

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

GRENADA

CLAIM NO. GDAHCV2020/0055

BETWEEN:

JOAN BUCKMIRE

Claimant

and

JULIE ANN DOWDEN (nee JOHNSON)

**(in her capacity as Administratrix of the Estate of Fernando Johnson [the
Deceased])**

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Benjamin Hood for the Claimant

Ms. Deborah St. Bernard for the Defendant

2022: March 22nd

RULING

[1] **ACTIE, J:** The claimant claims that she was in an intimate relationship with Fernando Johnson (hereafter “the deceased”). The defendant is the daughter and the Administratrix of the estate of the deceased.

[2] In a statement of claim filed on 3rd March 2020 the claimant claims for:

- (1) A declaration that the defendant and/or agents of the defendant are estopped from restricting the claimant from the use and enjoyment of the dwelling house and adjoining property situate at Mardigras in the parish of Saint David in the State of Grenada.

- (2) An injunction restraining the defendant, the defendant's agents or successors in title from restricting, preventing or otherwise interfering with the claimant's peaceful enjoyment of the dwelling house and property aforesaid.
- (3) A declaration that the claimant is entitled to absolute title to the dwelling house presently occupied by the claimant and five (5) acres of adjoining property
- (4) Damages for malicious and intentional trespass to the goods of the claimant located at the dwelling house.
- (5) Damages for interference with the business of the claimant; Special damages in the amount of \$30,711.17.
- (6) Interest; and Costs.

- [3] The claimant avers that she met the deceased in or about the month of September 2004, and that they commenced an intimate relationship in or about the month of April 2009, when she would live in the house of the deceased for several weeks at a time.
- [4] During that time, the claimant avers that the deceased began to involve her in business activities of the business named "Adfer Fire Protection" (hereafter "the business"). The claimant states that this business was jointly owned and operated by her and the deceased, and when the business was short of cash, she would contribute from her personal resources on the assurance of the deceased that the business belonged to both of them, and he would make provision for her wellbeing.
- [5] In December 2013, the claimant states that she moved into the dwelling house of the deceased and the couple lived together on a full-time basis as common law husband and wife. The claimant states that the deceased promised that he would

ensure that the claimant would have the dwelling house and 5 acres of land surrounding the said dwelling house.

- [6] The deceased took ill on 9th August 2019 and died on August 21st, 2019. The claimant continued to reside in the dwelling house after the death of the deceased.
- [7] On 13th October 2019, the claimant left the dwelling house to visit her children. When she returned, the locks of the dwelling house were broken, and upon entering she noticed several items in the dwelling house missing and/or destroyed by the defendant. Furthermore, on or about 23rd January 2020, the electricity service at the dwelling house was disconnected by the defendant, for which the claimant claims loss and damages.
- [8] The claimant contends that the breaking into the dwelling house by the defendant, and the damaging and removal of items was conceived and executed with malicious intent, since the defendant knew or ought to have known that her actions would cause damage to the business and harm and embarrassment to the claimant. The claimant states that the business sustained damage over a period of approximately 3 weeks.
- [9] It is the claimant's position that the defendant is estopped from going against the promise made by the deceased to the claimant and denying the claimant title to the dwelling house that she occupied and the five (5) acres of land surrounding the dwelling house.

Defendant's case

- [10] The defendant in her filed defence avers that the deceased specifically denied being in an intimate relationship with the claimant when asked by his adult children.
- [11] The defendant contends that the deceased indicated that he hired the claimant in a domestic capacity to assist with household chores when he was diagnosed with Alzheimer's disease.

- [12] The defendant states that the claimant was never involved in the operations of the business, and that the only employee of the business was Mr. Kishawn Pierre.
- [13] Following the death of the deceased, a meeting was held at an Attorney's office on 23rd August 2019 (hereafter "the said meeting") wherein the claimant agreed to vacate the deceased's residential property by 31st October 2019. The defendant avers that the claimant is now estopped from attempting to assert any beneficial interest or entitlement to any portion of the estate of the deceased.
- [14] The defendant states that the continued occupation of the property by the claimant hinders or obstructs her duties as Administratrix.
- [15] The defendant avers that her disconnection of the electricity services was in her capacity as Administratrix and was followed upon several requests for the defendant to deliver up possession of the dwelling house. The defendant states that in January 2020, upon investigation, she learnt that the claimant unlawfully permitted her daughter and son in law to occupy the premises. It was thereafter that the defendant caused electricity services to be disconnected. The defendant avers however that she is aware that an alternative form of electricity was being utilized through the use of a generator.
- [16] The defendant admits that she forcibly entered the dwelling house but maintains that at the time of her entry into same, the claimant had vacated the premises and was no longer occupying same.
- [17] The defendant counterclaims that the claimant, whether by herself or her servants and agents, wrongfully and unlawfully continues to occupy the dwelling house of the deceased without any legal authority, hampering and obstructing the defendant's carrying out of her duties with respect to the estate, thereby causing the defendant to suffer loss, inconvenience and damages.
- [18] The defendant counterclaims for, among other things:

- (1) Possession of the residential property situate at Mardigras forming part of the Estate of the deceased and currently occupied by the claimant and/or her servants or agents.
- (2) A declaration that neither the claimant nor her servants or agents are entitled to enter on or occupy the aforesaid residential property being the property of the deceased, or any part thereof.
- (3) An order that the claimant deliver vacant possession of the dwelling house and other property and assets of the deceased to the Administratrix in her aforesaid capacity.
- (4) A full accounting of the proceeds of the business, together with copies of all bank account(s) relating thereto from 9th August 2019 until the determination of this claim:
- (5) Rental income of \$2,000.00 monthly from September 2019.

Procedural irregularities

- [19] Ms. Deborah St. Bernard, counsel for the defendant, raised several procedural irregularities in relation to the claimant's claim and breaches of the case management orders namely: (i) The claimant was given carriage of the case management order made on 28th January 2021 but filed the order some six (6) months later on the 25th June 2021; (ii) The claimant failed to comply with the direction for standard disclosure to be made by 30th April 2021; (iii) The claimant failed to comply with the order made at Pretrial Review on 11th November 2021 directing the parties to file skeleton arguments with authorities on or before the 1st March 2022, the claimant in breach filed on 17th March 2022 (16 days late) without making an application for an extension of time and giving reasons for the failure; (iv) The trial bundle was unpaginated in breach of CPR 39.1(4) (v) The claimant's failure to file a defence to the defendant's counterclaim.

- [20] Firstly, the court will not rely or take into consideration the claimant's late submissions filed in breach of the order without an application for an extension of time. Secondly, Rule 18.1 (1) (c) of the Civil Procedure Rules 2000 ("CPR") defines a counterclaim as an ancillary claim. CPR 10.9 (2) provides that where a defence contains a counterclaim, then Part 18 applies. The defendant to a counterclaim/ancillary claim is required to file a defence within twenty-eight (28) days, failing which the ancillary defendant is deemed to have admitted the claim¹.
- [21] Mr Benjamin Hood, counsel for the claimant, argues that CPR 18.9 provides that a defence may be filed. The court is of the view that even though CPR 18.9 is permissive and not mandatory, a counterclaim can stand on its own as a claim filed by the defendant. CPR 10.2 (4) provides where defendant fails to file a defence, judgment in default may be entered.
- [22] The court is of the view that the claimant has failed to pursue her claim in keeping with the requirements of the CPR 2000. The failure to file a defence to the counterclaim suggests that the defendant's claim is unchallenged by the claimant.
- [23] Also, the failure to file standard disclosure is a breach of CPR 28.4 and accordingly the claimant is unable to rely on any documents not filed in accordance with the court's order.

Legal Analysis

Whether the claimant can in equity rely on the promise of the deceased

- [24] Proprietary estoppel was described by Byer J in **Cynthia Jones v Leroy Wilson-Jones & Ors**² 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 belief³."

¹ CPR 18.12 (2) (a)

² SVGHCV2017/0106

³ SVGHCV2017/0106 Cynthia Jones v Leroy Wilson-Jones, para 22

...

“Thus the starting point in assessing and analysing whether proprietary estoppel can even arise, one must ask three questions... these questions are ‘first is there an equity established? Secondly what is the extent of the equity established, if one is established? And thirdly what is the relief appropriate to satisfy the equity?’”⁴.

[25] Furthermore, Lord Carnwath in **Mohammed v Gomez and others**⁵ referred to paragraph 24 of the judgment of Lord Walker in *Thorner v Major*⁶ in relation to proprietary estoppel:

“... the doctrine is based on three main elements, although they express them in slightly different terms: a representation or assurance made to the claimant, reliance on it by the claimant; and detriment to the claimant in consequence of his (reasonable) reliance...”

In addition, Lord Carneth stated:

“I would prefer to say... that to establish a proprietary estoppel the relevant assurance must be clear enough. What amounts to sufficient clarity... is hugely dependent on context.”

[26] The court having heard the evidence and observed the witnesses rejects the defendant’s evidence that the claimant was her father’s helper. The court accepts the claimant’s evidence that she was in a common law relationship with the deceased.

[27] The claimant avers that the deceased dictated the contents of a will to a lawyer but has not seen the will prepared on behalf of the deceased. Further, the claimant provides neither documentary nor testimonial evidence in support of her assertion of the deceased’s intention to convey the dwelling house and the surrounding five acres of land to her. There is nothing put before the court which demonstrates that there was a representation or assurance made to the claimant, far less a clear assurance, and that the claimant relied on same. The claimant asserts that she was not aware that the deceased was the owner of lands until

⁴ SVGHCV2017/0106 Cynthia Jones v Leroy Wilson-Jones, para 23

⁵ [2019] UKPC 46

⁶ [2009] UKHL 18

2016. Accordingly, the issue of proprietary estoppel must be decided against the claimant, having failed to prove that there was an assurance made to her by the deceased.

[28] On the other hand, by virtue of the Grant of Letters of Administration, the property of the deceased, in law, devolves on the defendant and is held by her in the right of the deceased⁷. The defendant as personal representative is appointed to administer the property of the deceased⁸.

[29] In keeping with the above legal principle, the defendant has asserted⁹ that she has a greater right to the possession of the dwelling house than that of the claimant. Any interest in the property would devolve to the defendant as personal representative.

[30] Accordingly, the defendant is entitled to administer the estate of the deceased in accordance with the **Intestate Estates Act**¹⁰ and the **Real Estate Devolution Act**¹¹, and thereafter, it is for the beneficiaries of the estate to determine how their interest in the property of the Estate is to be treated with.

The Business “*Adfer Fire Protection*”

[31] With respect to the business “*Adfer Fire Protection*”, the court wholly rejects the defendant’s averment that it was deceased’s intention to give an employee, Kishawn Pierre, the business, as it is the evidence that the said employee resigned approximately four years prior to the deceased death. It is the evidence that the deceased registered the business in their joint names prior to his death. The court accepts that the claimant is a half share owner of the business “*Adfer Fire Protection*”.

⁷ GDAHCVAP2021/0002 Eliza Thompson v Catherine Thompson

⁸ Halsbury’s Laws of England (2021), vol 102, para 609

⁹ No Grant of Letters of Administration is before the Court

¹⁰ Cap. 154 of the Laws of Grenada

¹¹ Cap. 274 of the Laws of Grenada

Whether the claimant is entitled to damages for malice, trespass, and damage to property

[32] It is the evidence, and the court accepts that the claimant remained in possession of the said dwelling house after the death of the deceased. The court accepts the evidence that the defendant and her sister forcibly entered into the dwelling house and changed the locks. The actions of the defendant were done prior to her obtaining a Grant of Letters of Administration for the deceased's estate. It is also the evidence that the defendant disconnected the electricity supply to the dwelling house. This court granted an injunction in these proceedings directing the reconnection of the electricity supply.

[33] The claimant in her statement of claim pleads and particularizes the items allegedly damaged or removed during the defendant's and her agents' illegal entry. It is trite that special damages must be pleaded, particularized and proved. The claimant produces no receipts or other documents which would assist in the substantiation of her claim. The court would usually award a nominal sum where the loss was ascertained in absence of evidence to substantiate the amount pleaded. The court is of the view that the parties should endeavour to reach an amicable settlement on the items claimed. Counsel, Ms. St Bernard, undertakes on behalf of her client to allow the claimant to remove her items and deal with the items particularized in the statement of claim.

Counterclaim

[34] As indicated above, the claimant failed to file a defence to the counterclaim and accordingly the counterclaim is uncontested. The court having ruled in favour of the claimant with regard to the half share interest in the business and therefore it is necessary that the claimant gives an account of the business for the deceased's half share interest. The claimant is also required to give vacant possession to the defendant as claimed in the counterclaim.

[35] The court on equity principles takes into consideration that the claimant was in a common law relationship with the deceased and would therefore not make an award for the payment of rent for the period claimed by the defendant in the

counterclaim, and accordingly no award is made for rent or damages as claimed in the counterclaim.

- [36] Counsel for the parties agree that a period of ninety (90) days is reasonable for the full accounting and vacant possession of the dwelling home. The parties are further encouraged to have discussions and make reasonable arrangements for the business which is operated on the said premises.

ORDER

- [37] For the forgoing reasons, it is ordered and directed as follows:

- (1) The claimant's claim for absolute title to the dwelling house and 5 acres of adjoining property situate at Mardigras in the parish of Saint David is dismissed.
- (2) The claimant's claim for special damages is granted subject to the claimant proving the amount claimed, failing which the court will make a nominal award.
- (3) The defendant's counterclaim not contested by the claimant is granted in part.
- (4) The claimant shall, within ninety (90) days from today's date, provide a full accounting of the business "Adfer Fire Protection" together with copies of all bank account(s) relating thereto from the 9th August 2019 until judgment.
- (5) The claimant shall deliver vacant possession of the dwelling house and other property and assets of the deceased to the defendant within ninety (90) days of today's date.
- (6) The parties each having some measure of success shall bear their own costs.

- (7) The parties are further encouraged to have an amicable resolution of the issues pleaded as special damages.
- (8) The matter is adjourned to 14th July 2021 for report with liberty to file a consent order if sooner settled on special damages.

Agnes Actie

High Court Judge

By the Court

Registrar