

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

SVGHCV2009/0380

BETWEEN:

ANESTA ANDREWS

CLAIMANT

AND

THERESA JOHN
ARJANY BRAMBLE

DEFENDANTS

Appearances:

Mr. Roderick Jones for the Claimant

Mr. Ronald Marks for the Defendants

2022: 8 February

ORAL DECISION

Byer, J.:

- [1] This case has taken 13 years to come to trial and in that period not only did the face of the litigants change but so did the nature of the evidence that was presented on and relied upon at trial.
- [2] The claimant by their Fixed Dated Claim Form filed on 19 November 2009 claimed the following:
1. A declaration that the claimant is the lawful owner for an estate in fee simple absolute in possession of;
All that lot piece or parcel of land situate at Hopewell in the state of Saint Vincent and the Grenadines containing two (2) lots more or less being a portion of three (3) lots of land which is butted and bounded on the north by lands of Fairman George on or towards the south and east by lands of Miguel and on or towards the west by lands of Fairman George or howsoever otherwise the same may be butted bounded known distinguished or described TOGETHER with all ways waters watercourses rights lights liberties privileges easements and appurtenances thereto belonging or usually held used occupied and enjoyed therewith or reputed to belong or be appurtenant thereto.

2. An order that the defendant quit and deliver up possession of that part of the claimant's land that the defendant occupies.
3. An order that the defendant remove or caused to be removed any structure that she has erected upon the claimant's land.
4. Costs.
5. Further or other relief as the Court deems necessary and appropriate.

[3] In answer to this claim the defendant, at the time, Theresa John (now deceased) clearly pleaded a reliance on the provisions of the Limitation Act Chapter 90 of the Revised Laws of Saint Vincent and the Grenadines 1990¹ and at the most inferentially proprietary estoppel².

[4] In the closing address of the defendant the claim based on the Limitation Act Chapter 90 of the Revised Laws of Saint Vincent and the Grenadines 1990 was abandoned, and in this court's mind, rightfully so based on the evidence that was elicited at trial. Additionally, this court is satisfied on a balance of probabilities that the claimant would in all circumstances have been entitled to pursue her claim for possession as she holds the legal title to the same by virtue of her Deed of Gift registered as 3753/2008 dated 10 September 2008.

[5] At trial, counsel for the defendant seemed to suggest that the validity of the deed was in question based on questions directed to the claimant as to the payment of stamp duty she not having been the biological child of the deceased Walter Daniel. These questions, in this court's mind, were simply a red herring in the proceedings as this issue was neither pleaded nor expanded on by the defendant in their submissions and in this court's mind was also rightfully not pursued. As this court has said on a myriad of occasions, it is not for this court to conduct the case for either litigant, if this court is expected to make a ruling on matters raised by counsel then counsel must present that case for the court. That being said, this was obviously one such circumstance, and this court declines to make any finding on the issue of the validity of the Deed of Gift of the claimant in terms of the payment or non-payment of stamp duty.

[6] However it would be open to the court if the requisite evidence was before it to make a finding on the validity of the deed of the claimant. All that this court had before it was the deed of the claimant which made specific reference to another deed, not the possession of the grantor, but that the grantor had received the same by way of Deed of Gift dated 1989. That 1989 deed to Walter Daniel was not brought to the court by either party which on the face of it vests proper title in the

¹ Paragraphs 14 and 15 of the Defence and Counterclaim filed on 18/12/2009

² Paragraphs 5 to 9 of the Defence and Counterclaim filed on 18/12/2009

said Walter Daniel and thereafter to the claimant. The fact that the claimant although named as the daughter of the said Walter Daniel as Grantee cannot render a validly registered deed invalid without more.

- [7] That being said, it is clear, that on the face of it, the court must find that the claimant is the lawful owner of the property. However, the claimant has made a further claim for possession of the property the subject matter of this action.
- [8] In response thereto, the defendant has however raised the issue of claim by proprietary estoppel which has three prerequisites that is the promise, reliance on that promise and detriment suffered in reliance on such assurance or promise³.
- [9] Therefore in order, for the defendant to make a claim pursuant to this principle, it is clear that the defendant would have had to adequately plead the same and lead cogent evidence, as success based on this equity results in the loss to the owner of lands to, in most cases a stranger, as this principle gives rise to the creation of new rights⁴.
- [10] Thus when this court considers the pleadings of the defendant, the sole claim sought under the counterclaim were a declaration of ownership of the land the subject matter of the action.
- [11] It was therefore clear that the pleadings of the defendant, as I have already indicated, only inferentially raised the issue of proprietary estoppel on the following facts as pleaded:
- (i) That the deceased Walter Daniel, the claimant's predecessor in title, gave the defendant possession of the land the subject matter of the action. This pleading is supported by the single line in the untested witness statement of the now deceased first defendant, that "in 1995 Walter Daniel gave me a parcel of land next to where he lives at Hopewell"⁵.
 - (ii) That although the said Walter Daniel did not give her a deed for the land, the defendant pleaded that he told her no one can put her off the land. However, all the evidence led clearly stated that the only parties to this discussion were the two parties who are now deceased, the defendant and the same Walter Daniel. So once again in her untested evidence her only claim was that "Mr Daniel did not give me a deed for the land in 1995"⁶.
 - (iii) That having been put into possession the deceased defendant built a house. In her untested evidence she had this to say, "I commenced building a concrete blocks house on the parcel

³**Re Basham** [1986] 1 WLR 1498 at 1503

⁴The Law of Contract (Common Law Series) Chapter 2.129

⁵Paragraph 4 of the Witness Statement of Theresa Andrews filed 2 December 2010

⁶Paragraph 5 of the Witness Statement of Theresa Andrews filed 2 December 2010

given to me and that when I was about to build Mr Walter Daniel and his nephew Wiggie lined out the house for me and Mr Walter Daniel assisted with the running of the blocks”⁷ and

(iv) Mr Walter Daniel never asked her to vacate the premises.

[12] It is from these four facts as pleaded that this court is asked to consider whether the elements of proprietary estoppel had been made out by the defendant.

[13] Therefore when this court considers the evidence elicited at trial the court accepts the following facts on a balance of probabilities:

- a. That Walter Daniel did give the deceased first defendant permission to construct a home on the land. The construction of the home and the residence of the defendant up until she left the home in 2010 are firmly established even by the evidence of the claimant herself when she stated on cross examination that she was aware of the presence of the house of the defendant since 2001. In 2001, the said Walter Daniel was still alive and there is no evidence before the court that he attempted to remove the defendant during his lifetime save for an unsubstantiated statement in another untested witness statement, this time of Walter Daniel that he had told the defendant she needed to leave in 2005⁸. What is clear in any event, is that this attempt was never formalized and there is no credible evidence that this conversation ever really happened. What is clear is that the first time that any formal action was taken and which event the court accepts, is when the claimant, after the death of Mr Daniel issued notice to vacate which the defendant admitted she had received in 2009.
- b. That the said Walter Daniel and the claimant were aware since 2001 that the defendant had built a house made of bricks on the land. That is, a house that could not be moved without destruction of the same. The evidence that Mr Daniel himself assisted in the construction however was not convincing to this court as he would have already been a man advanced in years at that time. Additionally the evidence of the sole “independent witness” Ms Girlyn Miguel who made an assertion that Mr Daniel assisted in the construction of the defendant’s home was however diminished when she admitted at trial that having worked in Kingstown for an extended period of time she knew no details of the arrangement between the defendant and Mr Daniel, as she was not a part of that conversation and what she knew was as a result of second hand information from the defendant herself.

⁷Paragraphs 5 and 6 of the Witness Statement of Theresa Andrews filed 2 December 2010

⁸Paragraph 9 of the Witness Statement of Walter Daniel filed 3 December 2010

- c. That the defendant expended monies on the house but only at the initial investment at the time the house was built. It was clear to the court from all the evidence in trial that there had been no renovations made to the house since its completion in 2001. Ms. Miguel attempted to convince the court that some work had been done on the house during the lifetime of the defendant but this was contradicted by those family members who knew of the house and lived in the house never mentioning any such act but in fact stated categorically that no work had been done on the house, and it would appear even up to today. This court therefore accepts that this failure to do so up to the death of the defendant and even since her death presents the inescapable inference that this was so because the defendant and her family knew that in fact the land was not theirs but sought to claim not as to what they had expended but on the now abandoned claim of twelve years of occupation. That being said, let me make it clear that the extent of detriment as required by the principle of proprietary estoppel is nowhere etched in stone, but as this court in another matter stated⁹ there is no yardstick as to how much detriment is sufficient detriment but it is clear it must be more than trivial. The test therefore to be applied was as stated in the case of *Jones v Watkins*¹⁰ where Slade LJ stated it thusly, “[the detriment must be] whether it appears unjust or inequitable that the representor should be allowed to resile from his representation having regard to what the representee has done or refrained from doing in reliance on the representation”. In that judgment he also went on to make in my estimation an essential point, that when the claim is made as against an estate especially the items of detriment should be specifically alleged and proved, as a court would not and should not readily infer detriment that which has not been specifically alleged and proved.

[14] In the case at bar, although the court accepts that the claimant is merely the successor in title of the person who allegedly made the representation, the essence of the argument proffered by the defendant was as against the estate of Walter Daniel to bind the claimant as his successor in title and it is in these circumstances especially that the evidence must have been cogent and clear to establish the same.

[15] Therefore when this court considers the case in the round considering the pleadings, the evidence led and the unhappy fact that the person who allegedly made the assurance and the person who claims to have relied on this assurance could not be before the court, the court finds that the defendant has not satisfied it on a balance of probabilities that they are entitled to obtain redress based on proprietary estoppel and the court declines to give effect to any assurance that may have been extended to the defendant.

⁹**Anita Hunte v James Hunte** SVGHCV2016/0083 at paragraph 50 thereof

¹⁰Unrep. 26th November 1987 CA UK

- [16] However this court, must consider whether in any event the estate of the deceased defendant is entitled to any compensation for the fact that the claimant as owner of the land is entitled to possession of the same and the house thereon. A state of affairs, that this court may add, was recognized, though dismissed by the claimant through her counsel in submissions.
- [17] In this regard although this court recognizes that there has not been any pleading by the defendant seeking compensation for any enrichment on the part of the claimant, this court is mandated by the provision of section 20 of the Eastern Caribbean Supreme Court Act.¹¹ Section 20 entitled “Determination of matters completely and finally” mandates by the use of the word “...shall in every cause or matter pending before the court, grant either absolutely or on such terms and conditions as the court thinks just **all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any legal or equitable claim or matter ...**” (My emphasis added)
- [18] Thus it is clear to this court that to allow the claimant to acquire the house without compensating the defendant, which she admitted had been built on the property by the first defendant since 2001 at the latest, would be, in this court’s mind, to allow her to benefit by way of the principle of unjust enrichment.
- [19] As my brother Morley J in the case of **Maureen Dyett v Mary Casarin**¹² observed at paragraph 31 with approval the submissions made on behalf of the claimant in that case who had been seeking compensation based on proprietary estoppel, the nub of such a case is that the enrichment would be considered unjust where the land owner would have lulled the party to build the house and then took no action by way of letter or injunction to stop the construction while it was underway opting to instead to stay quiet and then claim it as their own. In the case at bar, it is pellucid to this court that nothing was done to stop the defendant spending the money to place this structure and no action was taken until after the property had moved from the hands of the original owner. I find that this is therefore a proper circumstance for the house to be valued as of today at the replacement value discounted for the state and condition of the same and the fact that the building is over twenty years old. That value is to be paid to the estate of the first defendant upon which the second defendant is to be given six months to vacate the same.

¹¹ Cap 24

¹² MNIHCV2018/0003

The order of the court is therefore as follows:

The Claim:

1. The declaration that the claimant is the owner of the lot of land the subject matter of this action is granted.
2. The order that the defendant quit and deliver up possession is granted but is made contingent on the valuation being conducted of the house on the said parcel of land and the value thereof being paid to the estate of the first defendant. Thereafter the second defendant will have six months to vacate the premises. The cost of this valuation is to be borne by the claimant and defendant equally. Any questions or issues arising from the valuation are to be determined by the court on application.
3. An order that the defendant remove the structure is denied.
4. Costs to the claimant in the sum of \$3,500.00 based on an unvalued claim pursuant to Part 65.5 CPR and based on the partial success of the claimant.

The Counterclaim:

5. The declaration that the defendant is the fee simple owner of the parcel of land the subject of this suit is denied and as such the counter claim is denied in its entirety.
6. Costs to the claimant on the dismissal of the counterclaim on an unvalued claim pursuant to Part 65.5 CPR 2000.

**Nicola Byer
HIGH COURT JUDGE**

By the Court

Registrar