IN THE COURT OF APPEAL OF BELIZE, A.D. 2023

CIVIL APPEAL NO. 7 OF 2022

STEPHANEY ILONA RHABURN	APPELLANT
v.	
VINCENT PAUL MARK	RESPONDENT
REGISTRAR OF LANDS	INTERESTED PARTY

BEFORE

The Hon Madam Justice Minnet Hafiz-Bertram	-	President
The Hon. Madam Justice Woodstock-Riley	-	Justice of Appeal
The Hon. Madam Justice Arana	-	Justice of Appeal

Mr. Darrell Bradley for the appellant.
Ms. Payal Ghanwani for the respondent.

Date of Hearing: March 9, 2023
Date of Promulgation: September 22, 2023

JUDGMENT

ARANA, JA

[1] This was an Appeal from the decision of Justice Shoman who dismissed a claim for ownership of property brought in the court below by Ms. Stephany Rhaburn against Mr. Vincent Paul Mark. At trial, Ms. Rhaburn abandoned her claim of ownership through adverse possession, but she then sought to establish ownership by virtue of a life interest in Mr. Mark's property based on a promise that she claimed Mr. Mark had made to her. At the conclusion of the hearing of this Appeal, on March 9, 2023, this court unanimously agreed and ordered that the Appeal should be dismissed and that the Appellant shall deliver possession of Lot 681 to the Respondent and shall remove her dwelling house placed thereon within 6 months commencing on March 9, 2023.

We promised to give our reasons in writing at a later date. We do so now.

FACTS

[2] The facts of this case are agreed upon as stated in the Pre-trial Memorandum between the parties. Mr. Mark, a Belizean who lived in the United States of America in 2004, gave Ms. Rhaburn permission to reside on property which initially belonged to his mother, but which he later inherited upon his mother's passing. Ms. Rhaburn built a house on that property and lived there for 17 years. When Mr. Mark returned from the United States to Belize and asked Ms. Rhaburn to remove her house from his land, Ms. Rhaburn refused. Ms. Rhaburn then brought a claim in the Supreme Court saying that she was entitled to ownership of this property through adverse possession, since Mr. Mark had allowed her to live on it for 17 years. At trial in the court below, Ms. Rhaburn abandoned her original claim for ownership through adverse possession. However, she insisted that she had acquired a life interest in this property, based on an oral promise which she claims Mr. Mark had made to her that she could live on his property for the remainder of her life. Mr. Mark vigorously defended this claim and brought a counterclaim against Ms. Rhaburn, stating that he never promised Ms. Rhaburn that she could live on his property for the duration of her life. He testified that what he had told Ms. Rhaburn was that he would allow her to live on his property until he needed it, and that she could live there on the condition that she built a house that was moveable. The learned trial judge in the court below dismissed Ms. Rhaburn's claim, gave her six months to vacate the property and awarded costs to Mr. Mark to be agreed or assessed.

At the Appeal, Mr. Bradley on behalf of the Appellant Ms. Rhaburn advanced two grounds of Appeal against the Respondent Mr. Mark as follows:

(a) that the decision is against the weight of the evidence, and determining an equitable interest as opposed to a bare licensee.

[3] In determining whether or not these grounds of appeal succeed, we examined the decision of the learned trial judge in light of the evidence on which she based her decision. We also considered the judge's decision in the context of the legal arguments submitted for and against this appeal.

Justice Shoman found that Ms. Rhaburn had failed to establish that she had an equitable interest in this property. The basis of this equitable interest was alleged by Ms. Rhaburn to be grounded in an oral promise that she claimed that Mr. Mark made to her that she could live on that property until she died. The learned trial judge emphasized the point that Ms. Rhaburn did not plead this alleged promise in her Statement of Claim, in her Reply to the Defence, nor in her Defence to the Counterclaim. We agree with the Learned Trial Judge's observation in para. 16 of her decision that:

> *"The failure of the Claimant to raise the promise that she could live on Lot 681 "for life" even after the Defence was filed irresistibly begs the question- why was the alleged promise to be permitted to live on Lot 681 for life not raised in the pleadings made on behalf of the Claimant?"*

The fact that the first time that the Claimant mentions this promise was in her Witness Statement filed one year after pleadings were closed was duly noted by the learned trial judge. *"It gives the impression of this purported promise being an afterthought, rather than the central argument of the Claimant's case."*

Justice Shoman also found that Ms. Rhaburn's answers in cross-examination did not help to establish her credibility. When Ms. Rhaburn was asked if she was a friend of Mr. Mark, she replied that she had just met him (in 2005). Justice Shoman also noted in paragraph 18 that *"Ms. Rhaburn does not say however, anything more in evidence, either in her witness statement to say when the promise was made, or if there were any terms or conditions attached, nor indeed, what portion of Lot 681 she could occupy and build on, or whether it was all."*

It is on this evidential basis, or rather, a lack of evidence, that the learned trial judge found in para. 19 of her judgment, quite correctly, in our view that:

> *"It is the Claimant who is alleging that she was promised a "life interest" in the property by the Defendant who must establish what was the promise upon which she acted, and I find the evidence of the Claimant to be quite lacking in this regard. I cannot conclude in all circumstances that any such promise was made to Ms. Rhaburn by Mr. Mark."*

Having perused the evidence led at the trial below on this point, we found no reason to disturb the factual findings of the learned trial judge.

[4] Turning to the legal submissions filed for and against this Appeal, we are in agreement with Ms. Ghanwani's submission that both grounds of appeal can be effectively disposed of together.

As we have already stated that the learned trial judge was correct to find that there was no evidence of the alleged promise made to Ms. Rhaburn by Mr. Mark, this addresses and disposes of the first ground of appeal that the decision of the learned trial judge was "against the weight of the evidence".

[5] The second ground of appeal is that "the learned trial judge erred in law in misapplying the test for determining an equitable interest as opposed to a bare licensee." Mr. Bradley submits that the Appellant had an equity in the property based on the Respondent's promise to her that she could reside on that property for the rest of her life. It is his submission that not only was a promise made to Ms. Rhaburn by Mr. Mark, but that this dispute centers around the difficulty in determining the nature of that promise which led Ms. Rhaburn to rely on that promise to her detriment, and which then gave rise to Ms. Rhaburn developing an equitable interest in the property.

Appellant's Legal Submissions

[6] Mr. Bradley submitted on behalf of the Appellant that the dispute between the parties was essentially as to the terms of Ms. Rhaburn's occupation of the property. Learned Counsel cites ***Cherry Cabral v. Alice Robinson King*** Civil Appeal 4 of 1994 in support of his submission that the Appellant has a license coupled with an interest in this property. ***Cherry Cabral*** was cited by Counsel for the Respondent Mr. Mark in order to quote and to comment on the utterance of Lord Denning, M.R. (page 36 of the Queen Bench Report and page 448 of the All England Report):

> *"It is quite plain from the authorities that, if the owner of land requests another, or indeed allows another, to expend money on the land under an expectation created or encouraged by the landlord that he will be able to remain there, that raises an*

equity in the licensee such as to entitle him to stay. He has a licence coupled with an equity."

The doctrine is also explained in Snell's Equity (29th edition) at pages 573 to 579 where the learned author mentions (on page 574) that there are four conditions to be satisfied for the equity to arise in favour of one person (the licensee) against another (the land-owner).

The conditions are:-

a. Detriment ... the person claiming must have incurred expenditure or otherwise have prejudiced himself or acted to his detriment;

b. Expectation or belief (The person claiming) must have acted in the belief that he already owned a sufficient interest in the property to justify the expenditure or that he would obtain such an interest. But if (he) has no such belief and improves the land in which he knows he has no interest or merely the interest of a tenant, or licensee, or occupier under an incomplete or revocable contract, he has no equity in respect of his expenditure...

c. The belief of (the claimant) must have been encouraged by (the landowner) or his agent or predecessor in title ...

The fourth condition deals expressly with a case where enforcement would contravene some statute, or prevent the exercise of a statutory discretion or excuse the performance of a statutory duty and also with the case in which the "land-owner" was a minor when the improvements were made. It is therefore inapplicable to the issues in the instant case. Mr. Bradley relies on this same ***Cherry Cabral*** case as authority for the principle that the promise need not come from the owner of the land, as it is sufficient that it comes from the agent of the landowner or from a successor in title. He submits on behalf of the Appellant that there is no dispute that the evidence shows that Ms. Rhaburn acted to her detriment by incurring expenses in building this property. While the exact quantum might be queried where certain receipts were disallowed by the trial judge, the order of the court which contains an option to purchase extended to Ms. Rhaburn proves that the court accepted that she built the house at her own expense. It is therefore Mr. Bradley's contention that

the court should have gone on to assess that the house is a modest but permanent dwelling house from the photos at page 63 of the Record.

[7] Mr. Bradley also argues that Ms. Rhaburn was given a promise by Mr. Mark that she would be allowed to reside on this property for the remainder of her life. He says that evidence of this promise is buttressed by the fact that even after Mr. Mark returned to Belize from the United States to retire in 2008, he allowed Ms. Rhaburn to continue living on this property for an additional 12 years and Mr. Mark still did not take any steps to immediately remove her from his land.

[8] Finally, Mr. Bradley argues that the Appellant's belief that she held a life interest in Mr. Mark's property was encouraged by the passage of time in that Mr. Mark allowed her to live on his property for seventeen years before serving her with a Notice of Eviction in February 2020. For these reasons, Mr. Bradley argues that the Appellant has established that the trial judge's decision was against the weight of the evidence and that Ms. Rhaburn has an equitable interest in Mr. Mark's property which amounts to a licence coupled with an equity. He therefore asks that this court set aside the order of the trial judge and replace it with an order granting Ms. Rhaburn a life interest for the remainder of her life, along with a permanent injunction preventing Mr. Mark, his servants and or agents from removing Ms. Rhaburn from the land.

The Respondent's Submissions

[9] Ms. Ghanwani argues on behalf of the Respondent that both grounds of appeal may be dealt with together as follows:

i) The Respondent contends that the Learned Trial Judge correctly found that the Appellant herein did not establish an equitable interest in Lot 681 and is no more than a bare licensee, and

ii) The Learned Trial Judge's decision was wholly supported by the evidence at Trial.

Though not expressly pleaded as such, Ms. Ghanwani submits that the interests claimed by the Appellant was based on the doctrine of Proprietary Estoppel. To establish an interest in land (in this case Lot 681) by virtue of proprietary estoppel the Appellant must have shown in the Court below that:

a. The Respondent, as owner of the land, induced, encouraged, or allowed the Appellant to believe that she has or will enjoy some right or benefit over the Respondent's property;

b. In reliance upon this belief, the Appellant acted to her detriment to the knowledge of the Respondent; and

c. The Respondent then sought to take unconscionable advantage of the Appellant by denying her the right or benefit which she expected to receive.

[10] Ms. Ghanwani submits that Ms. Rhaburn has failed to establish all three limbs of the proprietary estoppel principle. Citing Justice Sonja Young in ***Stephanie Yolanda Guerrero v Norman Henkis*** Claim No. 360 of 2015, Ms. Ghanwani states that the promise must have been made by the landowner in order for this limb of proprietary estoppel to be proven. Justice Young, citing the learned author of Commonwealth Caribbean Land Law, Professor Sampson Owusu at Page 186 stated that the doctrine of proprietary estoppel:

> *"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 landowner 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 his land."*

As the evidence clearly shows, the promise was made by Mr. Mark to Ms. Rhaburn as Ms. Rhaburn states repeatedly in her witness statement. In 2004, at the time when the promise was made, Mr. Mark had no interest in Lot 681 which then belonged to his mother. The Appellant is now alleging that in making this promise, Mr. Mark was acting as an agent of his mother, and relies on ***Jennifer Kelly and another v George Richardson and another*** Claim No. 9 of 1981**,** and ***Gloria Orellana v Wellington Busch*** Claim No**.** 23 of 1981**.** However, Ms. Ghanwani distinguishes these cases from the case at bar. In the ***Kelly*** case, the inducement or representation was made by the landowner at the time, being Ms. Orma Kelly, who held a leasehold interest in the subject property for 75 years. In the ***Orellana*** case, as indicated by the Appellant in her submissions, the deceased woman, Nemensia Kay, who held the freehold interest in the subject property, while she was still alive gave the Defendant permission to build a wooden house on the land. In exchange, the Defendant would effect all necessary repairs on the property, which he did. In both these cases relied upon by the Appellant, permission to live on the property was granted by the landowner, not

by an agent or successor. In addition, the Appellant in this case never pleaded at trial that in granting her permission to live on Lot 681, Mr. Mark was acting as agent for his mother, so she cannot allege this now. The trial judge is therefore correct in concluding that there is no evidence of any representation made to Ms. Rhaburn by the landowner in 2004, and she has failed to establish the first limb of the test for proprietary estoppel. The Respondent contends that he gave the Appellant permission to use the land temporarily until he required it for his personal use, provided that she constructed something moveable. Meanwhile the Appellant contends that he told her that she could live there until she dies. Ms. Ghanwani submits that interestingly, as acknowledged by the Learned Trial Judge, it is only until the filing of her witness statement (almost a year after the close of pleadings) that the Appellant suggested that the Respondent represented to her that she could live on Lot 681 until she dies. This was never mentioned in the Claim Form, Statement of Claim, or Claimant's Reply and Defence to Counterclaim. The relevant paragraphs of Her Ladyship's decision on this point are quoted below:

> "16. *The failure of the Claimant to raise the promise that she could live on Lot 681 "for life", even after the Defence was filed irresistibly begs the question- why was the alleged promise to be permitted to live on Lot 681 for life not raised in the pleadings made on behalf of the Claimant?*
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> *17. The First time that Ms. Rhaburn says anything about such an alleged promise is in her Witness Statement, filed about a year after the close of pleadings where she says "But the Defendant told me that if I wanted to stay in Hopkins Village he had a piece of land that I could use and that I could live there until I die...The Defendant then said that I could move unto the land and build on the land." Under cross examination, Ms. Rhaburn said when asking if Mr. Mark was a friend, that she was just meeting him in 2004. In cross-examination, Ms. Rhaburn continued to insist that Mr. Mark (whom she had just met) told her that she could "live on the land until I die". Ms. Rhaburn does not say however, anything more in evidence, either in her witness statement to say when the promise was made, or if there were any terms or conditions attached, nor indeed, what portion of Lot 681 she could occupy and build on, or whether it was all. It is the Claimant who is alleging that she was promised a "life interest" in the property by the Defendant who must*

establish what was the promise upon which she acted, and I find the evidence of the claimant to be quite lacking in this regard. I cannot conclude in all the circumstances that any such promise was made to Ms. Rhaburn by Mr. Mark."

[11] Ms. Ghanwani submits that the Respondent, in contrast to the evidence of the Appellant, consistently and credibly stated both in his Defence and in his Reply that he had given Ms. Rhaburn permission to build a moveable house on his property because he would eventually use the land for his own purpose. Unlike the Appellant who waited until her witness statement to mention the contents of the promise, the Respondent's evidence on the matter of the Appellant's occupation of Lot 681 and the structure to be built by her was consistent and credible throughout his pleadings and during his viva voce testimony at trial.

[12] In the Defence filed on behalf of the Respondent, he states as follows:

a. *"In or about June of 2004, he gave the Claimant permission to occupy the subject property. At no point was the Claimant's occupation uninterrupted because the Claimant was constantly reminded by the Defendant that she needed to build something moveable because the Defendant would eventually use the land for his own purpose."*

b. "The Claimant was informed to only construct something movable as the Defendant would require the property soon."

c. "The Defendant would travel between the United States and Belize at least three times for the year and visit the Claimant on the subject property and remind her that her permission to occupy the land was temporary and the construction must be something moveable. On all would inform the Defendant that she knew she had to move soon and would do so as soon as the Defendant required the subject property."

Similar statements are made at paragraph 3 of this Reply to Claimant's Defence to Counterclaim at paragraph 3:

"The Defendant further maintains that he informed the Claimant that the structure which she

intended to build must be moveable because the Defendant would eventually use the land for his own purpose."

Ms. Ghanwani submits that the trial judge was therefore right in finding that Ms. Rhaburn failed to establish the first limb of the test for proving proprietary estoppel; she was a bare licensee who had been given permission by Mr. Mark to live on his land temporarily and build a moveable structure.

[13] The Respondent says that the Appellant has also failed to prove detrimental reliance, the second of the limb of the test to establish proprietary estoppel**.** Ms. Rhaburn claimed that the house she built on the property was valued at $35,000. However, she was only able to prove receipts for materials valued at $1,449, while claiming that she did most of the labor personally. Ms. Ghanwani says that there is nothing on the receipts to suggest that those materials were used in the construction of the house. She also contends that the $35,000 claimed by the Appellant is astronomical.

The Respondent further submits that the Appellant:

a. Failed to apply to the Court for the appointment of any expert evidence and as such, no opinions, estimates or guesses should be entertained by this Honorable Court regarding the cost of constructing the dwelling house.
b. Failed to apply to the Court for the appointment of any expert evidence to show that the wooden house is not moveable when most wood houses are.
c. Failed to provide the Court with any proof of her finance which was used in the construction of the house.
d. Failed to provide the court with any construction estimate, bill of quantities, cost of labor or construction agreement.
e. Failed to bring any helper or contractor to give evidence regarding the cost or materials used to build the house.
f. Failed to provide the Court with any receipt for the purported clearing or filling of Lot 681.

The Respondent also submits that the Appellant accepted under cross examination that:

a. her house is made of wood and plycem;
b. has a zinc roof;
c. took less than a month to build;
d. sits on wooden posts, which she claims to replace often and so it stands to reason that these can be removed without affecting the integrity of the house.

Countervailing Benefit

[14] Ms. Ghanwani relies on ***Walsh v Ward*** [2015] CCJ 14 (AJ) for the principle that "the court should weigh the disadvantages suffered by the claimant against the countervailing advantages which he enjoyed as a result of that reliance." Ms. Ghanwani submits that the Appellants' use of Lot 681 rent free and without paying the property taxes when she had nowhere to go are countervailing benefits and any detriment that may have been suffered by her was heavily outweighed by the benefits which she received. The Learned Trial Judge therefore properly found in favor of the Respondent that no equitable interest has been established.

[15] Unconscionability

Ms. Ghanwani cites ***Capron v Government of Turks & Caicos Islands et al*** 2010 [UKPC] 2 in support of the point that the Appellant needs to prove unconscionability as the third element necessary to establish proprietary estoppel. The Court adopted the view that if the other elements were present to establish the grounds for proprietary estoppel, but that the result of asserting the legal right held by a respondent did not shock the conscience of the court, then a claimant would not be able to avail itself of the cause of action:

> *"It is only where the 'other elements' are present that the court's conscience requires to be examined for the presence of shock. Absent those elements, however reprehensible the behavior of the defendant and whatever the court's reaction to it may be the doctrine of proprietary estoppel will not avail the claimant."*

In the case at bar, the Respondent submits that not only are the first two elements of the test for proprietary estoppel not present, but that he has in no way acted unconscionably in asserting his

legal rights over Lot 681 now that he requires same for his use. It is the Appellant who has acted unconscionably by asserting a promise that was never made in an attempt to deprive the Respondent of his use and enjoyment of his property after he attempted to help her when she had nowhere to go.

Decision

[16] Having considered carefully the arguments submitted for and against this appeal, we find in favor of the Respondent. While Mr. Bradley in his submissions urged upon us that Ms. Rhaburn incurred expenditure on this property because of a promise made to her by Mr. Mark, and that this gave rise to Ms. Rhaburn having a licence coupled with an interest, we do not find ourselves persuaded by these arguments. It is our respectful view that in these circumstances it is this portion of Snell's discussion of the element of expectation in the doctrine of estoppel which obtains:

> *"But if (he) has no such belief and improves the land in which he knows he has no interest or merely the interest of a tenant, or licensee, or occupier under an incomplete or revocable contract, he has no equity in respect of his expenditure..."*

As noted we found no reason to disturb the findings of the learned trial judge that there was no promise made to Ms. Rhaburn by Mr. Mark that she could live on his property for the remainder of her life. Having so found, we say that Ms. Rhaburn developed the property at her expense knowing that she had no interest in that property other than that of a bare licensee, and she has no equity in respect of her expenditure. We agree with Ms. Ghanwani's contention that the Appellants' use of Lot 681 rent free and without paying the property taxes when she had nowhere to go are countervailing benefits and any detriment that may have been suffered by her was heavily outweighed by the benefits which she received. In reaching this decision, we take judicial notice of the fact that Hopkins is a popular tourist destination in Belize with property values of beachfront lots ranging as high as US $1million and beyond. We also bear in mind the fact that the Respondent has been deprived of the use of his property by the Appellant without any compensation for such a long period of time. We therefore dismissed this appeal and confirmed the decision of the learned trial judge in the court below with the following amendments and we ordered that:

1. The Appeal is dismissed.

2. The Judgment of the Trial Judge, Honorable Madam Justice Lisa Shoman, dated November 22, 2022 is confirmed except that the Appellant shall deliver possession of Lot 681 to the Respondent and shall remove her dwelling house placed thereon within 6 months commencing on March 9, 2023.

3. Costs of the Appeal to be paid by the Appellant to the Respondent as agreed or taxed.

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ARANA, JA

HAFIZ-BERTRAM, P

[17] I am in agreement with the reasons given for judgment by my learned sister, Arana JA.

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HAFIZ-BERTRAM, P

WOODSTOCK-RILEY, JA

[18] I concur.

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WOODSTOCK-RILEY, JA