IN THE SUPREME COURT OF BELIZE

Action No. 110/76

BETWEEN

HERMAN CHERRINGTON — Plaintiff

and

RICHARD HOARE — Defendant

Mr. D.O. Barrow for the Plaintiff

Mr. L.R. Balderamos for the Defendant

Before the Hon. D.E.G. Malone, Chief Justice

JUDGEMENT

On the 18th of September, 1972, the plaintiff purchased lot No. 1294 on Kelly Street, Belize City, from the defendant's father, Albert Hoare, who was the registered proprietor of the said lot by vitrue of a First Certificate of Title dated the 7th day of September, 1957, and registered in the land Titles Register, volume 4 at folio 1038. On that lot there are and were at the time of the purchase two houses. The larger, belonged to Albert Hoare and was sold with the lot to the plaintiff, but the smaller, which then was and still is occupied by the defendant, was expressly excluded from the sale of the lot. The plaintiff's action is for the recovery of possession of that portion of lot 1294 occupied, it is alleged, by the defendant as a tenant at will of the plaintiff under a tenancy duly determined by three months notice to quit dated the 16th day of April, 1973. The defendant by his defence denies that the plaintiff is entitled to that portion of lot 1294 on which his house is situate and in the alternative pleads that the plaintiff is estopped from saying he is entitled to the said portion which measures approximately 22' x 25'. In paragraph 5 of the defence the following facts are set out as the basis of the plea of estoppel:

"(1) In the year 1967, the defendant expecting to be allowed to remain in occupation of the said portion of land for life, was encouraged by his father Albert

Hoare, the owner, to build a house on the said portion of land.

(2) The Defendant, so encouraged, took possession of the said portion of land, built a house on it at a cost of some $2,600.00 with the knowledge of his father and with no objections from him.

(3) He has since occupied the said portion of land rent free and has paid the taxes thereon.

(4) The defendant had no notice to quit from Albert Hoare."

Having regard to the facts alleged as the basis of the estoppel plea, the estoppel pleaded and advanced in argument by Counsel for the defendant is that form of equitable estoppel known as "proprietary estoppel". In Snell's "Principles of Equity" 27th Ed., the attributes of that form of equitable estoppel are described at p. 565 as follows:

"Proprietary estoppel is one of the qualifications to the general rule that a person who spends money on improving the property of another has no claim to reimbursement or to any proprietary interest in the property ..... It is permanent in its effect, and it is also capable of operating positively so as to confer a right of action. The term "estoppel", though often used, is thus not altogether appropriate. It may well be that the equity is based on an estoppel, but it seems in essence to confer a substantive equitable right of property which is not registrable as a land charge."

In this case, the conception, as it were, of the substantive equitable right of property came about, the defendant claims, when he having written to his father Albert Hoare, who then resided in Guatemala, to inform him that he had married received in reply a letter of the 3rd March, 1967. In that letter from Albert Hoare are the following passages:

"Congratulations to you and Mrs. Richard Hoare. I cannot express my feelings of gladness in receiving your letter and learn you have got married. It made me happy for now I am trusting that you may make yourself a better man for we cannot tell what the future holds for us. So we must be prepared for the unseen .....

Contents of letter were carefully notice and with the greatest of pleasure you have my permission to do as you wish in fixing the small house but on condition you must learn to command respect that they may respect you and your family .....

You can show this to Albert that I give you authority to have access to the house. I and him have spoken over the property but it ended up as a wash 'out for no decision was made. So you go ahead and do your best."

The Albert referred to in that letter is the defendant's older brother who at the time lived in the larger of the two houses now on lot 1294. The defendant then occupied what is now the smaller of the two houses on lot 1294 and which then was smaller than it now is and in dilapidated condition because of damage sustained in the hurricane of 1961.

Acting, the defendant claims, on the authorisations given by the letter of the 3rd March, 1967, that he was to have access to the house and that he could fix it up as he wished, and because he considered that his father had by the letter of the 3rd March, 1967, given to him a licence to reside on the land for his life or as long as he pleased, he pulled down the existing building and at a cost to himself of $2,600.00 erected a new building of 15' x 20'. He adds that he later wrote to his father informing him of what he had done and that his father replied approving his action.

Whether in fact the defendant did pull down the building and build another or merely enlarged the existing building was much disputed at the trial and whether he wrote a second letter as he says he did and received a reply approving his actions was

also disputed. To my mind, however, those disputes are not of importance in this case, as it is not open to question that the defendant did spend money on the building and had his father's authorisation to do so. The real question at issue is the nature of the right that was given to the defendant by the letter of the 3rd March, 1967. That he was given a licence of some description cannot, to my mind, be disputed but a licence may be one of three kinds as Megarry J. pointed out in London Borough of Hounslow v. Twickenham Garden Developments Ltd. (1970) 3 A.E.R. 326; when at p. 333 he said:

> "The threefold classification of licences is well known. There are licences coupled with an interest, contractual licences and bare licences".

Of the three, the bare licence is always terminable at will. In that instance, the notice of termination may be abrupt but equity may impose a period of grace -

> "for the protection of a party who might otherwise suffer undue hardship from sudden termination".

(per Lord Delvin in Australian Blue Metal Ltd. v Hughes (1963) L.R.A.C. 74 at pp. 101 - 102). In the case of the contractual licence, the termination of the licence will depend upon the contract. It may thus preclude revocation which was the point made by Buckley L.J. in Hurst v. Picture Theatres Ltd. (1915) 1 K.B. 1, where at p. 10 he said:

> "There is another way in which the matter may be put. If there be a licence with an agreement not to revoke the licence, that, if given for value, is an enforceable right. If the facts here are, as I think they are, that the licence was a licence to enter the building and see the spectacle from its commencement until its termination, then there was included in that contract, a contract not to revoke the licence till the play had run to its termination. It was then a breach of contract to revoke the obligation, not to revoke the licence and for that the decision in Kerrison v. Smith (1897) 2 Q.B. 445 is an authority".

On the other hand, the contract may not preclude revocation. But if the contract makes no provision for termination, reasonable notice will be required in order to terminate it. From the fact, however, that a contractual licence may be irrevocable, it is not to be supposed that the licence created by the contract is an interest. That point was made by Lord Green, M.R. in Winter Garden Theatre (London) Ltd. v. Millenium Production Ltd. (1946) 1 All E.R. 678 where at p. 680 he said:

> "A licence created by a contract is not an interest. It creates a contractual right to do certain things which otherwise would be a trespass".

and by Megarry J. in London Borough of Hounslow v. Twickenham Garden Developments Ltd. (ibid) where at p. 355 he said:

> "Where in equity, at all events a contract may be regarded as bringing into being some estate or interest in the land separate from the contract that created it, a licence is no separate entity but merely a manifestation of the contract".

By the third type of licence, namely a licence coupled with an interest, is meant as Lord Delvin said in Australian Blue Metal Ltd. v. Hughes (ibid) at p. 94:

> "that the licensor cannot revoke such a licence if the licensee is thereby prevented from exploiting the interest that the licensor has granted to him".

In this case, there was, as I understand the evidence, no contractual arrangement. There were no promises intended to be acted upon and which in fact were acted upon. The defendant, subject to the condition imposed, was merely given the right to occupy the existing building on the land and to do as he wished in fixing up that building. I do not therefore consider that this was a contractual licence. Was it then a licence coupled with an interest or a bare licence?

SH

As I read the passages cited from the letter of the 3rd March, 1967, Albert Hoare, subject to the condition stated, gave to the defendant the exclusive right to occupy the building for an unspecified period of time in the knowledge that it was the intention of the defendant to spend money on it in fixing it up as he wished. If the condition is for the time being ignored the licence given, it seems to me, was a licence coupled with an interest as it would fall within the principle expressed by Lord Denning M.R. in Inwards and Others v. Baker (1965) 1 All E.R. 446 where at p. 448, after referring to earlier authorities, he said:

> "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".

If, however, that expectation does not exist, the equity does not arise. That is, I think, implicit in the passage cited from the judgement of Lord Denning M.R. in Inwards and Others v. Baker (ibid) and is evident in a further passage of that judgement where at pp. 448 - 449 he said:

> "So in this case, 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 expectation of being allowed to stay there".

In the letter of the 3rd March, 1967, from Albert Hoare to the defendant the condition expressed is that:

> "You must learn to command respect that they may respect you and your family."

Whoever the "they" may be, it seems to me that what Albert Hoare was telling the defendant was that he, the defendant, does not command the respect that he should command as his condition is that "you must learn to command respect" and that is preceded by his earlier words "I am trusting that you may make yourself a better man". Properly construed, the letter, I think, welcomes the defendant's desire to fix up the house and gives him authority to do so in the hope that he might thereby become a better man who will command respect. But as it makes the learning to command respect a condition of the permission it grants, it cannot, to my mind, be read as holding out the expectation that the defendant would have the house for his life or for as long as he wished. Accordingly, I do not consider that in spending money on the property, the defendant could have acted in the belief that he would be allowed to remain on the land for his life or for as long as he wished as at the time of reading the letter he must have realized or should have realized that he had still to gain the esteem of his father as one commanding respect. He may have hoped that he would be allowed to remain on the land for his life or for as long as he wished but that is not the same thing as a belief founded upon a reasonable expectation. I therefore am of the opinion that an equity does not arise coupled to this licence and that would be my opinion if even it was shown that after the defendant had incurred expense in connection with the building he had learned to command respect as at the time of incurring the expenditure, it could not be his expectation that he would be allowed to occupy the land for his life or for as long as he wished. The evidence in fact is that in the eyes of his father he did not win that distinction as I accept the evidence of Albert Hoare that his reason for selling lot 1294 was because of quarrels he had with the defendant which led to his being assaulted twice by the defendant. In passing I would add that the fact, which I accept, that at the time of writing the letter Albert Hoare had no intention of selling lot 1294 does not affect the conclusion I have reached that this was not a licence

coupled with an interest. The reason being that whilst his intentions were to keep the land and to give to his son a chance to become a better man, he retained the right to expell him from the land if he so wished.

Having thus eliminated both a contractual licence and a licence coupled with an interest, my conclusion must needs be that this was a bare licence and I am satisfied that the licence was revoked when written notice to quit the land was given by the plaintiff as far back as the 16th April, 1973. If even three months was not sufficient notice, so much time has elapsed since the service of that notice that any requirement for reasonable notice would by now have expired. The plaintiff however appears to have been in no hurry to recover possession of the land and the defendant, now that an order to give up possession will be made, should still have time in which to remove his house. It is, however, not necessary that the time allowed him should be lengthy as it is his evidence that he has had since 1975 Government land to which he can remove his house.

I therefore enter judgement for the plaintiff and order that the defendant do within six months of this day deliver up possession to the plaintiff of that portion of lot 1294 now occupied by him.

The costs of the action to be taxed and paid by the defendant

(D.E.G. MALONE),
Chief Justice.

30th March, 1977.

TO BE TAKE