ at paragraph 22 as:

"where one person (A) has acted to his detriment on the faith of a belief which was known to and encouraged by another person that he is going to be given a right over B's property, (B) cannot insist on his legal rights if to do so would be inconsistent with A's belief."

⁸ Treitel, *The Law of Contract* (12th ed) para 3-144

⁹ *Mohammed v Gomez and Others* [2019] UKPC 46

¹⁰ SVGHCV2017/0106

- [22] It is the claimant's evidence that following the building of the shop through the financing of Norris Purcell, over the years additions were made to the shop by him of the construction of a floating platform for parking, clothes and cosmetics section, toilet, steps and a septic tank. The claimant states that an apartment was built underneath the floating platform, as well as a veranda, and that he remodelled the roof of the shop after it was destroyed in hurricane Ivan.
- [23] The defendant states also that the deceased built a room on the side of the shop, then built the back of the shop and then the bottom part of the shop. He states that all the children of the deceased helped build the shop at various stages.
- [24] The claimant's difficulty is again proving that the representation was made by the deceased that the shop was to be in the sole ownership of the claimant, given the evidence of the involvement of the deceased and the defendant in the operations and the different stages of construction of the shop. This representation, if made, would have had to have been made prior to the alleged expenditure of Norris Purcell on the initial construction of the shop.
- [25] The claimant in a letter to the defendant dated 1st July 2012 informed the defendant of his appointment as administrator and his authority to do all accounts on behalf of the estate. In that letter, the claimant told the defendant that he (the defendant) had been operating the shop based on repeated stocking by the deceased and required an accounting by him for the use of the stock. This, in the court's view, is a further acknowledgment by the claimant that the shop and its contents formed part of the deceased's estate from which he required an account for the purpose of the administration of the estate.
- [26] Counsel for the claimant in filed submissions further suggests that based on the principles of unjust enrichment, the claimant is entitled to the shop and the land on which it is erected. It is generally accepted that there are four elements of an unjust enrichment claim: (1) the defendant must have been enriched; (2) the

enrichment must have been at the expense of the claimant; (3) that enrichment must have been unjust; and (4) there are no applicable defences¹¹.

- [27] Counsel for the claimant however, in said submissions, has failed to substantively address this court on the raised issue of unjust enrichment, there being no discussion of the relevant principles of law and no such application of these principles to the extant matter for the benefit of the case of the claimant. The court is therefore not properly placed to make a determination on same. In any event, based on the facts, the court is not convinced that the proper parties to an unjust enrichment claim are before the court. The claimant does not bring this action in his own right, but as Administrator of the deceased's estate, as against the defendant, a beneficiary of the estate of the deceased. The defendant is, admittedly, not the owner of the disputed land where the shop is erected and cannot therefore be said to have been so "enriched".

Conclusion

- [28] The court having heard the evidence is of the view that the claimant as administrator has failed to prove that the shop does not form part of the deceased's estate. It is the evidence that both parties occupied rooms downstairs of the shop, and that they both operated the shop together with the deceased. The survey plan and statutory declaration for the lot was made in favour of the deceased after 1985, therefore after the purported construction of the shop for the claimant, and neither makes reference to the claimant as owner of the building. Further, all the tax receipts before the court are in the name of the deceased and lists the two buildings and the land as belonging to the deceased. All the substantive evidence before the court weigh against the claimant's claim as owner in his personal right.
- [29] The absence of evidence to the contrary, ineluctably leads the court to the conclusion that the concrete building used as a shop forms part of the deceased's estate. The manner of dealings with the shop suggests that all parties dealt with it as a family entity. The evidence before the court is that of a fragmented family

¹¹Halsbury's Laws of England vol 100 (2024) Para 10

with self-serving evidence in support of the respective parties before the court. There is no evidence that the claimant in his personal capacity throughout conducted his right as owner exclusively, or dealt with the shop as an occupying owner in his own right might have been expected to deal with his property. There is no evidence of the claimant excluding anyone else from using the shop throughout the lifetime of his mother. The shop was operated as a family enterprise and not as exclusively belonging to the claimant in his own right.

[30] The Court of Appeal in **Eliza Thompson v Catherine Thompson**¹² per Michel JA, said “The grant of letters of administration only empowers the administrator to administer the estate of the deceased in accordance with the laws of intestacy of the country. In Grenada, the laws of intestacy are contained in the Intestate Estates Act and the Real Estate Devolution Act. These Acts provide for the manner in which the estate of a person dying intestate devolves to his heirs and codify the common law principle that a personal representative of the estate of a deceased acts as a trustee for the persons beneficially entitled by law to any property of the deceased. Furthermore, where the estate of the deceased remains unadministered, no beneficiary has an interest in the estate’s property”.

[31] The claimant as administrator of the estate since 2012 is under an obligation to administer the estate. Each of the parties are entitled to one-fifth share of the estate. The land measures approximately Eight Thousand square feet (8,000 Sq. Ft.) and is undividable. It is for the administrator together with the beneficiaries to determine the most equitable method to administer the estate including the sale or relinquishing shares to one or more beneficiaries within reasonable time, having regard the protracted delay since the claimant’s appointment as Administrator.

ORDER

[32] Given the above circumstances, it directed and ordered as follows:

- (1) The dwelling house and the concrete shop situate at Vendomme in the parish of St. George form part of the deceased’s estate;

¹² GDAHCVAP2021/0002

- (2) The claimant as administrator is entitled by law to administer and divest the interests of the beneficiaries in the deceased's estate to the beneficiaries in accordance to law.
- (3) The defendant, his servants and/or agents, howsoever named are restrained from interfering with the claimant's right to administer the estate of the deceased.
- (4) Both parties are restrained from assaulting, threatening, abusing, harassing, swearing or otherwise interfering with each other by words or conduct such that it impedes the administration of the estate of the deceased.
- (5) In the event that the court is satisfied that either of the parties has breached any of the orders prior to the administration of the deceased's estate, that party shall be ordered to vacate the property consisting of the deceased's estate forthwith.
- (6) Each party having had some measure of success shall accordingly bear their own costs.

Agnes Actie
High Court Judge

By the Court

Registrar