

GRENADA

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

CLAIM NO: GDAHCV 2006/0099

BETWEEN:

**VERONICA PERKINS
(Administratrix of the Estate of Edna Cecilia John)
VERONICA PERKINS
(by her Attorney Michael Aberdeen joined pursuant to
the Order of the Hon. Mr. Justice Davidson Baptiste
dated June 27th 2006)**

Claimants

AND

ADDINGTON JOHN

Defendant

Appearances:

Mr. A. John for the Claimants.

Ms. C. Edwards and Ms. S. Khan for the Defendant.

2008: September 19

JUDGMENT

- [1] **HENRY, J.:** Edna Cecelia John died intestate on 7th September, 2003. She was survived by one child, Veronica Perkins, to whom Letters of Administration were granted by the High Court in March 2004. From all accounts Edna John was a very loving and generous woman. Not only did she raise two children of her own, but after her children were grown, she took in and raised at least three of her grandchildren: Michael Aberdeen, who lived with Edna until age 40; Anika John who lived with Edna from age 3 until she became an adult; and Addington John, the defendant, who lived with Edna from a young age until Edna's death in 2003, when he was 43 years old.

- [2] Up to the time of her death, Edna occupied a portion of land at Victoria, St. Mark's. She did not have a deed for the land, but she had occupied it for at least 40 years and in 2001, she had a Statutory Declaration prepared by Albert Mitchell declaring such to be the case. It does not appear that it was registered in the Land Registry, but it was kept by Edna at her home. After Edna's death, Ms. Perkins became aware that Addington John had possession of the Statutory Declaration and was refusing to give it up, declaring his intention to build on the land. Ms. Perkins had an Attorney write to Addington John demanding the Statutory Declaration be delivered to her and that he refrain from any plans to build on the land.
- [3] Addington John through his Attorney replied that his grandmother had given him the land together with the house as a gift some 4 or 5 years before (subject to her continuing to live there), and that with her knowledge, consent, and encouragement, about 3 years ago he had renovated the house by installing internal toilet facilities. Further, that in 2002 he made repairs to the roof and built a concrete base bus garage alongside the house. Addington John also claimed that he was the one who financially maintained his grandmother and provided for all her medical expenses for many years up to her death. He therefore refused to hand over the document and has asserted that he has an irrevocable license to occupy the land and that Ms. Perkins is now estopped from denying his right to occupy the premises.
- [4] Veronica Perkins brought these proceedings in 2006 seeking the following relief:
1. A declaration that she is entitled to the lot of land together with the building thereon situated at Victoria, St. Mark's, formerly the property and residence of her mother Edna Cecelia John, and currently occupied by Addington John.
 2. An order directing the defendant Addington John to give up vacant possession of the said property to her within one month of the date of the order.
 3. An order directing Addington John to deliver up to her the Statutory Declaration made by Albert M. Mitchell on September 13, 2001 declaring Edna John in possession of the said property.
 4. Mesne profits

5. Costs

[5] The issues for the court's determination are:

1. Has Addington John acquired an equitable license by estoppel in the property occupied by Edna John before her death?
2. If so, what is the extent of the equity established?

[6] A license is a mere permission which makes it lawful for the licensee to do what would otherwise be a trespass **Thomas v Sorrell** [1673] Vaugh 330 at 351. A license in connection with land, while entitling the licensee to use the land, does not create an estate in land **Street v Mountford** [1985] A.C. 809 at 814. Furthermore, at common law, a licensor could revoke his licence. However, a license by estoppel is a licence which the licensor is precluded by estoppel from revoking or otherwise failing to put into effect. In order to establish such an equity by estoppel, three factors must be shown:

- (a) Detriment. The licensee must have been prejudiced by incurring expenditure or otherwise acting to his detriment.
- (b) Expectation or belief. The licensee must have acted in the mistaken belief that he had or would obtain a sufficient interest in the property to justify his expenditure or detriment.
- (c) Reliance on encouragement. The licensee must have acted in reliance on some encouragement by the owner, given either actively or passively with knowledge of his own rights.

[7] There are several cases where the courts have found an irrevocable license based on equitable principles. In **Inwards & Others v Baker** [1965] 2 Q.B. 29, a son wished to build a home and to acquire a piece of land for that purpose. He intended to acquire the land from a stranger but the price was beyond his means. His father, who owned 6 acres of land said to him, "why don't you build the home on my land and make it a bit bigger?" So encouraged, the son gave up the plan to purchase the other land and built his home on his father's land. The house cost £300 of which the son provided £150 and the father the balance. The son lived in the house with the expectation that he would be allowed to

remain there for his lifetime or for so long as he wished. The father died some 20 years later and under his father's will, the land vested in Trustees for the benefit of persons other than the son. The Trustees brought proceeding for possession of the house. The Court of Appeal held, reversing the county court judge, that where a person expended money on the land of another in the expectation, induced or encouraged by the owner of the land, an equity was encouraged such that the court would protect his occupation. The son was allowed to remain in occupation of the home for as long as he desired. Lord Denning stated that the son had a license coupled with an equity such that any purchaser who took the land with notice of the son's interest would also be bound by the equity.

[8] In **Pascoe v Turner** [1979] 1 W.L.R. 431, the parties became acquainted in 1961. In 1963, the defendant a widow moved into the plaintiff's house as his housekeeper. In 1964, they began to live together as man and wife. In 1965, plaintiff purchased another house into which they moved and continued to live as man and wife. In 1973, defendant went away for a short holiday. Immediately on her return the plaintiff assured her that the house was hers and everything in it. The defendant stayed on in the house and in reliance upon plaintiff's declaration that he had given her the house and its contents; she spent money on improvements and repairs. Plaintiff knew she was improving what she thought to be her property. Although the plaintiff said that he had put the transfer of the house in his Solicitor's hands, he never did so. There was no conveyance and nothing in writing. In April 1976, plaintiff wrote to defendant giving her 2 months notice to determine her license to occupy the house. Defendant refused to leave and plaintiff commenced an action for possession.

[9] The Court of Appeal held that since there were no documents supporting the plaintiff's statement that he had given the house to defendant, the gift had not been perfected, and in 1973, defendant occupied the house under a license revocable at will. But between 1973 and 1976 when the plaintiff encouraged or acquiesced in the defendant improving the house in the belief that the property belonged to her, this gave rise to an estoppel. The court therefore ordered plaintiff to execute a conveyance of the property to defendant.

- [10] Because the burden of a license by estoppel runs with the land and binds successors in title, if Addington John can prove a license by estoppel, it would be binding on the heirs of Edna who had notice.
- [11] In support of his claim, Addington John states in his affidavit that even though Edna received a pension it was very small and not enough to care for her; that he was the one with financial responsibility for Edna before her death; that he lived there and maintained the home and that as a consequence Edna, before her death, expressed the intention for him to have the land and gave him the Statutory Declaration. He further asserts that as a consequence of the delivery of the Statutory Declaration to him he erected a concrete garage on the premises without any objection on the part of the deceased and that he took steps preparatory to building a concrete house on the said land. Also as a consequence of the alleged action of Edna, on her death, he signed, along with Mr. Aberdeen, to take care of the funeral expenses. All this he says has created an irrevocable license in him to occupy the land.
- [12] Mr. Aberdeen strongly contests that it was Addington John who had financial responsibility for Edna or that she gave him the statutory declaration and expressed to him an intention for him to have the land. Mr. Aberdeen points out that Edna received two monthly pensions amounting to about \$260.00. This was confirmed by the evidence of Anika, Addington John's sister, who also lived in the home for some time. Anika's evidence, which the Court accepts, is that Mr. John paid for the cable service, which he had installed for his viewing pleasure; he paid the water bill and ½ of the phone bill. Edna, in addition to purchasing her food and necessities, paid the electricity and ½ of the phone bill.
- [13] No documentary evidence has been submitted in support of Mr. John's statement that he had financial responsibility for maintaining the home – not one bill or receipt has been submitted. Furthermore, I accept the evidence that Veronica regularly sent money from England for her mother, which would have supplemented her pension. Mr. John admitted in cross-examination that Edna's need at that time was for basic food items. While the evidence does show that Mr. John paid some bills such as cable and water, this evidence does not substantiate the allegation that he had financial responsibility for and maintained

the home. Rather it shows that as an adult member of the household he made a contribution, as would be expected in the circumstances.

[14] As to the day-to-day care of Edna, the evidence clearly shows that several members of the family assisted in taking care of Edna towards the end of her life. These include Michael and his girlfriend, Addington and his girlfriend, two visiting nurses – Julie and Doretta who visited her home to dress and care for her sick foot, in addition to Anika, Sharka and Faithlyn. No one person had the burden of her care; it was shared by her family members.

[15] With regard to Mr. John's claim that Edna, before her death, expressed the intention for him to have the land, very little detail is given in his affidavit. No dates were provided as to when this conversation took place. However, on cross-examination, he was asked when did this conversation take place? His answer was that it was just before she died. Edna John died in September 2003. However, in his lawyer's letter to Mr. Alban John, Veronica's Attorney, dated 16th October, 2003, in setting out Addington John's instructions, the letter states: "Mr. John contends that the deceased, his grandmother with whom he lived from age three months, gave him the lot of land together with the house as a gift some four or five years ago..." This clearly contradicts his in court evidence.

[16] With regard to the alleged gift. Addington John first alleged through his counsel that Edna gave him the lot of land together with the house as a gift. In his Affidavit of September 11, 2006 he stated that Edna expressed the intention for him to have the land and gave him the Statutory Declaration; and that he therefore later took preparatory steps to building his home on the said land. It was only in cross-examination that for the first time the Court heard from Addington John that Edna expressed to him that it was unfair for him to have the property and that he should divide it for himself, Sharka and Michael.

[17] Anika's evidence in this regard is that throughout the time she lived with her grandmother, she heard her say that the land belonged to Addington, Michael and Sharka. In any event, I find Addington John's evidence on this issue contradictory and unreliable and I do not believe that he was entirely candid with the court when he stated that Edna expressed the intention for him to have the land. I accept the evidence of Anika that at various times Edna expressed that she wanted her 3 grandchildren to have a share in the property.

- [18] As to how Mr. John got possession of the Statutory Declaration, Mr. Aberdeen denies that his grandmother gave it to Mr. John. Mr. Aberdeen's evidence is that when the document was prepared and given to his grandmother, he read it and explained it to her. He then placed it in a clothesbasket where it stayed until her death. After his grandmother's death, when the relatives gathered at the house it was discovered that the document was missing from the basket. According to Mr. Aberdeen, he confronted Addington John who told him that Edna had given it to him to get a plan done to build a concrete house on the site.
- [19] I must say that I do not find Mr. Addington John's evidence on this issue to be credible. I did not find him to be a credible witness. I do not accept his evidence that Edna, before her death expressed to him that she wanted him to have the land or that she delivered the Statutory Declaration to him.
- [20] Equally unbelievable is Mr. John's claim in his evidence that, induced by Edna's expression to him, and as a consequence of the delivery of the Statutory Declaration to him, he erected a concrete garage. The evidence does not support his contention that Edna induced or encouraged him. The evidence of Mr. Aberdeen is that it was Addington who sought Edna's consent to erect the garage for the bus he had acquired. According to Mr. Aberdeen, when Mr. John had difficulty persuading Edna, it was he who intervened and persuaded Edna to consent to Mr. John erecting the garage, because Edna did not want the garage. I accept this evidence.
- [21] With regard to the claim that he renovated the house by converting to indoor toilets, repairing floorboards on the veranda and repairing a portion of the roof, Mr. John conceded that the toilet fixtures were all sent from England by other relatives of Edna and he, being a mason, simply installed them in the house. The Court accepts that he did repairs to the floorboards of the veranda and roof over the years he lived there.
- [22] On the evidence therefore, Addington John has failed to prove that Edna, before her death, gave him the house and delivered the Statutory Declaration to him. Mr. John has also failed to prove that he was induced or encouraged by Edna to make renovations to the property or that he expended money in reliance on the expressions by Edna that the property was his.

- [23] Rather, the Court finds that he made contributions to the house as an adult member of the household. The Court finds that there was no gift to him of the property, but that from time to time Edna expressed her wish that her grandchildren have a share in the property. She, however, took no action to perfect a gift. Without the reliance and detriment on Mr. John's part, whatever wishes Edna may have expressed before her death concerning the property amounted, at best, to an imperfect gift, which the law will not aid in perfecting.
- [24] Edna did not execute a Will. Her interest in the property therefore, must pass under the laws of intestacy. Veronica Perkins having been granted Letters of Administration by the High Court was entitled to demand that the Statutory Declaration be delivered to her.
- [25] By section 4 (1)(c) of the Intestates Estates (Amendment) Act No. 48 of 1991, an intestate who leaves issue but no husband or wife, the issue is entitled to the whole. Veronica, being the only surviving issue is therefore entitled to the whole of Edna's estate.
- [26] Judgment is therefore granted in favor of the claimant as follows:
1. A declaration that Veronica Perkins is entitled to the whole of the estate of Edna Cecilia John, including her interest in all that lot piece or parcel of land measuring 1500 Sq. Ft. together with the building thereon, situate at Cruickshank Road, Victoria, St. Mark's.
 2. The defendant Addington John is hereby ordered to give up vacant possession of the said property to the said Veronica Perkins within 90 days of the date of this judgment.
 3. The defendant Addington John is hereby ordered to deliver up to the said Veronica Perkins or her Counsel forthwith the Statutory Declaration made by Albert Michael Mitchell on September 13, 2001, declaring the said Edna John in possession of the said property and which he now has in his possession.
 4. Costs in the sum of \$3,000.00.


Clare Henry
HIGH COURT JUDGE