

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

2019-HC-DEM-CIV-SOC-180

BETWEEN:

ABIOLA PRIMO, the duly constituted attorney of
MAYLENE AMSTERDAM also known as
MAYLENE BURNETT by virtue of Power of
Attorney executed on the 1st day of March, 2016 and
registered in the Deeds Registry on the 1st day of
March, 2016 and numbered 1390/2016.

Claimant

-and-

1. GODFREY BURNETT
2. PAULINE HUDSON

Defendants

The Honourable Justice Navindra A. Singh, Puisne Judge

Ms. Chandrawattie Persaud for the Claimant

Ms. Mandisa A. Breedy for the Defendants

Delivered April 7th 2021

DECISION

BACKGROUND

The Claimant is the owner of property known as and situate at Parcel 157; Block 72224; Zone 722, Bartica, Essequibo [hereinafter referred to as the Property] as is evidenced by Certificate of Title No. 2011/ 148 [**Exhibit “B”**].

The First Named Defendant [FND] is the Claimant’s brother and the Second Named Defendant [SND] is the FND’s spouse.

The Claimant claims that she granted permission to the Defendants to construct a wooden house on a portion of the land and occupy same while they completed the construction of their building at Itaballi, Essequibo River.

The Claimant claims that she has revoked the permission granted to the Defendants since 2012 but they have refused to remove therefrom.

The Claimant further claims that in December 2017, the Defendants agreed to remove upon receipt of the sum of \$100,000.00, however, after receiving the sum of \$20,000.00 they have reneged on this arrangement.

The Claimant claims an Order for Possession against the Defendants.

The Defendant contends that in 2004 the Claimant asked them to leave where they were living and build a home on the Property since she wanted them to live closely as family.

Relying on these representations they abandoned the home that they had begun developing and moved to the Property.

They contend that the Claimant executed a document on April 26th 2004 giving them permission to construct a building on the land.

They contend that at the time of the construction of the building the Claimant was living on the front portion of the Property and would have seen that they were building in concrete and wood and never objected.

The Defendants deny that they agreed to remove from the Property at any time in their pleadings.

The Defendants contend that the Claimant is estopped from ejecting them from the Property on the principle of Proprietary Estoppel.

The FND testified, under cross examination, that he had other land where he was doing gardening that he wanted to remove and go to live but he wanted the Claimant to compensate him for the building on the Property.

It is clear that based on the afore-stated facts that the Defendants received a licence to occupy the Property from the Claimant and therefore the Court must first determine what type of licence was given to the Defendants before a determination can be made as to whether the principle of Proprietary Estoppel arises for consideration.

The Court finds that it is appropriate at this stage to set out the four types of licences relating to property rights that exist.

1. Bare Licence

A bare licence is simply the giving of personal permission by the landowner for the licensee (the person with the benefit of the licence) to enter and remain on the land. The licensee will not be required to provide consideration for accessing the land. A bare licence effectively confers the right only of not being a trespasser so long as they comply with the terms of the licence; it does not confer any higher status than that. In a licence *'properly passeth no interest nor alters or transfers property in anything, but only makes an action lawful, without which it had been unlawful'* (**Thomas v Sorrell** [1673] EWHC (KB) J85 per Vaughan CJ).

2. Contractual Licence

A contractual licence is similar to a bare licence insofar as it grants the licensee permission to access the land. Where the two kinds of licences differ is that the contractual licence includes the giving of consideration by the licensee for the benefit of the licence.

Examples of everyday contractual licences include cinema tickets and sports events tickets. They do not confer on the licensee a proprietary interest in the land (**Cowell v Rosehill Racecourse Co Ltd** (1937) 56 CLR 305 per Latham CJ).

3. Licence Coupled with an Equity

These sorts of licences are found in situations where the landowner '*grants a licence to another to go upon land and occupy it for a specific period or a prescribed purpose, and on the faith of that authority the licensee enters into occupation and does work, or in some other way alters his position to his detriment*' (**National Provincial Bank Ltd v Hastings Car Mart Ltd** [1965] UKHL 1). A licence coupled with an equity may not be terminated simply upon the wish of the licensor.

4. Licence Coupled with the Grant of an Interest

This type of licence confers upon the licensee the right to go on another person's land for the sole purpose of removing something from the land (such as timber, minerals, and crops). This licence therefore includes the rights granted under *profits à prendre* to access an interest, coupled with the right to enter land in order

to exploit the interest. The licence cannot be revoked during the exercise of the licence.

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.

ISSUE I

What was the nature of the arrangement between the Claimant and the Defendants that resulted in the Defendants occupying a portion of the Property.

FACTS

The relevant facts are as aforementioned.

ANALYSIS

The Court does not find the Defendants' contention that the Claimant induced them to occupy and reside on a portion of the Property and abandon their intended move to Itaballi by offering them a portion of the Property for the following reasons.

Firstly, the FND testified falsely that he had obtained a residential and agricultural lease from the Guyana Lands and Survey Commission [GL&SC] for land in Itaballi [Exhibit "N2" - paragraph 5], when in fact, based on the document that he produced to the Court [Exhibit "J"] he received permission to occupy State Land from the GL&SC.

Secondly, that permission to occupy State Land was issued on February 10th 2003 and the terms and conditions then and there agreed to by the FND as is evidenced by his signature on the document.

This leads the Court to believe and in fact lends credence to the Claimant's claim that the FND approached her and asked her to temporarily occupy a portion of the Property around 2002/ 2003.

Thirdly, by his own testimony and that of the SND, the Defendants had not, in any way occupied the land in Itaballi, the subject matter of the permission to occupy State Land from the GL&SC, as of April 2004.

Based on the terms of the permission to occupy State Land the FND, the Permittee, would have violated the terms of the permit as of February 10th 2004.

It can reasonably be concluded that as of April 2004 the FND was experiencing difficulty in relocating to Itaballi, fourteen months having elapsed since he received the permission to occupy State Land, and Bartica is certainly closer to Itaballi than 4 Miles, Potaro Road, where he, the SND and their children were living and then secured the written permission from the Claimant [**Exhibit “K”**] to enable him to build on the Property.

The Court finds the FND’s contention that he gave up five (5) acres of residential and agricultural land just to live close to his sister incredible, especially when by the Defendants’ testimonies the Claimant was not residing at the Property when they moved there.

This finding is further reinforced by the FND’s testimony that he is presently gardening at another location **where he wants to relocate**.

The Court does not find that there has there been a clear and unequivocal statement by the Claimant relating to a promise of a portion of the Property to the Defendants or either of them in exchange for a certain act or acts.

CONCLUSION

The Court finds that the Claimant granted the Defendants a bare licence to occupy a portion of the Property at their request.

The Court further finds that that licence has been duly terminated.

In the circumstances the doctrine of Proprietary Estoppel does not arise.

In the circumstances the Court grants possession of property known as Parcel 157; Block 72224; Zone 722, Bartica, Essequibo to the Claimant.

The Court awards the sum of \$400,000.00 as mesne profits and \$300,000.00 as costs to the Claimant against the Defendants.

Justice N. A. Singh