

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

**GRENADA
CLAIM NO: GDAHCV 2016/0408**

BETWEEN

Cynthia Francis

Claimant

and

1. Theresa Bubb
2. Theresa Bubb, as Representative of the Estate of
Septimus Roberts, Deceased

Defendants

Before:

The Hon. Mde Justice Agnes Actie

**VIA ZOOM
APPEARANCES:**

Ms. Daniella Williams Mitchell for the claimant

2021: February 18
: April 26

RULING

- [1] **ACTIE, J:** This claim raises the issues of proprietary estoppel and unjust enrichment. Leave was granted to serve the claim and all subsequent notices outside of the jurisdiction on the defendants in the Republic of Trinidad and Tobago. The claimant failed to provide evidence of service on the defendants who failed to participate in the proceedings. The matter is for summary disposition pursuant to CPR 27.2(3).

Background

- [2] The claimant, Cynthia Francis and the defendant, Theresa Bubb, are half siblings through their mother, Melina Francis. Melina Francis and Septimus Roberts cohabited in a chattel house situate

at Snug Corner in the parish of Saint George until their deaths in 1993 and 1999 respectively. Their relationship bore two children namely Theresa Bubb (the defendant) and Joseph Francis. By order dated 3rd March 2017, Wynante Roberts J appointed Theresa Bubb, as representative of the estate of Septimus Roberts for the purpose of these proceedings.

[3] The claimant in a Fixed Date Claim filed on 27th October 2016 seeks:

- (1) a declaration that the claimant has an interest in the property being a lot of land with a concrete structure measuring 2505 sq. ft being a larger piece of land situate at snug Corner, St George Grenada
- (2) An Order that the defendants
 - (i) pay to the claimant the value of the concrete structure on the property which is the sum of EC \$284,789.00 or in the alternative
 - (ii) Convey the said piece of land to the claimant.
- (3) Interest and other further reliefs

The Evidence

[4] The claimant in an affidavit in support of the fixed date claim deposed that the property in dispute is owned by Septimus Roberts (deceased). The claimant states that her mother's relationship with Septimus Roberts bore two children namely Theresa Bubb (the Claimant) and Joseph Francis. The claimant deposed that Joseph Francis, to the best of her knowledge, died in the Republic of Trinidad & Tobago without issue. The claimant states that she resided on the property with her mother and Septimus Roberts and with their consent made improvements to the wooden house by adding a concrete verandah, bathroom and toilet.

[5] The claimant states that after 1999, she was in possession and occupation of the said dwelling house on land measuring 2505 square feet forming part of the larger lot of land. She states that the chattel house, with the exception of the concrete verandah, bathroom and toilet, was completely destroyed during hurricane Ivan in 2004. The claimant states that she informed Theresa Bubb in a telephone conversation sometime about 2006 of her intention to build a concrete house on the property. Theresa Bubb gave her permission and said that the land would be gifted to her when she (Theresa) sorts out the papers. The claimant avers that in reliance of that assurance she invested

in the property by building a four-bedroom concrete structure to the existing concrete verandah, bath and toilet.

- [6] In a letter dated 30th October 2015, counsel for the claimant wrote to Theresa Bubb informing of the promise to transfer the property. The letter states that in recent times, Ignatius Cobb, son of Theresa Bubb, had repeatedly stated that the house was a family house. In a letter appended to an email from Ignatius Cobb dated November 29, 2015, Theresa Bubb denied the agreement to gift the land to the claimant and also denied the claimant's ownership of the dwelling house. The letter stated that the entire parcel of land is intended for her son, Ignatius Cobb and the said house is a family house.

Law and Analysis

- [7] The sole issue to be determined is whether an equity can be established in favor of the claimant under the principles of Proprietary Estoppel and Unjust Enrichment.

Proprietary Estoppel

- [8] Lord Carnwath in the Privy Council decision in **Mohammed v Gomez and others**¹ said at paragraph 24 referring to Lord Walker in *Thorne v Major* [2009] UKHL 18; [2009] 1 WLR 776, in relation to Proprietary Estoppel states:

24. "... 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 ..." (para 29)

25. Later in the judgment he commented on a submission that the required assurance must be "clear and unequivocal". He said:

"There is some authority for the view that the 'clear and unequivocal' test does not apply to proprietary estoppel. That view was expressed by Slade LJ in *Jones v Watkins* (unreported) 26 November 1987; [1987] CA Transcript No 1200. The same view has been expressed in at least the past

¹ [2019] UKPC 46

three editions of *Treitel, Law of Contract*. The current (12th) ed (2007) by Mr Edwin Peel, in a passage comparing promissory and proprietary estoppel, states, at para 3-144:

'promissory estoppel arises only out of a representation or promise that is "clear" or "precise and unambiguous". Proprietary estoppel, on the other hand, can arise where there is no actual promise: eg where one party makes improvements to another's land under a mistake and the other either knows of the mistake or seeks to take unconscionable advantage of it.'

*... But if all proprietary estoppel cases (including cases of acquiescence or standing-by) are to be analysed in terms of assurance, reliance and detriment, then the landowner's conduct in standing by in silence serves as the element of assurance. As Lord Eldon LC said over 200 years ago in *Dann v Spurrier* (1802) 7 Ves 231, 235-236:*

'this court will not permit a man knowingly, though but passively, to encourage another to lay out money under an erroneous opinion of title; and the circumstance of looking on is in many cases as strong as using terms of encouragement.'

56. *I would prefer to say (while conscious that it is a thoroughly question-begging formulation) that to establish a proprietary estoppel the relevant assurance must be clear enough. What amounts to sufficient clarity, in a case of this sort, is hugely dependent on context" ...".*

[9] The starting point in this claim is that the land on which the concrete dwelling house is attached allegedly forms part of the unadministered estate of Septimus Roberts (deceased). Secondly, the Septimus Roberts' title to the said land is based on a Statutory Declaration which is not a good root of title. In **Nancy Jaleel v Neville Elcock et al**² Henry J citing Alleyne J. in **Gordon Charles v Claire Holas**³ said:

"A statutory declaration is nothing more than a written document containing allegations of fact solemnly declared in the form of law. It may have certain limited evidential value but is not an alternative method of conveying land".

² GDAHCV 2002/0490 consolidated with GDAHCV 2003/02130

³ GDAHCV 1996/0151

[10] The claimant states that she made improvement to the dwelling house during the lifetime of her mother and the owner, Septimus Roberts and with the concurrence of her sister after hurricane Ivan. The claimant states that she acted on the statement made by her sister on the belief that she would be entitled to interest in the land on which it is erected. The claimant contends that she acted to her detriment by expending monies for the construction of a four-bedroom dwelling house for herself and family. The claimant provided evidence of advances and credit facilities to substantiate that the construction of the building was financed through loans from Jonas Brown and Hubbards Ltd, First Caribbean Bank Ltd and refinanced by Republic Bank (Grenada) Limited. The claimant also provided a valuation report dated 10th October 2015, giving the house a market value of \$284,789.00.

[11] Sir Jonathan Parker in the Privy Council in **Theresa Henry et al v Calixtus Henry**⁴ said “The existence and extent of any equity arising under the doctrine of proprietary estoppel is nevertheless dependent on all the circumstances of the particular case, including the nature and quality of any detriment suffered by the claimant in reliance of the defendant’s assurance”.

[12] The court accepts the uncontested evidence that the claimant acted on the promise made and the acquiescence (lack of action) on the part of her sister, Theresa Bubb. However, the court is of the view that Theresa Bubb does not have any immediate interest capable of being transferred under the statutory declaration filed on behalf of the deceased Septimus Roberts. The title is to be regularized along with the administration of the deceased estate especially in light of the second beneficiary, Joseph Francis.

[13] The defendants’ inchoate interest in the said land does destroy the claimant’s equity. Lord Denning MR in **Inwards v Baker**⁵ relying on *Plimmer v Wellington Corpn* (1884) 9 App Cas 699, 710-11) states:

But it seems to me, from *Plimmer’s* case in particular, that the equity arising from the expenditure on land need not fail merely on the ground that the interest to be

⁴ [2010] UKPC 3

⁵ [1965] 2 QB 29,

secured has not been expressly indicated ... the court must look at the circumstances in each case to decide in what way the equity can be satisfied.”

[14] The court accepts the claimant’s unchallenged evidence that she has at her own expense erected a permanent structure on the property with the initial consent of her deceased mother and stepfather, Septimus Roberts. She was further encouraged by the consent and acquiescence of her sister, Theresa Bubb. It is the evidence that Theresa Bubb was fully aware of the significant expense and improvements made in the construction of the dwelling house as it is the evidence that she stayed at the said house when she visited from Trinidad.

[15] The Privy Council in **Mohammed v Gomez** (above) said “ *this court will not permit a man knowingly, though but passively, to encourage another to lay out money under an erroneous opinion of title; and the circumstance of looking on is in many cases as strong as using terms of encouragement.*”

[16] The court looking at the totality of the evidence is of the view that the claimant has made out a claim for proprietary estoppel against the estate of Septimus Roberts on the promises made by Theresa Bubb. The claimant acted to her detriment in making permanent improvement and expenditure based on the promise and acquiescence (lack of action) of a benefactor of the land. The doctrine of proprietary estoppel makes it unconscionable for a benefactor giving the assurance to go back on it.

Unjust Enrichment

[17] The claimant also relies on the equitable principle of unjust enrichment. Gordon JA (ag) in **Caribbean Development (Antigua) Limited v Electronic Technology International (Antigua) Ltd**⁶ at paragraph 10 states:

“Unjust enrichment presupposes three things. “First the defendant must have been enriched by the receipt of a benefit. Secondly, that benefit must have been gained at the plaintiff’s expense. Thirdly, it would be unjust to allow the defendant to retain that benefit.” The first

⁶ ANUHCVP2005/013 at para. 10

and second presuppositions are matters required to be proved by the claimant (respondent) and the third is a matter of legal inference derived from the evidence.”

[18] The equity arising in this case is based on the expenditure in the construction of a permanent concrete dwelling house. The permanent fixture to the land has enhanced the value of the deceased estate when it is finally administered. The court accepts that the estate of Septimus Roberts has been unjustly enriched at the claimant’s expense.

Conclusion

[19] The court, looking at the totality of the evidence, is of the view that the claimant has established her case both in the equity of proprietary estoppel and unjust enrichment. The expenditure in reliance of the promise by Theresa Bubb gives that the claimant an interest in the unadministered estate of, Septimus Roberts, deceased. One of the claimant’s reliefs is for the conveyance of the said dwelling house and the 2505 sq feet of land on which it is erected. The court is of the view that Theresa Bubb does not have any immediate interest capable of being transferred to claimant. The title of the Septimus Roberts and the administration of the estate is to be regularized especially in light of the fact that there may be a second beneficiary in the person of the deceased, Joseph Francis.

ORDER

[20] For the above reasons, it is hereby ordered and declared as follows:

- (1) The claimant, Cynthia Francis, has an interest in the concrete structure on land situate at Snug Corner in the parish of Saint George, Grenada.
- (2) The defendants shall pay the claimant the sum of \$284,789.00 being the value of the building erected on the said property.
- (3) The defendants shall pay the claimant interest at the rate of 6% from the date of judgment until the payment in full.
- (4) Prescribed costs pursuant to CPR 65.5.

Agnes Actie

High Court Judge

By the Court

Registrar