[2015] JMCA Civ 25

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 113/2012

BEFORE: THE HON MR JUSTICE MORRISON JA
THE HON MRS JUSTICE McINTOSH JA
THE HON MR JUSTICE BROOKS JA

BETWEEN	**ANNIE LOPEZ**	**APPELLANT**
AND	**DAWKINS BROWN**	**1st RESPONDENT**
AND	**GLEN BROWN**	**2nd RESPONDENT**

Written submissions by Carlton Williams instructed by Williams, McKoy & Palmer for the appellant

Written submissions by Miss Althea McBean instructed by A McBean & Co for the respondents

17 April 2015

MORRISON JA

[1] In its judgment given in this matter on 23 January 2015, this court allowed the appellant's appeal in part. The order of the learned trial judge (Campbell J) that there should be specific performance of an agreement between the appellant and the respondents for the purchase of property at Lot 2, 9 Panton Road, Stony Hill, St. Andrew ('the property') was set aside. However, the judge's order declaring that the respondents have an equitable interest in the property by virtue of the doctrine of

proprietary estoppel was affirmed and consequential orders in the respondents' favour were made accordingly.

[2] Campbell J had also made an order that all sums in account #001-101-034-6143 at the RBTT Bank (Ja) Ltd, Duke and Tower Street Branch, in the names of Althea McBean and or Lancelot Cowan (the then attorneys-at-law for the appellant and the respondents respectively) ('the RBTT account'), should "be paid forthwith to Robertson Smith Ledgister & Co. on behalf of" the appellant. However, neither party made any submissions in respect of this order at the hearing of the appeal and, in announcing the result of the appeal, the court invited further submissions from counsel in this regard. Submissions were also invited from counsel as to the appropriate order to be made for costs in the light of the outcome of the appeal. The appellant's and the respondents' submissions were in due course filed on 20 February 2015 and 17 February 2015 respectively.

[3] As the appellant pointed out, the RBTT account was established pursuant to an interim order made by Pusey J on 19 December 2007 (as varied on 14 April 2008). By this order, the respondents were required to pay the sum of $58,000.00 per month (being the amount due from them to the appellant as rental for the property) into the account, to be held until the determination of the matter or further order. However, the appellant contends that Pusey J's order as drawn was erroneous, as the monthly payment ordered by the learned judge was in fact $58,850.00.

[4] The appellant therefore submitted that (i) the court should make an order for payment out to her of the moneys in the RBTT account, plus the additional $850.00 per month for the entire period; and (ii) since by virtue of the provisions of the Rent Restriction Act, the appellant would be entitled to a 7.5% annual increase in rent, the court should also order that an amount representing this increase be paid to her by the respondents, with interest. As regards the costs of the appeal, the appellant submitted that, in all the circumstances, taking into account the fact that (i) the appellant was successful on appeal on the significant issue of specific performance; and (ii) the respondents have by the court's order gained the significant benefit of the property at the price originally agreed 10 years previously, the appellant should have the costs of the appeal.

[5] The respondents for their part pointed out that, pursuant to an order made by Sykes J on 30 December 2008, the sum of $348,000.00 was in fact paid out from the RBTT account to the appellant's then attorneys-at-law. Further, that of the balance remaining to the credit of the RBTT account, a significant amount was on 5 March 2010 placed on an account bearing interest at 5% per annum. As regards costs, the respondents submitted that, in the first place, they were obliged to bring the action by the appellant's refusal to fulfil her earlier promises to sell the property to them. Accordingly, the respondents submitted that, having prevailed substantially on appeal, they should have the costs of the appeal, even if not of the cross-appeal.

[6] In considering these submissions, I should say at once that the appellant's claim to a 7.5% annual increase in rent is, in my view, misconceived. Where the standard

rent of any premises subject to the provisions of the Rent Restriction Act has been assessed pursuant to section 19(1) of the Act, the rent of any such premises may be increased by such percentage of the standard rent as may be sanctioned by ministerial order (section 21(2)(a)). Section 3(1) of the Rent Restriction (Percentage of Assessed Value) Order 1983 provides for the annual increase in the standard rent of 7.5% in the circumstances stated in the Act and the Order. In this case, there is absolutely no evidential basis to support the annual increase in rent under these provisions that is contended for by the appellant.

[7] The appellant's more general contention is that the court should make an order that the funds standing to the credit of the RBTT account should be released to her. There can be no doubt that this result flows from Campbell J's express order (see paragraph 4 of the formal judgment). But it seems to me that this aspect of the matter may be more appropriately dealt with by either (and preferably) agreement between the parties or, failing this, by an application to the Supreme Court, supported by affidavit evidence, to ascertain the precise amount due to the appellant under this head. While Campbell J did not expressly reserve liberty to apply to the parties, it is well established that all orders of the court carry with them inherent liberty to apply to the court for assistance in working out the rights declared by the court in its judgment (see Halsbury's Laws of England, 5th edn, Vol 12, para. 1165 and the cases there cited).

[8] I turn now to the question of the costs of the cross-appeal, which was reserved pending the outcome of the substantive appeal. It is clear that, although the appellant prevailed in the cross-appeal, the default which led to (i) the dismissal of the original

appeal filed on her behalf; (ii) Campbell J's order extending time for filing the instant appeal; and (iii) the cross-appeal from that order, was substantially that of her attorneys-at-law. It accordingly seems to me that, while the appellant, as the successful party on the cross-appeal, would ordinarily be entitled to her costs (CPR rule 64.6(2)), this is a case in which, having regard to all the circumstances (as CPR rule 64.6(5) enjoins us to do), the more appropriate order is that there should be no order as to costs. To her credit, Miss McBean did not strongly contend for a different order.

[9] Finally, as regards the costs of the appeal itself, the general rule that costs should ordinarily follow the event would again seem to indicate that the respondents, as the overall victors in the case, should have their costs. But in this case, the rule must to some extent be qualified by the consideration that although the appellant was unsuccessful in the final result of the case, she did, as Mr Williams pointed out, succeed on the issue of specific performance. Taking all matters into consideration, therefore, I have come to the conclusion that the respondents should have 75% of their costs of the trial before Campbell J and 75% of their costs of the appeal, such costs to be taxed if not agreed.

McINTOSH JA

[10] In my opinion, Morrison JA, in his judgment as set out above, has arrived at the just outcome of the remaining issues for the determination of the court in this matter and I entirely agree with it.

BROOKS JA

[11] I have read the draft judgment of Morrison JA. I too agree with his conclusions as to the two issues raised as a consequence of the judgment of this court, in the unusual circumstances of this case.

MORRISON JA

ORDER

1. Failing agreement between the appellant and the respondents within 28 days of the date of this order, the disposition of the funds standing to the credit of the RBTT account is to be dealt with by way of an application by the appellant, supported by affidavit evidence, to a judge of the Supreme Court.

2. There shall be no order as to the costs of the cross-appeal.

3. The respondents shall have 75% of their costs of the trial and 75% of their costs of the appeal, such costs to be taxed, if not agreed.