

BARBADOS

[Unreported]

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

No 2188 of 2002

Between

PETULA DENNY

PLAINTIFF

**(Personal Representative of the Estate of
Joseph Beckles, deceased)**

-AND-

JOAN EDWIN

DEFENDANT

Before the Honourable Mr. Justice Randall Worrell, Judge of the High Court

2012: April 2; July 24;

2013: May 24

Ms. Diana Douglin of Messrs George Walton Payne & Co for the Plaintiff

Mr. Marlon Gordon for the Defendant

DECISION

[1] This matter concerns an application for possession of property by the Administratrix of the estate of a deceased man. It raises the fundamental question, often asked in our local circumstances, that is, in whom is the proprietary interest vested; the Administratrix or the party in possession?

BACKGROUND

- [2] The deceased, Joseph Beckles, was the owner of a house and land consisting of 2,680 square feet located at 2nd Avenue, Grazettes in the parish of Saint Michael. He purchased the property in 1974 and resided thereafter until he became ill in his later years. He then moved to Orange Hill, Endeavour in the parish of Saint James. In November 1985, Joseph Beckles died but prior to his death, he executed a will dated 23rd November 1981.
- [3] Under one of the provisions of this will, he bequeathed the property in question to his great grand daughter, the plaintiff in this action. He also bequeathed another parcel of land located at Endeavour in the parish of Saint James to Laurentine Edwin, the defendant's mother.
- [4] Shortly after the deceased man's death in 1985, the defendant moved into the property at Grazettes. She went about making numerous repairs to the property inclusive of putting in windows and doors, casting the floors and walls using concrete mixing and fixing the ceiling. She has remained in possession of the property from 1985 until present.
- [5] In the deceased's will, his son Joseph Webster was named as the Executor and Trustee. He has since died but the estate was not fully administered at the time of his death. The plaintiff applied for and obtained *Letters of Administration de bonis non cum testament annexo* to the deceased's estate; these were granted on 25th March 2002 and issued on 12th April 2002.
- [6] The plaintiff, as Administratrix, then issued a Notice to Quit dated 25th June 2002 to the defendant. The defendant has refused to vacate the premises to date and claims a proprietary interest in the said property.

THE CLAIM & COUNTERCLAIM

- [7] The plaintiff stated that the deceased let the property to the defendant at \$60.00 per week. By Notice to Quit dated 25th June 2002 and served on 22nd June 2002, the tenancy was determined on 31st July 2002 yet the defendant held over possession of the premises. She stated further that the defendant had not paid rent for 768 weeks and the sum of \$46,080.00 remained outstanding. In the circumstances she claimed possession of the premises, the said sum of \$

46,080.00, mesne profits from the date of filing of the writ until possession along with interests and costs.

- [8] The defendant to the contrary stated that she carried out works on the property based on the deceased's representations to her. She entered into possession and occupation of the dwelling from 1985 and was not aware that the plaintiff was entitled to claim a right to the property. In the circumstances, the defendant counterclaimed for (1) a declaration that the Grazettes property was vested in fee simple in equity in the defendant; (2) a declaration that the defendant was the owner of the dwelling house situate at Grazettes; (3) an order that the plaintiff execute a conveyance of the Grazettes property to the defendant; and (4) damages in the alternative and costs.

The Plaintiff's Witness Statement

- [9] The plaintiff deposed that by letter dated 13th February 2003 her then Attorneys-at-Law wrote to the defendant (by virtue of a letter to the defendant's Attorney) requesting that she cease and desist the carrying out of any construction on the property. The defendant replied by letter dated 25th February 2003, through her then attorney, indicating that she had in no way commenced construction of a wall structure and had given an undertaking not to construct anything until the instant matter had been determined. A copy of this letter was exhibited as 'PD6'. By further letter dated 12th December 2006, the defendant submitted a valuation prepared by TDH Building services for works carried out on the property showing a cost of \$20,000- \$25,000.00 representing work carried out on the property from 1985 – 1989 with the wall being completed in 2001.
- [10] By letter dated 7th November 1997, the defendant through her then Attorney wrote to the plaintiff stating that she was entitled to re-imburement for the value of the improvements she had made to the property.
- [11] The plaintiff deposed further that since she became of age, she paid the land taxes for the property. She wanted to carry out the wishes of the deceased and further, that she was entitled to the property.

Cross Examination

- [12] Under cross examination, the plaintiff testified that as far as she knew no one else laid claim to the property. She testified that she visited the defendant with her uncle, David Denny, to ask about the defendant paying rent and was told by the defendant that she 'was not paying a blind cent'. The defendant did not accept her as landlord.
- [13] Land tax was paid from the time she was 18 years old. The defendant paid rent to her father but the rent book could not be found and she could not say what the sums were. She was aware that a letter was sent to her Attorney indicating that the defendant had spent \$25,000.00 on the house. The defendant stated that she wanted to be re-imbursed but the property still looked dilapidated to her. She did not agree that the deceased convinced the defendant to do work on the property.

Witness Statement of Herbert Martin

- [14] Mr. Martin is the plaintiff's father. He became close to the deceased by virtue of a relationship with the deceased's granddaughter, the plaintiff's mother Ermnintha Euretha Denny. He deposed that the deceased initially made a will leaving the Grazettes property to his granddaughter but on her death during childbirth with the plaintiff, the deceased then bequeathed the property to his great granddaughter, the plaintiff.
- [15] Prior to his death the deceased resided in the Grazettes property but moved to Orange Hill to be closer to his family when he became ill. He moved into the house that he previously resided in with his granddaughter.
- [16] Mr. Martin deposed that the defendant's mother helped the deceased work agricultural land and they were friendly. He stated that the deceased told him that the defendant did not have anywhere to live and that he had told her to live in the house (the Grazettes property). At the time the house was liveable and did not require major works but the defendant made changes to make the house more comfortable for herself.
- [17] He deposed further that it was the deceased's intention to help the defendant and not to have her live in the Grazettes property as long as she has or even to own it. After the deceased died, the executor and him went to the defendant and told her she would have to vacate the premises or in the alternative to pay rent. He would

collect the rent since the executor lived in Trinidad. He believed the rent was about \$60.00 per week but the defendant refused to pay rent after the executor died. He stated that he subsequently gave the rent book to the executor's sister, Inez Springer.

Cross-Examination

- [18] Mr. Martin testified that the plaintiff was about 4 or 5 years old when the deceased made his will. He verified that the deceased moved to Orange Hill when he became ill but he could not recall the year. At the time the house was wood and wall and unfinished. He could not recall whether electricity was connected but he recalled that water was. He stated that he collected the rent but the defendant and her friend did not pay a lot. The rent book was left with the executor's sister who resided at Baywoods in the parish of Saint James. The court accepts this evidence.
- [19] He testified further that the defendant's mother helped the deceased to work the land but he did not know whether they were in a relationship. The deceased allowed the defendant to live in the house after she had children and had no where to go.
- [20] In re-examination, Mr. Martin stated that the defendant moved into the house, after the deceased had died, with her children and a boyfriend. They did not want to pay rent but the deceased's son in Trinidad (the Executor) stated that they had to pay rent and could not live there for free. The executor came up from Trinidad and told the defendant in his presence that she had to pay rent to him.

Defendant's Witness Statement

- [21] Ms. Edwin deposed that the deceased and her mother were involved in a common law union for more than 20 years. She regarded him as a stepfather and she would visit him to discuss her life situation. He always advised her and she took his advice seriously.
- [22] Sometime in 1982, he told her that he had a property in Grazettes, that it was not in good condition and he wanted her to fix it up and move into it. At the time she was living in rented accommodation and the owners had given her Notice to Quit and deliver up possession of the property. After discussion with the deceased, she stated that he advised her to fix up the property and move in.

[23] She obtained estimates and began working on the property to improve its dilapidated state. The property was a 2 bedroom wall house but contained no doors or windows. In addition to the concrete works and fixing the doors, she wired the house so the property could have electricity. Since the deceased's passing, she was surprised to receive letters asking her to vacate. Her 'step-father' did not mention anyone having ownership of the property because he would not have asked her to fix it knowing such was the case.

[24] She was asked by the plaintiff and her uncle to settle the instant matter outside of the courts but she believed that she has an equitable and legal right to the property and continued to reside there.

Cross Examination

[25] The defendant testified that she was put into possession by the deceased and she never paid rent to him. The deceased told her to move in as long as she wanted and that he wanted his house built. She stated that he let her move into the house because she had to leave where she was living at the time. She had two children that were 4 and 7 years old at the time but they were living with their grandmother. She confirmed that the deceased wanted to help her but did not expect that she would live there until she 'got back on her feet'.

[26] She had the conversation with the defendant in 1982 but did not move into the house until 1985. Between 1982 and 1985, she was 'fixing up' the house because it was not liveable in 1982. She plastered the interior walls between 1982 and 1985. Contrary to correspondence sent to the plaintiff indicating that the work was done between 1985 and 1989, the entire interior is what was worked on to make the house liveable and all of that work was done prior to 1985. The work was done with the knowledge and approval of the deceased who died some 8 months after she moved in. He would come to Grazettes every Saturday and she took him back to his home in Orange Hill.

[27] With respect to work done on the property, she submitted that the invoice tendered by Terrence Hoyte for work done on the property represented a quotation on the work he saw. She spent about \$20,000.00 in the years 1982, 1983 and 1984.

[28] With regard to Land Tax, the defendant testified that she had paid no land tax in relation to the property. She was told not to pay the tax on the property after she went to the Land Tax department. She was not taking advantage of the deceased's generosity by not leaving the house when asked to do so. She confirmed that she had the benefit of the house rent free since 1985 and further, confirmed that the house did not belong to her.

[29] In re-examination by Mr. Gordon, she stated that her mother moved in with the deceased when he went to Endeavour in the parish of Saint James to live. She went to the Land Tax Department in 1987 and was advised not to pay. She asked her then attorney about a valuation and was advised that the owner should do the valuation. She never had a discussion with the plaintiff about the property.

Witness Statement of Rosemary Yearwood

[30] Ms. Yearwood is the defendant's sister. She deposed to a common law union between her mother and the deceased. She also verified the conversation between the deceased and her sister after which the defendant fixed up and moved into the property. She stated that she was aware that her sister spent a considerable amount of money fixing up the house and that she remained in undisturbed possession to date.

Cross Examination

[31] Under cross-examination, she stated that the conversation between her sister and the deceased occurred in 1982. She stated further that the conversation took place in Fairfield, Black Rock; that she was in the living room when it occurred and she heard everything that was being said.

SUBMISSIONS

[32] The plaintiff submitted that the defendant was a licensee. There was never a promise of expectation in law to the defendant and she was never told that she would become the owner. She could not rely on equity to suggest that she had an interest in the property. In the plaintiff's view the equity was already satisfied given that the defendant lived in the property rent free for a substantial portion of time. The standard to be met was shown in the local case of *Sealy v Sealy* (decided 6 June 1990, Barbados Supreme Court).

[33] The defendant argued that the plaintiff was aware that she was in occupation before her legal interest commenced. She took her interest with full notice of the defendant's interest in the property. The defendant's position is that she has never acknowledged any person as her landlord and she contends that the plaintiff has not shown that such a relationship has ever existed.

DISCUSSION

[34] A number of issues arose out of this matter. The evidence indicated, and I so hold, that the defendant entered into the property based on representations made to her by the deceased. The question that must be decided is for what purpose did the deceased man permit or allow the defendant use of the property. The defendant's witness statement points to a cordial relationship between the deceased and herself. The deceased was well aware of the difficulties which the defendant was experiencing with her living situation and it appears to the court, having considered all the evidence that the deceased allowed the defendant to occupy the premises to help improve her circumstances.

[35] The evidence showed that the deceased made his will in 1981 and that the conversation between the defendant and the deceased occurred in 1982. It is reasonable therefore to conclude that at the time of the conversation between the deceased and the defendant, he would have been well aware of the provisions of his will bequeathing the said property to his great grand-daughter. In the circumstances, the evidence does not lend to a determination that the deceased granted the defendant permission to stay in the property with a view to her remaining there in perpetuity. There is no basis on which the court can conclude that the defendant was anything more than a licensee or a tenant at will based on the representations of the conversation between the deceased and herself.

[36] Having entered into the property, the plaintiff incurred considerable expense renovating the property to make it as the evidence indicated 'liveable'. The defendant argued that this expense gave rise to an interest in the property or an adequate remedy under the principle of proprietary estoppel. In support, the case

of *Ramsden v Dyson* [1866] LR 1 HL 129 was submitted for consideration and in particular the dicta of **Lord Kingsdown** where his Lordship stated

“If a man, under the verbal agreement with a landlord for a certain interest in land, or what amounts to the same thing, under an expectation, created or encouraged by the landlord, that he shall have a certain interest, takes possession of such land, with the consent of the landlord and upon the faith of such promise or expectation, with the knowledge of the landlord and without objection by him, lays out money upon the land, a court of equity will compel the landlord to give effect to such promise or expectation.”

- [37] With the greatest of respect, this case and the line of authorities submitted by the defendant are all distinguishable on the facts. The court cannot conclude from the evidence that it was the intent of the deceased for the defendant to have an interest in the property. The deceased had more than enough time if he so desired to bequeath any part of his estate to the defendant but he chose to make no such changes to his will. It appears and the court so holds, that the deceased did not intend for the defendant to have a proprietary interest in the property but intended for her to have some place to live at that point in time.
- [38] To this Court, the defendant cannot claim reimbursement and at the same time a proprietary interest, she must have appreciated that she was either a licensee or a tenant and hence the reason for the letter dated 7th November 1997.
- [39] In the letter dated 7th November 1997, the defendant’s then Attorney-at-Law wrote to the plaintiff indicating that the defendant was in the process of having the improvements she made to the property valued with a view towards reimbursement. Thereafter it appears that a period of inactivity subsisted and it was not until 25th September 2006 that a valuation was tendered by TDH Building Services in the amount of \$20,000.00 - \$25,000.00.
- [40] The defendant’s evidence is that this work was done prior to 1985. Correspondence from her then attorney indicates that this work was done after she

moved in from 1985 to 1989 and a wall was completed in 2001. There is no other evidence in this matter which could assist the court in determining when work was completed but the court never-the-less can conclude on the evidence that the deceased would have been aware prior to his death that the work needed to be done and gave his permission accordingly.

[41] What then is the defendant's entitlement? There are two interests here of note; the proprietary interest bequeathed to the plaintiff by the deceased and the equitable interest held by the defendant. The defendant indicated that she was in undisturbed possession of the property since 1985 and that the deceased did not request rent from her. The evidence indicated however and it has not been rebutted, that rent was demanded by the Executor and the defendant commenced the payment of rent. It was not until the Executor's death that the defendant ceased the payment of rent.

[42] The defendant argued that on the death of the deceased, the Executor and beneficiaries were on notice of her proprietary interest and that her interest could not be defeated without either settling the equity in the form of value or by transferring the property to the party for the value of whatsoever the amount that was in issue.

[43] The court is of the view that the defendant should be compensated to the value of the work completed at the point of valuation and accepts the figure of \$25,000.00 as the value of said improvements. The court is also mindful that arrangements between the deceased and the defendant, given previous findings, should reasonably be interpreted as meaning that the defendant could live in the property for a time period equivalent to the value of the improvements she made.

[44] The evidence before the court indicated that the defendant paid \$60.00 per week in rent. Accepting this figure as a reasonable amount to pay weekly for rent over the period of the defendant's occupation of the property, her equity would have been extinguished in 1993, some 8 years after her entry to the property (annual rent of \$3120.00).

[45] At an annual rent of \$60.00 per week by 52 weeks (\$3,120.00), the defendant's equity in the property, namely the value of the improvements made, would be

duly set off in the amount of \$25,000.00. In other words, the court finds that the value of the improvements in the sum of \$25,000.00 to which the defendant would be entitled has to be set off against the annual rent of \$3,120.00 and therefore the rent due for the period 1985- 1993 would duly be set of against the sum of \$25,000.00.

- [46] The court found on the evidence that the defendant commenced occupation of the property as a licensee. Her equity extinguished in 1993 and sometime thereafter she became a tenant upon the payment of rent to the Executor. The court, however, has no way of determining on the evidence the period of time for which the defendant paid rent. There is also no evidence as to when the Executor died and when the defendant ceased the payment of rent. In the absence therefore of any evidence to assist the court in its determination, an award of rent from the period when the plaintiff's rights as Administratrix commenced (April 2002) until the determination of the tenancy (July 2002) is appropriate. In the circumstances an award of \$1,040.00 for outstanding rent is made.

Orders Sought

- [47] The defendant essentially sought orders which would extinguish the right of the plaintiff as beneficiary under the will to take possession of the property and the court must therefore determine whether the evidence is of such breadth and quality that it showed that the equity could only be satisfied on conveyance of the property to the defendant.
- [48] In the circumstances, this court cannot so hold. The defendant's equity extinguished in 1993. The evidence showed that she was well aware as far back as 1997 that she was not in a property that belonged to her. Indeed she admitted the same in her evidence. Given therefore that the court found that she was a licensee, then a tenant and now a party holding over, it cannot be appropriate to accede to the defendant's requests either for a declaration that she was the owner of the property or indeed that she was entitled to a conveyance of same.
- [49] The plaintiff however is entitled to mesne profits from August 2002 until the date of this decision. Accordingly an award of \$34,800.00 is appropriate in the circumstances.

DISPOSAL

[50] Having considered all arguments, the authorities presented and the findings of the court therein, the following orders shall be made:

1) The plaintiff shall have possession of the property 6 months after the 31st May 2013, that is, that the plaintiff shall retake possession of the property located at Grazettes in the parish of Saint Michael on 1st December 2013.

2) The defendant shall pay to the plaintiff rent in the sum of \$1,040.00 and mesne profits in the sum of \$34,800.00 calculated to 31st May 2013.

3) It is declared that the plaintiff is the owner of the whole of the dwelling house situate at 2nd Avenue Grazettes in the parish of Saint Michael. It is further declared that the fee simple is vested in the plaintiff.

4) The defendant's counterclaim is hereby refused.

[51] The plaintiff shall have her costs. Counsel for the plaintiff and for the defendant are to make written submissions on costs no later than 4th June 2013.

Randall Worrell
Judge of the High Court