

COMMONWEALTH OF DOMINICA

IN THE MATTER OF TITLE BY REGISTRATION ACT-CHAP 56:50

AND

**IN THE MATTER OF THE CAVEAT AGAINST THE ISSUE OF A FIRST CERTIFICATE IN FAVOUR
OF ARAMINTA BOLAND IN RESPECT OF A PORTION OF LAND AT MARIGOT IN THE PARISH
OF ST ANDREW IN THE COMMONWEALTH OF SOMINICA CONTAINING 8,663 SQUARE FEET**

CAVEAT NO. 36/2017

BETWEEN: AGATHA TELEMAQUE CAVEATOR (Respondent)

AND ARAMINTA BOLAND CAVEATEE (Applicant)

Before: The Hon. Madam Justice M E Birnie Stephenson

Appearances:

Mrs Kathy Buffong-Royer of Pinnacle Chambers for the Caveator

Mr Anthony Commodore of Elijah Law Chambers for the Caveatee

2019: March 7
 November 26

[1] **STEPHENSON J:** On the 16th day of February 2017 Aramintha Boland (hereinafter Miss Boland) applied for First Certificate of Title to a parcel of land containing 8633 square feet in Marigot in the parish of St Andrew. Miss Boland claimed title on the basis that she and her forebears had been in sole undisturbed possession of the land as owner in fee simple for over 30 years.

[2] In March 2017 on becoming aware of the application by Miss Boland, Miss Agatha Telemaque (Miss Telemaque) with the encouragement of her friend Octalyn Musgrave caveated the application. Miss Telemaque took no steps to sustain the caveat and therefore Miss Boland sought to have the court order the caveat dismissed.

- [3] In essence, Miss Telemeque's case is that Miss Boland is not entitled to First Certificate of Title to the land in question on the ground that she Miss Telemaque grew up with Miss Joan Musgrave who is that owner of the parcel of land. Miss Telemaque maintains that Miss Joan Musgrave who is now of blessed memory promised the said to her and based on Miss Musgrave's promises she acted to her detriment in that:
- a. She gave up the opportunity to marry and move away and that she stayed and took care of Miss Musgrave who lived to be 100 years old; and
 - b. She spent her personal monies to repair and maintain the house that was on the property.
- [4] Miss Telemaque contends that she has therefore acquired an equitable interest through the doctrine of Propriety Estoppel thereby overriding any interest that Miss Boland may have acquired over the property.
- [5] Learned Counsel Mrs Kathy Buffong Royer for the Miss Telemaque submitted that the court is obligated to look at the parties' witness statements (which is the evidence) to see what are the real issues between the parties.

The evidence

- [6] It is the evidence of Miss Boland that the property was in fact purchased by her mother Miss Adelaide Hamlet over fifty years ago from one Mr Wellington James for one hundred and twenty pounds. That the property purchased was bigger than that which she was seeking to get First Certificate of Title for. That Miss Hamlet was the mother of both Miss Boland and Miss Musgrave and it is Miss Boland's evidence that her mother gave Miss Musgrave permission to build and live on the property as were other siblings who were alive at the time. As time went by various siblings took their pieces. Miss Musgrave built on a piece of the said land and lived there until her death.
- [7] Miss Boland told this court that Miss Telemaque lived in the house and looked after Miss Musgrave and she left when she went to have her children but would return. It is noted that Miss Boland told this court that initially there was a wooden floor on the house and that that wooden floor was replaced by a concrete floor and when that was done her sister was not working. Miss Boland also said that "Whilst Joan was still alive things were done to the house like the floor, house and roof. Aunty Joan was not working when those things were done."¹
- [8] Miss Boland also told this court that her sister Miss Telemaque did say that her house was for Miss Telemaque and her nephew "Hubert" who happens to be Miss Boland's son. Miss Boland told this

¹ As stated by the witness Miss Boland in her Cross examination by Mrs Kathy Buffong Royer

court that she said if that were to be that it is Hubert who would have to buy out Miss Telemaque's share and not the other way around.

[9] Miss Telemaque in her evidence sought to say that the property the entire piece was purchased in the first place by Stanley Musgrave who it turns out was the brother of Miss Musgrave and Miss Boland. But this is what she heard and believed and had no concrete proof of this.

[10] Miss Boland at the trial of this matter was able to give clear and understandable evidence in spite of her age and some gaps in her memory. She stated quite clearly to this court, that the property was purchased by her mother and when the mother was unable to complete payment, her brother Stanley Musgrave at the request of her mother assisted in completing the payments.

[11] I accept Miss Boland's evidence having had the opportunity to observe her give her evidence. She struck this court from her demeanour and general appearance as a witness of truth.

[12] Now whether the property was owned by the mother of Miss Boland, Miss Musgrave or Mr Musgrave it is clear to this court that Miss Telemaque not being an offspring of any of the children of Miss Adelaide Musgrave or Miss Boland or Miss Joan Musgrave would not be able to inherit an interest in intestacy to the land.

[13] Miss Telemaque is seeking to claim an interest under a constructive trust, which to this court is her only hope of extinguishing Miss Boland's, who is a sole surviving sibling right and is entitled to the land if not in her own right under the law of Intestate succession. If the land belonged to her mother (which this court accepts) and that her sister lived on the land, it is noted that the sister died intestate without issue leaving Miss Boland her sole surviving sibling and therefore Miss Boland would be entitled to the property without more.

[14] Now the crux of Miss Telemaque's case is that she has extinguished Miss Boland's entitlement as a constructive trustee.

[15] The issue therefore is, was a trust established and if so has Miss Telemaque defeated Miss Boland's entitlement to the property?

[16] The general rule of law in civil cases is that he who asserts must prove. This proof is on the balance of probabilities. There are issues that are essential to Miss Telemaque's case that she must prove them in order to succeed. The burden of proof is on her to establish proprietary estoppel.

[17] Miss Telemaque derived some assistance from Miss Boland herself, in that there were renovations done to the house occupied by Miss Telemaque and Miss Musgrave at a time when Miss Musgrave was not working, from which this court can only infer that the repairs and renovations were done by Miss Telemaque, as no other evidence has been adduced to the contrary. This court also accepted the evidence of Miss Boland who, under cross examination said that her sister did say that the house was to be left to Miss Telemaque and Hubert.

[18] Does Miss Boland's evidence coupled with Miss Telemaque's evidence establish a resulting or constructive trust in favour of Miss Telemaque on a balance of probabilities?

[19] At this point it is convenient for me to set out in summary form the applicable legal principles for a case such as this. The following established legal principles have each been taken into consideration and applied by this Court when considering the evidence and in making the findings set out in this judgment.

[20] In **Hussey –v-Palmer**² Master of the Rolls Denning in discussing the principles of law and referring to decided cases³ as it regards the constructive trust, resulting trust and proprietary estoppel said, "*A constructive trust arises when, although there is no express trust affecting specific property, equity considers that the legal owner should be treated as a trustee of an interest in it for another*"⁴ Master of the Rolls Denning also said

*"By whatever name it is described, it is a trust imposed by law whenever justice and good conscience require it. It is a liberal process, founded on large principles of equity, to be applied in cases where the defendant cannot conscientiously keep the property for himself alone, but ought to allow another to have the property or a share in it ...".*⁵

[21] An individual person has the ability in law to establish a proprietary interest in property using the vehicles of the constructive and resulting trusts. For Miss Telemaque to acquire an interest in property as a result of a constructive trust, she must adduce evidence that there, was a promise made upon which she relied on to her detriment. In the case at bar Miss Telemaque spoke of the promise made to her by Miss Musgrove. This was to my mind corroborated by Miss Boland herself

² *Hussey v Palmer* [1972] 3 All ER 744 at 747

³ *Falconer v Falconer, Heseltine v Heseltine and Re Cummins (dec'd), Cummins v Thompson Cooke v Head and Binions –v- Evans* (ibid at page 747)

⁴ Ibid at page 747

⁵ Ibid at 747

from the other side of the case who spoke to her sister saying that her house (Miss Musgrave's house) was for Miss Telemaque and Hubert.

[22] Miss Telemaque spoke to maintaining and renovating the house out of her own funds relying on the promise that it would be hers. Miss Telemaque spoke to the house being renovated and repaired after Miss Musgrave stopped working from which it could be inferred that Miss Boland was doing this.

[23] It is noted that in **Hussey –v- Palmer**⁶ Master of the Rolls Denning said the law could impute a trust even “though there is no agreement between them, and no declaration of trust to be found, and no evidence of any intention to create a trust”⁷

[24] In the case **Taylor Fashions Ltd v Liverpool Victoria Trustee Co Ltd**⁸, It was held that “the court was required to ascertain whether in the particular circumstances it would be unconscionable for a party to be permitted to deny that which, knowingly or unknowingly, he had allowed or encouraged another to assume to his detriment”

[25] Having seen and heard the witnesses who all gave evidence in chief and who were all cross examined by counsel and who answered the questions put to them by the court, I find the following to be the facts of this case:

- a. That Miss Telemaque lived in the home of Miss Joan Musgrave from her childhood through adulthood until Miss Musgrave died at the ripe old age of one hundred years;
- b. That Miss Telemaque did leave the home from time to time to have her children but returned;
- c. That the property was initially purchased by Ms. Adelaide Hamlet, Misses Musgrave's and Boland's mother and Miss Musgrave like other many siblings was permitted to build her house on a portion of her mother's land;
- d. Miss Musgrave died without legal issue;

⁶ ibid

⁷ Ibid

⁸ [1981] 1 All ER 897

- e. That Miss Musgrave spoke to Miss Boland about “Hubert and Miss Telemaque inheriting her property;
- f. That Miss Musgrave must have made this same promise to Miss Telemaque who during the lifetime of Miss Musgrave spent her own funds to maintain and renovate the house relying on the promise that the house would be hers. It is her evidence that she was always told that this was going to be hers and Miss Musgrave told her sister that the property was to be for Miss Telemaque and Hubert we can therefore find that it is true as Miss Boland told the court about the repairs and renovations that were being done to her sister’s house after her sister had ceased to work.
- g. This court accepts that Miss Telemaque relied on the promises made to her by Miss Musgrove to the point that she opted to not marry but stay and look after Miss Musgrove. It is noted that she looked after Miss Musgrove was not denied by Miss Boland.

[26] It is the finding of this court that the promises were indeed made to Miss Telemaque as corroborated by the testimony of Miss Boland herself. It is also the finding of this court that Miss Telemaque believed and relied on these promises and expended monies on the maintenance and renovations of the house.

[27] It is the finding of this court that Miss Telemaque acted on the promises to her detriment thereby entitling her in equity to a share in Miss Musgrove’s property. Miss Telemaque has established proprietary estoppel.

[28] Having found that equity has been established it is not for the court to determine the extent of the equity.

[29] This court also finds that Miss Boland knew of the promise that her sister made to Miss Telemaque and knew of the actions of Miss Telemaque as it is indeed to this court Miss Boland whose evidence I accepted that her sister told her that her house was for Miss Telemaque and Hubert who I believe was Miss Boland’s son. Miss Boland also told us that she said that Miss Telemaque would have to sell her share to Hubert.

[30] In **Gillet –v- Hope**⁹ it was held that the court must look at the matter in the round and that the element of detriment is an essential ingredient to establishing proprietary estoppel. It was held that

⁹ [2002] 2 ALL E R 289

any actions are sufficient. Detriment the court noted is not a narrow concept and that the inquiry to be made by the court must be a broad inquiry. The detriment must also be pleaded.

[31] In **Plimmer –v- City of Wellington Corp**¹⁰ it was also held that the court must “look at all the circumstances of each case to decide on what way equity can be satisfied.”

[32] Looking at the circumstances of the case at bar how can the equity be satisfied. Does the equity enjoyed by Miss Telemaque override the interest of Miss Boland who stands really to inherit the property as the sole surviving beneficiary of her mother’s estate or of her sister’s estate who predeceased her without issue?

[33] Master of the Rolls Denning in **Hussey –v- Palmer**¹¹ said that “A Constructive (Resulting) trust “is a trust imposed by law whenever justice and good conscience require it”. After examining a number of decisions of the court the Master of the Rolls said “...*the court must look at the entire circumstances of the case before it decides which way equity can be satisfied*¹²”

[34] In the St Lucia case **Henry and another –v- Henry**¹³ the Privy Council in the context of that case where the party seeking to rely on proprietary estoppel on the grounds that he remained on the deceased property planting it and looking after it until her death relying on the promise that the property would be, held that “It was clear that by remaining on the plot, and doing so not only for his own benefit and that of his family but for G’s benefit too, (G was the original owner who made the promises upon which reliance was placed) in providing her with food and caring for her, C had effectively deprived himself of the opportunity of a better life elsewhere. ...Accordingly, the requirement of detriment was met and an equity had arisen in C’s favour under the doctrine of proprietary estoppel ...”

[35] Having regard to the legal principles and the factual findings made by this court in the case at bar and bearing in mind the dictum of Denning MR in **Hussey –v- Palmer** and the ruling of the Privy Council in **Henry and another –v- Henry** it would be unconscionable to allow Miss Boland to assert ownership and legal rights over the part of the property occupied by Miss Telemaque. There is therefore proprietary estoppel in favour of Miss Telemaque who this court is saying is entitled to a share in Miss Musgrove’s property.

¹⁰ [1881-5] All E R Ext 1320 PC as quoted in **Henry and Another –v- Henry** (2010) 75 WIR 254 at paragraph 39

¹¹ [1972] 3 All ER 744

¹² Ibid at page 748

¹³ (2010) 75 WIR 254

[36] There is a wide discretion which this court can exercise in order to satisfy equity but a number of things have intervened in this matter. The house to which Miss Boland lay claim to was destroyed by Hurricane Maria after the commencement of these proceedings and the trial herein. Miss Boland sadly did not survive much longer after the trial; this court is uncertain at this time what is the physical situation of the property located at Marigot. Further no application has been made to this court to substitute Miss Boland with a personal representative of her estate by either side. So therefore, at this stage this court is of the view that it will suffice to declare that there is Proprietary estoppel in favour of Miss Telemaque in that she is entitled to a share in the property of Miss Musgrove located at Marigot in the Parish St Andrew.

[37] That property would have to be ascertained and a proposal presented as to how Miss Boland will be able to obtain her share in the property aforesaid.

[38] Judgment is therefore entered for Miss Telemaque and this court declares that Miss Telemaque is entitled to a legal and beneficial share of the property owned in possession by Miss Musgrove at the time of her death.

[39] There shall be no order as to costs.

[40] Liberty to apply

[41] Pursuant to Part 42.10 of the Civil Procedure Rules the Typographical and accidental errors regarding the names of the parties as has been drawn to the attention to this court upon the delivery of the judgment have been corrected. It is to particularly noted that there word "not" as appears in paragraph 28 has been changed to "now".

M E Birnie Stephenson
High Court Judge

SEAL

BY THE COURT

REGISTRAR