

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF
GUYANA

COMMERCIAL JURISDICTION

2017-HC-DEM-CIV-FDA-1050

BETWEEN:-

**DEMERARA CONTRACTORS AND
ENGINEERS LIMITED**, a company
incorporated under the Companies Act of
Guyana, Chapter 89:01.

Claimant

-and-

PRITIPAUL SINGH INVESTMENTS INC., a
company incorporated under the Companies
Act of Guyana, Chapter 89:01.

Defendant

BEFORE THE HON. JUSTICE NARESHWAR HARNANAN

APPEARANCES: Mr. Timothy Jonas - Claimant
Mr. Neil Boston SC - Defendant

DECISION:

BRIEF FACTS:

1. The Claimant seeks possession of a portion of property they own by transport which is currently occupied by the Defendant. They contend that the Defendant is not entitled to enter and remain on that portion of their property. They also seek damages for trespass and a permanent injunction against the Defendant from entering upon the said land.
2. They contend that the Defendant surreptitiously moved onto the land in question and began clearing, filling and constructing thereon without their permission and knowledge. They contend that it was only after a fire which cleared some of the dense overgrowth that they became aware of the

Defendant's incursion on the land, at which point they initiated steps to assert their ownership.

3. This portion of property is located in Providence on the East Bank of Demerara, abutting the Demerara River. The Defendant denies the claims of the Claimant and contends by their pleadings that they had purchased the lands in question from their predecessors in title as part of the transported property they acquired from them (Georgetown Seafoods Ltd), as described in Transport.
4. They further contend that even if the portion of the property is owned by the Claimant, they (the Claimant) knowingly failed to assert its right against the occupation and development by the Defendant, to its detriment. They contend that the Claimant would have acquiesced to the Defendant's activities in the property, which is now subject to the doctrine of proprietary estoppel.
5. They have counterclaimed substantially for an order to convey the disputed portion of land in their name.
6. The issues in this matter are:
 - I. Whether the Claimant owns the property in dispute.
 - II. Whether the Defendant has established an equity, as they have claimed.
 - III. If so, whether the Claimant is estopped from asserting its title to the said property.

ISSUE I: Whether the Claimant owns the property in dispute.

7. This issue was ultimately not contested by the Defendant [*See paragraph 4 of the Defendant's substantive submissions acknowledging the Claimant's ownership*]. This Court also believes the expert evidence of Mr Randolph Choo-Shee-Nam, Sworn Land Surveyor, brought by the Claimant. He gave cogent evidence that the subject land in dispute forms part and parcel of the Claimant's transported lands. His plan, which was tendered into evidence and marked *Exhibit C*, detailed the relevant portions of land, P and W, with W identified as being the disputed area.

ISSUE II: Whether the Defendant has established an equity, as claimed.

8. This is the major issue in this matter. The Defendant may be entitled to various orders if this issue is resolved in its favour. The Defendant is claiming an equity in the said land based on the doctrine of proprietary estoppel, whereas the Claimant has alleged that the Defendant is a trespasser.
9. For context, this disputed portion of land is mainly foreshore land with river frontage, as described by Mr. Choo-Shee-Nam (hereafter, CSN). This is a matter of fact.
10. The evidence before the Court strongly suggests that this area in 2015 was unoccupied, low and marshy, overtaken by vegetation of various heights and prone to being inundated, whenever the river tide flows. This is also not disputed.
11. Portion W is at the rear of Portion P. Portion P is occupied by agents of the Claimant. Portion P is fenced and has buildings in various states of repair – one of which is a storage bond used by its parent company, Demerara Distillers Ltd.
12. The evidence led by the Claimant also reveals that Portion P is not populated with managerial level employees of the Claimant, on a regular basis. The evidence of the Claimant's Projects Manager, Kenneth Ragnauth, that Portion W is not ordinarily visible from the business operations of the Claimant on Portion P, was not contradicted by the Defendant.
13. Ragnauth further testified that the business operations take place in the bonds, which face the public road and which obstructs the view to the rear of the property preventing visibility of Portion W. He also testified that the vegetation to the rear of Portion P did not allow for an unobstructed view of Portion W.
14. The Claimant's expert CSN also testified that he undertook a valuation of the portions in January 2015, at which time his inspections revealed that Portion W did not house any buildings, was undeveloped and

overtaken by bush. He also testified that there were no civil works or other development visible on Portion W at that time.

15. Under cross examination, CSN maintained that Portion W was overgrown with bush and courida plants, some being 15 feet in height in 2015 when he did his valuation. This Court had no reason to doubt CSN's veracity. This Court formed the impression that CSN was forthright with the Court and being true to his duty as an expert witness to provide opinion evidence that is fair, objective and non-partisan.

16. In fact, even witnesses for the Defendant acknowledged the state of Portion W, as well as to the kind of activity on the Claimant's Portion P. The Operations Manager of the Defendant, Lakeram Rameshwar testified under cross examination that before the Defendant constructed their 'Readymix building' with a blue roof on Portion W, the area was '**sheer bush**' which had to be cleared before the building could be constructed.

17. He testified further that the construction of that building took 4 months to build and was completed in April of 2016. As to the nature of activity on the Claimant's Portion P, he testified that he has seen machinery east of where the Defendant was working on Portion W, for instance trucks going in and out, but not on a daily basis.

18. The Defendant's Deputy Managing Director, Vishnu Panday also testified that he has never seen persons at the Claimant's bond on Portion P. He acknowledged that there is an office to the eastern side of the said bond and he has seen persons in that office. He further testified that he did not know who those persons were and whilst he saw them regularly, he did not know how often they go there and what they do. He confirmed that he has never seen anybody else on Portion P, other than the persons in the office.

19. The interest that the Defendant is claiming to have acquired in Portion W is grounded in the doctrine of proprietary estoppel. This Court expresses gratitude to both Counsel for their erudite submissions on the law in this regard. They were both quite helpful to the Court.

THE LAW:

Proprietary Estoppel:

20. In ***Muschinski v Dodds*** [1985] 160 CLR 583, at pages 615-616, *Deane J*, in the High Court of Australia, noted that:

Under the law of this country - as, I venture to think under the present law of England...*proprietary rights fall to be governed by principles of law and not by some mix of judicial discretion, subjective views about which party 'ought to win'...and the 'formless void' of individual moral opinion...*

21. *Wilken and Ghaly*, wrote in ***The Law of Waiver, Variation, and Estoppel***, OUP, 3rd Edition, 2012, at page 210 that:

The doctrine of proprietary estoppel has its origins in equity's traditional jurisdiction to ***prevent the fraudulent assertion of legal rights***. The narrative thread running through the cases that have shaped the doctrine is one of ***judges balancing the desire to address unconscionable conduct against the principle that laws should be accessible, clear and predictable***. Although this tension occurs throughout the common law and equity, in this area it is heightened by three recurrent features of the circumstance that give rise to a dispute. First, the dispute will usually relate to an interest in land and therefore engage the principle that ***proprietary right must be certain, so as to permit an efficient market***. Second, the dispute will often relate to 'domestic property', and may or may not engage 'a special principle' which operates in the domestic context. Third, the rights that are claimed will usually lack the definitional certainty of rights that have been formed in accordance with the formalities for the creation or disposition of an interest in land. [emphasis supplied]

22. They summarised the elements of the doctrine, thus:

The doctrine of proprietary estoppel operates to prevent the ***unconscionable assertion of property rights***. The trigger for the operation of the doctrine, ***'unconscionability'***, has

crystallised into three reasonably well settled elements: *assurance, reliance and detriment*. A claim in proprietary estoppel will only arise where a claimant has acted to his detriment in reliance on an assurance, from the owner of property, that he has, or will be granted, rights over that property. Once this is established, the Court will take into account ‘all the circumstance of the case’ to ascertain whether it will be unconscionable to deny the claimant a remedy. The Court’s discretion, although flexible, is not wholly unstructured and it is increasingly clear that the Court will seek to grant the minimum remedy necessary to avert unconscionability... [emphasis supplied]

23. *Gray and Gray, Land Law*, 4th Edition at paragraph 10.189, as cited by *Wilken and Ghaley* at page 212, notes that:

The essential common elements of what is now called proprietary estoppel emerge from equity’s response to ‘three broad, and not entirely distinct, categories of circumstance. These categories comprise (1) the ‘imperfect gift’ cases, (2) the ‘common expectation’ cases, and (3) *the ‘unilateral mistake’ cases*. [emphasis supplied]

24. This was cited with approval in ***Cobbe v Yeoman’s Row Management Ltd*** [2008] UKHL 55, *per* Lord Justice Robert Walker.

25. Each category of circumstance referred to above comes with its own body of case law illustrating circumstances when the doctrine has been applied successfully and when it has failed on its application. In the factual matrix before this Court, the Defendant asserts an ‘*acquiescence*’ based strand of proprietary estoppel.

26. Reliance was placed on the decision of ***Fisher v Brooker*** [2009] 1 W.L.R. 1964 at 1780 paragraph [62], where *Lord Neuberger* said:

The classic example of proprietary estoppel, standing by whilst one’s neighbor builds on one’s land believing it to be his property, can be characterized as acquiescence.

27. This strand falls neatly within the ‘*unilateral mistake*’ category of circumstance identified by *Gray and Gray* (cited above). *Wilken and Ghaley*, who contends that examples of this situation are becoming increasingly rare (page 214 at paragraph 11.17), describes this category thus:

C (representing the party claiming an interest in property) believes that she owns the property which, in fact, belongs to P (original property owner)...[This] problem occurred quite frequently in the nineteenth century, when the construction of a canal and railway network, coupled with the complexity of unregistered conveyancing, often resulted in building works being carried out on land without the agreement of its owner.

28. In ***Rochdale Canal Company v King (No 2)*** [1853] 16 Beav 630, *Sir John Romilly MR* noted at pages 636-637 that:

The principle on which the Defendants rely is one often recognised by this Court, namely, that if one man stand by and encourage another, though but passively, to lay out money, under an erroneous opinion of title, or under the obvious expectation that no obstacle will afterwards be interposed in the way of his enjoyment, the Court will not permit any subsequent interference with it, ***by him who formally promoted and encouraged those acts of which he now either complains or seeks to take advantage.*** [emphasis supplied]

29. On this issue, *Wilken and Ghaley* opine at page 215, paragraph 11.17 that:

Despite the reference to ‘encouragement’ the distinguishing feature of this class of cases is that the mistake is not induced or caused by P but is made independently and unilaterally by C. The ***unconscionability stems from P’s knowledge of C’s mistake combined with P’s knowledge or encouragement of C’s detrimental reliance.*** It is not necessary to demonstrate P’s active encouragement of the mistake or expenditure. ***Passive but***

knowing acquiescence suffices. Mere delay, however, will not constitute acquiescence. [emphasis supplied]

30. They went on to describe at page 224, at paragraph 11.36 that:

In passive acquiescence cases, P will incur no liability unless he knew not only of C's belief but also of his own inconsistent legal rights. **Put simply, in passive acquiescence cases P must know that C's belief is mistaken.** Some doubt has been expressed as to whether such knowledge is an essential prerequisite of liability or merely one of a number of factors to be taken into account. It is submitted that **such knowledge is essential in passive acquiescence cases. The underlying basis of the doctrine is unconscionability or unfairness:** P will be prevented from taking unfair advantage of C's belief. **There seems little warrant for making P bear the consequences of this belief unless he played some part in its formation or continuance. In cases where P has provided no active encouragement of C's belief, he may only be said to have played a role in its formation or continuance where he was aware of C's error and failed to correct it.** Thus a duty to speak out or protest at performance of the relevant works is generated; such a duty cannot arise unless P believes that he has a right over the property in question; **it cannot be unreasonable to refrain from correcting a belief which you do not know is mistaken...** [emphasis supplied]

ANALYSIS:

31. It is therefore clear from the authorities that the common thread running through the principle of acquiescence is 'knowledge'. Whether the encouragement is active or passive, the property owner must be imbued with knowledge that the party asserting an interest in the property is mistakenly acting to his detriment over the property and simply stands by without asserting his or her rights.

32. A relevant question therefore, is whether the evidence before the Court establish that the Claimant company had knowledge of the works carried on over Plot W by the Defendant company, and stood by and did nothing about it?
33. Witness for the Claimant, Ragnauth maintained that it was only after a brush fire had caused damage to the Claimant's fence to the northern and western boundaries of Portion P that he traversed there to assess the damage and arrange for repairs. This was in July 2016. He testified that it was then he observed for the first time machinery, construction material and hardware placed on Portion W and individuals were carrying on pile driving.
34. He testified that it seemed as if they were carrying on an extension of pile driving which had commenced on the adjoining property, north of the Claimant's. He said that upon being advised by Executives of the Claimant's parent company, he telephoned the Defendant to speak with someone in charge of the Providence operations.
35. He further testified that he was connected with a Mr Lakhram who he said he informed of the expansion onto the property of the Claimant and demanded that the Defendant cease their trespass. This, according to Ragnauth, occurred sometime in September 2016.
36. Prior to this, the evidence of the Claimant was that in January 2015 when their Surveyor, CSN did a valuation, there were no civil works or any works whatsoever was being conducted on Portion W.
37. Subsequently, Ragnauth testified that he was instructed to re-establish the boundaries of Portion W, *to wit*, CSN was retained to undertake a second valuation and after this confirmed the development activities on Portion W, a survey was commissioned in March 2017.
38. Witness for the Defendant, Lakeram Rameshwar also confirmed that the area where the development activities were undertaken was '**sheer bush**'. Vishnu Panday, another witness for the Defendant, also admitted that the vegetation on Portion W before it was cleared was thick and over 7 feet high and that it required heavy machinery to clear it.

39. The Chief Executive Officer of the Defendant company, Pritipaul Singh also testified as to the state of Portion W in 2015, which was relatively consistent with the evidence of CSN, Ragnauth, Panday, and Rameshwar.

40. He testified that up to 2015, the area west of Portion W was crab-bush. He said that there was no buildings or developments and that the crab-bush in 2015 was about 3 feet. He said that there were also courida and mangrove trees. Most of the trees, he said, were big, and that the area was very low as compared with the sea-defence.

41. **He admitted under cross examination that when he started clearing, he did not know whose land it was and that they did not have permission from the Claimant or anyone else. He further admitted that the first time he heard from the Claimant company was when Ragnauth told PSI that they are trespassing, and they have to move out.**

42. **He also admitted under cross examination that he did not even know where his lands lie in relation to each other and that he did not even do a survey to establish this when he purchased the property from Georgetown Seafoods Ltd.**

43. Based on the totality of the evidence before the Court, more especially that recounted above, this Court makes the following conclusions of fact:

- (a) The physical location of the Portion W is located behind the area traversed by agents of the Claimant.
- (b) The view of Portion W from the perspective of Portion P is obstructed by dense vegetation, which was observed by the Court when it conducted two site visits in 2019.
- (c) Activities occurring on Portion W could not be easily discerned from Portion P.
- (d) There is no evidence before the Court that the Claimant knew of the development activities of the Defendant over Portion W before July 2016.

- (e) There is no evidence before the Court that the Claimant ought to have known of the development activities of the Defendant over Portion W before July 2016.
- (f) The Defendant was not operating under the mistaken impression that the land at Portion W formed part and parcel of their transported land which they purchased from Georgetown Seafoods Ltd.
- (g) The Defendant acted to its own detriment over developmental activities on Portion W, based on no assurance, or acquiescence (whether active or passive) by the Claimant.
- (h) Even the exact detriment is incapable of assessment as the testimony of Vishnu Panday did reveal that the receipts tendered for piles were for all the piles purchased which were driven along the mudflats. He admitted that those piles along the mudflats were driven in a grid format – rows and columns. starting north working the way south.

44. In the circumstances, this Court finds that the Defendant has trespassed onto the land, at Portion W, owned by the Claimant and has remained there despite a demand to vacate.

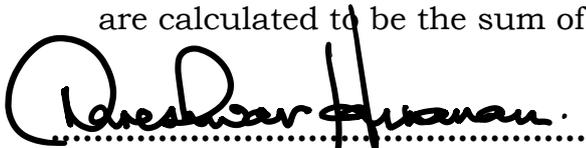
45. This Court also finds that there exists no principle in law which the Defendant can rely upon to retain their occupation of Portion W.

ISSUE III: Whether the Claimant is estopped from asserting its title to the said property.

46. This Court also finds that the Defendant has failed to demonstrate any beneficial interest in and to Portion W, based in equity or otherwise, which estops the Claimant from asserting its title over, or which entitles the defendant to any monetary compensation for developmental works carried on over Portion W.

ORDERS:

47. This Court orders and declares that the Defendant is not entitled by their servants/agents or otherwise to enter upon the property of the Claimant situate at Lot lettered 'W', comprising 1.22 acres, part of the front lands of Plantation Providence, as shown on a plan of a part of the front lands of Plantation Providence by D.C.S. Moses, Sworn Land Surveyor, dated the 15th January 1958, and deposited in the Deeds Registry on the 4th June 1958, as more fully described in Transport No. 882 of 1991.
48. The Court orders that the Defendant deliver up to the Claimant, possession of the said property on or before the 30th November 2020. It is further ordered that the Defendant is authorised to remove from the said land, any movable materials and equipment it has placed there on or before the 30th November 2020. It is further ordered that the Defendant is authorised to remove any fixture to the said land, on or before the 30th November 2020, save that in the process of such removal, no permanent damage is caused to the said land.
49. This Court orders that an injunction be and is hereby issued directed to the Defendant restraining them, their directors, officers, servants and/or agents from entering upon the said property or any part or portion thereof after the 30th November 2020.
50. This Court orders that the Defendant do pay general damages to the Claimant for its trespass upon the property of the Claimant at Lot 'W' as described, in the sum of \$2,000,000.00.
51. The Defendant's counterclaim is ordered dismissed for being unsubstantiated.
52. The Defendant is further ordered to pay prescribed costs to the Claimant based on the value of the dismissed counterclaim. Those costs are calculated to be the sum of \$4,600,000.00.



Nareshwar Harnanan
Puisne Judge
26 October 2020