

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON MONTSERRAT

CASE NO. MNIHCV2017/0037

**In the estate of William Anthony Tuitt,
deceased, and an action for possession of
land and in trespass**

**Between: TERRANCE WADE (as the sole executor
of the late William Anthony Tuitt)**

Applicant

and

JAMES WEEKES

Respondent

APPEARANCES

Mr Jean Kelsick for Terrance Wade.

Mr David Brandt for James Weekes.

2018: JUNE 12, 26, JULY 2

JULY 16

JUDGMENT

On who owns a house

- 1 **Morley J:** On 12 and 26.06.18, there was a trial on who should own a house at Judy Piece on Montserrat, parcel 14/15/071, with closing speeches on 02.07.18. The claimant (Wade) says it was left to him by his late father (William), who died on 25.08.15. The defendant (Weekes)¹ says he should own it as it was promised to him by William who left him the keys from 2011. If Wade owns it, he wants back-rent from Weekes from the date of William's death.
- 2 Wade and Weekes are cousins. In 2011, William, then elderly and living mostly in the UK, gave his nephew Weekes the keys to his home, telling him to hold on to them, repair the house, and to collect rent. William died on 25.08.15, and in his Will dated 26.11.14 left his estate to Wade, which Wade says includes the house. Wade has battled to get the keys, until court order of 21.12.17, which in addition ordered an expedited trial, whereupon there was application by Weekes that I recuse myself, which was refused on 28.03.18.

Was Weekes a caretaker?

- 3 Having heard conflicting evidence, I find the following facts, preferring among the witnesses in particular the evidence of Maureen Tuitt (Maureen), Wade's mother.
 - a. Wade is 38, born in 1980, in a wheelchair, having suffered meningitis when 10 months, now living with Maureen in Judy Piece from 1990 (though in the UK from 1995 to 2013).
 - b. William's disputed property is coincidentally next door, purchased in 1997, and built up to 2003, before William also went to the UK, where he mostly lived thereafter.
 - c. From 1980 Wade lived with William, and William's partner, Francis, who was Maureen's mother. Maureen when 15 fell pregnant to William, her stepfather, as a result of sexual assault. She moved out shortly after her pregnancy and lived with her lifelong partner John Tuitt, leaving Wade raised by William for ten years. When Wade moved to his mother in 1990, William continued to see him, until Wade left for the UK in 1995.
 - d. In all that time, particularly during infancy to the age of 12, I find a bond arose, given William living with Wade, or near him, so that I am satisfied William was genuinely fond of Wade, feeling responsible for him, possibly motivated in addition by the disgraceful manner in which

¹ For the purposes of this judgment, the parties and others will be referred to as bracketed for ease of reading, and no disrespect is intended by not writing out on each mention full names and titles or the legalese as to whether claimants or defendants.

the pregnancy arose, so that I am sure he intended his home to go to Wade, who is his only known child.

- 4 In parallel, concerning Weekes, I find William was also fond of him. He was a favourite nephew. They worked together at Alcocks where Weekes was a mason, (while he is also a fisherman), and in part he helped build William's home. They would spend time together. When William went to the UK in 2003, he asked Weekes' wife Roseanne to look after his home in Judy Piece, and to collect rent from it. A dispute arose later, as Roseanne did not pay William the rent. She was sued, though the action ceased later. In 2011, William asked Weekes to take over running the house in his absence. He told him he must maintain the property and could use rent to feed himself as needed. I have no doubt there was an affection between them.
- 5 While in the UK, William was much in contact with another nephew, William Allen (Allen). There is evidence there was tension between the two. William had not made a Will, and Allen wanted him to do so. In 2013, William came back to Montserrat for about two weeks. His health was failing. He no longer had full use of his arms. Weekes looked after him. He washed him, fed him, helped with his toilet, and prepared his medication. William told Weekes to keep hold of the keys to his home, protesting Allen was keen he made a Will, which he wanted to avoid. Weekes was made accountable for the property to the tax office on 14.11.13, and Weekes says William told him at the airport as he returned for the last time to the UK *'do not deliver the keys to anyone when I die'*.
- 6 William returned to the UK, and did in fact make a Will, on 26.11.14, via a Wills firm run by one 'Michael Lancaster'. In due course, the Will was recognised as proved on Montserrat under seal of the Registrar by grant of probate on 15.08.17.
- 7 William was seen from late 2014 several times, up to shortly before his death on 25.08.15, by Weekes' siblings, who are Shirley, Inez, and Jeremiah, all in the UK, (from whom I have heard in evidence by skype, along with Weekes, Wade and Maureen in court). Shirley told Weekes of William's death soon after he passed.

- 8 On 20.01.16, Maureen showed Weekes the Will, and asked for the keys, which were refused. On 22.01.16, Maureen was challenged by letter from Counsel Brandt as to whether William really was Wade's father, and whether he really was dead. There has been trouble ever since as Weekes would not hand over the keys, as directed by the Will, leading to this litigation.
- 9 In addition, in evidence at trial Weekes said he had not had clear information William had died, Shirley had not known, and this was why he had challenged Maureen trying to claim the house in 2016, which the court finds to be evidence which was misleading and untrue, and which damaged the credibility of everything he has said, and of his case generally.
- 10 Weekes has tried to persuade the court he was promised the house by William, but I find not so. It is improbable on the evidence. He has failed to meet the burden of proof, or if put another way, I find Wade has satisfied me that the house belongs to him under the Will. However, it may be important to note that I do not think Weekes has been unprincipled (though his evidence has been unreliable). Instead, he has held a genuine belief, but has made a mistake. I find the overwhelming evidence is, even on Weekes' case, that William only ever asked him to be 'keeper of the keys', not to 'keep the house'. In other words, he was to look after it, not to own it. In Weekes' mind, being told to keep hold of the keys meant owning the house, but he is wrong to think this. Where he suggests William specifically promised him the house, I reject this. It is unsupported by any reliable independent evidence (and I do not consider his siblings to be independent), though I do accept he told Weekes to keep hold of the keys on his death, but I find this was in the context of an argument with Allen, who the evidence suggests William seemed troubled might covet his property on death.
- 11 In support of Weekes being a caretaker is Jeremiah, who said in his affidavit that William put Weekes in charge of all he had and told him don't give the keys to anyone if anything happened to him². In evidence, Inez told the court William had said in response to an enquiry by Joseph Tuitt as to using William's home that he had given Weekes the keys. Shirley echoed this in her evidence, concerning Joseph, saying William had given the keys and authority over the house to Weekes. The thrust of the evidence as it has been explored in court has been clearly about keeping the keys, which is not the same as keeping the house, notwithstanding in affidavits the

² See affidavit Jeremiah Tuitt, filed 21.02.18, para 7.

- language is in places different, no doubt influenced by the attorney preparing the case. Just because a witness has reported in affidavit that William used words to suggest the house 'belonged' to Weekes does not mean that such language is accepted as accurate. It is the purpose of examination of a witness in court to see if the language of an affidavit withstands scrutiny. In this case, when speaking in court, all the witnesses for Weekes, including Weekes himself, have fallen into talking of his being given the keys and not to hand them over, which is not ownership, but caretakership.
- 12 Moreover, in all correspondence from Counsel Brandt to Counsel Kelsick in 2016, in exhibited letters dated 22.01.16, 26.07.16, and 11.08.16, as this dispute grew, there is no assertion Weekes owns the house, just a refusal to hand over the keys. To the mind of the court, this is telling. Assertion Weekes owns the house has only followed the attempt by Wade to get back the keys through the court, filed on 20.11.17, which is astonishingly as late as 2 years and 3 months after William died, strongly suggesting there may be late over-egging of the implications of the caretakership.
- 13 Furthermore, the Will post-dates William leaving Weekes in late 2013, and Weekes is not mentioned in it, which again is telling, that there was no intention to benefit him, suggesting there was no meaningful promise to him of the house (if anything was said).
- 14 What has really been going on in this case it seems to the court is great unhappiness on the part of Weekes' family at the Will. It is thought a fraud, concocted by Allen. However, this court does not go behind it, as it has been approved at the High Court on 15.08.17. What is curious though, suggesting it is not a fraud, is that Wade is the beneficiary, not Allen, who is otherwise merely named to receive £1000. Moreover, had William died intestate, it seems Wade as his only son would have inherited the house anyway, so that it is unclear to the court what may have been the advantage of a fraudulent Will in these terms. However, it is the belief the Will is a fraud which has meant Weekes has held on to the keys, as he was asked. This seems likely the real motive for refusing to hand them over. And in support, at the conclusion of the case, a three page closely written letter post-dating the death, of 21.12.17, went into evidence, SK1, from Shirley, who is highly articulate, a teacher, and who complains of Allen and the Will, noting only in the last paragraph: *'Because William Tuitt knew he was illiterate and blind, he went in person*

to the land authority in Montserrat and signed a document giving James Weekes authority over his land and gave him his house keys with instructions that if anything should happen to him, not to give anyone the keys.’ Again, there is no mention that Weekes owns the house, just emphasis on being its keeper, and not handing over keys.

- 15 In short, I find as a fact Weekes was not promised the house, either as a gift or on death.

Could proprietary estoppel ever arise?

- 16 In addition, even if William had said in 2013 to Weekes that the house would belong to Weekes, this would not be enough to give rise to a proprietary estoppel.
- a. The Will post-dates any such conversation and Weekes is excluded, so that constructively it positively undermines there ever having been any supposed actionable promise.
 - b. And furthermore, Weekes has not done enough to his own detriment to warrant estoppel, as the height of his efforts has been to help William as he grew frail, which is to be expected among relatives, and only for two weeks. Put shortly, Weekes cannot claim he gets the house because he helped an old man for several days with his toilet.
 - c. And even if William loudly told Weekes while being so helped that his reward would be the house, the elderly are known to make promises to get help, their plight can be tragic so that someone infirm may say anything in desperation, which means the court ought to look beyond the words and examine deeds and difficulties. In this case, Weekes has helped in a common manner, and while he is to be praised and thanked, the house does not follow, made pointedly clear in there being no mention of Weekes in the later Will.
- 17 It is well-established that to found an estoppel, objectively detriment must be substantial, per Dunn LJ in **Watts v Storey 1983** CAT 319:

“The overwhelming weight of authority shows that detriment is required, but the authorities also show that this is not a narrow or technical concept. The detriment need not consist of expenditure of money or other quantifiable financial detriment, so long as it is something substantial. The requirement must be approached as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances...where

the detriment is sufficiently substantial is to be tested by whether it would be unjust or inequitable to allow the assurance to be disregarded, that is again the essential test of unconscionability. The detriment alleged must be pleaded and proved.”

18 Moreover, per Robert Walker LJ (as he then was) in **Jennings v Rice 2002** EWCA Civ 159:

“The detriment of an ever-increasing burden of care for an elderly person, and of having to be subservient to his or her moods and wishes, is very difficult to quantify in money terms. Moreover, the claimant may not be motivated solely by the reliance on the benefactor’s assurances, and may receive some countervailing benefits (such as free bed and board). In such circumstances, the court has to exercise a wide judgemental discretion.”

19 I put aside the fact the detriment has arguably not been pleaded (possibly to avoid drawing attention to its weakness), and instead look squarely at it. Weekes was allowed to use the rent to feed himself. He had a benefit in kind for looking after the house, and briefly William (and on the evidence from Weekes only ever gave him £250). Where a person looks after an elderly person as founding an estoppel the authorities point to care for many years. In my wide discretion, applying an objective test, looking after William for two weeks in 2013 is not enough to found an estoppel in the teeth of a Will in 2014 expressly to benefit an only and disabled son with no mention of Weekes, no matter what William, desperate to have help to urinate, may have said at the airport.

Has Wade proved claimable back-rent?

20 Turning to back-rent, the evidence is uncertain. There are no records. Weekes was put in charge of William’s home from 2011, and apart from giving him £250 in 2013, did not give him rent raised, even though he was telling his siblings untruths he was putting rent collected into an account for William. I accept William did say Weekes could spend money on himself. In tandem, repairs have been needed, as the upper part of the house is said to be uninhabitable, though it has not been established what could or should have been put toward precisely what repairs. There were tenants coming and going, usually from abroad, mostly Spanish-speakers, who

would pay some rent, though erratically, which cannot be gainsaid by Wade. I find what was paid or should have been paid has not been proved, keeping in mind Weekes was told he could spend some of the money on himself, nor how rentable the property was. In theory, Weekes should have handed over the keys immediately on death, and specifically on demand by Maureen on 20.01.16, but his reluctance in the teeth of a Will thought a concoction by Allen on examination at trial has been comprehended by the court.

21 In short, I find Wade has not proved how much rent was or should have been collected, nor how rentable the house is.

22 Moreover, as to damages simply for trespass I reject this claim as Weekes was doing as he believed right, though mistakenly, in not passing the keys, as he had been directed by William.

Costs

23 As to costs, Wade has won the primary action, namely the property is declared his. Costs follow the event. This is unfortunate as I sense the parties are not wealthy and I anticipate that Weekes may struggle to pay. It may be that the action has been driven by his counsel. However, it is the role of counsel to advise clients, and the court anticipates Weekes was warned by Counsel Brandt of the costs implications if he might lose, and specifically was warned about the strength of his case, which experienced counsel I have no doubt will have explained was very weak as to proprietary estoppel, or gift, and separately open to strong challenge as to whether any actionable verbal promise was ever made. In these circumstances, the court must assume that Weekes was robustly advised and that pursuing the action was his decision, through various hearings and arguments, and so must pay Wade's reasonable costs in full, else unfairness accrues to the winning party who has incurred considerable expense. If the reality is that Counsel Brandt has been driving this case, then no doubt he may wish to settle the costs himself (though the court makes no finding nor can make any order to this effect).

24 The orders following this judgement are therefore:

- a. Wade is declared owner of the property 14/15/071, being the land and house, as left to him by his father William in his Will of 26.11.14.

- b. Weekes is not ordered to pay back-rent, or damages for trespass, or for the property being in disrepair, or ordered to change the locks.
- c. Weekes shall pay Wade's reasonable costs of this action, (which will include the earlier hearings and filings as to injunction and recusal).

The Hon. Mr. Justice Iain Morley QC

High Court Judge

16 July 2018