

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

GRENADA
CLAIM NO: GDAHCV2019\0496

Between

1. VERA DANIEL
(In her capacity as Personal Representative in the estate of Gerald Gooding, Deceased)
2. VERA DANIEL
Claimants

AND

1. JULIUS GOODING {as Personal Representative Emmanuel "Dillon"
Gooding)
2. JULIUS GOODING
3. MARGARET GOODING- BINDA
4. RAHIAN T. MURREL GOODING
(in the capacity as Personal Representative in the estate of Dillon Boston Gooding)
5. RAHIAN T. MURREL GOODING
Defendants

Together with
GRENADA
CLAIM NO: GDAHCV 2020/0068

Between

1. RAHIAN T MURREL GOODING
(in her capacity as Personal Representative in the Estate of Dillon Boston Gooding,
deceased)
2. RAHIAN T MURREL GOODING
(In her capacity as Beneficiary in the Estate of Dillon Boston Gooding, deceased)
3. MARGARET BINDA GOODING
(In her capacity as Beneficiary in the Estate of Emmanuel Bernard Gooding, deceased)
Claimants

AND

1. VERA DANIEL
2. JULIUS GOODING

Defendants

Before: The Hon. Mde Justice Agnes Actie

APPEARANCES:

Mr. Derrick Sylvester with Ms. Hazel Hopkin for Rahian M. Gooding et al
Ms Celine Edwards with Mr. Zurriel Francique for Vera Daniel et al

2020: December 18
(written submissions filed on February 1, 2021)
2021: March 22

JUDGMENT

- [1] **Actie J:** The two claims before this court relate to the intestate succession of the late Gerald Gooding for property situate at New Hampshire, in the parish of StGeorge, Grenada.
- [2] Gerald Gooding died intestate on 15th April 1992, leaving three children namely, Vera Daniel, Julius Gooding and Emmanuel Gooding. Emmanuel Gooding died in St. Thomas on the 24th May 2012 leaving a **will** naming his brother, Julius Gooding as executor.
- [3] Vera Daniel unaware of the existence of Emmanuel Gooding's **will** applied for and obtained a Grant of Letters of Administration on 13th November 2013 for the estate of Emmanuel Gooding. By Deed of Assent dated 10th December 2013, Vera Daniel as personal representative of Gerald Gooding and Emmanuel Gooding vested Gerald Gooding's estate into herself and her brother Julius Gooding as beneficiaries.

[4] A probate of the will of Emmanuel Gooding was obtained on 4th September 2015. In his will, Emmanuel bequeathed the residential property in New Hampshire to his daughter Margaret Gooding-Binda and the clubhouse to his son Dillon B. Gooding. Dillon Gooding died on 28th July 2016 and on 30th August, his wife Rahian T. Murrel Gooding was appointed Personal Representative of his estate.

[5] Upon notice of Emmanuel Gooding's will, the Registrar of the High Court revoked the Grant of Letters of Administration of the estate of Emmanuel Gooding made in favour of Vera Daniel. However, the Deed of Assent dated 10th December 2013 vesting the estate of Gerald Gooding in Vera Daniel and Julius Gooding was not revoked.

THE CLAIMS

[6] In Claim **GDAHCV2019\0496** filed on 5th November 2019, Vera Daniel in her personal capacity and as personal representative of Gerald Gooding filed a notice of intended partition and on 18th March 2020 filed a fixed date claim seeking the partition of Gerald Gooding's property including the concrete dwelling house and clubhouse "Brownie's Hideaway" mentioned in Emmanuel Gooding's will.

[7] Rahian T Murrel Gooding as personal representative and beneficiary of Dillon B. Gooding and Margaret Gooding-Binda as beneficiary of Emmanuel Gooding filed a defence and counterclaim. The counterclaim seeks an order that the Clubhouse "Brownie's Hideaway" and the dwelling house claimed by the Vera Daniel belong to the estate of Emmanuel D. Gooding. The defendants also seek an accounting from Vera Daniel of all the monies generated in the operations of the club house.

[8] In Claim **GDAHCV 2020/0068** filed on 19th May 2020, Rahian T Murrel Gooding as personal representative and beneficiary of Dillon Gooding and Margaret Gooding-Binda as beneficiary in the estate of Emmanuel Gooding filed a claim against Vera Daniel and Julius Gooding seeking inter alia:

- (i) A declaration that the last will of Emmanuel B. Gooding dated 10th December 2010 is a valid will in law and is entitled to be admitted to probate in the supreme court Registry.
- (ii) An order that the Grant of Letters of Administration made in favour of the first defendant on 13th November 2013 is revoked and declared null and void to all interests and purposes in law whatsoever.
- (iii) An order that the assent dated 10th December 2013 be declared null and void and struck out from the record of the deeds and land registry.
- iv) An order that Vera Daniel provide a report on her administration of the estate of Emmanuel Gooding from the date of the deceased death and to render an account of her administration of the estate of Emmanuel Dillon Gooding.

[9] In her defence, Vera Daniel contends that Emmanuel Gooding was not the sole owner of the dwelling house and the club house, Brownies hideaway. She states that she is entitled to 1/3 share of the dwelling house and the club house since both properties were built on land forming part of their father (Gerald Gooding) estate.

[10] Ms Celine Edwards, counsel for Vera Daniel in her filed submissions, states that whatever is affixed to land belongs to the legal title holder and accordingly the structures were erected on the Gerald Gooding's estate and each of the siblings is entitled to a 1/3 share each. Counsel contends that the chattel house converted into concrete during the lifetime of the parents is a good will gesture by his children and forms part of Gerald Gooding's estate. Accordingly, the estate of Emanuel Gooding is entitled to a one-third (1/3) share of the dwelling house.

[11] In relation to the club house "Brownies Hideaway", Vera Daniel said that it was a joint business venture between herself and her deceased brother, Emmanuel Gooding. Vera admits that the bulk of the capital was injected by Emmanuel and there was no objection by the family in the construction of the clubhouse on the family land. She however states that she invested all her resources and contributed significantly to the success of the business. Vera contends that she relied to her detriment on the promises made by Emmanuel that the clubhouse business would be separate and apart from his estate.

Law and analysis

[12]The sole issue to be determined is whether the dwelling house and the club house" Brownie's Hideaway" form part of Emmanuel Gooding's Estate. Both parties rely on the doctrine of constructive trust and promissory estoppel in support of their claims.

[13] Counsel Edwards for Vera Daniel cites the well-known authorities in **Stack v Dowden and Abbot v Abott**¹. Ms. Hopkin counsel for the defendants relies on the decisions in **Re Basham (deceased) Inwards and Others v Baker**² and **Lloyds Bank pic v Rosset and another**³.

[14]The court in **Re Basham**⁴ held,

"Proprietary estoppel was a form of constructive trust which arose when A acted to his detriment on the faith of a belief known to and encouraged by B that he had or was going to be given a right in or over B's property, so B was prevented by equity from insisting on his strict legal rights if to do so would be inconsistent with A's belief. The belief on which A relied did not have to relate to an existing right nor to a particular property. It followed that a proprietary estoppel could be raised on a belief or expectation that future rights would be granted over a person's residuary estate."

[15] In **Taylor's Fashions v Liverpool Victoria Trustee**⁵ it was held that:

" Proprietary estoppel 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, knowing or unknowingly he has allowed or encouraged another to assume to his detriment than to enquiring whether the circumstances can be fitted within the confines of some preconceived formula serving as a universal yardstick of unconscionable".

¹[2007] UKPC 53

² {1966} 1 All ER 446

³ [1990] 1 All ER 1111

⁴ [1986] 1 WLR 1498

⁵ [1982] QB 133

[16] There is support in the evidence before the court that there existed good family relations between the parties. The evidence of Julius Gooding, brother and executor of the estate of Emmanuel Gooding, is of great assistance in the determination of this matter. He said he migrated to England in the 1960 during the "Windrush" period but always kept in close contact with his brother, Emmanuel and sister, Vera.

[17] Julius Gooding acknowledged that Emmanuel mentioned his intention to build the disco. He said that he never knew that his sister Vera built or contributed to the construction of the disco or claimed ownership of the disco during Emmanuel's lifetime. He said the construction was built with maroons. He said any assistance given by Vera in running the disco was done as brother/ sister relationship and as far as he was aware, Vera paid herself out of whatever she earned from the business. He confirmed that Avis, Vera's Daughter, rented the apartment downstairs the disco and paid the rent to Emmanuel during his lifetime and then to himself, Julius, on behalf of Emmanuel's estate.

[18] In relation to the dwelling house, Mr Julius Gooding said that the chattel house was owned by their parents where they all lived. He said that their father gave Vera her share of land where she now lives, he said they always had the understanding that the rest of the land where the disco and Emmanuel's house is built was for Emmanuel and himself.

[19] Julius Gooding said that Emmanuel informed him of his intention to build the house in wall and he gave his approval as he had already had property elsewhere. Julius said that Emmanuel transformed the chattel house into a concrete dwelling home during the lifetime of his parents. He said that Emmanuel visited Grenada every year and lived in the house. Julius further stated that he is aware that Marguerite Gooding Binda, Emmanuel's daughter, repaired the roof after hurricane Ivan.

[20] The court is tasked with weighing the requirements of fairness in this case. The evidence before the court is compelling that Emmanuel built the club house "Brownies Hideaway" and dwelling home during the lifetime of his parents with the acquiescence of his siblings. The issue is whether

the estate of Emmanuel Gooding can succeed in their claim for constructive trust in relation to the dwelling house and the Brownie's clubhouse.

[21]¹ⁿ **Edwards V Baker**⁶ Lord Denning MR on constructive trust said;

" It is an equity well recognised in law. It arises from the expenditure of money by a person in actual occupation of land when he is led to believe that, as the result of that expenditure, he will be allowed to remain there".

[22] Bareness Hale in **Abbot v Abbot** said that the law has undoubtedly moved on in relation to constructive and resulting trust. The search is to ascertain the parties shared intentions, actual, inferred or imputed with respect to the property in the light of their whole course of conduct in relation to it.

[23]¹ⁿ **Re Basham**, the court held that the principle of proprietary estoppel was not limited to acts done in reliance on a belief relating to an existing right but extended to acts done in reliance on a belief that future rights would be granted.

[24] Even though there is no written contract to give the Emmanuel any other particular interest in the land, the court is required to look at the entire circumstances to determine whether there is an equity arising out of the significant expenditure of money by Emmanuel Gooding, deceased.

[25]^{1t} It is clear from the evidence that the family had a harmonious relationship. The court accepts that the siblings acquiesced to Emmanuel building the dwelling home and the clubhouse during the lifetime of his parents. The court accepts the totality of Julius Gooding's evidence that Emmanuel stayed at the house during and after his parents demised and treated the home as his personal home. Vera Daniel in her own evidence states that her father gave her a portion of land to build her home which suggest some informal partition during the lifetime of the parents. This also confirms Julius Gooding's evidence that it was the intention that the remaining lands would have been for the benefit of himself and Emmanuel.

⁵ [1965]1All ER 446 at 449

[26] With respect to the clubhouse Brownie's Hideaway, the court does not accept that there was a joint venture between Emmanuel Gooding and Vera Daniel. Vera Daniel states that the original structure was expanded, and an apartment was added where her daughter resides and pays rent. Vera Daniel in her own evidence admits that her daughter paid rent to Emmanuel during his lifetime and to Julius as executor after Emmanuel's death. The evidence is clear that by their own conduct Vera and her daughter acknowledged Emmanuel's ownership of the Brownie's property. It would be inconceivable that Vera's daughter would have paid rent to Emmanuel during his lifetime and continued payment to his estate even after his death for a property belonging to her mother.

[27] Vera having acquiesced cannot now insist on her strict legal entitlement under the law of intestacy. It is my view that the actual expenditure and the occupation of the dwelling house gave Emmanuel an expectation at the material time that his siblings would not have insisted on their legal right under intestacy. The deceased having acted on that expectation devised the dwelling house and the club house as part of his estate in his will.

[28] Estoppel inhibits the unconscionable insistence upon legal rights. It would be unconscionable to allow them to rely on the strict legal title under intestacy to deprive Emmanuel and by extension his estate from the interest claimed in the two concrete buildings.

[29] Applying the law and taking all the evidence in the round it can logically be inferred that there was sufficient inducement from the conduct of Vera Daniel and Julius Gooding to Emmanuel's detriment. Accordingly, it is declared that the club house "Brownie's Hideaway" and dwelling house are the properties of Emmanuel Gooding and form part of his estate. The absence of the will means that the remaining lands of Gerald Gooding fall into law of intestacy except the two buildings.

[30] The issue is now whether the vesting assent should be set aside in light of finding in favour of estate of Emanuel Gooding. **Section 23 of the Deeds and Land Registry Act** provides for the Rectification of errors, etc and reads: -

"The High Court may, on the application by summons of any person claiming any interest in any land in Grenada, order that any entry in the registry books be cancelled, or that any omission or mistake therein be rectified, or that any certificate indorsed or given under this Act be amended or cancelled, or that any instrument not registered be proved and registered, or that any person appear before the Court or before the Registrar and produce or prove any instrument and answer any question with reference to the registration or intended registration of any instrument.

[31] The Deed of Indenture dated 10th December 2013 named Vera Daniel as personal representative of both Gerald Gooding and Emmanuel Gooding. The revocation of the grant of letters of administration of the estate of Emmanuel Gooding in effect stripped Vera of her powers to act for Emmanuel's estate. The court notes that the deed was made on 10th December 2013 was executed after the probate of Emmanuel's will on 13th November 2013. The starting point is that the vesting deed cannot stand in light of the will of Emmanuel Gooding as the share entitlement described in the vesting deed is incorrect and also Vera Daniel did not have the capacity to act on behalf of the estate of Emmanuel Gooding. This deed of vesting assent is not a true reflection of the estate of Gerald Gooding and Emmanuel Gooding and should therefore be cancelled and removed from the records.

[32] The claimants also seek an account from Vera Daniel of her intermeddling in the estate of Emmanuel Gooding. In light of the will of the deceased, and the revocation of the grant of letters of administration, Vera Daniel is required to give an account of her dealings with the estate of Emmanuel Gooding's estate.

[33] In summary it is ordered and declared as follows,

(1) In relation to **claim 2019/0496**:

- i. the fixed date claim filed by Vera Daniel seeking the order for partition stands dismissed and judgment is entered in favour of the defendants on their counterclaim.
- ii. It is declared that the beneficial interest in the clubhouse "Brownie's Hideaway" and the dwelling house belong to the Estate of Emmanuel Gooding (deceased.)

- iii. Vera Daniel shall provide an accounting of the business Brownie's hideaway from the date of the death of Emmanuel Gooding within two (2) months.

(2) In relation to **claim 2020/0068:**

- i. It is declared that the Deed of Assent dated 10th December 2013 is declared null and void and is accordingly struck out from the record of the Deeds and Land Registry in Grenada.
- ii. The Grant of Letters of Administration made in favour of Vera Daniel for the Estate of Emmanuel D. Gooding on 13th November 2013 is revoked.
- iii. Vera Daniel shall provide a record of her administration and render an account of the Estate of Emmanuel Gooding, from the date of death within Two (2) months of today's date.

- (3) The two claims having been determined together , Prescribed Costs in the sum of \$7,500.00 to be paid by Vera Daniel.



Agnes Actie

High Court Judge

By the Court

Registrar

Ag.

REGISTRAR
SUPRE COURT
Of GRENADA