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SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1996

Suit No. 141 of 1993

BETWEEN:

1. JAMES WILLIAMS
2. ELMINA WILLAMS

Plaintiffs

and

RITE ETIENNE

Defendant

Mr. A. Arthur for Plaintiffs
Mr. C. Landers for Defendant

1996: January 11 and 16.

J U D G M E N T

MATTHEW J.

On March 12, 1993 the Plaintiffs filed a writ of summons indorsed with statement of claim asking for the following relief:

1. a perpetual injunction against the Defendant from trespassing in the Plaintiff's house;
2. possession of a dwelling house;
3. damages; and
4. costs.

In their statement of claim the Plaintiffs allege that they were at all times the owners of a dwelling house valued at $90,000 situate at Petit Bourg in the village of Laborie and they permitted the Defendant to live in the bottom floor of that house after she had made it livable. The Plaintiffs allege that the Defendant moved into the said dwelling house some time after 1991 but has now claimed ownership of the house.

The Defendant entered appearance on March 31, 1993 and filed her

defence and counterclaim on April 15, 1993. In that document the Defendant denies the Plaintiff's ownership and states that she had a wooden house on the land belonging to her daughter, Mary Hippolyte and the Second Plaintiff, another daughter, agreed to build her a small wall house on the same spot and as a result she broke down and sold the wooden house.

She stated that the Plaintiffs without her consent or the consent of Mary Hippolyte, the Plaintiffs built a large two storeyed building stating that the Defendant would live downstairs free of rent while the Plaintiffs would live upstairs.

She said she spent $6,944.50 to make the ground floor habitable. In her counterclaim she asked for the following:

1. a declaration that she is the owner of the ground floor of the building or alternatively $28,544.50 special damages;
2. general damages; and
3. the costs hereof.

The Plaintiffs filed a request for hearing on June 8, 1993.

EVIDENCE

At the trial the Plaintiffs gave evidence and called Peter Jean Jules and Everard Louis as witnesses. The Defendant who is 75 years old gave evidence on her own behalf and called her daughter Mary Hippolyte, as her only witness.

James Williams stated that Elmina Williams is his wife and they own a wall structure at Laborie valued at $86,000. He said he started construction in 1989 but stopped in 1992 when the building was yet incomplete.

He stated that he made an arrangement with the Defendant and her deceased husband that because their house was not in a good

condition he would build a house on the spot where her old wooden house was located after they had broken down the wooden house and that she and her husband would remain in the bottom floor of the house until their deaths.

He said the Defendant and her husband entered the house in February 1992 and they had made improvements to the house.

He stated that he did not build a small house for the Defendant and her husband. He said also that it was Mary Hippolyte who gave him permission to build the wall house on her land.

He said his wife and himself are claiming ownership of the house and he only gave the Defendant and her husband life enjoyment of the bottom floor of the house. He stated that Defendant agreed to that arrangement but she is now claiming ownership of a portion of the house and as a result he does not want her to have life enjoyment any more.

When he was cross-examined he agreed that the Defendant completed the bottom floor of the house but could not say that the amount spent to do so was $7,000.

He admitted that initially Mary Hippolyte allowed him to build because she thought he was going to build a small wall house for her mother but later he said the plan was changed and he was allowed to build a larger house.

In answer to the Court he said:

> "She is claiming the house so that is the loss I am now suffering".

Elmina Williams stated that she did not say she was going to build a house for her mother and the arrangement was that her husband would build a house and her mother would remain in a room with her

husband until they died.

Peter Jean Jules, the building contractor who worked on the house estimated the present value of the structure at $86,000 and Everard Louis said he bought the Defendant's wooden house for $600 but the house was not worth that amount.

Rite Etienne stated that she owned a wooden house at Petit Bourg and as a result of speaking to her daughters, Mary and Elmina, she broke down the house and sold it to Everard Louis for $600 although she put a value of $8,000 or more on the house.

She stated that Elmina told her she will build a nice house for her.

She said later on:

> "I saw a building going up on the spot where my house was. It was a wall house. I sent to call Mary to see the big wall house they were putting up. They had promised to build me a small wall house."

She said she eventually went to live in the bottom floor of the big wall house and she made improvements to it in order to be able to live there.

She said Elmina never told her about life interest and all she said was that she was going to build a small house for her.

She said finally:

> "I am asking the Court for me to get the bottom of the house to compensate me for the house they caused me to break down".

Mary Hippolyte stated that a concrete house is built on her land on the spot where her mother's wooden house was located. She said:

> "Elmina John is the owner but I know the house belongs to my

mother. Half of the house belongs to my mother . . . . . .

. . . . . .

I agreed that Plaintiff was going to build the house for my mother and she would live upstairs when she came from Castries and my mother would live downstairs."

In his final address learned Counsel for the Defendant submitted that based on the promise the Plaintiffs made the Defendant broke down her wooden house and went to rent somewhere else for six years.

He said Plaintiff gave permission to Defendant to make the bottom floor livable.

Counsel submitted that Defendant changed her position and should in one form or another get the place where she is living for the rest of her life.

Learned Counsel for Plaintiffs submitted that the Plaintiffs built the house and gave the Defendant a life interest; the Defendant did not agree to the construction of the house and so it would be difficult to establish that Defendant and her husband were given ownership.

Counsel then stated as follows:

"I submit Defendant was given usufruct consent given by Mary Hippolyte.

In terms of rent something was done for her benefit.

I ask for possession of dwelling house in accordance with the prayer. I ask for possession, not physical possession. I refer to Article 394 of the Civil Code."

CONCLUSION

I thought learned Counsel for the Plaintiffs was asking for inconsistent relief. At one time he seems to be submitting that Defendant is entitled only to a usufruct for life and at another time he is asking for possession of the premises and a perpetual injunction to restrain the Defendant from trespassing on the Plaintiffs' property. Indeed Article 394 which he cited is as follows:

> "Usufruct is the right of using and enjoying things of which another has the ownership, in the same manner as the owner uses and enjoys them, but subject to the obligation of preserving their substance."

The Plaintiffs' case seems to be that they gave the Defendant a usufruct for life but because the Defendant is claiming ownership they are now asking for possession. This no doubt is why the male Plaintiff in answer to the Court said he was suffering loss.

One of the bases of the Defendant's claim for ownership is that the female Plaintiff, her daughter, said she would build a small house for her but on her own evidence when she saw a big wall house going up she called Mary, her other daughter. She must have realised that the house was not being built for her.

She also asks that she be given ownership to compensate her for her wooden house which she had to break down.

The Plaintiffs did not in fact build a small wall house for the Defendant. I find as a fact that the Plaintiffs built the house for themselves and they agreed with the Defendant and her husband to give them life interests in the bottom storey of the building.

I believe James Williams that the plans for the construction of the small house were changed and even Mary seems to have liked the idea that the Plaintiffs would be living upstairs while her mother lived downstairs.

I believe that the Plaintiffs, the Defendant and Mary Hippolyte all agreed to the grant of the life interests to the Defendant and her husband and that it was never agreed that the Defendant should get any other interest but a life interest in the property.

The Defendant could only claim ownership of a small house assuming she could get over the hurdle of the requirement for consideration but that venture never materialised. The Plaintiffs expended in excess of $80,000 to build their house in accordance with the evidence of Peter Jean Jules and I find they are the rightful owners of the entire wall structure.

But I find that this ownership is subject to the Defendant's life interest in the bottom storey. I find there was a promissory estoppel as described by the learned authors of the Fourth edition of Halsbury's Laws in England, Volume 16 paragraph 1514. The paragraph is as follows:

> "When one party has, by his words or conduct, made to the other a clear and unequivocal promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to their previous legal relations as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced. This doctrine, which is derived from a principle of equity enunciated in 1877, has been the subject of considerable recent development and is still expanding. It differs from estoppel in pais in that the representation relied upon need not be one of present fact.
>
> The doctrine cannot create any new cause of action where none existed before, and it is subject to the qualification (1) that the other party has altered his position; (2) that the

promisor can resile from his promise on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position; (3) the promise only becomes final and irrevocable if the promisee cannot resume his position. The doctrine is known variously as "equitable" or "promissory" or "quasi" estoppel."

The expenses incurred by the Defendant to make the place livable are not the responsibility of the Plaintiffs who never agreed to pay for them. I believe the intention was that the Defendant should bear those costs as well as the rental of alternative accommodation when her house was broken down. These expenses must be regarded as part of the package.

There is no doubt that Defendant was living in an unsuitable house and that was why her daughters were concerned about getting better accommodation for her. She no doubt now lives in more secure accommodation. The old house was sold for $600 and Everard Louis, the purchaser, thought he paid too much for it.

I reject the Defendant's evidence that her wooden house was valued in excess of $8,000 and I reject more so the allegation in paragraph 8 of the defence and counterclaim that it was worth $18,000.

I dismiss the Plaintiffs claim for possession of the house and the accompanying relief.

I also reject to make a declaration that the Defendant is owner of the ground floor of the building.

My order is:

1. I declare that the Plaintiffs are the owners of the dwelling house in question but that is subject to a life interest in the bottom storey in favour of the Defendant.

2. There shall be no order as to costs.

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A.N.J. MATTHEW
Puisne Judge