

Elaine Knowles

Appellant

v.

**George Knowles as Executor and Beneficiary
of the Estate of Oliver Knowles, deceased**

Respondent

FROM

**THE COURT OF APPEAL
OF THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

JUDGMENT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL

Delivered the 9th June 2008

Present at the hearing:-

Lord Hoffmann
Lord Hope of Craighead
Lord Walker of Gestingthorpe
Baroness Hale of Richmond
Sir Henry Brooke

[Delivered by Sir Henry Brooke]

1. This is an appeal by the claimant Elaine Knowles (“Elaine”), a retired schoolteacher, from the judgment of the Court of Appeal of the Eastern Caribbean Supreme Court on 18th September 2006 whereby it allowed an appeal by the defendant George Knowles (“George”) from the judgment of Joseph-Olivetti J in the High Court of Antigua and Barbuda dated 20th July 2005.

2. This litigation is concerned with a house built on a parcel of land at Powell's Estate in the parish of St George in Antigua which Elaine has occupied as her home since 1984. Powell's Estate used to be owned by George's father Oliver Knowles ("Oliver"). Oliver died in 1974, and the land was then registered in the names of George and his mother Violet Knowles ("Violet") as his executors. By her husband's will Violet inherited a life interest in the estate which was to pass to George absolutely following Violet's death.

3. Elaine met George's brother John Knowles ("John") in 1971. She was then living in Liberta, but before their only child Rhyves was born in 1976 John sold her a house in Clare Hall which his father had given to him while he was still alive. Eight years later John and Elaine married, and it was at this time that they moved with their young son to the house in Powell's Estate. Elaine then obtained tenants for her house in Clare Hall which she still owns.

4. There are seven houses on Powell's Estate. Violet lived in one of them, and George at one time lived with his family in another. Violet allowed John and Elaine to choose the house they would like to live in. Although the two-bedroomed concrete house they chose had previously been tenanted, it was empty in 1984, and before the couple moved in they had the house painted inside and out and carried out works to make the house more agreeable to live in – retiling and improving the bathroom and replacing the screens in the kitchen.

5. Four years later they carried out more extensive works. These included the erection of a single bedroom annex (complete with bathroom, washroom and storeroom); erecting a roof to join the annex to the main house; building a driveway; and fencing the property with a new concrete and steelwork fence. In 1989 all the windows had to be replaced following storm damage done by Hurricane Hugo. In 1991 a greenhouse was built, and lattice work was erected to enclose the patio between the annex and the main house.

6. After Violet died in 1992 they went on living there, and in 1993 Elaine changed the kitchen cupboards at a cost of \$10,000. Unhappy tensions then developed within the marriage, and by 1997 John had moved out of the main house to live in the annex. In 2002, the year before the marriage finally collapsed, roofworks were done and the house was repainted inside and out.

7. John went and lived elsewhere following the divorce in 2003, and tensions then rose between George and Elaine over her continued occupation of the house. The judge found that George cut down some of

the trees on the property and poured diesel oil over others, and on 29th September 2003 Elaine's solicitors wrote to him asserting their client's entitlement to the property. George's solicitor replied on 8th October to the effect that she had no legal or equitable rights at all: she was occupying the land as a licensee. On 20th November 2003 the licence was terminated on three months' notice. Elaine then instituted these proceedings to determine her rights in the matter.

8. In her Statement of Claim she asserted that she had taken up residence in the house with Violet's and George's permission (para 4), and that she and her husband had carried out the building works between 1988 and 1992 with George's permission and on the understanding that George would transfer this land to them both (para 6). She said that it was on the basis of this understanding that they had instructed a surveyor following discussions with George (para 7), and that she had carried out the further works in 2002 with George's consent and/or acquiescence (para 11). In summary, she said that she had spent more than \$100,000 in improving the property in the belief or expectation that she would obtain an interest in the land, based on discussions held with Violet, John and George (who, she said, had encouraged her in carrying out the works) (para 12). She claimed a declaration that George held the property in trust for himself and her in such shares as the court might determine.

9. In his Defence George said that John and Elaine had simply been occupying the property as licensees. In 1994 he had intended to make a gift of the land to his brother John, but John had refused this offer. He had never said anything to give Elaine any encouragement to believe that the land was hers.

10. In due course the judge was to hold that the case fell to be determined with regard to the principles of proprietary estoppel rather than those of constructive trust because, she said, this was really a case of someone claiming an interest in land on the basis of improvements carried out with the alleged encouragement and acquiescence of the owner.

11. It was common ground that George and Elaine had not been on speaking terms from a time soon after Elaine started living with John. It was against this background that the sole issue the judge had to decide was whether in all the circumstances George had ever made any form of representation capable of giving rise to a proprietary estoppel in John's and Elaine's favour.

12. At the trial Rhyves supported his mother's evidence while John gave evidence on his brother's side. The judge preferred the evidence of

Elaine and her son: in particular she found certain inconsistencies in what George had told her. She found that because George was living nearby and had had to pass close to the house every day, he must have known that Elaine and John were living in the house with his mother's permission and carrying out extensive renovations there. She said that he could easily have intervened and told them that any improvements they made would enure to his benefit without any compensation when his mother died. He did not do so, and the judge found that his failure to intervene when he knew what was happening in the house meant that he impliedly consented to them living there and making renovations. She added that it was highly unlikely that Violet, who knew she only possessed a life interest, would have acted as she did without consulting George. The judge therefore found that George knew that Violet had given John and Elaine the house to live in, and that he impliedly agreed to this since he knew they were there and raised no objections to them carrying out such significant improvements.

13. The judge said that if John and Elaine had only been occupying the house with Violet's permission, as George averred, one would have expected that after his mother's death George would have taken immediate steps to assert his rights. Instead, he never spoke to them about their continued occupation of the property. The judge said that this must have cemented Elaine's belief that George and his mother had given them the house as their own.

14. At the trial there was a dispute about what had happened in 1994 when it was common ground that John instructed a surveyor to carry out a survey of the house and the portion of land on which it stood. The judge preferred the evidence of Elaine and her son on this issue. Elaine said that in 1994 John told her that George was going to transfer the property to them, and they had therefore decided to instruct a surveyor to demarcate the property. After the survey was completed, they decided that they would have the land transferred into Rhyves's name. Rhyves, for his part, said that in about 1993, following his grandmother's death, his father had called him into his bedroom and told him that he and his mother had decided to put the property in his (Rhyves's) name and that he must not think they could throw them out when they got old. He was later asked to go to a lawyer's offices to sign some documents, but when he went there with his mother the lawyer was not there, and no documents were ever executed.

15. The judge also accepted evidence given by Elaine and John to the effect that when the annex was being constructed in 1988, George told their contractor that the roof was hanging over his land, and he later gave them an extra piece of land to take care of this. The judge took this to

mean that George allowed them to use and fence in more land, since there was no formal transfer of title.

16. The judge found from all this evidence, coupled with George's silence about the repairs and his inaction after his mother's death, that George and Violet intended to give the house and the portion of land to John and Elaine, or had led them to believe that they would give it to them and so could be said to have actively encouraged them in embarking on substantial improvements over the years in that belief. She also found that after his mother's death George had intended to give full effect to the gift by transferring the title and that it was for this reason that he had approved the survey, but that no one had followed matters up when the lawyer did not act promptly. She found this unsurprising, because when a relationship is good and there is no urgency one seldom bothers with formal legal documentation. She felt that Elaine's testimony to the effect that Violet's intention was to give them the house and that George had impliedly consented was supported by George's failure ever to visit the house to inspect it, or to remind them that John alone was his licensee for the duration of the marriage.

17. Because John and Elaine had expended substantial sums in the belief that George had impliedly consented to his mother's intended gift, the judge said that it would be unconscionable to allow George to go back on this now and lay claim to a house which had no doubt been significantly improved over the last 20 years.

18. The judge therefore held that George was estopped by his conduct from asserting his legal title to the house and land, and that Elaine had acquired an interest in the house, which the judge fixed at 50%, by virtue of her contributions to the improvements and repairs which she and John had been encouraged to undertake to her detriment [sic] by the conduct of George and his mother. She therefore held that George held the property in trust for John and Elaine in equal shares and made appropriate ancillary directions to give effect to this finding.

19. The Court of Appeal in due course allowed George's appeal, set aside the judge's order and directed that George be entitled to recover possession of his property. They were influenced by the fact that there was simply no evidence that George had encouraged his brother and sister-in-law to believe that he was content to give them an interest in the property, as opposed to acquiescing in their living there during his mother's lifetime (when most of the improvement works were done). Furthermore, it had never been part of Elaine's case that George had evinced an intention for the first time to give the property to his brother at the time of the 1994 survey and the abortive visit to the lawyer's office.

It was always her case that this transaction merely represented an effort to implement an intention which George had expressed much earlier, of which there is simply no evidence.

20. Their Lordships agree with the approach of the Court of Appeal. The fact that George had acquiesced in a situation in which John and his wife made their home in the house during his mother's lifetime cannot properly be interpreted as evincing any intention on his part to give it to them after his mother's death. As Barrow JA observed, Oliver had given his son John other properties while he was still alive, and the history points equally well to Violet having given John a licence to live in the house with his family rent free – a licence George did nothing to end after her death until the events that gave rise to this litigation – as to there having ever been any expressed intention to make them an outright gift.

21. In her oral argument before their Lordships counsel for Elaine relied on a passage in her client's witness statement (which had stood as her evidence-in-chief at the trial) to the effect that when Violet offered them a house on the estate in 1984 she had told them that Oliver's will had left the property to her and George, and that she could not do anything without George and George could not do anything without her. Violet had then contacted George "who gave John and I his blessings". Elaine went on to say that when she chose the house now in dispute, "all of this George knew and agreed". A little later she added that "in fact, everything said by [George] to me or to John and I or even our son Rhyves were always to the effect that the property is ours".

22. From the notes of the evidence given at the trial it appears that Elaine accepted in cross-examination that George had never gone into any arrangement with her to give her any interest in the house, and that John was the one who had made the arrangements. She maintained, however, that they were given the property by Violet and George.

23. Although the judge preferred Elaine's evidence to the evidence given by George on a number of matters, she did not refer to this part of Elaine's evidence in her judgment. Elaine accepted, however, that because they were not on speaking terms she had never spoken to George about any aspect of their occupancy of the house, and in their Lordships' opinion the Court of Appeal was therefore entitled to observe that when Elaine said in her witness statement that everything George had said to her, or to her and John together, had always been to the effect that the property was theirs, this could not possibly be true.

24. No reliance was placed on this part of Elaine's evidence in the pleadings, and it does not seem to have been suggested in the courts

below that Elaine should be permitted to rely, as hearsay evidence, on something George must have told his mother and his mother had passed on to one of them – it is not clear which, or indeed what he must have said. For what it is worth, the evidence given by both George and John at the trial gave no support to any suggestion that George had said anything to Violet about their occupancy of the house when Violet allowed them to live there and acquiesced in their building works.

25. Elaine also said in cross-examination that when she went into the house she did not know that on Violet's death the house belonged to George: she had thought it belonged to her and John. This might mean that she did not know that Violet was only a life tenant, or it might mean that somehow or other George had led them to believe that they were entitled to treat the house as their own after his mother died.

26. In the opinion of their Lordships this evidence in Elaine's witness statement, on which the judge made no findings, provides far too slender a basis on which to allow her appeal. It was not relied upon in the pleadings, and no reliance seems to have been placed on the possible value of double hearsay evidence at the trial. There was also the unsatisfactory feature of Elaine's evidence on which the Court of Appeal was to comment unfavourably. If these matters had been analysed and argued in this way at the trial it is not at all clear what conclusions the judge would have reached.

27. In *Jennings v Rice* [2002] EWCA Civ 159; [2003] 1 P & CR 100 Robert Walker LJ said at para 56 that the essence of the doctrine of proprietary estoppel is to do what is necessary to avoid an unconscionable result. In the opinion of their Lordships it would be unconscionable in this case to deprive George of his property when he had done nothing at all to encourage any belief that his brother and sister-in-law could treat the property as belonging to them. While recourse to the doctrine of estoppel provides a welcome means of effecting justice when the facts demand it, it is equally important that the courts do not penalise those who through acts of kindness simply allow other members of their family to inhabit their property rent free. In *E & L Berg Homes Ltd v Grey* (1979) 253 EG 473, [1980] 1 EGLR 103 Ormrod LJ said at p 108:

“...I think it important that this court should not do or say anything which creates the impression that people are liable to be penalised for not enforcing their strict legal rights. It is a very unfortunate state of affairs when people feel obliged to take steps which they do not wish to take, in order to preserve their legal rights, and prevent the other party acquiring rights against them. So the court in using its equitable jurisdiction must, in my judgment, approach these cases with extreme care.”

28. Their Lordships agree. For these reasons they will humbly advise Her Majesty that the appeal should be dismissed. The appellant must pay the costs of the appeal.