

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION

Cle/gen/000693/2017

Between:

RALPH HALL AND LOUISE HALL – PHILLIPS
(in their capacity as Personal Representative of the Estate of the Late Eltha
E. Hall)

Plaintiff's

VS

SHAQUILLE SANDS

Defendant

BEFORE: The Honourable Mr. Justice Gregory Hilton

APPEARANCE: Stephanie Wells for the Plaintiff's

Ramona Farquharson for the Defendant

Hearing Dates: 18th December 2018

Decision

Hilton, J.,

1. This action was commenced by a Writ of Summons filed 6th June 2017 on behalf of the Plaintiffs.
2. The Defendant filed a Memorandum of the Appearance on 12th July 2017.
3. The Plaintiff filed an Amended Writ of Summons on 17th September 2018 and the STATEMENT OF CLAIM provides:

STATEMENT OF CLAIM

1. The Plaintiffs are two of the surviving children of the late Eltha E. Hall (hereafter called "the deceased") the third being Deon Hall, who consents to this action. The deceased died intestate on the 10th day of May 2017. A grant of Letters of Administration was granted to Ralph R. Hall and Linda L. Phillips on the 21st day of December 2017.
2. By deed of Conveyance dated 18th March 1983. The deceased is and was at all material times the fee simple owner in possession of a dwelling home and property situate in Little Blair and the owner of a 2013 Honda CRV (the "Assets"). The Defendant is allegedly the putative granddaughter of the deceased and has no legal or beneficial interest in part or whole to the Assets.
3. By reason of the grant of Letters of Administration, the Plaintiffs are vested with the legal authority to bring this action. By reason of Section 4 (b) (ii) of the Inheritance Act 2002 and by reason that they, along with their brother Dean Hall are the heirs-at Law of the deceased, they are the only ones beneficially and legally entitled to the title, use and control of the Assets.

4. By numerous verbal communications to and with the Defendant, the Plaintiffs requested the defendant to desist from Trespassing or from having any further dealings with the Assets but the Defendant has failed to do so.
5. Notwithstanding these request the defendant has persisted in wrongfully entering the Little Blair dwelling home and property and has remained in possession thereof. The Defendant has unlawfully taken control and use of the 2013 Honda CRV and has failed to yield up possession of the said vehicle to the Plaintiffs.
6. The Defendant has threatened that she intends, unless retained by this Honourable Court, to continue to Trespass and remain in possession of the dwelling home and property.
7. By reason of the matters aforesaid the Plaintiffs has been deprived of the use and enjoyment of the Assets the subject matters of the estate and have thereby suffered damage and loss.

AND THE PLAINTIFF CLAIMS:

- (1) Possession of the Assets the subject matter of the estate of the late Eltha Hall.
- (2) A declaration that the Defendant is not entitled to enter the said dwelling land and / or have access to the control of the 2013 Honda CRV.
- (3) An order that the Defendant do forthwith vacate the dwelling home and yield up possession of the 2013 Honda CRV.
- (4) An injunction to restrain the Defendant whether by herself or by her servants or agents or otherwise howsoever from entering the Plaintiff's said land and/or having access to or making use of the 2013 Honda CRV.

- (5) Damages or mesne profits.
 - (6) Costs
 - (7) Further or other relief.
4. The Defendant filed a Defence to the action on 7th November 2018 the contents of which are set out below:

DEFENCE

1. That the Defendant admits paragraph 1 of the Amended Statement of Claim (hereinafter referred to as “the claim”) dated the 17th day of September, A.D., 2018 save and except the Defendant’s unable to speak to Deon Hall’s her biological father’s consent or otherwise, nor the grant of said Letters of Administration. To those Acts, which the Defendant has no direct knowledge, the Plaintiff is put to strict proof thereof.
2. That the Defendant admits paragraph 2, save and except she vehemently rejects the assertion that she has no legal or beneficial interest in the assets of her Deceased grandmother. Eltha E. Hall.
3. That the Defendant denies paragraph 3 and puts the Plaintiff to strict proof.
4. That the Defendant acknowledges that the Plaintiffs in particular her uncle, Ralph Rolle has shouted at her and hurled insults which she deciphered as him wanting her out of her home. A home she has shared for more than ten (10) years with the Deceased. As for numerous and the exact content of the alleged communications, the Plaintiff is out to strict proof of paragraph 4 of the Claim.

5. That paragraph 5 of the Claim is accepted, save and except the Defendant denies any and all suggestions that she is a trespasser and thereby wrongfully entering Little Blair dwelling home and unlawfully using assets. The Plaintiff is put to strict proof thereof.
6. The Defendant denies paragraph 6 of the Claim and asserts that she is not a trespasser and has never threatened the Plaintiffs. The Plaintiffs are put to strict proof of paragraph 6 of the Claim.
7. That the Plaintiff denies paragraph 7 of the Claim and puts the Plaintiff to strict proof of any and all loss and damages as referred to in paragraph 7 of the Claim.
8. That the Defendant contends that she visited her grandmother, the late Eltha Hall often as a child and began living with her from more than twelve years ago.
9. That once the Defendant became gainfully employed, she began assisting her grandmother with household expenses, maintenance and general upkeep of the home.
10. That the Defendant never paid any rent to her grandmother or anyone else and was permitted to live in the said subject home with no interference from the Plaintiffs or anymore.
11. That the Late Eltha Hall verbally advised the Defendant and other close family friends that she wished for all that she owned to go to the Defendant. Further, she would state that she did not want the Plaintiffs or any of her children to get their hands on anything she owned. Reliance is also placed on my Affidavit
12. filed the 29th day of May, A.D., 2017, Action No. 2017/Pro/cpr/00031.

13. One of the last conversations the Defendant had with her grandmother she made her promise not to allow her ungrateful children to get their hands on any of her things.
 14. That the Defendant asked the Deceased if she had a Will. She claimed that she did but refused to say where it was or who had prepared it.
 15. Further the Defendant contends that she has always resided with her Late grandmother and any requests for her to leave were made after her grandmother's death. Also the same has been totally motivated by greed.
 16. That the Defendant contends that she was and still is a beneficial owner of the said property and that it is further advanced that the same was held on trust for her. Also, that she has not deprived the Plaintiffs of anything as they never had any use of the said home or vehicle of her grandmother.
 17. That the Defendant believes that she has a life interest in the subject property.
 18. That the Defendant has acted to her detriment in investing monies into maintaining the said home and has built many memories with her grandmother there. That the same is her home and she wishes to stay.
-
5. The Plaintiffs filed a Summons dated the 12th November 2018 seeking an Order of the Court pursuant to order 14 of the Rules of the Supreme Court (R.S.C.) for Summary Judgement against the Defendant on the grounds that the Defence filed by the Defendant is wholly without merit.
 6. In support of the Summons the Plaintiffs relied on three Affidavits filed 18th October 2018, 12th November 2018 and 13th November 2018 respectively; AND the Defendant, in opposition to the Summons relied on Affidavits filed 23rd August 2018

(which had exhibited an affidavit filed 29th May 2017 in action No. 2017/Pro/cpr/00031), 14th December 2018 and 17th December 2018 respectively.

Background

7. The salient facts, for the most part undisputed, are as follows:
 - (i) The Late Eltha hall was the mother of the Plaintiffs and Deon hall (the father of the Defendant) and she was the grandmother of the Defendant. The late Eltha Hall died intestate on 10th May 2017 and the grant of Letters and Administration of her estate was granted to the Plaintiffs on the 21st December 2017 with the concurrence of Deon Hall.
 - (ii) At the time of her death the late Eltha Hall was the fee simple owner in possession of a house and property situate in Little Blair, New Providence, by virtue of a conveyance dated 18th March 1983 and also the owner of a 2013 Honda CRV motor vehicle and the Defendant had resided with her at the time of her death for some 5-12 years (though this length of time is disputed by the Plaintiffs.)
 - (iii) After the death of the late Eltha Hall the Plaintiffs requested the Defendant to remove herself from the home which she has refused to do claiming that she had a beneficial interest in the home and had invested monies in maintaining the home.
 - (iv) The Defendant never challenged the Plaintiffs administration of the estate of the deceased nor has she sought to set aside the grant of Letters of Administration to the Plaintiffs obtained in 21st December 2017.

The Law

8. The provisions of the Inheritance Act Chapter 116 section 4 (1) (b) (ii) states:

“The residuary estate of an intestate shall be distributed in the manner mentioned in this section namely –

If the intestate leaves children but no husband or wife, the residuary estate shall be distributed equally among the children

In this case there are three children of the deceased Eltha Hall and each are entitled to a one third (1/3) share in the estate of the deceased. There is no provision in the Act for a grandchild (whose parent is alive) to share in the estate of a deceased.

9. The Defence of the Defendant has raised the issue of “proprietary estoppel” which prevents the revocation of a right affecting land, which one party has been led by another to believe to be permanent. The doctrine is founded on the wider equitable principle against unconscionability and its effect is to prevent a person from enforcing his strict legal right when it would be inequitable from him to do so in the light of the conduct of the parties and the dealings that have taken place between them.

In the case of *Inwards vs. Baker* [1965] 1 ALL E.R.446 at 448 Lord Denning MR put the statement of the Law in this way:

“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 license coupled with an equity.”

Later on in the judgement Lord Denning stated that it is for the court to say in what way the equity can be satisfied.

In the *Inwards vs. Baker* case, a father allowed his son to build a house on his (the father's) land in 1931. The son was under the impression that he would be permitted to live there as long as he wished. When the father died in 1951 the trustees of the father's will allowed the son to remain in occupation of the house for 12 years up to 1963 after which they sought possession. Possession was refused by the court on the grounds that the son had acquired, as against the father, an irrevocable license arising by proprietary estoppel and the trustees were bound by the license because they had acquiesced in the son's continued occupation after they had notice of it.

10. In the case of *Hussey v. Palmer* [1972] 3 ALL E.R. 744 the Plaintiff Mrs. Hussey, an elderly woman, was persuaded by Mr. Palmer the Defendant and his wife (who was the daughter of the Plaintiff) to sell her house and live with them; which Mrs. Hussey did. However, as the Defendant's house was too small for all of them to live comfortably, the Plaintiff, with the approval of the Defendant and her daughter paid for the construction of an additional bedroom onto the house at a cost of 607 pounds. Later due to conflicts between the parties the Plaintiff moved out of the house and sought from the Defendant the financial costs of the additional bedroom which the Defendant refused.

At page 7 and 8 of the decision Lord Denning MR ruled that the Plaintiff had obtained an equity in the property and that the court must look at the circumstances of each case to decide in what way the equity can be satisfied. Lord Denning ruled that in that particular case the Plaintiff had an interest in the property proportionate to the 607 pounds which she had put into it.

11. The Defendant has referred to the recent case of *Dobson vs. Griffey* [2018] EWHC (ch) where at para: 24 the court defined proprietary estoppel in this way:

- “24. The doctrine of **proprietary estoppel** operates in a similar way. First of all the defendant landowner by his words or conduct makes an assurance to or creates an expectation in the claimant. It need not be the promise of a specific right or **interest**, as long as it is clear enough in all the circumstances; See per Lord Walker in *Thorner v Major* [2009] 1 WLR 776, [29]. At this stage this is not an enforceable obligation. It does not comply with the relevant formalities rules. But, assuming that it is intended to be relied upon by the claimant, and it is relied upon, to her detriment, such that it becomes unconscionable for the defendant to resile from it, an equity is thereby raised against the defendant. The equity thus created is an **interest** in the property which does not need to comply with any relevant formalities rules, because it operates by way of imposing a trust on the defendant to satisfy it, and **constructive** trusts are outside the scope of those rules: see the Law of Property Act 1925, s 53 (2). The claimant is then entitled to an appropriate remedy to satisfy the equity. This may be an order for the defendant to perform the promise itself. Or it may be something else, perhaps the payment of money by the defendant to the claimant.
12. The Defendant has also referred to the case of *Re Basham (deceased)* (1987) 1 ALL E.R. 205 the head note of which reads as follows:

The deceased married the plaintiff's mother when the plaintiff was 15. From then until the deceased retired some 30 years later the plaintiff worked for the deceased without payment, helping him to run various public houses and a service station. The Plaintiff, her husband and their children formed a very close-knit family with the deceased and the Plaintiff's mother and always lived nearby. On

several occasions when the plaintiff and her husband considered moving away they were dissuaded by the deceased from doing so. During his retirement and after the death of the Plaintiff's mother the deceased was cared for by the Plaintiff and her husband. The deceased owned a cottage and had on numerous occasions indicated to the plaintiff that she would get the cottage when he died in return for what she had done for the deceased. He reiterated that intention on his deathbed. His family also understood that the cottage would go to the Plaintiff on his death. The deceased died intestate leaving an estate of some £43,000 comprising the cottage valued at £21,000 and cash of £23,000, less funeral expenses and some small debts. His next of kin who were entitled to the estate on the intestacy were two nieces who were the administrators of the estate. The plaintiff brought an action against the nieces seeking a declaration that she was entitled to the deceased's estate because the deceased had induced and encouraged in her the expectation or belief that she would receive the estate on his death and she had acted to her detriment in reliance on that expectation thereby raising a proprietary estoppel in her favour.

Held – Proprietary estoppel was a form of constructive trust which arose when A acted to his detriment on the faith of a belief known to and encouraged by B that he had or was going to be given a right in or over B's property, so that B was prevented by equity from insisting on his strict legal rights if to do so would be inconsistent with A's belief. The belief on which A relied did not have to relate to an existing right nor to a particular property. It followed that a proprietary estoppel could be raised on a belief or expectation that future rights would be granted over

a person's residuary estate. Since the plaintiff's belief that she would inherit the deceased's estate had been encouraged by the deceased since the plaintiff and her husband had acted to their detriment in subordinating their own interests to the wishes of the deceased in reliance of the plaintiff's belief that she would inherit, the plaintiff had established a proprietary estoppel and was entitled to the estate.

13. In considering the facts of the present case it is undisputed that the Defendant lived with her deceased grandmother for a considerable period and that throughout that period lived rent free.

The Affidavit sworn by one Marilyn Symonette on 13th December 2018 indicated that the Defendant lived with the deceased for more than five years prior to her death.

The deceased suffered a stroke on 7th February 2017 and eventually died in May 2017 while under the care of the Defendant at the home.

The Plaintiff in her filed Defence and her Affidavit indicates that the deceased promised her the property and that she, the Defendant, maintained the property during the time she resided there.

14. Proprietary Estoppel is a Defence that can be raised in a proper case; And, whether or not it can be made out successfully, is a matter for the court to determine after hearing all relevant facts.
15. While the court is of the view that the Defendant may have an uphill task at trial in ousting the Plaintiff's legal entitlement to the property (specifically the house), the court cannot make a final considered decision without all of the relevant facts and, as such, I will not accede to the order sought by the Plaintiff for summary judgement.

16. As the legal issues have been defined I think it prudent to have this matter proceed to trial expeditiously as the grant of Letters of Administration to the Plaintiffs was obtained more than a year ago.
17. I order that a Directions hearing be set down no later than four weeks from the date of this ruling.

Dated this 23rd day of January 2019

The Hon. Mr. Justice Gregory Hilton