

EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL SUIT)

BRITISH VIRGIN ISLANDS
BVIHCV 2008/0235

DERECIA SCATLIFFE-THOMAS

Claimant

And

FLETCHER SCATLIFFE

Defendant

Appearances:

Duane Jean-Baptiste of JS Archibald & Co. for the Claimant

Fletcher Scatliffe, the Defendant, in person.

2010: June 3rd; June 22

JUDGMENT

Catchwords: (Proprietary estoppel – daughter, claimant seeking declaration of beneficial interest and subdivision of land – whether defendant father had promised to subdivide and transfer part of land to the claimant and she had relied on that assurance to her detriment).

- [1] Joseph-Olivetti J: This unfortunate matter between father and daughter reached the courts when the daughter, Mrs. Derecia Scatliffe-Thomas filed a claim on 30 July 2008, against her father, Mr. Fletcher Scatliffe. The subject matter of the claim is land owned by the Father, known as Road Town Registration Section Block 2938B Parcel 195 ("Parcel 195"). The Daughter alleges that the Father made verbal assurances to her that he would subdivide Parcel 195 and transfer a portion of it to her, and that in

reliance on those assurances she built her dwelling house upon the land and that the Father has now reneged on his promises. The relief she seeks, is, (a), a declaration that she is the beneficial owner of that part of Parcel 195 on which her house is built; (b) an order that the Father transfer absolute title to her; and (c), damages for two retaining walls destroyed by the Father. In the alternative she seeks compensation for her expenditure on the property.

[2] On 9 September 2008, the Father filed a Defence and Counterclaim, in which he denies making the assurances as alleged and in turn claims damages in the sum of \$850.00, being the costs of removing the two retaining walls, which he claims were wrongfully erected by the Daughter on Parcel 195. On 1 October, 2008, the court referred the parties to mediation but they were unable to resolve their differences.

[3] The Issues

[4] The main issue here is whether the Father made the assurances to the Daughter as alleged in para. 2 of the Statement of Claim which reads –“The Claimant is the Defendant’s daughter and occupies her dwelling house which was constructed on parcel 195, after the Claimant received verbal assurances from the Defendant that he would subdivide parcel 195 and transfer a subdivided portion to the Claimant.” [Emphasis added]

[5] The gravamen of the Daughter’s case was ably summarised by her counsel, Mr. Duane Jean-Baptiste. He argued that the doctrine of proprietary estoppel arises in this matter since, upon the assurances of the Father, the Daughter altered her position to her detriment by constructing her dwelling house on Parcel 195 at great personal expense, and that in all the circumstances, it would be unconscionable for the Father to renege on his assurances.

[6] I too am of the view that the principles governing this claim are those of proprietary

estoppel. These principles are explained in *Snell's Equity*, 31st Edition at para 10-03-
“The system of estoppel developed by equity to supplement the rather narrow rules at
common law was based on the unconscionable or inequitable conduct of a party. The
Court would intervene to prevent unjust enrichment where it was unfair for an owner to
retain a benefit or improvement to property where the landowner induced another party
to confer that benefit or acquiesced in that party's misapprehension that he had an
interest in the property...” The rule from which proprietary estoppel arises comes from
the case, *Taylor Fashions Ltd v Liverpool Victoria Trustee Co Ltd* (1979) [1982] QB
133n. (See *Snell's Equity*, 31 Ed. para 10-16), where Oliver J stated the following rule
for the doctrine of proprietary estoppel as follows “if A, under an expectation created or
encouraged by B that A shall have a certain interest in land, thereafter, on the faith of
such expectation and with the knowledge of B and without objection from him, acts to
his detriment in connection with such land, a Court of Equity will compel B to give effect
to such expectation.”

- [7] The principles were recently revisited by the Privy Council in *Henry v Henry* (2010) UKPC 3, which dealt in particular with how the equity is to be satisfied if the court finds that an equity arises. Henry reiterated that the court has power to fashion a remedy to meet the justice of all the circumstances.
- [8] Both parties gave evidence on their own behalf and called no other witnesses. Having seen and heard them, I preferred the evidence of the Father as he impressed me as a witness of truth, whereas the Daughter, having regard to her general demeanor and answers on cross-examination, struck me as someone who had embarked lightly on this litigation and was not entirely honest and candid with the Court. Therefore, where they differ on the facts I have resolved the conflicts in favor of the Father.
- [9] The original owner of Parcel 195 was Tortola Investment Trust Limited (“T.I.T.”). In or about March 2002, the Father agreed to buy Parcel 195 from T.I.T. His intention was to buy the land for the ultimate benefit of his children, including the Daughter and

grandchildren. He intended to do so by taking the conveyance in the name of a company in which he and his children would have shares. He incorporated a company for that purpose. The Daughter reluctantly admitted in cross examination that she was aware of the company, as she had attended the offices of the Father's lawyers to sign documents relating to the company.

[10] The Father told the Daughter and his other children that he would transfer Parcel 195 to the company and that they will become equal shareholders in the company if they paid the stamp duty of \$10,400, on the transfer of the land into the company's name. Again, the Daughter admitted this in cross-examination and also that she had not paid any part of the stamp duty.

[11] The Father completed the purchase of the land on 12 March 2002 as is evidenced by the Instrument of Transfer No. 2568/2007. However, the children did not pay the stamp duty and therefore the Father has not, to date, caused Parcel 195 to be transferred to the company. But, apparently from his testimony, which I accept, he still remains hopeful that the children would do so, and this, even though he eventually paid the stamp duty himself in October 2007, (almost 5 ½ years after he bought the land). He registered the Instrument of Transfer on 2 October 2007. In his viva voce testimony he expressed his willingness to transfer the land to the company and to give the children shares once they reimburse him for the stamp duty.

[12] It is of note that Parcel 195 is subject to certain purchaser's covenants as contained in the Instrument of Transfer. See the Second Schedule thereto, headed the "Description of rights expected or reserved"; and the Third Schedule, headed the "Covenants and restrictions binding upon Transferees". I will refer to these subsequently.

[13] I find that, contrary to the Daughter's allegations, when the Father permitted the Daughter in January 2004, to commence construction of her dwelling house on a portion of Parcel 195, that he was operating on his original indication to his children and

gave her no assurances that he would subdivide and transfer title of a portion of the land to her. And again, contrary to her evidence I also find that the Father allowed her to choose the portion she wanted to occupy. This portion was situated below a road that runs through Parcel 195 and she gained access via that road.

- [14] In or about July 2004, the Daughter obtained a loan of \$250,000 for 10 years from First Bank Virgin Islands to finance the construction of her house. The Father co-signed the loan and he secured the loan by way of legal charge over one of his properties, located at Huntums Ghut. The Father readily accepted that the term of the loan was for 10 years as he had made it clear to the Daughter that he did not want his property at Huntums Ghut to be tied up with the bank for a longer period. The Daughter accepted that position.
- [15] The Daughter completed the house in or about April 2005 and she and her family have occupied it since then. And, the Daughter and her husband have always met the monthly installment payments on the loan in the sum of \$2991.80.
- [16] Around 2006, however, the relationship between Father and the Daughter deteriorated. It is not clear what caused the rift as prior to that it would appear that they enjoyed a cordial relationship, with the Father even arranging and paying for gardening services for the Daughter. In fact it appears that this situation still exists despite the law suit and that the Father has given financial assistance to the Daughter.
- [17] In November 2007, the Daughter constructed a retaining wall on the top side of the access road contiguous to land designated by the Father as land for one of his sons, Derwin. The Daughter did not obtain permission from the Father to build this wall and thereafter, the Father demolished the wall. The Daughter subsequently reconstructed the wall, and again the Father removed it.
- [18] Obviously, from the foregoing, the Daughter's case that the Father verbally assured her

that he would subdivide Parcel 195 and give her title to the portion upon which she constructed her dwelling house, has not been established.

- [19] Further, my finding that the Father made no such assurances as alleged, is supported by the covenant against subdivision and transfer of a part only of Parcel 195 of which the Father was always aware and so careful not to act in breach thereof. I refer to the covenant, in Clause 2 of the Third Schedule of the Instrument of Transfer which provides:

“There shall be no subdivision, transfer, sale, lease or other disposition or otherwise of a part only of the said parcel in any circumstances whatsoever.”[Emphasis added]

- [20] The Daughter testified that she only recently became aware of Clause 2, since the Father never told her about it. The Father explained, and I accept, that he never informed the Daughter about Clause 2 because it was not necessary to do so since there was never any intention, discussion or assurance made by him to transfer any title to part of Parcel 195 to her.

- [21] Mr. Jean Baptiste, cross-examined the Father on Clause 1 of Third Schedule which essentially prohibits the Father from fencing Parcel 195 except in a manner approved in writing by T.I.T, no doubt in an effort to show that T.I.T or the Father did not view those covenants seriously. The Father admitted that he had fenced a part of the Parcel 195 in order to prevent animals from entering and eating and destroying the Daughter's plants, but had not obtained written approval for so doing from T.I.T. He explained that he had called T.I.T and obtained verbal approval via the telephone. He mentioned also that T.I.T told him what type of fencing to use and that he adhered to it. I have been given no good reason to reject this testimony. Further and more pertinently it would appear that the fencing is still standing. Surely if it had been erected in breach of covenant T.I.T would have taken steps to remove it.

- [22] In like vein , Mr. Jean Baptiste, referred the Father to Clause 3 of the Third Schedule which states “There shall be erected and completed on the said parcel within thirty six (36) months of this transfer a dwelling house not exceeding two storeys”. Counsel questioned the Father on the fact that the Father has not, to date, completed his dwelling house which he began building on Parcel 195. The Father stated that the requirement is that there be a completed dwelling house, implying that the Daughter's dwelling house, having been completed, satisfied the requirement. I agree. He further explained that if there was any problem with that, T.I.T would have demanded that he pay the substantial penalty provided for of approximately \$125 per day.
- [23] Having regard to all the circumstances I am of the view that before the Daughter built her house, it was clear to her what the Father's intentions were. The Daughter cannot now seek to have the land transferred to her simply because the parties' relationship has broken down and she now yearns to have legal title in the land upon which she built her home and to re-structure her mortgage payments because she now finds the terms of financing onerous.
- [24] In all the circumstances therefore, the Daughter has not established the very foundation on which her case was based, and her claim for a declaration and subdivision of Parcel 195 must be dismissed.
- [25] I am of the view that the interest in the land which the Father had promised the Daughter was an indirect interest by way of shares in a company to which the land would be transferred if she and her siblings paid the stamp duty. She has not paid or, more precisely, reimbursed the Father for her share of the stamp duty and therefore she cannot ask for shares without first doing so. However, the Father, as already noted has indicated that he is still open to transferring the land to the company and to giving her shares if she pays her portion of the duty. It is therefore open to the Daughter to pursue that remedy if she so wishes.

- [26] It is notable that the Father has never asked the Daughter and her family to give up possession of the portion of Parcel 195 which she occupies, an unequivocal indication that he intends to keep his promise to her and to her siblings, once they meet the condition he has set. Therefore, the highest that can be said in these circumstances is that the Father intended that the Daughter and her family should have the right to peacefully occupy that portion of parcel 195 until such time.
- [27] Having regard to all the circumstances, some sort of equity has arisen as the Father allowed her to build even though she had not paid the stamp duty and in the interim it seems to me that this interest can be satisfied after weighing all the obvious disadvantages as well as the obvious benefits enjoyed by the Daughter in giving her a right to occupy for life. And even though that relief was not claimed, having regard to the powers granted to me by section 20 of the West Indies Associated States Supreme Court (Virgin Islands) Act Cap. 80 ("the Act")¹ and in the interest of justice, and particularly to stave off any further litigation on the subject, I will make such a declaration in the Daughter's favour.
- [28] Having found that the daughter has failed to establish the very foundation of her case as pleaded, her claim for the declaratory relief claimed and the subdivision and the transfer to her of a portion of Parcel 195 is therefore dismissed and instead she is given the limited declaration referred to above.
- [29] **Who, if anyone, is entitled to damages in respect of the retaining walls?**
- [30] The Daughter is claiming for damages in the sum of \$1475.00, being the cost of labour and materials of constructing the two walls. And, the Father is counterclaiming for the sum of \$850 being the cost of removing the walls.

¹ Section 20 provides: "The High Court...in the exercise of the jurisdiction vested in them by this Ordinance 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 so that as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of these matters avoided."

- [31] The Father admits that he destroyed the retaining walls, but says that he acted lawfully since the Daughter erected the walls on land that she had no permission to occupy and did so without his consent.
- [32] I have observed photographs of the land on which the Daughter's house is situate and, in particular, the area where the retaining walls were built, and have had regard to the Father's testimony and to the grudging admissions of the Daughter that she built the walls on land that she did not occupy. I find that the Daughter had constructed the walls outside of the area in which she was entitled to occupy and on land she knew was intended and identified for the occupation of her brother. Therefore technically she trespassed on those lands and the Father was entitled to demolish the walls subject to what I have to say next.
- [33] However, I accept the Daughter's evidence, which was not contradicted, on this issue that it was necessary for her to construct the retaining walls to ensure that the road over which she accessed her property, remained clear and unobstructed by earth and water coming from the portion earmarked for her brother, especially in the rainy season. This right to unobstructed access is essential for the Daughter to enjoy her right to occupation and she did what she could to alleviate the situation, in fact, she took steps to mitigate her damages.
- [34] And accordingly, she is entitled to recover the costs of building those walls as this was something the Father ought to have done to ensure that she had unimpeded access to her home. Accordingly, I will award damages to the Daughter, in the sum of \$1475, which is equivalent to the costs of constructing the retaining walls. The Father's counterclaim is therefore dismissed and having regard to all the circumstances and to section 20 of the Act, I will also order him to re-build the wall.

[35] **Costs**

[36] Generally, costs follow the event. Here each party has succeeded on some issues therefore, in all the circumstances, I will make no order as to cost.

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Rita L. Joseph- Olivetti
High Court Judge
Territory of the Virgin Islands, U.K