

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. 353 of 1992

BETWEEN

BARBARA CUMBERBATCH

Plaintiff

AND

**ALPHONSUS FREDERICK (Executor
Of the Will of MRYTLE CUMBERBATCH
(Deceased)
VIERRA CONSTANTINE
CYNTHIA CUMBERBATCH
CECIL CUMBERBATCH**

Defendants

Before the Honourable Mr. Justice P. Moosai

Appearances:

Mr. D. Alexander for the Plaintiff

Mr. R. Ramcoomarsingh for the Defendants

JUDGMENT

The facts of the case are not very much in dispute. The deceased, Myrtle Cumberbatch (“Myrtle”), was the owner of the property situate at No. 7 Lackpat Road, Tunapuna. Before Myrtle became the owner, her mother and father owned the said property. The dwelling-house on the said property was in a dilapidated state and it was decided to construct a new dwelling-house. Myrtle at the time was living abroad. The nature of the agreement or arrangement is in dispute.

The Plaintiff contends that in 1982 Myrtle discussed the construction of the new dwelling-house with her siblings the third and fourth Defendants (Cynthia Cumberbatch [“Cynthia”] and Cecil Cumberbatch [“Cecil”]) and herself. Cecil and the Plaintiff are married but now live separate and apart. Myrtle agreed with them that the ground floor of the said dwelling-house would be for Cynthia and her other sister Vierra Constantine, and the first floor would be

for Cecil and the Plaintiff. Myrtle also said that whenever she came to Trinidad she would stay with Cynthia and Vierra on the ground floor.

Cecil contends that as the dwelling-house was in a dilapidated state Myrtle thought it fit that Cecil and Cynthia (Vierra was living abroad by this time) should have some kind of improved accommodation. Myrtle said she would do her best in assisting them in building the new dwelling-house. It was agreed that Myrtle, Cecil, Cynthia and the Plaintiff should get together and pool their resources for the purpose of building the new dwelling-house. Cecil, Cynthia and the Plaintiff had to invest their incomes to buy materials. Myrtle was to take a loan from Colonial Life Insurance Company Limited (CLICO) to pay for the labour. All Myrtle told them was that when the said dwelling-house was finished Cynthia would occupy the ground floor and Cecil and the Plaintiff would occupy the first floor. Myrtle made no promise as to any inheritance or who was to get what.

Cynthia contends that the arrangement for the building of the said dwelling-house was that they should get together and build same as Myrtle decided that all of them should live together, she (Cynthia) would live downstairs with her children and Cecil and the Plaintiff would live upstairs.

I accept the evidence of Cecil that there was no promise by Myrtle at the time the arrangement was made to confer any specific interest in the said dwelling-house. The Plaintiff struck me as being a confident and credible witness in many respects but I do not accept her evidence on this aspect. Cecil and Cynthia struck me as being straightforward and honest on this issue. They both appeared to be simple witnesses. In coming to my conclusion I also accepted the

evidence of Cynthia. Cynthia said that she expended her moneys on the construction. She first gave money to buy bricks and some windows for downstairs. When the place was fit to be occupied she moved in and started paying four hundred dollars (\$400.00) per month. She provided nine thousand dollars (\$9,000.00) for the construction and when she moved in she finished the gallery and the first bedroom. Cynthia also said that she moved out in September or October 1987 as she could not afford to pay the four hundred dollars (\$400.00) per month rent, which was required. Myrtle was alive at the time so that it would certainly seem to suggest that there was no promise by Myrtle to confer any particular interest in any portion of the said dwelling-house to any of the parties.

Thereafter, the Plaintiff was granted a Power of Attorney to carry out the construction of the said dwelling-house. The estimated cost of construction was two hundred and thirty-four thousand dollars (\$234,000.00). That began in 1983. The Plaintiff supervised the construction, paid the workers, and bought the materials. Myrtle provided the initial financing in the sum of one hundred and forty thousand dollars (\$140,000.00) which sum Myrtle borrowed from CLICO. The repayment figure on that loan was one thousand eight hundred and sixty dollars and thirty-three cents (\$1,860.33) monthly.

In addition the Plaintiff took two loans on 7th November, 1983 and 7th August, 1984 with Scotiabank to complete the construction of the said dwelling-house in the respective sums of forty thousand dollars (\$40,000.00) and fifty thousand dollars (\$50,000.00). On 25th November, 1987 there was a refinancing

by Scotiabank of the two loans. As at 28th August, 1990 the Plaintiff had paid the sum of one hundred and thirteen thousand five hundred and seventy-two dollars and eight cents (\$113,572.08) which, as I have found, was used solely towards the construction of the said dwelling-house. In any event this evidence was not challenged save as to whether or not the moneys were spent on the said dwelling-house. I also find that Myrtle had express knowledge of the first loan of forty thousand dollars (\$40,000.00). With respect to the second loan I find that Myrtle stood by and permitted the Plaintiff to expend her moneys. That coupled with the Plaintiff's actions and beliefs was such that it would be dishonest and unconscionable for Myrtle to stand on her strict legal rights: Snell's (ibid.) page 576.

With respect to the CLICO loan of one hundred and forty thousand dollars (\$140,000.00), the payments to be made were as follows: the Plaintiff \$430.00 per month, Cecil \$430.00 per month, Cynthia \$400.00 per month, with Myrtle paying the balance.

Cynthia began living in the said dwelling-house around October 1983 and the Plaintiff and Cecil around December 1983, even though the construction was not completed.

On 8th August 1984 Myrtle revoked the Power of Attorney granted to the Plaintiff as the accounts were not being properly kept, things were not going smoothly with the construction and the Plaintiff was not communicating with Myrtle. Thereafter the Plaintiff ceased to play any part in the construction of the said dwelling-house. In 1987 Myrtle's relationship with the Plaintiff was back to

normal as by that time, Myrtle had realized what was the true cost of construction of the said dwelling house.

On 16th August 1990 Myrtle died. The Plaintiff vacated the said dwelling-house in November 1990 because of the deterioration in the relationship with Cecil and also because Myrtle had not kept her promises to the Plaintiff. The Plaintiff always thought that Myrtle was a very honest and straightforward person. Myrtle however left the said property at No. 7 Lackpat Road, Tunapuna by will to Vierra, Cecil and Cynthia.

There were some suggestions in cross-examination by Attorney for the Defendants that the Plaintiff was not a credible witness. On the contrary and save for my earlier finding, the Plaintiff struck me as a credible witness. The confident manner in which she gave her evidence both in examination-in-chief and cross-examination leads me to the conclusion that she was speaking the truth. In addition she seemed to have an intimate knowledge of everything that transpired up to the time she was relieved of control of the supervision of construction of the said dwelling-house. To the credit of both Cecil and Cynthia, neither sought to challenge what she said in any material manner.

Although it was suggested to the Plaintiff in cross-examination that the moneys which she borrowed was not utilized for the purpose of construction of the said dwelling-house, it would have been very easy for Cecil to say that she was lying. He as her husband would have known. He never sought to do so.

Having found the facts as above the question arises as to whether the Plaintiff is entitled to any relief.

stated:

“We have had the advantage of cases which were not cited to the country court judge, cases in the last century, notably Dillwyn v. Llewelyn (2) and Plimmer v. Wellington Corpn. (3). This latter was a decision of the Privy Council which expressly affirmed and approved the statement of the law made by LORD KINGSDOWN in Ramsden v. Dyson (4). It is quite plain from those 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. Counsel for the plaintiffs urged before us that the licensee could not stay indefinitely. The principle only applied, he said, when there was an expectation of some precise legal term; but it seems to me, from Plimmer’s case (5) in particular, that the equity arising from the expenditure on land does not fail

“merely on the ground that the interest to be secured has not been expressly indicated... the court must look at the circumstances in each case to decide in what way the equity can be satisfied.””

In the instant case there is no agreement, as I have found, to grant any particular interest to Cecil, Cynthia and the Plaintiff. 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 Plaintiff should, at the request or with the acquiescence or encouragement of Myrtle, have spent moneys 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 (supra) per Lord Denning M.R. at pages 448, 449.

In this case Myrtle allowed an expectation to be created in the Plaintiff's mind that if she spent moneys on the construction and contributed to the CLICO loan she would be permitted to reside there. The Plaintiff spent substantial sums. The Plaintiff also supervised the construction until 1984. There is therefore an equity arising out of the expenditure.

How is the Court to satisfy that equity? There is evidence that the Plaintiff incurred expenditure in the sum of one hundred and thirteen thousand five hundred and seventy-two dollars and eight cents (\$113,572.08), the cost of the two loans from Scotiabank. In addition the Plaintiff paid the sum of four hundred and thirty dollars (\$430.00) per month towards the CLICO loan until she left in November, 1990. She has also had the benefit of residing rent-free in the said dwelling-house together with her children (who are not the children of Cecil) from December 1983 until November 1990. Neither party has produced a valuation of the said dwelling-house to this Court so that I am unable to make a determination, if I were so minded, as to a quantification of an interest in same.

The marriage is at an end. It would make no sense to put the Plaintiff back into possession of the said dwelling-house even if I were minded to come to the conclusion that she was entitled to reside there for the rest of her natural life. I am therefore of the view that the equity can be satisfied by the payment to the Plaintiff of the sum of ninety thousand dollars (\$90,000.00).

There would therefore be judgment for the Plaintiff. The First Defendant is to pay the sum of Ninety Thousand Dollars (\$90,000.00) to the Plaintiff. The costs of the action are to be paid by the Defendants to the Plaintiff to be taxed in default of agreement.

Dated this 11th day of December, 1998.

PRAKASH MOOSAI

JUDGE