

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

REGULAR JURISDICTION

COURT FILE NO.: **2018-HC-DEM-CIV-SOC-25**

BETWEEN:

1. RALPH MC DONALD
2. ANNETTE MOHABIR represented herein by her duly constituted attorney RALPH MC DONALD agreeably with Power of Attorney numbered 1664 of 2015 and registered in the Deeds Registry on the 17th day of March, 2015.

Claimants

-and-

1. RONALD SAYWACK also known as RONALD SURAJBALI, personally and in his capacity as the Administrator with Will Annexed of the estate of *JUMRATTAN*, deceased.
2. MOHANDAI SAYWACK
3. LILIAN SAYWACK also known as LILIAN BROWN

Defendants

Jointly and Severally

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. Parmanand Mohanlal for the Claimants

Mr. Keavon Bess for the Defendants

Delivered July 12th 2019

DECISION

The Claimants claim to be entitled to ownership of property described as sub-lot RJ comprising of lot 78S, Second Street, Ruimveldt, now known as Alexander Village, Georgetown, Guyana [hereinafter referred to as the “Property”] on the ground of promissory or proprietary estoppel.

BACKGROUND

Transport for the “Property”, Transport numbered 1188 of 1960 [Demerara County] [**Exhibit “A1 - A2”**] is in the name of Jumrattan, who was the Defendants’ mother and the Claimants’ maternal grandmother.

The Claimants’ mother, Sheila Saywack resided with Jumrattan at the “Property” until the death of Jumrattan, who died testate on June 19th 1984.

By her last Will and testament dated June 5th 1962 [**Exhibit “B”**] Jumrattan devised all of her property to the Defendants.

By the said Will Jumrattan specifically declared that she was leaving nothing to Sheila.

Sheila died in 1990 and after Sheila’s death, the Claimants continued to reside at the “Property”.

The Defendants **permitted** the Claimants to continue residing in the “Property”.

By this time the Second Named Defendant [hereinafter referred to as the SND] and Third Named Defendant [TND] had emigrated from Guyana.

The Claimants are claiming that the Defendants **encouraged** and **induced** them to expend monies to repair and renovate the “Property” by promising them that they will convey the “Property” to them.

The Claimants claim that acting on this promise they expended over \$10,000,000.00 [ten million dollars] on the building and therefore, on this basis, they are entitled to ownership of the “Property”.

The Defendants contend that they permitted the Claimants to continue occupying the “Property” after their mother died on the condition that they pay the rates and taxes for the “Property”, maintained it and not allow it to fall into disrepair. These conditions would be in lieu or rent.

The Defendants refute the assertion that they ever promised to convey their interests and/ or title in and to the “Property” to the Claimants.

ISSUE I

Have the Claimants acquired titular interest in the “Property” by way of a promissory estoppel?

LAW

Promissory estoppel is a doctrine that exists in contract law. To establish a promissory estoppel, the following requirements must be proven;

- I. A pre-existing contract or legal obligation which is then modified.
- II. There must be a clear and unambiguous promise.
- III. A change of position.
- IV. It must be inequitable to allow the promisor to go back on their promise.

CONCLUSION

It is clear from the evidence that this legal doctrine is inapplicable to the facts of this case and in fact Counsel for the Claimants have conceded this in his submissions.

ISSUE II

Have the Claimants acquired any interest in the “Property” by way of a proprietary estoppel?

LAW

The Modern approach to proprietary estoppel is set out by Justice Oliver in **Taylor's Fashion Ltd v Liverpool Victoria Trustees** [1982] QB 133 which was applied by the Privy Council in **Lim Teng Huan v Ang Swee Chuan** [1992] 1 WLR 1306.

Under the Modern approach there are three requirements to establish an equity for proprietary estoppel:

- I. An assurance giving rise to an expectation that the claimant would have an interest in land.
- II. The claimant must demonstrate reliance on the assurance.
- III. The claimant must have acted to their detriment as a result of the assurance.

FACTS

The First Named Claimant [hereinafter referred to as FNC] testified that he and the Second Named Claimant [hereinafter referred to as SNC] expended in excess of \$10,000,000.00 on renovating and repairing the “Property” pursuant to the Defendants’ promise to transfer title to the “Property” to them, however, after this was done the **SND** refused to fulfil her promise to convey the “Property” to them.

As a result they petitioned to the Land Court for adverse possessory title. The Commissioner of Title of the Land Court, Ms. Nicola Pierre, dismissed the Petition having found that the Claimants possession of the “Property” was permissible and not adverse.

It is the FNC’s testimony under cross examination that;

“That permission was granted in 1984 when my grandmother died.

Q: What was said to you?

A: Continue to live, pay the rates and taxes and maintain the place and we will eventually transfer it to you.”

The FNC tendered several receipts to demonstrate expenditures on the “Property”, which were marked as **Exhibits “C1 - C10”**and **“Q1 - Q12”**.

He further testified that there were many more receipts for monies expended but those were never kept as they did not *“expect it to come to this”*.

He testified that he still resides in the “Property”.

The SNC testified that permission was granted to them by the SND and TND in 1990, after their mother, Sheila, died. The SND was at the time living in the U.S.A. and the TND was living in England.

She continued to reside in the “Property” until she emigrated to the U.S.A. in 2011.

She testified that she continued to assist the FNC financially to repair and renovate the “Property” and after that the **FND** refused to fulfil his promise to convey the “Property” to them.

The FND testified that the Claimants were permitted to occupy the “Property” purely out of compassion after their mother died and it was agreed that they would pay the rates and taxes and maintain the building in lieu of paying rent.

ANALYSIS

A. Was an assurance given to the Claimants that give rise to an expectation that they would have an interest in the “Property”?

The sole evidence of such an assurance is out of the mouths of the Claimants which the Defendants have denied.

The first factor that the Court has to examine in circumstances such as these is the credibility of the witnesses.

In this regard the FNC testified that the first time such an assurance was given was in 1986 when Jumrattan died at which time they were told that if they paid the rates and taxes and maintained the “Property” it would eventually be transferred to them. He does not specifically state who told them that.

The SNC testified that the first time that the assurance was given was in 1990 when Sheila died at which time the SND and the TND told them that they [the SND and TND] will transfer their shares in the “Property” to them [the Claimants].

No one testified as to any details of where or the mode of communication of these alleged promises.

This is a clear and material discrepancy in the testimonies of the Claimants with respect to when and by whom this assurance was initially given.

Further, the Court finds it incredible that the Defendants would have been giving the Claimants assurances that the “Property” would be transferred to them in 1986 when the Claimants were at that time occupying the “Property” with their mother Sheila.

In addition, both Claimants have accepted under cross examination that they swore to a Petition [**Exhibit “F1 - F7”**] that was presented to the Land Court whereby they issued sworn statements to the effect that they were occupying the “Property” without the consent or permission of anyone, particularly the FND, who had opposed the Petition. In fact the FNC further testified to that assertion in the Land Court.

The FNC claims this was done on the advice of their then Attorney-at-Law, however, the fact remains that this is a witness who knowingly gave false testimony.

On further examination of the evidence, it is noted that the Claimants, claiming to be expending monies on the “Property” since 1990 never sought to secure title to the “Property” until some two and a half decades later, in 2015, when the Petition to the Land Court was filed.

The Claimants have sought to persuade this Court to believe their story because of inconsistencies in the FND’s testimony with regards to him obtaining the first Letters of Administration for the Estate of Jumrattan [**Exhibit “H1 - H2”**], however, the FND explained why he made certain statements to obtain that grant, withdrew the grant and in fact secured a second grant [**Exhibit “M1 - M2”**].

While it is inexcusable to lie in a Court proceeding, it is clear that the FND did not obtain a benefit that he was not entitled to whereas the Claimants lie/s to the Land Court were intended to obtain a benefit which they could not obtain in that Court.

Further, it is clear from the SNC's testimony that after she emigrated, the upper flat of the "Property" was all but abandoned and it was only repaired in 2016 to facilitate the marriage of the FNC's son and him living there with his new bride.

This certainly is not demonstrative of the actions of a person/s who believes that they are, for all intents and purposes, the owners of the "Property".

The Court also considered the assertions of the Claimants of expending large sums of monies to repair and renovate the "Property" in the context of the veracity of the Claimants.

In examining the receipts tendered in evidence, the Court found that Exhibits "C1", "C2" and "C3" were not indicative of repairs being done to the "Property". In fact Exhibits "C1" and "C2" are receipts for a table, chairs and a mattress.

Exhibits "C5", "C10", and "Q1" through "Q12" were all issued in the years 2016 and 2017 and "C9" was issued in 2013.

By that time, 2013 onwards, the Claimants were well aware that the Defendants had no intention of transferring the "Property" to them since the Petition to Land Court had been filed and it is the Claimants' testimony that the Petition was filed because the Defendants refused to transfer title to them, therefore these

expenditures could not be pursuant to any assurance of title being transferred to them.

It is clear that these expenditures were done either to bolster the Land Court Petition or to facilitate the FNC's son and his bride or both.

The remaining receipts spread out over a decade, between 1995 and 2009, and total less than \$2,000,000.00 which is actually a very small sum to spend maintaining a property for almost thirty years, to wit, from 1990 to 2009.

The Court does not believe the FNC when he testified that he did not keep other receipts because he did not expect it to come to this.

It is beyond comprehension why anyone would dispose of millions of dollars of construction receipts which would be required in tax filings, for balancing personal budgets or to simply know what was spent on repairs.

Apart from keeping these receipts to prove that monies were spent in repairing the "Property" it simply makes good economical sense to preserve such receipts.

The Court does not believe that the Claimant had more receipts that he disposed.

CONCLUSION

The Court does not believe on a balance of probabilities that the Defendants or any of them gave the Claimants any assurance that they would transfer title to the "Property" to them.

In light of this finding, proof of the other elements that are required to prove proprietary estoppel must fail since it is required that those things be done pursuant to or because of an assurance.

In the circumstances the Claimants' claims are dismissed.

Paragraph 35 (I) of the Defendants' Defence and Counterclaim is granted. Possession to be delivered forthwith.

The Court awards costs in the sum of \$1,000,000.00 to the Defendants against the Claimants.

Justice N. A. Singh