

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE
CIVIL JURISDICTION

BETWEEN:

ROYDELL HODGE, Administrator Ad Litem
of the Estate of ALLISTER HODGE pursuant
to Order of Court dated 13th January, 2020.

Plaintiff

-and-

1. DELVIN HEYWOOD
2. EARTISHA WASHINGTON

Defendants

1. DELON HERNANDEZ
2. JANE DOE
3. JOHN DOE

Added Defendants

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. Lyndon Amsterdam representing the Plaintiff

Ms. Shellon Boyce representing the First Named Defendant

No appearance by or for the Second Named Defendant and/ or the Added
Defendants

Delivered June 11th 2021

RULING

BACKGROUND

This High Court Action was instituted by Allister Hodge [hereinafter referred to as
AH] on May 28th 2015 seeking an Order for Possession against the Defendants.

AH was the owner of land located at Lot 142 Recht-Door-Zee, Parfaite Harmonie, West Bank Demerara by virtue of Certificate of Title No. 1121 of 2007 [**Exhibit “C”**] upon which a three bedroom house was constructed [hereinafter referred to as the Property].

AH sought an Order for Possession against the First Named Defendant [hereinafter referred to as the FND] and the Second Named Defendant [hereinafter referred to as the SND] claiming that they were occupying the Property as mere licensees and he had terminated such licence.

The FND is his deceased ex-wife, Dianna Hernandez-Hodge’s [hereinafter referred to as DHH], son and the SND is the FND’s common law spouse.

The FND contends that although AH owned the land, he [the FND] contributed to the construction of the building thereon by agreement with AH and DHH and is therefore entitled to an interest in the building under the doctrine of Proprietary Estoppel and accordingly counterclaimed for a Declaration that he is entitled to a share in the Property. He further contended during the trial that his interest must necessarily extend to the land.

The marriage between AH and DHH was dissolved on May 29th 2015 [**Exhibit “D”** - Decree Absolute] and DHH died on April 25th 2018 [**Exhibit “F”** - Certificate of Death].

AH died on September 9th 2018 before the trial of the Action and as a result Roydell Hodge, AH’s son, was substituted as the Plaintiff in this Action in his capacity as

the Administrator Ad Litem of the Estate of Allister Hodge, deceased.[**Exhibit “A”** - Certificate of Death of AH] [**Exhibit “B”** - Certificate of Birth of Roydell Hodge].

Roydell Hodge is in fact the Executor of AH’s Last Will and Testament [**Exhibit “E”**].

During the course of the trial, which commenced on October 5th 2020, Delon Hernandez, the brother of the FND testified that he was in occupation of the Property and as a result he was joined as an Added Defendant and served with the proceedings, however, he did not enter an appearance or file a Statement of Defence to the Claim.

ISSUE

Is the FND entitled to an interest in the Property.

LAW

The purpose of the doctrine of Proprietary Estoppel is to refrain, or ‘estop’, any attempt by a legal owner to inequitably go back on guarantees made by them in the course of dealing with another party regarding the owner’s land.

The doctrine of Proprietary Estoppel is impeccably laid out by Lord Denning MR in **Crabb v Arun District Council** [1975] 3 All ER 865 @ 871;

“It will prevent a person from insisting on his strict legal rights—whether arising under a contract, or on his title deeds, or by statute—when it would be inequitable for him to do so having regard to the dealings which have taken place between the parties. What then are the dealings which will preclude him from insisting on his strict legal rights? If he makes a binding contract that he will not insist on the strict

legal position, a court of equity will hold him to his contract. Short of a binding contract, if he makes a promise that he will not insist on his strict legal rights—even though that promise may be unenforceable in point of law for want of consideration or want of writing—and if he makes the promise knowing or intending that the other will act on it, and he does act on it, then again a court of equity will not allow him to go back on that promise.”

Proprietary Estoppel can help to make sense of the sorts of arrangements that are entered into by laypersons, that may on the face of it appear to be a licence.

Thorner v Majors and Others [2009] UKHL 18 - the party claiming the benefit of the proprietary estoppel must prove a promise or assurance that he will acquire a proprietary interest in the specified property.

FACTS

Loletha Hodge testified that AH was her brother and she was fully aware of the construction of the house when it was in progress.

She testified that her brother had contracted Walter McCaskey to build the house and since she lived four streets away from the Property she overlooked the construction and reported to her brother during the time/s that he [AH] was working in the Interior of Guyana.

She testified that the cement for the construction of a septic tank at the Property was stored by her after it was purchased and her brother hired Troy Frank and Mervin Lewis to build that septic tank.

Walter McCaskey testified that he was contracted by AH to build the house in 2004 at which time he drained the land of water and laid the foundation for the house, thereafter, the construction progressed slowly, based on the available income of AH, and as a result the building was not completed until 2011.

He testified that AH was the only person that ever paid him and to his knowledge was the only person that purchased the materials for the construction.

The FND testified that he lived with AH, DHH and his brother, Delon Hernandez, at a rented premises in Sister's Village, West Bank Demerara from around 2004 paying rent in the sum of \$12,000.00.

He testified that in 2009 he informed AH and his mother that he was going to move out to start a life with his common law spouse and they [AH and DHH] proposed to him that he contribute to the rent and continue residing with them.

They further told him that they were about to commence foundation works at the Property and they proposed to him that if they all pooled their resources together they could complete the home in a shorter time.

As a result it was agreed that his common law spouse would move in with them at Sister's Village and he would start contributing to the construction of the house.

He testified that the land was vacant and undeveloped at that time. He also testified that the land was sand filled in 2008 or 2009 and they commenced laying blocks in 2009.

He testified that during 2010 he was working in the Interior of Guyana and would send monies to his mother [DHH] for her to purchase materials and pay workmen.

He testified that he changed jobs and began working with the AH's employer in 2011. AH then found himself unemployed and so he [the FND] would send monies to AH for his personal use and for the construction of the house.

He testified that from 2010 to February 2020 he expended the sum of \$500,000.00 towards the construction and maintenance of the house.

He testified that he solely paid for the materials and workmanship to construct the roof, twelve windows, a toilet set, a sink and the plastering of the inside of the house.

He testified that they all moved into the house in December 2011.

He testified that he recently [just prior to February 2020] expended \$40,000.00 to plaster the walls of a bedroom and have the walls and floor of the bathroom tiled.

The FND testified that he solely paid all the utilities bills for the Property.

The FND relied on the testimony of one witness, his brother, Delon Hernandez, who testified that in 2009 AH and his mother, DHH, proposed to him that they [AH and DHH], the FND and him [Delon] could pool their resources together and build a house on AH's land and he would have a home to live in rent free.

He agreed and they agreed that a three bedroom house would be constructed so that AH could have a room, the FND and his family would have a room and he [Delon] would have a room.

He began contributing to the construction in 2009. He testified that he and his friends provided the labour for the laying of the foundation and he also contributed financially by contributing \$20,000.00 every month to a total of \$720,000.00.

He testified that the FND sent monies from the Interior of Guyana, where he was working, to him [Delon] for him to give his mother [DHH] to pay towards the construction.

He testified that since his mother's death he has not returned to the Property but maintains that he still occupies the Property.

ANALYSIS

The FND claims a Proprietary Estoppel and therefore the onus is on him to prove the promise or assurance which gives rise to such Estoppel.

It is his contention that AH promised him that if he contributed to the construction of the house he would have a permanent place for him and his family to live.

Since AH is now deceased, the Court must determine whether such a promise was in fact made by AH to the FND by examining the circumstances in which the alleged promise was made and the actions of AH and the FND thereafter.

1. In his evidence in chief the FND testified that in 2009 AH and his mother, DHH, told him that they were thinking of commencing the foundation work for the house and at that time proposed to him that he contribute to the construction [Exhibit "K2" paragraphs 7 - 10]. He testified in examination in chief that the foundation was laid in 2008 or 2009 [Exhibit "K3" paragraph 15],

however, under cross examination he accepted that the foundation was completed in 2004 as Walter McCaskey testified.

- II. He testified that the conversation came about because he had informed AH and DHH that he was going to move out because his common law spouse was expecting [pregnant] [**Exhibit “K2” paragraph 7**]. He also testified that his first child was born on October 8th 2010 [**Exhibit “K1” paragraph 5**], making it highly improbable that his common law spouse was expecting in 2009.

These are major inconsistencies since they create doubt in the Court’s mind as to whether the conversation where the alleged promise was made did in fact occur. These inconsistencies leaves the Court without a date or time period when the purported conversation took place.

- III. The FND testified that subsequent to that conversation in 2009, his common law spouse moved in with them [AH, DHH and Delon] at Sister’s Village and he began contributing to the construction [**Exhibit “K2” paragraphs 11 -14**], however, under cross examination he testified that he contributed between \$40,000.00 to \$60,000.00 every month towards the construction of the house since 2004 until the completion of the construction which he says was around 2011. He also testified in examination in chief that he commenced spending on the construction in 2010 [**Exhibit “K3” paragraph 21**].

This again leaves the Court in doubt about when the purported conversation took place and even further the FND did not give any details about the arrangement in terms of each person’s contribution.

This lack of details does create a doubt about whether there was indeed an assurance as testified to by the FND, particularly since I he also testified that the arrangement between him and AH and DHH was for him to contribute to the rent for the premises that they were living in at Sister's Village and he never testified what portion of the monies that he gave/ sent to his mother represented his contribution to the rent.

The Court further notes that based on this testimony the FND must have contributed around \$4,200,000.00 towards the construction, yet he did not produce a single receipt evidencing a purchase despite testifying that he personally purchased some of the materials [**Exhibit "K3" paragraph 22**]. Neither did he produce one witness to substantiate one expenditure or money transfer to AH, his mother or his brother.

Further, the FND testified that the monies were given/ sent to his mother and not AH while his brother testified that the FND sent the monies to him [Delon]. This is a material discrepancy in the testimonies of these witnesses since it creates doubt as to whether any monies were in fact contributed to the construction by the FND.

- IV. The FND testified that he personally paid McCaskey two or three times [which McCaskey denied] and another contractor called Dog. He later testified, under cross examination, that he never paid Dog.
- V. The FND testified that to the date of his witness statement he continued to expend monies on the building as it was/ is still not completed and that he had expended in excess of \$500,000.00 [that would be between 2010 and February

13th 2020]; interestingly, he had made that exact statement in his Affidavit of Defence on September 17th 2015.

The most shocking revelation came with the FND's testimony that "*A carpenter do the calculation for me. A carpenter help me with the material costs and labour costs.*" in response to a question about how he came up with the figure of \$500,000.00 which clearly shows that his estimates are not based on his memory of monies he expended but rather on the estimates of an unknown carpenter as to what the construction may have cost.

It is patently obvious that the FND is not a truthful witness and certainly not one that the Court can rely on.

The Court notes that the Second Named Defendant, who was supposedly living with the FND at all material times was not called as a witness and Delon Hernandez, who testified as a witness for the FND, though also claiming to contribute to the construction of the house, lays no claim to the Property.

In any event, it is clear that Delon Hernandez, was an equally untruthful witness and merely a witness of convenience.

Delon testified that he and his friends provided the labour for the building of the foundation in 2009 [**Exhibit "L2" paragraphs 6 - 7**], when it is now clearly established that the foundation was laid in 2004. Unfortunately for him his witness statement was sworn to before the FND accepted that the foundation was laid in 2004.

Further, based on his evidence of financial contribution [**Exhibit “L2” paragraphs 9 - 10**] the construction was completed until sometime in 2012 and not 2011 according to the testimony of the FND and inferentially by him [**Exhibit “L2” paragraphs 11**]

CONCLUSION

The Court does not believe that AH made any promise or gave any assurance to the FND that if he contributed to the construction of a house on the land situate at lot 142 Recht-Door-Zee, Parfaite Harmonie, West Bank Demerara he would have acquired any right, title or interest to the Property.

In fact the Court does not believe that the FND contributed in any way to the construction of that house.

In the circumstances, the FND has failed to establish that he has any legal or equitable interest in the Property.

In view of the foregoing the First Named Defendant’s Counterclaim is dismissed.

The Court grants an Order of Possession to the Plaintiff against the Defendants and Added Defendants for property known as and situate at lot 142 Recht-Door-Zee, Parfaite Harmonie, West Bank Demerara, more fully described in Certificate of Title numbered 1121 of 2007.

The Court awards costs in the sum of \$250,000.00 to the Plaintiff against Delvin Heywood.

There is no order as to costs against the SND and/ or the Added Defendants.

