

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHCV2021/0090

BETWEEN

TYRONE CARLISLE SIMMONS

CLAIMANT

(By his Lawful Attorney on Record

Melissa Amanda G. Simmons)

AND

NORRIS SIMMONS

FIRST DEFENDANT

CORINNNA PARSON

SECOND DEFENDANT

Appearances:

Mr. Jomo Thomas for the Claimant

Mr. Cecil A. Blazer Williams for the Defendants

2022: April 5th

May 11th

JUDGMENT

Byer, J.:

- [1] The claimant and the first defendant are family members, the first defendant being the uncle of the claimant, he is the brother of the father of the claimant.
- [2] In spite of this court sending this matter to mediation with a hope of salvaging the familial relationship stressed by the filing of this litigation, the parties did not settle and the matter proceeded to trial before this court with the claimant and the first defendant uncompromisingly adhering to their relative positions.
- [3] By Fixed Date Claim Form (the claim) filed 16 July 2021, the claimant sought the following reliefs:
1. A declaration that the claimant is entitled to the possession of parcel of land with house erected thereon situate on Lot 9 at Frenches and registered as Deed No. 839/1982.
 2. An injunction prohibiting the defendants, their servants and or agents from occupying the said property registered under Deed No 839/1982.
 3. An order that the defendants do within 7 days pull down and remove the wall.
 4. The court to declare the Statutory Declaration No 1589/1988 recorded in the name of the 1st Defendant is illegal, null and void.
 5. *Mesne* profits from 2017 until possession is delivered up; (current letting value of property).
 6. Alternatively damages to be assessed.
 7. Damages for trespass
 8. Interest
 9. Cost
 10. Any such further or other relief that the court deems fit.
- [4] The claim was supported by an affidavit by the Attorney on Record for the claimant his cousin's daughter Melissa Simmons. It is this affidavit that set out the parameters of the claim, which are stated as follows:
- i) the grandfather of the claimant Floris Albert Simmons (the/their/his father) by his Last Will and testament dated 16 May 1964, left a portion of his parcel of land at Frenches, Kingstown to the claimant with a life interest in his daughter Daphne;
 - ii) Grant of Probate of the Last will and testament was made to the Executrix named in the will, Betty Simmons (the Executrix) the mother of the claimant on 27 September 1968;
 - iii) Pursuant to her powers under the will the Executrix executed a Deed of Assent in favour of her son, the claimant on 28 April 1982 registered as Deed Number 839 of 1982 (the Deed of Assent);

iv) Subsequent to the death of the father, Daphne purportedly gave the first defendant, who was not a beneficiary under the Last will and testament of their father, permission to live in the house in which she had a life interest. She thereafter migrated to the United Kingdom and never returned, dying there in 2017;

v) That the possession by the first defendant was effected solely by the permission of the said Daphne but that the first defendant at all times knew that the house belonged to the claimant and was only there on the licence of the family inclusive of the claimant; and

vi) The first defendant has refused to leave the said premises despite being asked to do so since the death of Daphne and instead have wrongfully made alterations to the said land and house restricting the claimant's access to the same.

[5] The defendants by their Amended Defence and Counterclaim¹ sought to rely on the provisions of the Limitation Act² that the first defendant had occupied the land since 1968 and that as such the claim of the claimant would be extinguished by operation of the law. In the alternative, the defendants also claimed by counterclaim that by virtue of proprietary estoppel, the first defendant having expended monies on the property the claimant was estopped from claiming possession of the same.

[6] The issues for the court therefore were two:

1) Is the claimant barred from claiming possession by virtue of the provisions of the Limitation Act and if not,

2) Are the defendants entitled to rely on the principle of proprietary estoppel.

[7] Before this court embarks on a consideration of the identified issues, I wish to make it clear that reference in this judgment to defendant refers to the first defendant, the second defendant being his common law wife and then legal wife in 2020 gave no evidence as to her personal occupation of the land or contribution to the construction of the house. The second defendant was therefore clearly joined as a party being in occupation of the house with the first defendant and against whom an order would have to be made if the claimant is successful on his claim for possession.

Issue #1: Is The Claimant Barred From Claiming Possession By Virtue Of The Provisions Of The Limitation Act?

[8] It must be made clear that the defendant has not admitted in his pleading that the claimant is the paper owner of the lot of land the subject matter of this action. He however did plead that the basis upon which the claimant inherited the land the subject matter of this action, the Last will and testament of his father had been questioned by both his mother and his sister Daphne. However,

¹ Filed 20/10/2021

² Cap 129 Revised Laws of Saint Vincent and the Grenadines

the defendant made it clear in cross-examination that these questions never translated to legal action being taken and quite properly the defendant made no claim in relation to the validity of the will which led to the Deed of Assent and ownership vesting in the claimant.

- [9] That being said, in order for this court, to determine whether the defendant is entitled to use the Limitation Act as a shield against the action for possession by the claimant, the court must make an assessment of the evidence upon which the defendant relies to support such a contention.
- [10] At this juncture the court wishes to make it clear, as it was made clear to counsel for the defendant, and which indication was apparently not heeded given the nature of the pleading in this regard³, reliance on the Limitation Act does not entitle the proponent of the provisions of the Act to any relief. In the words of Mohammed J in **Magdalene Lendore v Winsford Frank and anr**⁴, “...a person who is an adverse possessor cannot rely on these provisions of the Limitation Act to be used as a sword to mount an action for possession against an owner who has the paper title but they can only be relied on as a shield against a paper title owner who has been dispossessed by the adverse possessor and has brought an action to recover possession. Therefore, in law, the Claimant cannot rely on her adverse possession to bring an action to dispossess the owners of the paper title...”
- [11] This was also the position of the Court of Appeal in **Arnold Celestine v Carlton Baptiste**⁵ in which George-Creque JA (as she then was) had this to say; *“It appears to have been overlooked that these provisions are directed at the right of the paper owner to bring a claim for recovery of land and limit the time frame within which the paper owner may do so. This contemplates that the paper owner must have become dispossessed of the land - by the adverse possessor. What these provisions do not permit or contemplate is the situation where, as here, the adverse possessor brings a claim against the paper owner and then sets up the limitation bar as against the paper owner as a basis upon which the adverse possessor becomes entitled to ownership of the land.”* (My emphasis added)
- [12] Thus, the only consideration that can be had by the court is whether the defendant has factually possessed the property the subject matter of this action and in fact did so with that intention to possess⁶. Thus, the question is simply “...whether the defendant squatter has dispossessed the paper owner (in this case the registered proprietor) by going into ordinary possession of the land for the requisite period without the consent of the owner.”⁷ (My emphasis added)
- [13] Thus the nub of the commencement of possession must be that it was undertaken without the permission of the person with title to land. Thus, “any party asserting possessory title on that basis

³Paragraph 1 of the Counterclaim filed 20/10/2021 – “A declaration that the property comprised in Statutory Declaration No 1589 of 1988 is the property of the First Defendant by virtue of Section 17(1) of the Limitation Act Cap 129 of the Revised Laws of Saint Vincent and the Grenadines 2009”

⁴GDAHCV2006/0620 at paragraph 25

⁵GDAHCVAP2008/0011 at paragraph 15

⁶**J A Pye (Oxford) Ltd v Graham** [2003] 1 AC 419

⁷**Jeffrey Adolphus Carty v Raphael Edwards** AXAHCV2003/0045 per George-Creque J (as she then was)

must therefore have entered the land without permission from the beginning or having entered with permission, such permission must have expired⁸. (My emphasis added)

[14] In the case at bar, that question of permission or lack of permission is the nub of the defendant's case.

[15] In the pleadings of the defendant, this issue was pleaded thusly⁹:

"The First Defendant will contend that he moved on to the property in 1968 when his sister, Daphne Simmons told him to do so after collecting the keys from Clyde Simmons' mother-in-law, for the chattel house on the land."

[16] In support of this contention, the only one of the witnesses that the defendant brought to court who could speak of any "personal" knowledge of the commencement of the occupation of the land at Frenches, was the defendant himself. It was therefore with some consternation that the manner in which the commencement of the defendant's occupation was captured by these words:

"In 1968, I occupied a board or chattel house on a piece or parcel of land situate at Frenches in which I lived as a child but which became vacant after I and other family members left."

[17] However at trial of the matter, this troubling issue took on a life of its own by the oral evidence of the defendant on cross examination and those of his witnesses.

[18] On cross-examination¹⁰, the defendant who seemed to have a very convenient memory for some things and not for others gave this court the distinct impression that he was not as feeble minded or as forgetful as he purported to portray and as such this court found him a less than credible witness. That being said, on cross-examination early in the start of the examination, the defendant clearly stated that his sister Daphne had given him permission to live in the house but that he did not know of her having a life interest in the said property. He then went on to say that as far as he knew, and what Daphne had told him was that their father had given her the property and although he had a document to show that Daphne owned the property he had not produced it to the court. But then he went onto immediately to contradict himself by saying he had no such document. He also then once again contradicted himself when he said that he could not remember Daphne giving him permission to stay in the house.

[19] The only documentary evidence that the defendant did produce was a letter purportedly from Daphne¹¹ dated 8 March 2005 in which she relayed a purported conversation that she had with their father before she migrated to the United Kingdom, that he had willed the house and land to her. It therefore appears that it is upon this basis that she further writes to the defendant and "gives" him the land and house to occupy and own.

⁸**George Donald Barclay and ors v Hilda Clement nee La Pierre** GDAHCV2003/0177 per Price Findlay J at paragraph 83

⁹ Paragraph 3 of Amended Defence and Counterclaim filed 20/10/2021

¹⁰ At trial on the 5/4/2022

¹¹ Letter is from an A. Kramer but no document was produced to link Daphne to this person

- [20] Although this court accepts that the intention of Daphne may have been to divest herself of property she believed she may have been entitled to, this court categorically accepts that Daphne had no house and land to “give” to any one and all that she could have passed to the defendant was her interest in the land which as stipulated under the will of their father, that is simply, a life interest.
- [21] It is trite law that a person can only divest themselves of the interest which they themselves hold. Daphne, her mother, not even the defendant made any claim against the validity of the will and the same was probated and stands as evidence as to the intention and will of the father. Daphne received a life interest, the most that she gave the defendant therefore was a licence to occupy the house for the period of her life interest.
- [22] Indeed, it would only have been on the cessation of that life interest that the defendant’s possible entitlement in his own right would have been triggered, which by all accounts would have been in 2017, on the death of Daphne.
- [23] It is thus only in 2017, in this court’s mind, that the defendant’s “adverse possession” could have started to run as against the claimant.
- [24] This court accepts that the defendant’s occupation of the property in 1968 began with the permission of the person in whom the immediate right of possession was reposed. In 1968, the house became vacant when all family members emigrated out of St. Vincent. The defendant moved in and commenced living there. He remained living there at the behest of the life tenant. There was no evidence, despite being referred to by the defendant and his family that a document existed showing the transfer to the defendant of the house by Daphne. In fact, it is clear that despite his pleading that his father did not have legal title for the land upon which the house stood¹² the defendant accepted that there was in fact a deed of conveyance in the name of his father¹³ and as such his father was entitled to bequeath the land as he so desired and he did in fact do so by his will.
- [25] Further this court is assured that none of the evidence led by the defendant with regard to his reliance on the Limitation Act has shown on a balance of probabilities that the defendant has established that his occupation of the house and the land was any other than by the permission of Daphne. As my sister Ellis J stated in **Ellen (Edlyn) Works v Mitch Phillip and Margaret Phillip**¹⁴:

*“If the possession is enjoyed by virtue of some legal entitlement, then it cannot be adverse. Hence, the existence of a lease or licence will defeat a claim as the possession, even if exclusive, is by the agreement of the paper owner. This position was clarified by Alleyne, J. in **Lett v Davis & Jones** where he stated:*

¹² Paragraph 7 (b) of the Amended Defence and Counterclaim

¹³ Paragraph 10 of the Witness Statement of the Defendant filed 30/12/2021

¹⁴ GDAHCV2004/0429 at paragraph 73

"Where the occupier of premises is in possession by the owner's leave, his occupation may not be an independent possession by him, but the possession of the owner himself, so that the owner is in possession through the occupier as his licensee."

- [26] In this court's mind therefore the earliest that the defendant could have claimed to have been in possession was 2017. His occupation of the same would at that point no longer been due to his permission by Daphne but would have been as against the true owner the claimant. However, this claim was filed in 2021 by the claimant and at that point, time would have immediately ended way beyond the requisite period.
- [27] This court therefore finds that the defendant is not entitled to rely on the provisions of the Limitation Act and the court finds therefore the claimant is not barred from his claim for possession. However, that is not the end of the matter as the defendant has also sought to rely on the equitable principle of proprietary estoppel.

Issue #2: Are the Defendants Entitled To Rely On the Principle of Proprietary Estoppel?

- [28] In order for the defendant to successfully rely on the principle of proprietary estoppel, he has to prove, three fundamental elements. These are that there was a promise or assurance by the claimant to the defendant or at least by the person who was had the right to make such an assurance, that the defendant relying on that promise, then took some action that was to his detriment. As the court in the case of **Wilmot v Barber**¹⁵ stated it, "[w]hat are these matters of fact that have to be considered? Firstly, the claimant must have made a mistake as to his/her legal rights; secondly the claimant must have expended some money or must have done some act on the faith of the mistaken belief; thirdly that the defendant who is the possessor of the legal right, must know of the existence of his own right which is inconsistent with the right claimed by the claimant. If he does not know of it he is in the same position of the claimant and the doctrine is founded upon conduct with a knowledge of your legal rights; fourthly, the defendant must know of the claimant's mistaken belief of his rights and finally the possessor of the legal right must have encouraged the claimant to spend money or to undertake other acts either directly or by abstaining from asserting his legal right." (My emphasis added)
- [29] The defendant's case therefore in this regard is that having taken up occupation of the house in 1968, that in 1981 he then sought to convert the wooden house which he occupied into a concrete dwelling for which he expended large sums. That having expended these large sums, he then executed a statutory declaration to himself of ownership of the land in 1988. The defendant further contends that between 1968 and 2021 despite visits and communication from the parents of the claimant and the claimant himself, he was never informed that the land belonged to the claimant but that he was tacitly encouraged to make these renovations and refurbishments which it would now be unconscionable to allow the claimant to obtain without due compensation.

¹⁵ (1880) 15Ch D 96 at 105

- [30] The claimant on the other hand contends that the defendant knew from the inception of his occupation that he was not entitled to any claim regarding the property. That the defendant knew full well the contents of the will that devised the portion of the property to the claimant and that when he expended sums on the refurbishment of the house he did so essentially at his own risk.
- [31] In order for this court to therefore make a determination in this regard it must undertake an analysis of the evidence that was led with regard to the elements that need to be proven.

The Assurance/The Promise

- [32] The evidence of the defendant in this regard was alarmingly absent in his examination in chief but he did make some attempt to speak to this on cross examination. Thus, he told the court the following:

"Daphne gave me permission to move onto the property. I can't say whether Daphne owned the property. I do not think it is true that Daphne had a life interest in the property.I have a document that shows that Daphne owns the property – it is at home in the house. I have no documents saying that Daphne owns the house."

"Daphne told me that I could move into the house after the family left"

"I was in constant contact with Betty and Clyde"

"I remember Betty writing to me we also wrote to each other"

"I did not know that the land belonged to Tyrone."

- [33] In cross examination the defendant also relied on the contents of a letter written by the mother of the claimant who the defendant variably throughout his evidence said he did know and that he did not know that she was the executrix of the estate of his father, a state of affairs, which in this court's mind, lent further credence to the court's determination that the defendant was a stranger to the truth.

- [34] The letter written by the executrix¹⁶ was dated 22 September 1981 addressed to the defendant. Half way through the letter, she had this to say:

"How about the house have you repair it as yet, may it (sic) will be nice if you can fix it up for your kids and perhaps we can stay there with you when we come down if possible."

- [35] It is this sole statement that the defendant in his defence¹⁷ pleaded supported his occupation of the said land and the building of his concrete house.

¹⁶Exhibit "NS2" to the Amended Defence and Counterclaim filed 20/10/2021

¹⁷ Paragraph 5 of the Amended Defence and Counterclaim filed 20/10/2021

- [36] In this court's mind it therefore appears that this is the totality of the evidence that the defendant relies on to substantiate the first limb of the equitable principle.
- [37] In the submissions of counsel for the defendant he also spoke of the "encouragement of Betty and Daphne"¹⁸ to stay on the property and that this was the basis of the defendant's subsequent actions.
- [38] However, the courts have made it clear, that in order for a representation to operate as an estoppel, it must be found that the "representation [was] clear and unequivocal, it must be intended to be acted on, and it must be in fact acted on. When I say it must be "intended to be acted on", I would add that a man must be taken to intend what a reasonable person would understand him to intend. In short, the representation must be made in such circumstances as to convey an **invitation** to act on it."¹⁹ (My emphasis added)
- [39] Indeed, "...once it is shown that a representation was calculated to influence the judgment of a reasonable man, the presumption is that he was so influenced."²⁰ But the all-important question has also got to be, did the person who may have been considered to have made the representation in a position to do so? That is, can it be said that Daphne's "statement" to the defendant could amount to an assurance or promise upon which the defendant was entitled to rely?
- [40] In this court's mind the answer to these questions must be no. This court has found that on a balance of probabilities, that defendant knew of the terms of the will of his father. He admitted in cross-examination (although he changed this answer several times) that he asked the executrix about the will and its contents. This court has also found that in any event Daphne had no title to the land to make any representation to the defendant. She simply was unable to do so. However, the more pressing issue is that there is no doubt, even from the words of the claimant himself that he had been aware that the defendant had made improvements to the house, whether it was by rebuilding or renovating, that the house that is presently on the land is not the house that he inherited under the will of his grandfather in 1964. That is an uncontroverted fact.
- [41] These circumstances therefore beg the question whether, where there has not been an assurance by an individual who can bind the land owner, whether the land owner, in this case the claimant, would still be held to be acting unconscionably seeking to have his order for possession where he knew that the defendant had made improvements on his land which he allowed even if he did not actively encourage them.
- [42] In the case of **Jones v Watkins**²¹ Slade LJ quoted with approval the dicta of Oliver LJ in **Taylor Fashions v Liverpool Victoria Friendly Society; Old & Campbell v Same**²² that "... the more recent cases indicate, in my judgment, that the application of the *Ramsden v Dyson* (1866) LR 1

¹⁸ Defendant's Submissions filed 19/4/2022

¹⁹ **Sidney Bolsom Investment Trust Ltd v E Karmios & Co (London) Ltd** [1956] 1 All ER 536 at 539 per Denning LJ

²⁰ **Greasley v Cook** [1980] 1 WLR 1306 at paragraph 18 per Denning LJ MR

²¹ 26 November 1987 unreported

²² [1982] QB 133

HL 129 principle – whether you call it proprietary estoppel, estoppel by acquiescence or estoppel by encouragement is really immaterial – requires a very much broader approach which is directed rather at ascertaining whether, in particular individual circumstances, it would be unconscionable for a party to be permitted to deny that which, knowingly, or unknowingly, he has allowed or encouraged another to assume to his detriment than to inquiring whether the circumstances can be fitted within the confines of some preconceived formula serving as a universal yardstick for every form of unconscionable behavior.” However, it is still required that even that representation by acquiescence must be clear and it must be dependent on the context²³.

- [43] Thus, what is the context of this action? In this court’s mind, the defendant knew that his occupation of the house was only because of the family having all emigrated from the state of Saint Vincent. That the defendant knew that the land had been devised by his father to the claimant and to the claimant’s father. That the defendant knew that his sister Daphne only had a life interest in the property and that when he expended monies at the time that the house was in a state of dilapidation that he did so to provide a house for his family but that he knew it was never his and that no one had given him that clear assurance that it would be his. I therefore find that the defendant has not made out the first fundamental tenet of proprietary estoppel, that of the assurance upon which he could have relied.
- [44] This court accepts that the defendant knew full well that he was not entitled to the land and the house but used the period of thirty seven years when the claimant did not visit St. Vincent to convince himself that the claimant was not coming back for the same. This is even borne out by the fact that the defendant in 1988 sought to swear a statutory declaration. Although the premise of that declaration, this court has already determined was flawed, it is an indication to this court that the defendant really sought to acquire this property to himself and in doing so this court accepts that he incurred cost, even though he did so at a risk to himself.
- [45] Therefore although this court accepts that the defendant has not made out an entitlement to rely on the principles of proprietary estoppel, it is clear, as accepted by the claimant that there have been improvements to the property and as my brother Morley J in **Maureen Dyett**²⁴ stated the doctrine of unjust enrichment must be the flip side of the proprietary estoppel coin in this context.
- [46] It is agreed that the defendant made no plea or led evidence or even submitted on this as an issue, however under section 20 of the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act²⁵ the court is empowered to deal with matters finally and grant any remedies that the parties may be entitled to on the matter before it.
- [47] Thus this court is of the opinion that the defendant would be entitled to the equitable remedy doctrine of unjust enrichment in that this court accepts that it would be manifestly unfair and

²³**Thorner v Majors** [2009] UKHL 18 at paragraph 56; applied in **Maureen Dyett v Mary Casarin** MNIHCV2018/0003 at paragraph 27

²⁴ Ibid

²⁵ Cap 24 of the Revised Laws of Saint Vincent and the Grenadines

unconscionable to grant the claimant possession of the house without compensating the defendant for the improvements made thereto.

[48] In the case of **Samsoondar v Capital Insurance Company Ltd**²⁶ the Privy Council held that “...a claim in the law of unjust enrichment had three central elements which the claimant must prove: that the defendant has been enriched, that the enrichments was at the claimant’s expense and that the claimant’s expense was unjust...”

[49] In the case at bar, the court having found that the defendant expended monies on the improvements to the house and the claimant having accepted that improvements were made²⁷ and that further on in re-examination on the stand made it clear that he loved his uncle and would not want to bring him harm or stress, this court also finds that in obtaining possession of the property, the claimant must compensate the defendant for the same. It is therefore ordered that claimant is to pay to the defendant the sum of \$161,000.00 as set out in the valuation of Chris Browne dated 7 December 2020²⁸.

The order of the court is therefore as follows:

On the Claim

1. The declaration that the claimant is entitled to the possession of a parcel of land with house erected thereon situate at Lot 9 at Frenches and registered as Deed No 839/1982 is granted.
2. The injunction restraining the defendants their servants or agents from occupying the said property is refused.
3. An order that the defendant do pull down and remove the wall within 7 days of this order is refused, the defendants have 4 weeks to undertake that removal.
4. The statutory declaration No 1589/1988 is declared null and void.
5. An order for *mesne* profits is denied.
6. An order for damages for trespass is denied.
7. Prescribed Costs to the claimant on an unvalued claim pursuant to Part 65.5 CPR 2000.

²⁶2020 UKPC 33; [2021] 2 All ER 1105 at 1113

²⁷In cross-examination at trial on 5/4/2022 the claimant stated: “I was aware that he had renovated the existing house that was there already. I was not aware that he had built a house. I was aware that the defendant had expended large sums of monies on the house he resides in from the documents that he had submitted to the court.”

²⁸ Exhibit “NS4” to the Amended Defence and Counterclaim

On the Counterclaim

1. The declaration that the property in Statutory declaration No 1589 of 1988 is the property of the first defendant by virtue of the Limitation Act is denied.
2. An order that the claimant is estopped from claiming the said property is denied but the claimant is ordered to pay to the defendant the sum of \$161,000.00 for the said house within 6 months of the date of this order. Upon payment of the sum in full, the defendant and his family are to vacate the said property within two months thereafter.
3. Prescribed costs to the defendant on the sum awarded pursuant to Part 65 CPR 2000.

Nicola Byer
HIGH COURT JUDGE

By the Court

Registrar