



[2019] JMSC Civ 95

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2016HCV03864

BETWEEN	YVETTE ROWE	CLAIMANT
	(Administrator of estate Allan Rowe)	
AND	JANET ROWE	DEFENDANT

IN OPEN COURT

Mrs. Joan Thomas instructed by E D Davis & Company for the Claimant

Mr. John Givans instructed by Givans & Company for the Defendant

Heard: May 10 and 31, 2018 and May 7, 2019

Claim for accounting for rent collected – whether beneficiary intermeddling in estate – Claim for removal of caveat – Defendant in actual possession – whether adverse – Proprietary Estoppel – Limitation of Actions Act

LINDO J

Background to Claim

[1] Mr Allan Rowe died intestate on May 12, 2009. He died leaving the following properties:

- (i) Lot 2, Papine Estate, known as 3 University Road, Kingston 7, comprised in Certificate of Title registered at Volume 1181 Folio 679 of the Register Book of Titles

- (ii) Lot 1 on plan of part of August Town, known as part of 32A Bryce Hill Road and 81 August Town Road, Saint Andrew, comprised in Certificate of Title registered at Volume 1330 Folio 336 of the Register Book of Titles, and
- (iii) 85 August Town Road, Kingston 7, comprised in Certificate of Title registered at Volume 782 Folio 17 of the Register Book of Titles

[2] Prior to his death, Mr Rowe entered into a ‘Stipulation of Settlement Agreement’ with his then ex-wife, Mispah Rowe, (filed under Index No 8632/1997 in the Supreme Court of the State of New York) in relation to the property situated at 85 August Town Road. A term of this Agreement was that he was to transfer the property “within 90 days of the execution of the agreement” to the said Mispah Rowe and to Michael Rowe, one of his sons. This was not done and as such became the responsibility of the Claimant, as administratrix of his estate.

[3] Mr Allan Rowe had also, over a number of years, given the Defendant, Janet Rowe, his daughter, multiple Powers of Attorney to manage his affairs in Jamaica. She had been charged with the responsibility for collecting rental income for the properties and for the maintenance of the said properties. This she continued to do for some time after the death of the deceased.

[4] The Claimant, Yvette Rowe, widow of Allan Rowe, was appointed administratrix of the estate of the deceased by a grant of Letters of Administration made on January 14, 2013. She is ordinarily resident in the United States of America (USA) while the Defendant currently maintains occupation of Apartment 3C, part of the property located at Lot 2, Papine Estate, Saint Andrew (3 University Road). The Defendant has occupied this apartment since 1997. On September 17, 2013 she lodged a caveat (No.1841982) at the Office of Titles against the Certificate of Title relating to the said property.

The Claim

[5] On September 15, 2016, Yvette Rowe filed a Fixed Date Claim Form with affidavit in support. In this claim, she seeks, *inter alia*, that:

- i. the Defendant give an account of all rent collected from tenants at the three premises beginning at the date of death of Allan Rowe.
- ii. the Defendant deliver up to the Claimant or her Attorneys-at-Law all proceeds of the rent collected in relation to the properties at 3 University Road and 85 August Town Road from May 12, 2009 to present, and all proceeds of rent collected for the property located at 32A Bryce Hill Road from May 12, 2009 to September 9, 2015.
- iii. that the Duplicate Certificates of Title for the premises located at 3 University Road and 85 August Town Road held by the Defendant be delivered up to Claimant or her Attorneys-at-Law.
- iv. An Order to direct the Registrar of Titles to remove the caveat numbered 1841982 lodged by the Defendant on September 17, 2013 against the Certificate of Title for the premises located at 3 University Road.

Defendant's Response to the Claim

[6] Janet Rowe, on February 15, 2017, in compliance with an order of the court, filed an affidavit in response to the claim. She subsequently filed affidavits on May 26, 2017 and March 2, 2018, in further response to the claim, and denying the allegations outlined by the Claimant.

The Trial

- [7] At the commencement of the trial, the court was advised that there was now no issue in relation to the delivery of the Duplicate Certificates of Title as they had been handed over to the attorneys-at-law for the Claimant.

The Claimant's Case

- [8] At the trial on May 10, 2018, the affidavits of the Claimant filed on September 15, 2015, May 11, 2017 and November 10, 2017 were admitted as her evidence-in-chief and she was cross-examined.
- [9] Yvette Rowe alleges that Janet Rowe has been collecting rent since the death of Mr Allan Rowe and has been using the monies collected for her own benefit. Her evidence is that the Defendant has intermeddled in the estate of the deceased and has retained sums that are owing and due to rightful title owners, as well as to the estate, and has put the Claimant at risk of civil action by the beneficiaries entitled under the estate.
- [10] She alleges that after having received the Grant of Letters of Administration in the estate, she was at all times prevented by the Defendant from exercising her duties with the respect to management of the properties owned by the deceased.
- [11] In amplifying her evidence, by commenting on paragraph 4 of the affidavit of the Defendant filed on March 2, 2018, she stated that it was not true that she had not asked for any receipts, as before her husband died, the Defendant used to send money whenever the deceased asked, and after he died, there was no income coming in so sometimes she, the Claimant, would ask about the rental income and receipts. She stated further that she had no knowledge of her, the Defendant, not giving or keeping receipts for money she received for rent. The Claimant stated that, to her knowledge, there was no discussion with the Defendant regarding any repairs carried out on the properties, financed from the rental income.

- [12] The Claimant's case further is that the Defendant would only send monies on an ad hoc basis and would do so to assist with the maintenance of her siblings and that she refused to provide her with a monthly statement of the rent she had collected upon her request. She contends that after obtaining the Grant of Letters of Administration, the Defendant would rarely send any money, and that the sum of three thousand United States Dollars (USD\$3000.00) was handed over to her by the Defendant, on the instructions of the deceased, prior to his death. This sum the Claimant says was given to her by the Defendant at a Burger King branch in the USA.
- [13] In relation to the Apartment 3C at 3 University Road, the Claimant states that it was not given to the Defendant by the deceased, but that she had been given permission to live there by the deceased, and it remained the family home in which they stayed whenever they visited the island.
- [14] Upon cross-examination by Mr Givans, the Claimant admitted that she had been in the USA when the apartment complex was built and cannot speak to when construction commenced, when it was completed, how many apartments exist on the building, or whether or not the deceased gave an apartment to the Defendant. The Claimant also agreed that along with the deceased, she only stayed in the apartment with the Defendant on one occasion, and that she had also stayed there another occasion, without the deceased.
- [15] The Claimant admitted to relying on, and seeking the Defendant's help even after receiving the Grant of Administration and also admitted that she has not visited any of the properties owned by the deceased since his death.

The Defendant's Case

- [16] Janet Rowe's affidavits filed February 15 and May 26, 2017 and March 2, 2018, were accepted as her evidence in chief, and she was cross-examined.

- [17] She indicates that she was the person who sought buyers for the property located at 32A Bryce Hill Road and that she had directed the current owners to the Attorneys-at-Law on behalf of the estate in order to purchase same. She further outlines that there was no contention between herself and the Claimant for some time and that they had worked in unison, with the law firm E. D. Davis & Associates in order to assist with the administration of the estate of the deceased.
- [18] She states that she implored the Claimant, on numerous occasions, to assume some responsibility in the management of her father's affairs and even after having obtained the Grant of Letters of Administration, the Claimant failed to exercise her duties as Administratrix.
- [19] Exhibiting what she states to be one of many Powers of Attorney issued to her in order to manage the estate, the Defendant states that she acted as the deceased's agent and managed all his affairs and businesses. She maintains that the sums generated from the rent, which she managed to collect, could not and would not sway her to continue to maintain her father's affairs, but rather, that she did so in order not to see his assets wasted.
- [20] The Defendant states further that the highest rental fee paid by any of the tenants, fifteen thousand dollars (\$15,000.00), was paid by only three (3) tenants, the lowest paid rent amounted to five thousand dollars (\$5,000.00), and the most common rental sum was twelve thousand dollars (\$12,000.00). All of these she outlines, were not paid on a consistent basis.
- [21] She also states that the monies spent to conduct major repairs to the properties included work done on the roof, for retiling, repairing kitchen cupboards, replacing doors and bathroom fixtures, painting exteriors, cutting the yards, plumbing work and drawing and cleaning of the pit several times, at the property located at 85 August Town Road.

- [22]** In exhibiting receipts, she highlights a trend of expenditure amounting to the sum of seven hundred and ninety-five thousand dollars (\$795,000.00) for repairs and maintenance of the properties up to July 2016. She states that having not been required to keep a strict account prior to her father's death, she can say all the expenditure in up-keep of the properties amounts to "hundreds of thousands of dollars".
- [23]** She also exhibits receipts of deposits amounting to one million, two hundred and twenty thousand, two hundred dollars (\$1,220,200.00) lodged to the bank account of the Claimant's sister, Ms. Sandra Syan Brissett, from September 11, 2007 to November 10, 2014, and outlines that these sums were paid over in such a manner by the direction of the Claimant. The Defendant also states that the sum of three thousand United States of America dollars (USD\$3000.00) was paid over by her, to the Claimant shortly after the death of the deceased, and was on an occasion she visited Brooklyn, New York, in the USA, where she met with the Claimant at a Burger King branch, agreed upon.
- [24]** The Defendant contends that she contributed financially to the construction of the apartment complex located at 3 University Road and that the deceased had made representation to her that she was entitled to an apartment she chose, and she has been living there ever since its construction, some 20 years ago. She states that her husband and daughter have also been living there with her for approximately nine (9) years and she has treated it as her own. She exhibited property tax receipts for the premises showing payments between 2007 and 2012 and maintains that the property taxes have been paid up to 2017.
- [25]** She exhibited two receipt books for rent said to be collected from tenants, from November 2006 to July 2012 and August 2013 to November 2016. These amounted to two million, three hundred and ninety-two thousand dollars (\$2,392,000.00) and one million, nine hundred and ninety two thousand dollars (\$1,992,000.00) respectively. She also exhibited a schedule for rent, prepared by Copeland Shaw of Woodburn & Shaw Business Solutions Limited, for the

period of 2010 to 2016, totalling some thirteen million, five hundred and sixty-two thousand dollars (\$13,562,000.00). Exhibited also was a schedule of expenses relating to the three properties and a schedule of monies sent to the Claimant from 2007 to 2015 amounting to eight million dollars (\$8,000,000.00) and two million, seven hundred and fifty-two thousand, three hundred and twenty-two dollars (\$2,752,322.00), respectively.

[26] The Defendant exhibited a copy of a statement from Grace Kennedy Remittance Services Limited dated February 14, 2017 outlining an amount of one million two hundred and sixty-four thousand, seven hundred and one dollars and eighty-six cents (\$1,264,701.86) in total, as sent to the Claimant between October 2010 and December 2013. She asserts that of the twenty-seven (27) tenants combined, of the three properties, only about half of them paid their rent, while the other half refused by threatening physical harm to her and there existed no written tenancy agreements, to her knowledge, between the deceased and the tenants, other than for a shop rented by the University of the West Indies and another rented by the Jamaica National Building Society. The Defendant further outlines that, of the tenants who did in fact pay rent, they did not do so on a consistent basis and these conditions, she says, are common, given the nature of the August Town area.

[27] When cross-examined by Mrs Thomas, she admitted that the Powers of Attorney only lasted for up to five (5) years and were not intended to last forever. She outlined that it is due to the Claimant's disinterest in the properties, as well as her interest as beneficiary, she continued to assume responsibility for managing the affairs of her father, after his death, by 'looking about them' through maintenance, repairs and collecting rental income.

[28] She vehemently denied that she had utilized any rental income for her personal use and insisted that 'every single cent collected as rent' from the tenants were paid over to the Claimant or to whom she directed her to pay, or was spent on the maintenance and up-keep of the properties. She maintained that she had not

been required by her father to keep receipts of rent, and would discuss expenditure only when he came to visit the island. She stated that she would not be required to keep receipts of expenditure, but would do so on occasions and stated that she had not needed to, because she and her father had regular discussions about the management of his affairs.

The Issues

[29] The court now has to determine whether the Defendant should be required to give an account of rents received from tenants at the three properties owned by the deceased and whether an order ought to be made directing the Registrar of Titles to remove the caveat lodged by the Defendant against the property at 3 University Road.

The Submissions

[30] I am grateful to Counsel for the extensive submissions provided which addressed the issues to be determined by the court. I will not restate these detailed submissions, but Counsel can rest assured that I have taken them all into consideration and will make reference to them as I see it necessary to explain the reasons for my decision.

The Law and Application to the facts

[31] It is trite law that a person appointed by the court to act as Personal Representative of an estate of a deceased person may sue in the name of the estate to recover sums to which the deceased was entitled and remained outstanding upon the passing of the deceased.

[32] It is also well settled that where a person intermeddles in an estate in such a way as to denote the assumption of authority or an intention to exercise the functions of an executor, he may be treated as an executor de son tort and is liable to be sued by the rightful representative, beneficiaries and even creditors. As stated by Simmons J in **Howard Jacas (Executor estate Sylbert Juan Jacas, deceased)**

v Bryan Jacas and Bryan Jacas (Attorney of Thelma Jacas) [2014] JMSC Civ 190 at paragraph 26, "...the slightest acts of interference are sufficient to attract that designation"

[33] In the instant case, the Claimant in her capacity as administratrix of the estate of the deceased is therefore entitled to bring a claim against the Defendant whom she alleges, has intermeddled in the estate of the deceased by instructing tenants not to pay rent to her or her attorneys at law. Although the Defendant has denied that specific allegation, she agreed that she continued to collect rental income and to manage the affairs of Mr Alan Rowe even after his death. A determination therefore has to be made whether she should account for the sums collected.

Whether the Defendant should account for rental income received from the properties.

[34] The issue of whether the Defendant should be ordered to account for the rent collected by her from the properties of the deceased, must be addressed by assessing whether the sums reasonably due to the estate by the tenancy arrangements between the deceased and existing tenants have been accurately accounted for by the Defendant and whether that which was sent to the Claimant or spent on the management and maintenance of the properties, reasonably account for that which was collected.

[35] It is the evidence of both parties that there exists an issue with regards to the collection of rental income from the tenants of the properties. The Defendant has asserted that she has been threatened by acts of violence on occasions she attempted to collect rent, while the Claimant has stated that having served the existing tenants with letters notifying them to pay rent to her Attorneys-at-Law, the tenants failed to do so and she has had to resort to serving Notices to Quit. I therefore find it reasonable to conclude that the Defendant did not collect rent on

a consistent basis, and that it is more likely than not that she has not received all the rents up-to-date, from all existing tenants.

- [36]** The Claimant contended that the Defendant had not kept record of the rent received, but on the evidence, I find that Janet Rowe, although not having been required to do so by her father, had been doing so at least from November 2006 to November 2016. She has provided a schedule of rent, expenses and monies sent to the Claimant, which exhibits an amount of \$13,562,000.00 generated from 2010 to 2016 as rental income. Of this \$8,000,000.00 was said to be spent on maintenance and repairs of the properties and \$2,752,322.00 sent to the Claimant. It is contended that of that latter amount, the only evidence of payment the Defendant had exhibited amount to \$1,894,701.00, \$857,621.00 less than the sum outlined in the schedule. This sum, the Defendant maintains, was handed over to the Claimant. The Claimant has however, put forward no evidence of how or when monies were received by the Defendant and has put the Defendant to strict proof.
- [37]** Essential to the issue of proper accounting by the Defendant, therefore, is the sum of eight million dollars (\$8,000,000.00) which the Defendant has asserted was paid as expenses for upkeep of the properties, a sum of \$2,809,678.00 which she maintained was used to pay debts and an amount of \$20,000.00 per month, which she asserts her father allowed her to retain in order to pay her utilities and for her work in managing the estate. The difficulty with the assertion of the Defendant is that receipts provided by her for expenses of maintenance and repair amount to \$786,500.00.
- [38]** Although the Claimant attempted to show that the expenses centered around the property in which the Defendant resides, I find this to be highly speculative. It instead, is quite reasonable to assume that the Defendant has produced these receipts in relation to all the properties, considering that 12 apartments exist on the complex on which she resides and some wear and tear must have manifested while she was managing all the properties.

- [39]** Additionally, I find that the Defendant has not shown in her evidence any reasons for which monies were paid to settle debts of the estate and when, or to whom these were paid. This would tilt the scale in favour of a finding that the Defendant has in fact failed to properly account for the expenditure from rental income for the estate. However, I accept that when one considers the work she claims to have done managing the affairs of her father prior to his death, without being required to give any formal accounting, all she continued to do prior to the Claimant applying for and receiving a grant of administration, in addition to what she continued to do subsequently, some of which I find were with the full knowledge of the Claimant, I find on a balance of probabilities that she would not be able to provide exact or complete figures to account for all she has been doing over the years.
- [40]** I bear in mind also the evidence of the Defendant, which I accept as true, that of the number of tenants combined in the three properties, only about half of them used to pay rent, the other half refused and even those who paid, did not do so consistently.
- [41]** I have also considered the timeline of events, and bear in mind that, not having been required to supply receipts to the deceased during his lifetime, which I accept as a fact, or to the Claimant after his death, it would be unreasonable to expect that she would have kept every single receipt prior to his death and after almost seven years after his death in order to supply physical evidence to satiate the Claimant's contention of whether there has been proper accounting of the rental income.
- [42]** It is not for the Defendant to prove the case for the Claimant. There is no evidence to show that all the tenants have been paying rent or paying on a regular basis or that the need did not arise for sums collected as rental to be spent on the maintenance and upkeep of all the properties over the years and amounted to "hundreds of thousands of dollars". The Claimant has not satisfied the court on a balance of probabilities that the Defendant has not reasonably

accounted for the income from the properties and on the evidence of the Defendant, together with exhibits provided by her, I find that she has given a reasonable account of the rental she has collected from the properties and how these sums were spent.

Whether the Defendant has an interest in Apartment 3C University Road/ Whether the court should direct the Registrar to remove the caveat

[43] The central focus in addressing the issue of the caveat lodged by the Defendant, includes a determination of the nature of her occupation and possession of the premises and the capacity in which she been occupying same. The determination of this aspect of the case is dependent on a consideration of both law and equity.

[44] It is trite law that where a person has acquired no interest in property, he cannot retain occupation or possession as against the rightful owner or his appointed representative.

[45] The Claimant has asserted that the Defendant was let into possession of Apartment 3C by the consent of her father, was an object of her father's generosity and as such remained a licensee for the duration of her occupation while the Defendant is maintaining that she was given the apartment 3C by her father. In the alternative, however, the Defendant has stated that she has acquired an interest by adverse possession and that the relief sought by the Claimant is statute barred.

[46] Pursuant to section 3 of the **Limitations of Actions Act, 1881**:

"No person shall make an entry, or bring an action or suit to recover any land or rent, but within twelve years next after the time at which the right to make such entry, or to bring such action or suit, shall have first accrued to some person through whom he claims, or, if such right shall have not accrued to any person through whom he claims, then within twelve years next after the time at which the right to make such entry, or to bring such action or suit, shall have first accrued to the person making or bringing the same."

- [47] In conjunction with Section 3, the provisions of Section 4(a) is also relevant for these purposes as it states:

“The right to make an entry or bring an action to recover any land or rent shall be deemed to have first accrued at such time as hereinafter is mentioned, that is to say-

(a) when the person claiming such land or rent or some person through whom he claims shall, in respect of the estate or interest claimed, have been in possession or in receipt of the profits of such land, or in receipt of such rent, and shall while entitled thereto have been dispossessed, or have discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was so received;”

- [48] The effect of the expiry of the limitation period prescribed by Section 3 is set out in Section 30 as follows:

“At the determination of the period limited by this Part to any person for making an entry, or bringing any action or suit, the right and title of such person to the land or rent, for the recovery whereof such entry, action or suit respectively might have been made or brought within such period, shall be extinguished.”

- [49] In **Ramnarace v Lutchman** [2001] 1 WLR 1651 where the determination before the Court was whether the occupier was a tenant-at-will and could claim, under section 9(1) of their Limitations Act, for adverse possession, or whether the occupier was merely a licensee, occupying by an act of generosity by a family arrangement, Lord Millet highlights in paragraph 17 that:

“A person cannot be tenant at will where it appears from the surrounding circumstances that there was no intention to create legal relations. A tenancy is a legal relationship...Before an occupier who is in exclusive possession of land can be treated as holding under a licence and not a tenancy there must be something in the circumstances such as a family arrangement, an act of friendship or generosity or suchlike, to negative any intention to create legal relations.”

In paragraph 18 he explains that:

“In the present case the appellant was allowed into occupation of the land as part of a family arrangement and at least in part as an act of generosity. But not wholly so, for the appellant testified that the intention of the parties was that she would buy the land when she could afford to do so, and the judge accepted her evidence. Her uncle was generous in that he allowed her to remain indefinitely and rent-free pending her purchase”

Further, at paragraph 20, he states:

“...the Court of Appeal gave insufficient weight to the fact that the appellant was throughout in exclusive possession and that her occupation was attributable, not merely to her uncle’s generosity, but to the parties’ intention that she should purchase the land in due course...she must be taken to have entered into possession of the disputed land... as an intended purchaser and as a tenant at will.”

[50] In **Recreational Holdings Jamaica Limited v Carl Lazarus and the Registrar of Titles** [2014] JMCA Civ. 34, Morrison JA, as he then was, indicated that “adverse possession cannot be claimed by a person whose possession was obtained and continued by virtue of the consent, grant or otherwise from the true owner whom he claims to have dispossessed...”

[51] If the Defendant’s possession is under a licence, it therefore cannot be adverse, and she would have acquired no interest in the apartment during the lifetime of her father. This licence would have been revoked on his death. According to Lord Walker in **Clarke v Swaby** [2007] UKPC 1:

“...it is perfectly clear under the law in Jamaica ..., a person who is in occupation of land as a licensee cannot begin to obtain title by adverse possession so long as his licence has not been revoked. Unless and until it is revoked, his occupation is to be ascribed to his licence, and not to an adverse claim.”

[52] If there was the mere consent by the deceased for the Defendant to occupy the premises, the Defendant would not have met the 12 year statutory minimum to allow what Sykes, J (as he then was), refers to in the case of **Arthur McCoy and Marcia McCoy v Fitzroy Glispie** [2012] JMCA Civ. 80 at paragraph 42, as an:

“extinction of title, extinction of the right to repossess and extinction of the right of re-entry.”

- [53]** In view of the foregoing authorities, I find that on the evidence placed before me the Defendant was never a licensee. It is more likely than not that, the Defendant has occupied the apartment 3C on her reliance that the deceased gave the apartment to her, as her own, and as such she acquired an interest therein. She has been in occupation of the apartment from 1997 and her evidence, which has not been controverted, is that she lives there with her family and allowed the deceased, on one occasion, and the Claimant, on an occasion with the deceased, to remain in the living room space, when they were visiting the island. The Claimant has not put forward any evidence to show that the deceased, during his lifetime treated the particular apartment as his own and was merely allowing the Defendant to occupy same.
- [54]** I reject, as speculative, the argument of the Claimant that simply because the property was listed in the Power of Attorney granted to the Defendant, had the deceased intended for her to retain the specific apartment as her own, he would have omitted it from the Power of Attorney. This property is a complex comprised of 12 apartments which the Defendant has given evidence that she was responsible to manage and maintain. The Power of Attorney spoke to the property, as a whole, and as such, I find that it would not be reasonable to draw such an inference, considering the fact that the Defendant was vested with the responsibility for managing the entire complex, as well as other properties.
- [55]** Reliance was also placed on the fact that the Defendant has not taken steps to transfer the apartment in her name, but I find that this also does not sufficiently rebut the possibility that the apartment was in fact given to the Defendant by the deceased. It is further diminished, to some extent, by the fact of the property tax receipts the Defendant has exhibited as evidence to substantiate her objection to the Claimant’s case. The Defendant having retained exclusive possession of the apartment and having treated it as her family’s home even prior to the death of the deceased, combined with lack of evidence from the Claimant showing that

there was any intention on the part of the deceased, to treat the specific apartment as his own, leads me to find, on a balance of probabilities, that the Defendant had in fact been gifted by the deceased with Apartment 3C.

[56] I find that the Defendant gained an interest in the property by her reliance on the representation of the deceased that Apartment 3C was being given to her as her own. In my view, the Defendant was reasonably entitled to and in fact relied on her father's assurances that Apartment 3C was hers. These assurances I accept were expressed by the deceased to the Defendant, as well as shown by his conduct. In relation to his conduct, even on the evidence of the Claimant, for example when they visited, I find that the deceased gave full control of the apartment to her. I bear in mind also that she was not required to pay rent for the apartment.

Proprietary Estoppel

[57] In the case of **Essex Plant Limited v Broadminster**, [1988] 56 P & CR 353, Lord Hoffman highlights that where an occupier is let into possession pending the exercise of an option, the occupier retains an interest in the land immediately and his/her possession is merely ancillary. In view of this, I find that the representation of the deceased to the Defendant, and the Defendant having taken the apartment and established it as her family's home, and having lived there for over 20 years on reliance of the representation, and the detriment that she would face if this representation is revoked 20 years later, she acquired an interest in the apartment, and her possession of same was ancillary.

[58] In **Dillwyn v Llewellyn**, [1862] 45 E.R. 1285, at page 1286, Lord Westbury L.C. illustrates the scenario in which proprietary estoppel will apply as follows:

"If A puts D into possession of a piece of land and tells him, "I give to you that you may build a house on it", and D on the strength of that promise, with the knowledge of A, expends a large sum of money in building a house accordingly I cannot doubt that the donee acquires a right from the subsequent transaction to

call on the donor to perform that contract and complete the imperfect donation that was made.”

[59] I agree with counsel for the Defendant that expenditure of money is not a necessity for the remedy of proprietary estoppel to be available, and as such, even in the absence of exorbitant expenditure by the Defendant, the remedy is still available to her.

[60] I find support in the case of **Greasley and Others v Cooke**, [1980] 1 WLR 1306 where Lord Denning MR, at paragraph 1309 f to g, states:

“It so happens that in many of these cases of proprietary estoppel there has been expenditure of money. But this is not a necessary element. I see that in Snell on Equity (27th Edn, 1973, p 565) it is said that A must have incurred expenditure or otherwise have been prejudiced himself’. But I do not think that is necessary. It is sufficient if the party to whom the assurance I given, acts on the faith of it, in such circumstances that it would be unjust and inequitable for the party making the assurance to go back on it...”

[61] In **Annie Lopez v Dawkins Brown and Glen Brown** [2015] JMCA Civ. 6, the Court of Appeal referred to the ingredients for proprietary estoppel as, a representation by one person to another capable of giving rise to an expectation, evidence of reliance on that representation by the person to whom the representation was directed and resultant detriment or disadvantage to the person relying on the representation should it be unconscionably withdrawn.

[62] I am of the view that all the ingredients for proprietary estoppel, which would allow equity to step in to restrict the Claimant from asserting that the Defendant has no interest or right in Apartment 3C of the property located at 3 University Road and request the Court to direct the Registrar of Titles to remove the caveat, are in place in the case at bar. The Defendant, in this case, received a representation from the deceased on which she relied. She would be prejudiced and it would be detrimental to her, leaving her without a home, should the Claimant decide to exercise power of sale.

[63] Upon the facts, it is my firm belief that the rights of the deceased, as title owner, have been extinguished and new rights were created and passed to the Defendant in 1997 when she entered into possession. Having gained an interest in Apartment 3C, the Defendant therefore retains the right to lodge a caveat against the Certificate of Title of the property located at 3 University Road.

Conclusion and Disposition

[64] Based on the nature of the claim and the burden of proof which rests on the Claimant as a consequence, I must point out that I found it surprising at the insufficiency of the evidence proffered by the Claimant in support of her claim. She had no knowledge of when the apartments at 3 University Road were built, whether the apartments were all tenanted or whether any or all the tenants were in fact paying rent. Additionally, she did not know the circumstances under which the deceased had given the Defendant the apartment although she contended that the Defendant was a mere licensee. She gave no evidence as to how or when the Defendant came into possession of the property and had no idea how long she had been living there or who in fact occupies the apartment and neither was she aware of any arrangements between the deceased and the Defendant as it relates to her assertion that she collected a monthly sum of \$20,000.00 from the rental income.

[65] The effect of the paucity of evidence on the part of the Claimant is that this court cannot find on a balance of probabilities that the Defendant has not accounted satisfactorily for monies collected as rental from the properties owned by her father or that her factual possession and occupation of Apartment 3C from 1997 to present, is not as a result of her having an interest in the said premises.

[66] Additionally, I must point out that during the course of the trial, having assessed the demeanour of the parties, I was more impressed with the demeanour of, and the evidence given by Janet Rowe. She impressed me as a witness of truth. Her responses to questions in cross-examination were spontaneous and she had no

difficulty in admitting that she had in fact continued to collect rental income and managed the affairs of the deceased after her father's death and even indicated that she could have sold the property if she chose to.

[67] The Claimant, on the other hand, was hesitant and cautious. She had the burden of proving that the Defendant had not accounted for proceeds of rent collected from the properties but her evidence-in-chief and evidence elicited by way of cross-examination showed that she had no facts to substantiate her claim in respect of the Defendant's possession and occupation of Apartment 3C and neither did she provide evidence from which this court could find on a balance of probabilities that the Defendant has not accounted satisfactorily for proceeds of rent collected from the properties she managed prior to and even after the death of Allan Rowe.

[68] The claim is therefore dismissed with costs to the Defendant to be agreed or taxed.