



[2022] JMSC Civ 76

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU 2019 CV 02528

BETWEEN	ORLANDO CAMPBELL	CLAIMANT
AND	ANTHONY MEIKLE	DEFENDANT

IN CHAMBERS

Mr. Craig Carter Instructed by A. McBean and Company for the Claimant

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

Heard: May 18 and June 24, 2022

Power of Attorney; Proprietary Estoppel; Equitable Interest; Agency

S. Barnes, J (Ag)

[1] This is a claim brought by Orlando Campbell against the Defendant Anthony Meikle (by his agent Lloyd Campbell), seeking the following:

1. An order to restrain the Defendant from selling the property, 54 Harwood Drive, Washington Gardens, Kingston 20, Registered at Volume 950 Folio 357 in the Register Book of Titles.
2. An order to restrain the Defendant or his servants or agents from demolishing, damaging or removing the structure built by the Claimant on the said property.

3. An equitable interest “by way of an irrevocable and perpetual licence binding on successors in title, to remain on the property.”

The Evidence

[2] Orlando Campbell makes this claim, because in 2016 he built a house at the rear of the subject property, owned by Anthony Meikle. He says he had written permission to build from his uncle, Lloyd Campbell, who has a Power of Attorney from the owner (Anthony Meikle) with respect to the property.

[3] The Exhibits tendered, as agreed between Counsel in the trial, are:

- 1) Exhibit 1 – Power of Attorney dated April 2, 2014
- 2) Exhibit 2 – “Letter” signed by Lloyd Campbell permitting the Claimant to build on the property dated February 14, 2016
- 3) Exhibit 3 – Jamaica Constabulary Force Customer Reference Form from Denham Town Police Station dated June 8, 2017
- 4) Exhibit 4 – Registered Title to 54 Harwood Drive, Washington Gardens, Kingston 20, Registered at Volume 950 Folio 357

[4] Exhibit 1, the Power of Attorney, which is at the centre of this matter, states:

I, Anthony Meikle, give[s] Lloyd George Campbell revocable Power of Attorney to manage my property located at 54 Harwood Drive, Washington Gardens Kingston 20, Jamaica West Indies.

His responsibility is to maintain and collect rent obtained for the large portion of the house and payment will be free occupancy of the small side of the house. He is authorised to obtain necessary power and light and be responsible for the charges incurred as of April 2014 for that portion of the house.

- [5] The document is duly executed, stamped and registered at the Registrar General's Department.
- [6] The Claimant says he was shown the Power of Attorney, and under cross examination said that his understanding was that Mr Meikle had no intention of returning to Jamaica and the property was given to his uncle Lloyd and his father Christopher as a gift.
- [7] Having seen this document, the Claimant said further under cross examination that he "did not feel completely comfortable until my uncle gave me a written permission to build." It was the Claimant who wanted more than "oral" permission, and insisted on getting "something in writing". He said Lloyd Campbell obliged, and gave him the permission which has become Exhibit 2 in this trial, as his proof of this.
- [8] Exhibit 2 states:
- I Lloyd Campbell hereby give Orland Campbell permission to construct a house on the property located at 54 Harwood Drive Kingston 20, which I Lloyd Campbell was given to responsibility to maintain the property.*
- Said document bears the signature "Lloyd Campbell" and is dated 14/02/16.
- [9] The Claimant's evidence in Affidavit filed June 20, 2019 is that he moved into the structure he erected on the premises "between March and May 2017". He also stated that Lloyd Campbell filed suit in the Parish Court against him for Recovery of Possession in August 2017.
- [10] The Defendant Anthony Meikle is obviously quite elderly and had some difficulty recalling facts and issues in the case. Even in answer to the court regarding his age and date of birth, he seemed awry. But on this he is adamant: he gave no one permission to build on his property.
- [11] Mr Meikle recognised his Power of Attorney (Exhibit 1) and says it was given to Lloyd Campbell "to maintain and collect rent for the large portion of the house." As in his Affidavit filed September 16, 2019, Mr Meikle also insisted under cross

examination that he knew not of the Claimant and his father living at the property, or further, that the Claimant was building/had built a house thereon.

[12] The 'agent' Lloyd Campbell in his Affidavit filed on September 16, 2019 said he saw the document Orlando Campbell claimed he signed giving him permission to build on the property, but he signed no such document and it is "clearly a forgery". He said Orlando Campbell told him he got permission from the owner Mr Meikle himself. But when he himself asked Mr Meikle, he said he had given him (Orlando) no such permission,

[13] He also said when he told the Claimant to stop building, his brother, the Claimant's father, Christopher Campbell, who was then occupying the 'large' side of the main house, threatened him with violence. He made reports to both the Duhaney Park and Denham Town Police Stations, as evidenced by Exhibit 3.

[14] Lloyd Campbell also under cross examination that he did not take the Claimant and his father to court for rent. "I couldn't sue Orlando for rent. Him nuh live inna wehy mi fi sue him. A him a try capture the man place," he said. When asked if he took him to court to stop him from building, his answer was "And to come out. Him and him father."

[15] Mr Lloyd Campbell was adamant that he never gave any permission for the Claimant to build on the property. His demeanour was observed by the court, as he appeared agitated and defensive.

Law and Analysis

[16] The parties are *ad idem* that the Claimant saw/read the Power of Attorney. Said Power of Attorney is limited in its scope, giving the holder responsibility for the large portion of the house. There is nothing therein which could give rise to the interpretation or assumption by the Claimant that Mr Meikle had no plans to return to Jamaica and that the property was gifted to his father Christopher Campbell and uncle Lloyd Campbell.

- [17] The Claimant's Attorney intimated that his client was "encouraged" to build on the property and having done so he has acquired an equitable interest through Proprietary Estoppel. Here he relies on authorities as outlined in the bundle filed May 17, 2022, all of which were instructive and helpful to the court.
- [18] **Liggins v Inge [1831] 7 Bing 682**, one of the authorities used, is distinguishable from the instant case, as in **Liggins** the licence was given (though orally) by the person with legal authority to do so. In the case at trial, Lloyd Campbell had no such legal authority.
- [19] In **Earle Alexander Shim v Sylvia Elmay Shim and Elizabeth German** 2005 HCV 02986, Brooks J (as he was then), stated, in the Judgement of 16th May 2008:
- In **The Doctrine of Proprietary Estoppel**, 2nd Ed. the learned author Mark Pawlowski treats, as essential to the doctrine, the existence and action, of a legal owner of the property in question. He states at page 1: "The essence of proprietary estoppel is that if a legal owner of land has so conducted himself, either by encouragement or representations, that the claimant believes that he has or will acquire some right or interest in the land and has so acted to his detriment on that basis, it would be unconscionable for the legal owner to assert his strict legal rights."*
- [20] The Claimant also quoted from **Snell's Equity** 29th Edition page 573 which also raises the issue of "representation or encouragement", as well as other authorities, all of which were taken into consideration.
- [21] I noted the statement of Edwards JA in **Carmen Cranston v Tamazine Samuels et al** [2019] JMCA Civ 42 at paragraph 63 in particular, and will state here that the Claimant cannot rely on any authority he claims to have sought and received from the agent. He saw for himself the extent of the Agent's authority and has not said that the owner acquiesced, accepted or consented to him building on the property.
- [22] The Claimant also referred to author Sampson Owusu's text: **Commonwealth Caribbean Land Law** 2007. But I will take him a step further and quote from page 186, where the author summarized the principles of proprietary estoppel/acquiescence as follows:

'The doctrine of acquiescence allows a person who develops the land of another in the glare or with the knowledge of the landowner to lay claim to or recover the land together with the developments on the land effected by him. This is possible only if the land owner makes a promise of a grant of the land to the person or stands by and does not assert his title to the land while the person develops the land. The doctrine can be invoked not only where the land owner makes an express promise of a grant of the land but also where he stands by and by his silence encourages the person to develop the land.' ...

'There should therefore be a representation on which the stranger relied to his detriment. That is an encouragement or assurance or any conduct on the part of the landowner which makes the stranger believe that he has or will have title or some interest in the land.'

- [23]** At no time did the Claimant say he sought and received authority from “the legal owner”. Yet he knew who that person was, described him as his cousin, and saw the Power of Attorney he executed.
- [24]** The argument he raised about being “encouraged” to build on the property by the agent Lloyd Campbell, is somewhat far-fetched, given that said agent had no such legal authority.
- [25]** Further, the claimant says he was ‘uncomfortable’ with what he saw in the Power of Attorney. This discomfort, the court contends, comes from what he discerned in the Power of Attorney which did not authorise the holder to give permission to build on the land and this heightened his quest for “more”. He therefore sought “written permission.”
- [26]** But Lloyd Campbell is adamant that he never wrote or signed the permission letter (Exhibit 2), as he was in no position to give permission to build on the land and claimed, under cross examination, that he could not read well. The court noted

that he brought no independent evidence to support his strident claim that the signature on the letter was a forgery or that he had a 'reading challenge'.

[27] But **even if** that letter of permission (Exhibit 2) was indeed signed by Lloyd Campbell, he had no such authority and that renders the letter void.

[28] The Claimant took a risk and acted to his detriment on his own volition.

[29] The Defendant, through his Attorney Mr John Givans, is contending that in this case where the Defendant and owner of the property is a "disclosed principal" he is "not bound by any act of his agent which is outside the scope of the agent's actual or apparent authority, unless the principal in fact authorised the agent to do the particular act or ratified it" – **Bowstead on Agency** 15th Ed pp 92-92; 308-309.

[30] He further quoted from other cases of some vintage in which the principal was not bound by the agent's actions where no such authority was given.

[31] In any event, the maxim "He who asserts must prove" is applicable, and the Claimant has failed to prove his case to the satisfaction of the Court.

[32] Mr Carter for the Claimant, has also asked the court to assess the evidence and demeanour of the witnesses and to determine who was more credible in the circumstances. There were indeed discrepancies between what was stated in the Affidavit and what was said under cross examination in court – particularly by Mr. Meikle. But said discrepancies/utterances did not go to the root of the case and the court has already mentioned how he appeared.

[33] In this case, the law and facts trump the demeanour and credibility of the witnesses and leads to the only conclusion which could be reached in the circumstances.

Findings

[34] The Court finds on a balance of probabilities, that:

- a) The Claimant has failed to establish he had the authority of the Defendant/owner to build on the property located at 54 Hardwood Drive, Washington Gardens, Kingston 20.
- b) The Claimant has failed to establish that the Defendant and owner of the property has no authority to sell or otherwise deal with the subject property.
- c) The Claimant has failed to establish that he has an equitable interest in the property or that proprietary estoppel applies and there is therefore no need to assess whether his interest gives rise to an irrevocable/perpetual licence.

The Orders are:

- 1) Judgement for the Defendant.
- 2) Cost to the Defendant to be taxed if not agreed.
- 3) Injunction granted on September 24, 2019 on the Application of the Claimant is discharged.
- 4) The Defendant's Attorney-at-Law is to prepare, file and serve these orders.