

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Claim No. BVIHCV 2022/0296

BETWEEN

JADA HOPKINS

CLAIMANT

AND

**[1] ALITHA ADAMS
[2] ~~DANA BLYDEN~~
[3] ~~AMANDA ANSLEM~~**

DEFENDANT

Appearances: Lewis Hunte KC for the Claimant
Monique Peters for the Defendant

2024: March 7th

JUDGMENT

[1] **YOUNG J:** What has happened to this family is indeed sad. The glue that once held it together is no more than a cherished memory to both parties and most things between them have fallen apart. The Court had hoped that through mediation hurt feelings and grief would find an outlet which would lead to an amicable settlement. This was not to be and so here we are at trial.

[2] The Claimant, Jada Hopkins and the now deceased Leshaghn Smith were not married but they lived together and had three children, one being in vitro when he died. Jointly, they owned a parcel of land on which stands a three storey dwelling house (the Property) where they lived.

- [3] The sole remaining Defendant, Alisha Adams, is Leshaugh Smith's mother. He was her only son and she accepted his invitation to live in the said dwelling. She continues to live there.
- [4] The Claimant says that although Leshaughn purchased the land, she alone helped him to finance the building. Being the survivor of the joint owners she is the sole owner of the Property and her name alone appears on the register as proprietor. She now finds it impossible to live with the Defendant and has served the Defendant with a notice to quit. However, the Defendant continues to occupy the premises and interfere with her staff and the operation of her business which she conducts at the Property.
- [5] The Claimant seeks the Court's assistance in ejecting the Defendant from the Property. She also wants damages for the Defendant's trespass and any damage done to the property as well as an injunction from any further trespass or interference with the business and/or staff and costs.
- [6] The Defendant says she sold her apartment and gave up her lease on the promise that the ground floor apartment would be hers. She was gifted that apartment by Leshaughn Smith in the Claimant's presence before he died. She had also assisted him physically and financially with the construction and has thereby acquired a beneficial interest in the property. Although she actually lived upstairs with Leshaugh and his family she now wishes to be allowed to move into the ground floor apartment which she owns. She maintains that because of the interest she has acquired she is entitled to do so.

The Issues as stated in the agreed pretrial memorandum

- a. Whether the Defendant's occupation of the premises is that of a licensee and is terminated by virtue of the Notice to Quit and termination of such licence was by virtue of the letter dated 12th August, 2022.
- b. Whether the Defendant made direct and/or indirect contributions to the building of the Property?
- c. Whether the Defendant has an equitable interest in the property and the extent of that interest.

- d. Whether the Defendant was granted permission to occupy the lower apartment to the First Defendant.
- e. Whether the lower apartment was gifted to the Defendant with an intention to transfer legal ownership?

Preliminary issues raised by the Claimant in submissions only

1. The Defendant has filed no pleadings:

- [7] This is an inherited matter where Counsel for the Defendant was changed mid stream and after pleadings were closed. The Court is, nonetheless, baffled as to why the Claimant would attempt to raise an issue such as this in submissions only. How or why was an entire trial conducted if there was no pleaded defence!
- [8] Now, the Claimant draws the court's attention to Civil Procedure Rules 10.5 and 10.7 which speak to the Defendant's duty to set out his case and the dire consequences of failure to do this. However, the Claimant does not explain why she did not seek to have the matter heard summarily as an undefended claim pursuant to Rule 27.2 (4). The reason is because it is quite clear from Rule 10.2(2)(a) that a Defendant is allowed to file an affidavit in Defence.
- [9] The Affidavits filed by the Defendant briefly set out the facts on which she sought to rely, stated what of the claim was admitted, what was denied and gave her version of what had transpired. At paragraph 5 of her first affidavit she stated that she assisted Leshaughn in building the property both financially and physically and because of this input she gained an equitable interest in the dwelling (paragraph 6). She goes on to state at paragraph 7 that he gifted the apartment to her in the presence of the Claimant and thereafter it was agreed that the apartment would be rented out to generate extra income. So she "gave up her apartment so money could come in (sic) exchange for living in the main house" - paragraph 8.
- [10] This was supplemented by her second affidavit at paragraph 7 where she states "The first Defendant's interest arise from the gift made to her by Leshaughn. The Claimant's affirmation of the gift, the financial contribution and the physical input in the construction of the property. Based on all

the above, the First Defendant gave up her home and sold her furniture and relying on the stated fact that the one-bedroom apartment on the lower floor was hers.” Then at paragraph 8 - “....the gift was valid. The gift was duly acknowledged by the Claimant.”

[11] While admittedly much is left to be desired by the state of these “pleadings” as they are not as clear as one would expect, *East Caribbean Flour Mills Ltd v Ormiston Ken Boyea St Vincent and the Grenadines*¹ allows the Court to look at the pleadings and the evidence to determine the issues. The Court also reminds that proving a defence is different to pleading a defence.

[12] Even more telling is the very pre trial memorandum which both parties agreed. It recognised that the existence of an equitable interest and the extent of that interest were both in issue. How could this be if there was no defence at all.

2. The Defendant has no Counterclaim

[13] This Court is unsure why this was raised since what the Defendant has pleaded in part in her defence that she has a proprietary estoppel founded on an imperfect gift. If the Court finds that such an equity has been established it defeats the claim. There is no need for a counterclaim. The estoppel here is used as a shield not a weapon. It is not then a cause of action, it merely prevents the other party from acting unconscionably.

3. The Defendant has no documents

[14] Following a successful application for extension of time to disclose documents and file further affidavits made in September, 2023, the Defendant disclosed a number of documents and filed a number of affidavits. The Defendant did not file an additional affidavit for herself and there were no documents attached to those she had filed prior to the order.

[15] Rule 30.4 clearly provides that any documents to be used in conjunction with an affidavit must be marked, identified, verified and exhibited alone or in a bundle conveniently arranged and paginated. The Claimant’s own affidavits do none of these things.

¹ Civil Appeal No.12 of 2006

- [16] This Court holds that there being no agreement between the parties or previous order otherwise, any documents disclosed but not exhibited in the usual way will not be allowed into evidence.

The Issues as the Court finds them:

1. Is the Claimant entitled to an order of possession:
 - a. Whether the Defendant has an interest in the property or her licence is protected by a proprietary estoppel
 - b. Whether the Defendant is a trespasser
2. Is the Claimant entitled to damages for trespass and if so in what quantum
3. Is the Claimant entitled to any other damages and if so in what quantum
4. Is the Claimant entitled to an injunction restraining any further trespass to the Property or interference with the Claimant's staff and business.

The Evidence:

- [17] The Court here will summarize only the relevant evidence of the witnesses other than the Claimant and the Defendant. The discussion of the issues themselves would necessarily reflect a full consideration of the evidence of the Claimant and the Defendant.
- [18] Estonia Erickson was a business partner of the late Leshaughn Smith in one of his businesses. He attested that the Defendant demanded money from the partnership account. He signed a cheque for a little over \$22,000.00 and gave it to her. The Defendant said it was for Leshaughn's funeral. The court found little relevance in this evidence as the Claimant was not a partner in this business and had no claim relating thereto.
- [19] Bradford Leonard stated that he had been contracted by the Claimant and Leshaughn Smith to construct the said dwelling house. He was paid by them both and with his workmen he did all the construction. He only saw the Defendant once on the site when she brought food for the workmen. He certainly would not have allowed her to work on the site as she would not have been covered by his insurance and would only interfere with the professional standard of his work.
- [20] Lorraine LaRose said she had a casual conversation with Leshaughn Smith while the dwelling was being constructed. He told her that he and his mother were looking to get a loan from the bank to develop the property. He also informed that the first floor was his mother's floor and the other floors were his.

- [21] Amanda Ansley, the Defendant's sister, had heard from the Claimant that the Defendant had been gifted the apartment. He told her when she moved in she could change whatever she wanted. He suggested she rent the apartment and move upstairs so the rent could be used to pay his daughter's school fees. He was making sure she was taken care of for life.

Now to the Issues:

1. Is the Claimant entitled to an order of possession:

- [22] There is no dispute that the Claimant is the legal proprietor. As such she is presumed to be the sole beneficial owner as well. The Claimant, having given proper notice to the Defendant, is entitled to possession. A licensee who remains on land after the licence expires or is properly revoked is a trespasser. It is for the Defendant now to demonstrate that there is some reason why the Claimant should not be allowed to insist on her strict legal rights.

a. Whether the Defendant has an interest in the Property or her licence is protected by a proprietary estoppel

- [23] The Claimant alleges that she is the sole legal owner as the joint co owner has died and by the law of survivorship sole ownership has passed to her. This is so, but what the Defendant claims is a beneficial interest or an equitable estoppel. She alleges that she put money into the building, her son intended her to have an interest as he gave certain assurances and gifted her with the ground floor apartment. The Claimant herself presented the key to that apartment as a Christmas gift to her. She sold her furniture and gave up her lease before she moved to the Property as she relied on the stated fact that the apartment was hers. She was no bare licensee or lodger.

The Law:

- [24] Gilbert Kodilyne in Commonwealth Caribbean Property Law 4th ed at page 90 under the heading Licence protected by estoppel states:

The doctrine of proprietary estoppel prevents the revocation of a right affecting land that one party has been led by the other to believe to be permanent. The doctrine is founded on the wider equitable principle against unconscionability, and its effect is to prevent a person from enforcing his strict legal rights when it would be inequitable for him to do so in the light of the parties' conduct and the dealings that have taken place between them. Thus, where X, the owner of land, allows Y to expend money on that land or otherwise act to his detriment under

an expectation, created or encouraged by X, that Y will be able to remain on the land or acquire an interest in it, equity will step in and ensure that Y's expectations will not be defeated.

- [25] Megarry & Wade in the Law of Real Property 2008 para 16-001, describe proprietary estoppel as "the equitable jurisdiction by which a court may interfere in cases where the assertion of strict legal rights is found to be unconscionable".
- [26] The modern statement of the law on this doctrine is **Thorne v Major**². It gave a more flexible approach which required three main elements: assurance, reliance and detriment. Additionally, there ought to be no bar to equity meaning that the person claiming the estoppel must approach the seat of equity with clean hands - no misconduct.
- [27] An assurance is a clear and unequivocal representation in word or conduct by the landowner which is sufficient to create or encourage an expectation in the mind of the person claiming the estoppel that they would eventually become entitled to the whole or part of the property. This may happen over time. There is, however, a risk involved where a party may invest in improvements to another person's land and is then unable to prove that some unambiguous or any assurance had in fact been made.
- [28] The person claiming the estoppel must also be able to prove that in reliance on the estoppel they acted to their detriment. Reliance is not simply making a statement to that effect. There must be some action taken which it would be reasonable to believe. If there has been an assurance and the person proves that they have acted to their detriment the court may presume that reliance has been demonstrated.
- [29] While a person may have great expectations, he becomes a volunteer if he has acted without detriment. The detriment must be identifiable. The court is required to look backwards to see what form the detriment may have taken. When assessing detriment the court must also consider any benefits gained and like the detriment the benefit need not only be financial. In **Gillett v Holt**³ the

² [2009] UKHL 18

³ [2000] 3 WLR 815 CA at 232

Court of Appeal confirmed that some detriment must be suffered but detriment is not a narrow or technical concept. “The detriment need not consist of the expenditure of money or other quantifiable financial detriment, so long as it is something substantial. The requirement must be approached as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances.”

- [30] Thankfully, as the doctrine has evolved over time courts have begun to give a more holistic approach to determining the existence of an estoppel. Rather than simply ensuring that the three elements exist individually, the courts have tried to look at the entire picture as a whole. This perhaps achieves a more equitable outcome. In **Matilda Nelson v Alexis Alcide**⁴ at paragraph 48 Farara JA (Ag) was of this view when he declared “Put simply the question of whether it would be unconscionable for a court to allow the promisor to resile from the assurance or representation made or given to a claimant, is to be approached in the round, as part of a broad inquiry. It is not to be approached in a compartmentalized way, whereby each element or ingredient of proprietary estoppel is considered as free-standing, leading to a court accepting or rejecting the claim where it finds that one element may not have been fully made out on the evidence.”
- [31] Where a proprietary estoppel is found the Supreme Court in **Guest v Guest**⁵ made it clear that the remedy need not only be the fulfillment of the promise made but alternative proportionate remedies could also be sufficient.
- [32] There is certainly benefit in decided cases and their application of the doctrine may be helpful guidance but the facts of each case has to be looked at individually. This court appreciates that land is a valuable asset and the ordinary man is not a lawyer so he often orders his affairs without a true understanding or even knowledge of the law. Ordinarily, where a court finds the existence of a proprietary estoppel the court will determine “the minimum equity to do justice” (Scarman LJ in **Crabb v Arun District Council**⁶). So it will fashion a remedy which satisfies the equity or does justice in the case. In the matter at bar there is however, no counterclaim.

⁴ SLUCVCAP 2018/2002

⁵ [2022] UKSC

⁶ [1975] EWCA Civ 7

The Court's consideration:

- [33] It is often difficult to pursue proprietary estoppel. In the case now before us one of the two joint owners is dead and his direct knowledge of any possible assurances given is lost. There is a hostility between the parties that has been accepted by the Claimant as hatred. There is no willingness to compromise. In those circumstances it is highly unlikely that promises, if made, would be kept.
- [34] The court must now consider if there was a promise relied upon to some detriment by the promisee and whether it would be unconscionable for the promisor to be allowed to renege. The evidence was not voluminous but it spoke volumes.

The investment (money and labor):

- [35] The Defendant attested to expending in the region of \$25,000.00 as a contribution towards building the house. This money she said she gave to the deceased to buy building materials, pay workmen "whatever was needed." I could find no evidence (cogent or otherwise) other than the Defendant's own bald yet vague statement that she invested money into the building. She exhibited not a single receipt, withdrawal or other bank statement, conversation had with the deceased or any other evidence to support this allegation. The evidence of her own sister Amanda Anselm was that Leshaughn was the one who helped the Defendant financially.
- [36] Similarly, whatever she may have invested physically was not in the form of construction labour. This Court could find no reason to doubt Mr Leonard about how the building was constructed. Under cross examination the Defendant admitted that her labor was planting flowers, weeding, cleaning windows and moving garbage. These may have been very helpful to the household but on its own it creates no equitable interest. There certainly was no indication that she had been promised any type of interest for her effort or investment.
- [37] A greater difficulty here is that the Defendant does not plead that this money or labor was given pursuant to any understanding with the owners of the property that she would get an interest in the property or even that the apartment would be hers. The fact that she admits that she gave the money only when her son was "short on cash" and that the Claimant may have been unaware of her

investment makes it even more unlikely that this Court would believe that these contributions, if they were made, were made with the intent to earn or support some interest in the property.

- [38] Rather, she expressed her immense love for her only son and grandchildren. She may simply have been helping out for that reason alone. Taken on its own it is insufficient to ground an estoppel or an interest in the property sufficient to found a constructive trust.

An imperfect gift:

- [39] The Defendant says she was gifted the apartment on Christmas Day by Leshaughn and the gift box with the key was handed over to her by the Claimant in whose presence he made his declaration of the gift of the apartment. It was also the Claimant who broadcasted the news at the Christmas family gathering of the gift which Leshaughn had bestowed on the Defendant.

- [40] This Court believes this version of the events rather than those given by the Claimant. The Court has looked at the demeanor of the witnesses as they testified, it has also looked at how often the Claimants version was similar yet just slightly different to the evidence provided by the Defendant.

Considered in the round:

- [41] The Court considers the Claimant's own evidence that the Defendant came to live at the Property on the invitation of Leshaughn Smith but that she came to assist with the children. While it is agreed that Leshaughn invited the Defendant there this Court finds it impossible to believe the Claimant's testimony that she came whether only or mainly to assist with the children.
- [42] The Defendant had her own full time job. Any assistance she could reasonably render with the children would have been when she was not at work and she could easily have given that whether she lived there or not. Moreover, it is the evidence of the Defendant's sister Amanda Anselm that it was she who took care of the children not the Defendant.
- [43] The Court believes that the Defendant came there with Leshaughn's expressed permission and obviously the Claimant's implied permission. She came with the expectation that she would have been given the apartment in which to live. This is borne out by the fact that she was allowed to move

in and has lived in that building since that time. It is apparent that she assumed it to be a place to live forever as she gave up her lease and sold all her furniture.

- [44] The Claimant admitted under cross examination that a bed and chest of drawers were bought for the Defendant although she maintained that she did not know what the Defendant had done with her belongings. She obviously did not bring them with her. The Claimant also admitted that the Defendant had come to live with them permanently (there was no end date) or she added, until Leshaughn decided what he would do with his other land. Nowhere in any of her affidavits did the Claimant ever say Leshaughn had some intention to possibly house his mother elsewhere. It simply did not ring true.
- [45] The Defendant, however, does not plead a specific statement of the assurance given by Leshaughn before she moved in but she refers to the apartment at all times as her apartment and attested that it was a stated fact that the apartment was hers.
- [46] This Court was able to see her demeanor on the stand and believed that she was convicted in her belief that the apartment was hers. The court also looked at the Claimant's and Leshaughn's conduct - buying the furniture, accepting that she'd be there indefinitely. The Defendant's conviction could only grow stronger when she was given the key at Christmas. She believed then that Leshaughn intended for her to be the owner of the apartment because he said so. I do not doubt the Defendant for a moment.
- [47] Taking all of this into consideration, there is sufficient evidence to prove that Leshaughn intended to gift an interest in the property to the Defendant. By handing over that key Leshaughn was making good on his assurance that the Defendant would not only have a home for life but that it could no longer be disputed that she owned the apartment. The Claimant was well aware of this. She knew Leshaughn wanted to take care of his family. While she stated herself and his children to be his family she must have known he intended to take care of his mother as well as he had allowed her to move in and he had made certain clear declarations.

- [48] The Claimant also knew that the Property was bought and developed mainly by Leshaughn, she allowed him, without protest, to make the assurance and to give the gift to the Defendant. She was not then in a position of power and her encouragement was passive even if taken at its lowest.
- [49] The Claimant stood by as the Defendant sold her furniture, gave up her lease and moved into the house. Even if she believed then that she had moved there as a mere licensee when she handed the apartment key to the Defendant at Christmas and heard Leshaughn's declaration that the Apartment was a gift, there could be no doubt of his true intention. This Court is certain that the Claimant said nothing by way of objection or non consent as there is no such evidence provided. It is therefore found as a fact that she acquiesced. That is the even clearer assurance now given to the Defendant by them both. It is on that assurance that the Defendant must surely have relied to form the belief that the Apartment really belonged only to her. There was nothing unreasonable about this.
- [50] The Claimant also told others that Leshaughn had made this significant gift. She never acted or stated that she was not in agreement and so the Defendant had no reason to believe that she was not. The Defendant believed that the promise made had been fulfilled. While she never lived in the apartment, I also believed her when she said that she stayed upstairs as the apartment was not yet completed. She then remained there to allow the rent of the apartment gifted to her to be used for her foreign grandchild's benefit. This she said was done with her consent after a full discussion with the Claimant and Leshaughn.
- [51] The Claimant agreed that the proceeds of the rent went to assist that particular grandchild both before and after Leshaugh passed. It would seem more likely than not that some agreement had been put in place for this to occur. It has also not gone unnoticed that the Claimant never agitated for the Defendant to move out while Leshaghn was alive. She never then said that the apartment had not been gifted. Rather she now says it was a gift of the key. A key to an apartment that was not yet completed seems an unusual gift if the intent was to gift mere occupancy.
- [52] The Court also considers the evidence of Ms LaRose. The deceased is passed but his conversation with Ms LaRose is found to be quite relevant as he can not now speak for himself. Rule 69(a) of the

Evidence Act allows this type of evidence as an exception to the hearsay rule and the court is empowered to accept this evidence even where the requisite notice has not been given. The witness testified that the deceased admitted to her that the ground floor apartment was for the Defendant.

- [53] In the circumstances as this Court finds them it would be nothing less than unconscionable for the Claimant to now state that Leshagh's mother is nothing but a mere licensee. Equity will mitigate the rigors of strict law and the Claimant will not be allowed to insist on her legal rights considering the dealings which have taken place between the parties.

b. Whether the Defendant is a trespasser:

- [54] This finding swiftly addresses the issue of whether or not the Defendant is a trespasser. She is not. Having successfully asserted the shield of a proprietary estoppel. The Court, however, can go no further than to dismiss the claim for possession. There is no counterclaim so the court is unable to fashion any equitable relief. The claims for damages (**Issues 2 and 3**) which flow from the trespass will also swiftly fall away.

The Aftermath:

- [55] While it is evident that the arrangement of living in the same household no longer works, the Defendant has sought no relief. This is where mediation could have bravely and kindly stepped in to facilitate a binding agreement between the parties ensuring a smooth road ahead. Although the Court can make no orders in relation to remedies, it is compelled to state that perhaps even existing on the same premises would be problematic for these parties.
- [56] If the Court were somehow able to grant relief it would have been proportionate in its order that the apartment be appraised and the Claimant pay to the Defendant the value as appraised. That way she has money to find herself her own suitable accommodations and the Claimant has freedom to live in the property she owns and will occupy only with those she chooses. The Court extends an invitation to the parties to return to mediation if they think it could be any use to them moving forward.

4. Is the Claimant entitled to an injunction restraining any further trespass to the Property or interference with the Claimant's staff and business

[57] The Defendant admits in paragraph 14 of her second affidavit that the Claimant is indeed a partner in the businesses as she claimed. She can not now turn face to say the Claimant has brought nothing to prove that admission. This Court also finds that the Defendant has admitted that she has been trying to acquire an inventory of the assets of the business so that she may apply for letters of administration to secure the estate of her son.

[58] Her answers under cross examination did not lead this Court to believe that she had not in fact been interfering with the operation of the business. Since the businesses exists on the compound of the Property it is best to restrain any further activity or interference. For this reason the Court will injunct the Defendant from doing any acts which amount to an interference with the claimant's business or her staff. This injunction restrains her only in her personal capacity. If perchance she may become an administratrix of the deceased's estate and those businesses form part of his estate she will not be restrained in that capacity.

Determination:

[59] It is Ordered

1. The Claims for possession and damages are all dismissed.
2. The Defendant is restrained whether by herself or her agents from interfering with the Claimant's businesses and their staff.
3. Both Parties have seen some level of success but the Defendant's is greater by far. She is awarded 80% of the costs agreed by the parties to be granted on the prescribed basis. I will rely on counsel to calculate and agree.

**Sonya Young
High Court Judge**

By the Court

Registrar