IN THE SUPREME COURT OF BELIZE, A.D. 2012

CLAIM NO. 31 of 2011

MICHELLE CARD **CLAIMANT**

AND

GERALD ALEXANDER RHABURN **DEFENDANT**

Hearings
2012
24th January
6th February
7th May
31st May
16th July

Ms. Darlene Vernon for the claimant.
Mr. Said W. Musa SC for the defendant.

LEGALL J.

JUDGMENT

1. The main legal issue in this case is whether the claimant, who is the daughter of the defendant, is entitled to a share or life interest in property owned by lease by the defendant, situate at 1157 Coney Drive, Belize City, Belize, (the property) on the ground of equitable relief based on proprietary estoppel. Whether such relief is applicable

in this case depends on the facts. It is, however, not easy in this case to determine the true facts, because the only witnesses to the facts are the defendant on the one hand, and the claimant and her husband, on the other hand. The court has to decide who is speaking the truth. Fortunately, there are some facts which find concurrence on both sides; and we should consider these first, before analyzing the facts in dispute.

2. It is accepted by both sides that the claimant lived with her parents since birth, and in the property since 1991, when the upper flat of the property was built by the defendant who took mortgages to do so. The defendant took a mortgage from the Development Finance Corporation (DFC) in 1989. Later he took another mortgage from the National Development Foundation Corporation (NDFC), which he used to pay off the loan from the DFC. Subsequently he got another mortgage from Belize Bank to repay the loan to NDFC which was in liquidation. The outstanding balance of the mortgage at Belize Bank as at July 2011 was $88,561.55. It is also accepted that around 1996 the claimant who had a two year old child from a previous relationship, and who was still living with her parents at the property, met her then boyfriend; and with the permission of her father, the claimant, her boyfriend and the baby were allowed in 1996 to live at the upper flat of the property. The claimant and her then boyfriend, who later became her husband (they were married in 2009) moved to the lower flat of the property around 2000; and at present are still residing there.

3. There is a dispute as to the valuation of the lower flat. The defendant obtained a valuation dated 19th July, 2011 of the entire property by Morrison and Associates who put the valuation at $320,000; with the below flat valued at $65,658.88. The claimant obtained a valuation dated 1st March, 2010 of the lower flat from valuator Talbert Brackett in the sum of $48,000. But the circumstances under which the claimant, her husband and child went to live at the lower flat are the main points of dispute between the parties. According to the claimant, after meeting her husband around 1996, she and her husband wanted to remove from her father's home, and wanted a place of their own, and took several measures to achieve this objective, which were known by the defendant. The defendant, according to the claimant, proposed to the claimant and her husband, that they build a lower flat of the property, which at that time only had the upper flat and no lower flat, and that they could live there, and it would be their home. The reason for this proposal by the defendant was, according to the claimant and her husband, because they could assist the defendant in paying the mortgage charged on the property by Belize Bank. The claimant said that she and her husband agreed to the proposal by the defendant; and it was also agreed and promised by the defendant that when the lower flat was built on the property, it would belong to the claimant for her life.

4. As a result of the promise or agreement, the claimant and her husband say that they expended more than $50,000 to build the lower flat, which building began in stages, until the whole of the lower flat of the property was enclosed. The claimant swore that the defendant

supervised the building of the lower flat; and her husband supplied the labour. The claimant insisted that prior to building the lower flat, there was no structure there; and the back of the property was "swamp land with mangroves". To prove that there was no lower flat prior to their building it, the claimant tendered a photograph of the property, namely MC3 which shows no lower flat. There was also tendered a photograph showing the property with the completed lower flat. There is, though, no evidence of the date these photographs were taken. The building of the lower flat began, according to the claimant, with a 12 feet by 12 feet room; and later by another room of the same size. The claimant states when the first room was built, she permitted her father to use it for storing his musical equipment, and for the practice of music, as he was, and still is, a musician. After the building of the second room, the claimant and her husband moved from upstairs to the lower flat around the beginning of 2000. While occupying the lower flat, the claimant and her husband continued to add rooms; and at present there are six rooms at the lower flat.

5. The claimant states that in accordance with the above agreement, she and her husband gave the defendant one thousand dollars to fill the back yard of the property to remedy the swamp and mangrove problem. After the filling, the claimant swore that she and her husband built a one bedroom wooden structure at the back of the property, and separate from the lower flat. The claimant and her husband swore that the defendant saw them building the rooms and the wooden structure, and did not object to them. The claimant and her husband say that they applied for, and obtained electricity for the

lower flat and structure, and electricity bills are in the name of the claimant's husband. The claimant and her husband swore that, as agreed, they assisted the defendant to pay the mortgage by giving him varied monthly amounts in the sums of $400. or $600. and sometimes as much as a $1,000. They have not obtained receipts for these payments to the defendant, and are not aware of the total amount paid towards the mortgage. But they denied a suggestion that the total of the amount paid in relation to the mortgage was $3,500.00. The claimant and her husband also denied that the defendant gave them temporary permission to live at the lower flat for two years at a contribution rent of $200.00 monthly, until their home was completed at Ladyville. The claimant's case is this: That the defendant agreed and promised her that if she built the lower flat at her own expense, she could live there for as long as she lived and it would be her home. The claimant says that she and her husband in accordance with the agreement and promise spent their own money and built and developed the lower flat and also paid towards the mortgage and therefore they are entitled to a share of the property.

6. The defendant disputes several aspects of the above evidence of the claimant and her husband. The defendant states that below the upper flat, was not empty in 1996, but had his music studio there which was enclosed; and the entire downstairs had a cement flooring, thereby disputing the claimant's evidence that there was no lower flat at that time. The defendant also states that the claimant found living upstairs did not provide enough space and privacy for her and family, so she requested permission to enclose a part of the lower portion of the

property to live there, until she and her husband were able to build their own home at Ladyville Village. The defendant swore that the claimant told him that she and her husband would need about two years to build their own home at Ladyville and agreed to pay $200.00 each month for occupation of the lower portion until their home at Ladyville was completed. The defendant said that to enclose a portion of the lower flat, it took a contribution of $7,000 by the claimant. He said that at the completion of the construction of a part of the lower flat, the claimant, her husband and child removed from upstairs in 1999 and resided at the lower flat and are still residing there. The defendant swore that it was "clearly understood" that the agreement was for the claimant and her family to occupy the part of the lower flat "for only a temporary period until the home was completed" at Ladyville. He swears that to date they have not built their home at Ladyville as they had promised.

7. The defendant also swore that while the claimant was residing at the lower flat, she wanted more space, so he permitted her to use the part of the lower flat where his studio was, and he put the studio at another part of the lower flat at his own expense. He denied that the claimant spent money to fill up the back yard of the property. He said that it was while he was abroad on one of his music tours, that the claimant built the wooden structure at the back of the property without his permission. He says that the claimant has rented to a tenant the wooden structure for $400.00 a month and has taken over his music studio without his permission and is also renting it to another tenant for $400.00 a month. He states that he does not benefit from the rents

received by the claimant. The defendant also swore that the claimant did not spend an excess of $50,000. on the lower flat; and that he did not make any representation or encouragement to the claimant to build the lower flat or make improvement at the property "with the intent that she would have an interest in my property," to use his own words. The defendant said that the claimant enclosed the entire lower flat with six rooms, in spite of his objection and without his consent.

8. Who is speaking the truth? A strong persuasive feature of this case is that the lower flat was built in stages during a period of about ten years from about 2000 to 2010; and not once did the defendant reported, according to him, the building of the entire lower flat without his consent to the police or a lawyer or took legal action to stop the building. When asked the reason for him during this long period not taking such action, he said it was because of his sick wife who had a heart problem. The implication is that if he took such action against his daughter, that may or would aggravate the heart problem of his wife and may result in her death. But the evidence is that his daughter and her mother – the defendant's wife – were for years not on speaking terms. In that case, it is difficult to see the wife's health suffering if he had consulted a lawyer to write a letter to the claimant pointing out that the claimant had no permission to proceed to enclose the entire lower flat, and calling upon her to cease the construction, especially in a situation where the claimant had caused a lawyer to send him a letter explaining her rights, a letter which is shown below. I do not therefore accept the defendant's evidence that he believed his wife's health would suffer, and his

reason for not taking some kind of legal action to stop the claimant from proceeding with the enclosure of the entire bottom flat.

9. One thing is clear: the defendant did give permission to the claimant to build at least two rooms at the lower flat, and he accepted that the claimant spent money for that purpose. But he is insisting that the permission was for them to stay there temporarily on payment of $200. monthly rent until the construction of their house at Ladyville was completed. It may appear from the defendant's evidence that the agreement was that the claimant, after having built the two rooms downstairs, and thereby improving the property, would then leave the constructed two rooms and the improvement of the property for the defendant, and move to their home at Ladyville. Perhaps there are people who would make such an agreement; but on the facts of this case, including the inaction of about ten years of the defendant to take any legal action or consult a lawyer to stop the construction of the entire bottom flat, it is difficult to accept this evidence of the defendant.

10. But it is still urged that the defendant's evidence should be accepted because the claimant and her husband are not witnesses of truth and their credibility is suspect. It was pointed out that the claimant said in her witness statement that initially the property was simply an upstairs with nothing downstairs. But in cross-examination she said that "before we moved in downstairs my father stored his instruments downstairs. He had for many years. He had band practice downstairs prior to me and my husband moving in." But the claimant had

testified that the building of the lower flat was in stages, one room, then another, while they were still residing upstairs; and the musical instruments were stored in one of these rooms with her permission before they moved downstairs.

11. It was also said that the claimant was not truthful in that she had denied that her father had contributed, or in any way had involvement in the building of the lower flat. But in cross-examination she said "My father supervised the building of downstairs. The defendant helped me distribute the $7,000 which was used to buy material and pay labourers." The claimant, says the defendant, had also given the false impression that she built a house at Belmopan the subject of a sale to her by the defendant; but, as it turned out, she did not build, but made repairs to the house. The claimant also gave the impression that she lived at the house in Belmopan; but she later admitted that she visited the house for purposes of repairs and rental. In addition to the above proved discrepancies and inconsistencies, learned senior counsel for the defendant brought to the court's attention a letter written on behalf of the claimant by her attorney-at-law Mr. Carlo Mason dated 5th March, 2010, as follows:

> "My clients' intention is to remove themselves from the said premises at Coney Drive. However, their ability to move to new premises has been severely hampered by the extent of the monies they have invested into the Coney Drive premises, at your behest, and upon the strength of promises made by you, father of one of my clients

> concerning the succession plans involving the said premises.
> My clients have expended a total of forty eight thousand dollars ($48,000.00) into the said premises, rendering what was once an empty and open downstairs section into what is now a rather attractive dwelling space for a normal sized family. Interestingly enough, it was only after the completion of this dwelling space that your position on the devisee of the premises.
> In light of the above, we hereby demand the reimbursement of the aforementioned sum of forty eight thousand dollars ($48,000.00) which had been expended by my clients in the construction of the downstairs."

It was submitted that the claimant was not in the letter claiming any equitable interest in the property, which is now being claimed, but compensation based on promises made by the defendant concerning succession plans. Because of this discrepancy and all of the others above, it is submitted that the claimant ought not to be believed.

12. In spite of all the discrepancies, the inactivity on the part of the defendant to take any legal measure to stop the enclosure of the whole of the bottom flat when he said that the whole enclosure was not authorized by him, and bearing in mind that the full enclosure took about ten years to complete, I think these matters tilt the scale in favour of believing the claimant that the defendant promised that if she built the lower flat of the property and assisted him with the mortgage, the flat would be hers for as long as she lived. It must also be noted that although Mr. Mason wrote a letter to the defendant on

behalf of the claimant, still the defendant did not contact a lawyer to make a response to that letter and protest the building of the entire lower flat. Moreover, I saw the parties gave their evidence and I observed their demeanour. I am satisfied, on a balance of probabilities, that the defendant did make to the claimant the promise as aforesaid.

13. The issue now is what is the legal effect of such a promise. The parties on both sides submitted a plethora of authorities of the legal effect of such a promise. I do not intend to detract from the scholarship and industry of learned counsel on both sides by not considering all the authorities. This is because I find the legal principle is wonderfully captured in ***Inwards and others v. Baker 1963 2 QB 20***, the facts of which are to some extent similar to this case. In that case, a Mr Baker was the owner of a little over six acres of land. His son, Jack Baker, was thinking of building a bungalow. He had his eye on a piece of land but the price was rather too much for him; so the father said to him: "Why not put the bungalow on my land and make the bungalow a little bigger." That is what the son did. He did put the bungalow on his father's land. He built it with his own labour with the help of one or two men, and he got the materials. He bore a good deal of the expense himself, but his father helped him with it, and he paid his father back some of it. Roughly he spent the sum of £150 out of a total of £300 expended. When it was finished, he went into the bungalow; and he has lived there ever since. In 1951 Mr Baker died, and in 1963 his executrix took proceedings to get the son out of the property: see Denning M.R. at p. 35.

14. The first instance judge held against the son. His appeal was allowed on the main ground that if an owner of land requests another or indeed allows another to expend money on the land under an expectation created or encouraged by the landlord or owner that he will be able to remain there, that raises an equity in the licensee such as to entitle him to stay because he has a licence coupled with an equity. Lord Denning states the principle this way:

> "Even though there is no binding contract to grant any particular interest to the licensee, nevertheless the court can look at the circumstances and see whether there is an equity arising out of the expenditure of money. All that is necessary is that the licensee should, at the request or with the encouragement of the landlord, have spent the money in the expectation of being allowed to stay there. If so, the court will not allow that expectation to be defeated where it would be inequitable so to do.

Inwards v. Baker was followed in ***Gillett v. Holt 2001 Ch 210***, where on a discussion on proprietary estoppel, the court said that "the fundamental principle that equity is concerned to prevent unconscionable conduct, permeates all the elements of the doctrine. In the end, the court must look at the matter in the round": see page 225, per Report Walker LJ. Where a person (A) has acted to his detriment on the faith of a belief, which was known to and encouraged by another person (B) that he either has or is gong to be given a right

in or over B's property, B cannot insist on his strict legal rights if to do so would be inconsistent with A's belief: see ***Re Basham (Deceased) 1987 1 AER 405, at p 409 per Edward Nugee QC***.

15. To establish proprietary estoppel it is necessary to prove that the applicant or claimant, at the request or with the encouragement of the landowner or defendant has spent money in improving the property in the expectation created by the defendant that the claimant would be allowed to occupy it. If that is established, the court would not allow that expectation to be defeated where it would be inequitable to do so. Where a person under an expectation, created or encouraged by a landlord or owner of land or property, that he shall have a certain interest in that land or property, takes possession of the land or property with the consent of the owner or landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord and without objection by him, expends money upon the land or property, a court of equity will compel the landlord or owner to give effect to such promise or expectation: see ***Ramsden v. Dyson (1866) LR1 HL 129***. In this case before me, the defendant, – and I do apologize for repeating it – over a period of about ten years saw the claimant and her husband build the entire lower flat, one room at a time; saw them purchase materials and spend money in the building of the flat; and yet did not throughout this period consult a lawyer or took any legal proceedings to prevent the claimant from building the entire bottom flat. I therefore do not accept the evidence of the defendant that he gave the claimant temporary permission to occupy the two rooms of the lower flat at an occupation rent of $200.00 a

month. For the reasons above I do not believe the defendant when he said that he did not make any representation or encouragement to the claimant to build the entire lower flat with the intent that she should live there as long as she lived. Although there are inconsistencies in the claimant's evidence as shown above, I believe her when she said the defendant promised and encouraged her to build the lower flat at her expense and that she would be able to live there for her life. I accept the evidence that she spent about $50,000 improving and building the lower flat. The claimant therefore has, on the facts, an equitable right to live in the lower flat for her life.

16. But I have no doubt that the defendant did not make any promises to the claimant concerning renting out the structure at the back of the property to tenants. The evidence is that the claimant has rented the structure to a tenant at $400.00 per month. The rent from the structure was not, according to the defendant, shared with him, but the claimant's husband testified that he shared the rent with the defendant. There is also no evidence that the defendant promised the claimant that if she built the structure at the back of the property, she could occupy it for her life time or rent it to a tenant. I believe he saw her building the structure and did not object to it. But the structure is on land owned by the defendant, and since the claimant paid for the structure, and based on the testimony of the husband above, I think justice requires that the rent from the structure should be shared equally.

17. The claimant has frankly stated that she and her husband "stand ready and willing to make payments towards the loan (mortgage) as we have been doing to save the property from auction or foreclosure." There is no evidence of the amount of the monthly mortgage, but I think the justice of the case requires that the claimant should pay monthly half of the monthly mortgage payments. Looking at the case in the round and considering all the facts and circumstances, the equitable thing to do is that the claimant be given, as she applied for, a life interest in the lower flat. I also rule that the rent collected for the structure should be shared equally.

18. Costs follow the event. Since both parties were partly successful, they are to bear their own costs.

19. I therefore make the following orders:

(1) A declaration is granted that the claimant is entitled to a life interest in the lower flat of the property situate at 1157 Coney Drive, Belize City, Belize.

(2) The Registrar of lands is ordered to reflect the life interest mentioned at (1) above in the lease or title of the property mentioned at (1) above.

(3) The claimant is ordered to pay to Belize Bank Limited each and every month commencing from 1st September, 2012 half of the monthly mortgage payments payable to Belize Bank Limited with respect to the property until the full amount of the mortgage is paid.

(4) The claimant shall pay to the defendant each and every month commencing from 1st September, 2012 half of the rent collected from the tenant for the structure at the back of the property.

(5) Parties to bear their own costs.

Oswell Legall
JUDGE OF THE SUPREME COURT
16th July, 2012