THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO. CV 2007 - 1149

BETWEEN

PAUL DE FOUR CLAIMANT

AND

GAIL RAHIM DEFENDANT

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BEFORE THE HONOURABLE MADAME JUSTICE DEAN-ARMORER

APPEARANCES

Mr. Robert Boodoosingh for the Claimant.

Mr. Ravi Doodnath for the Defendant.

JUDGMENT

Introduction

1. In this action the claimant approaches the Court in his capacity as the legal personal representative of the estate of his late mother, Estephany De Four. He seeks an order for vacant possession against the defendant, who at the time of trial occupied a temporary structure standing on the subject lands, in respect of which the claimant's mother held an agricultural tenancy.

- 2. The defendant has advanced a defence based on the doctrine of proprietary estoppel. She has alleged that over a period of some two (2) decades the claimant and his family acquiesced in her renovating and upgrading the temporary structure. She has contended that she has acquired an entitlement to the subject lands as a result of her detrimental reliance on the acquiescence of the claimant and his family.
- 3. In this judgment, the Court examined recent authorities on the doctrine proprietary estoppel and considered whether the defendant had acquired an interest in the lands by virtue of the principles emerging therefrom.

Procedural History

4. This action was initiated by a Claim Form filed on the 12th April, 2007 and accompanied by an affidavit filed on the same day by the claimant, Paul De Four. The claimant sought the following relief:

"...possession of All and Singular that leasehold property situate at Todd Station Road, Talparo..."

- 5. In response, the defendant, Gail Rahim filed an affidavit, which had been sworn on the 16th August, 2007.
- 6. More than one year later, on the 11th December, 2008, Paul De Four sought permission to file his Statement of Case. The claimant complied with this direction on the 4th February, 2009.
- 7. The defendant filed her defence on 18th March, 2009. On the 3rd April, 2009, the defendant filed a counterclaim seeking the following declarations in respect of the dwelling house situate at Todd Station Road, Talparo:

¹ The property is more particularly described in the Claim Form filed on 12th April, 2007.

- "a. a declaration that she is entitled to a legal and equitable interest in the dwelling house situate at Todd Station Road, Talparo;
- b. a declaration that she is entitled to possession of the house in question..."
- 8. The claimant filed a defence to Counterclaim and Reply on the 15th July, 2009.
- 9. Two (2) witness statements were filed in support of the Claim:
 - that of the claimant himself as well as the witness statement of Richard Samuel, (Richard) former common law husband of the defendant.

The defendant filed three (3) witness statements. They were signed by:

- the defendant herself,
- Florence Thomas-Gomez and
- Milroy Caraballo.
- 10. At trial, Milroy Caraballo was not present to be cross-examined. All other witnesses were cross-examined.

Facts

- 11. The lands situated at Todd Station Road, Talparo are State Lands. They comprise some four (4) acres of agricultural land and had been leased to Estephany De Four pursuant to a Probationary Tenancy Agreement dated the 22nd March, 1965².
- 12. The lands were leased as agricultural lands. It was specified in the agreement that the tenant would hold the rented premises for a period of three (3) years.

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² The agreement dated 22nd March, 1965 was exhibited in these proceedings as "PBF 2".

- 13. Paragraph 2 of the Agreement listed thirteen (13) covenants by which the tenant, Ms. Estephany De Four agreed to abide. Among them were Clauses 2 (2) and 2 (11). Clause 2 (2) reflected the following agreement:
 - "2. The tenant agrees with the landlord as follows:-
 - ...(2) To use the rented premises only for the following agricultural purposes... and for the erection thereon (if he so desires) of a temporary building to be used exclusively as a residence for himself and his immediate family together with any temporary outhouses necessary for use in conjunction with the said temporary building..."
- 14. Clause 2 (11) recorded the following agreement by the tenant:

"Not to erect or otherwise construct upon the rented premises any building structure or other erections ... without first obtaining the written consent of the landlord..."

- 15. It was common ground that there was one dwelling house on the land.
- 16. Estephany De Four died on the 21st September, 1979. Her son, Paul De Four, who is the claimant in these proceedings applied for Letters of Administration of her estate in 1983. The claimant received the grant of Letters of Administration on the 12th February, 1993. He initiated these proceedings in his capacity as the Legal Personal Representative of the Estate of Estephany De Four.
- 17. Meanwhile, the claimant had given permission in 1986 to his brother, Francis De Four to erect a temporary structure some fifty (50) feet from the permitted dwelling house. This temporary structure is the subject of these proceedings. It was common ground that the construction of the temporary structure was contrary to the tenancy agreement. There

- was also no dispute that the structure had to be demolished before the claimant could have the tenancy agreement renewed.
- 18. Francis De Four nonetheless allowed his son Richard Louis Samuel (Richard) to take up residence in the temporary structure. In 1992, Richard began cohabitating in the temporary structure with the defendant, Gail Rahim.
- 19. It is at this juncture that a number of disputes of fact arise. They are:
 - Whether the temporary structure was upgraded at all and if so whether the upgrade was financed by Richard and the defendant or by Richard alone, or by the defendant alone.
 - Whether Richard or the defendant had obtained the claimant's permission to upgrade the temporary structure.
 - Whether the defendant was aware that Richard did not own the temporary structure.
 - Whether the claimant ever asked the defendant to vacate the temporary structure or to desist from renovating it.
- 20. In the course of cross-examination, the defendant provided the following description of the temporary structure as it stood in 1989 when she began cohabitating with Richard:

"This was an unfinished flat concrete house with hollow clay red blocks. It was unfinished with no connection to electricity or running water, it was covered with a galvanize roof..."

21. The defendant's description was compatible with those provided by both the claimant and Richard, the claimant's sole witness. Paul De Four, under cross-examination described

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³ See paragraph 6 of the Witness Statement of Gail Rahim filed on 16th December, 2011.

the original structure as having just a roof, without doors or windows, while Richard referred to red blocks and wooden doors and windows. Accordingly, I accept as a matter of fact that in 1992 the structure was an unfinished house with hollow clay red blocks without electricity or water.

- 22. It was the defendant's case that during the time of her cohabitation, with Richard, they pooled their resources and carried out improvements to the structure, on the basis of permission which Richard had obtained from the owners of the land.
- 23. Under cross-examination, Richard strongly denied that he had carried out any improvements. He also denied that he had obtained permission to effect improvements. Under cross-examination Richard was directed to his witness statement, where he had this to say:

"That Ms. Rahim was always aware that I and only I had permission to continue with the refurbishing of the dwelling house located on the said property."

Then at paragraph 6, Richard stated:

"That during my period of residence with Ms. Rahim...I was the sole breadwinner in the home and I financed the entire refurbishing of the said property..."

24. Having regard to the unequivocal statement in Richard's witness statement, on a balance of probabilities, I accept that Richard financed some part of the refurbishing during the period of cohabitation.

- 25. It appears however, from the defendant's answers in cross-examination that Richard's contribution to the upgrading of the structure was minimal and may have been restricted only to the plastering of walls.
- 26. When asked when repairs were done, the defendant replied that some plastering was done while Richard was there. The defendant declared under cross-examination that during the course of twenty-three (23) years she did a lot of work and tried to improve the living conditions for herself and her children.
- 27. The defendant failed altogether to produce bills and admitted that she occupied the structure rent free. Under cross-examination, the defendant admitted that Richard always told her that the structure was owned by his father, Mr. Francis De Four.
- 28. Under cross-examination, the defendant admitted that she knew that the structure was temporary and that the structure was contrary to the tenancy agreement. She admitted further that she went to the Land and Surveys department to make enquiries concerning the tenancy agreement and that she did so because the De Four family had her "under pressure" and she had nowhere to go.
- 29. From the defendant's evidence, it is, in my view, reasonable to infer that the De Four family in fact "pressured" the defendant to vacate the structure following Richard's emigration to the United States. The only document recording such pressure was the 1999 letter from Francis De Four to the defendant. This letter is in fact exhibited by the defendant. Having regard however, to the defendant's answers under cross-examination, I accept on a balance of probabilities that the defendant effected improvements to the structure, during her twenty-three (23) years of occupation. She did so in defiance of the De Four family and in the face of the pressure which they exerted on her.

Submissions and Law

- 30. The parties relied on the written submissions of their respective attorneys-at-law.

 Learned attorney-at-law, Mr. Boodoosingh cited and relied on the following authorities:
 - Thorner v. Major and Others [2009] 3 All ER. 945
 - *Uglow v. Uglow* [2004] EWCA 987
 - *Gillett v. Holt* [2001] 1 Ch.210
 - The Privy Council decision in *Henry v. Henry* [2010] 75 WIR 254
- 31. Learned attorney-at-law, Mr. Doodnath also presented erudite written submissions citing:
 - Dillwyn v. Llewellyn 45 E.R. 1285
 - *Inwards v. Baker* [1965] 2 QB 29
 - Crabb v. Arun Distrcit Council [1976] Ch. 179
 - *Re Basham* [1987] 1 All ER 405

The Law

- 32. The law is to be found entirely in the decided cases. Set out below are the authorities upon which learned attorneys-at-law relied.
- 33. *Dillwyn v. Llewellyn* [1862] 45 ER. 1285, was cited by learned attorney-at-law, Mr. Doodnath. In that case, Lord Chancellor Lord Westbury had this to say at page 1286:

"About the rules of the Court there can be no controversy. A voluntary agreement will not be completed or assisted by a Court of Equity in case of mere gift. If anything be wanting to complete the title of donee, a Court of Equity will not assist him in obtaining it; for a mere donee can have no right to claim more than he has received. But the subsequent acts of the

donor may give the donee that right or ground of claim which he did not acquire from the original gift."

Lord Westbury continued:

"If A puts B in possession of a piece of land and tells him "I give it to you that you may build a house on it" and B on the strength of that promise with the knowledge of A expends a large sum of money in building a house accordingly, I cannot doubt that the donee acquires a right from the subsequent transaction to call on the donor to perform that contract and complete the imperfect donation that was made.

The case is somewhat analogous to that of a verbal agreement was not binding originally for want of the memorandum in writing...but which becomes binding by virtue of the subsequent part performed."⁴

- 34. In *Wilmot v. Barber* [1880] 15 Ch. D 96, Fry J. considered the speech of Lord Cranworth in *Ramsden v. Dyson* [1866] LR I HL 12g and formulated the following five (5) probanda:
 - a) The claimant must have made a mistake as to his legal rights.
 - b) The claimant must have expended some money or done some act on the faith of his mistaken belief.
 - c) The defendant must know of the existence of his own right.
 - d) The defendant must know of the claimant's mistaken belief
 - e) The defendant must have encouraged the claimant in the expenditure of money or in the other acts which he has done whether directly or by abstaining or asserting his legal right.

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⁴ Dillwyn v.Llewelyn 45 E.R. 1285 and 1286

35. Learned Attorney-at-Law, Mr. Doonath also cited *Inwards v. Baker* [1965] 2 Q.B. 29 in which a son was encouraged by his father to build a bungalow on the father's land. After the father's death, the trustees of the father's will brought proceedings for possession against the son.

Lord Denning considered earlier authorities and formulated the following statement of principle at page 37 of the report:

"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 asserted 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...

...the court must look at the circumstances in each case to decide in what way the equity can be satisfied..."5

Lord Denning continued in this way:

"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 equitable to do so..."

36. In *Crabb v. Arun District Council*⁷ also cited by Mr. Doonath, Lord Denning revisited the principle of proprietary estoppel. In that case the defendants through their agents had represented that they would permit the plaintiff to use a designated road as access from their premises. The defendants reneged on this representation.

⁵ Inwards v. Baker [1965] 2QB 29 at 36, 37

⁶ Ibid at p. 37

⁷ Crabb v. Arun District Council [1975] 1 Ch. 179

In the course of his Judgment, Lord Denning had this to say at page 187:

"When Mr. Millett for the plaintiff said he put his case on an estoppel it shook me a little: because it is commonly supposed that estoppel is not itself a cause of action. But that is because there are estoppels and estoppels. Some do give rise to a cause of action and some do not. In the species of estoppel called proprietary estoppel it does give rise to a cause of action."

Lord Denning referred to his own statement in *Moorgate Mercantile Co. Ltd. V. Twitchings* [1976] QB 225 and had this to say as to the effect of estoppel on the true owner of property:

"...his own title to property be it land or goods has been held to be limited or extinguished and new rights and interests may be created therein. And this operates by reason of his conduct – what he has led the other to believe - even though he never intended it."

Lord Denning continued at page 187 G:

"The new rights and interests so created by estoppel in or over land will be protected by the courts and in this way give rise to a cause of action." 10

Then at p. 187 G-H, Lord Denning had this to say at 187 G-H:

"The basis of this proprietary estoppel ...is the interposition of equity.

Equity comes, in true form, to mitigate the rigours of strict law. The early cases did not speak of it as estoppel. They spoke of it as raising an equity." 11

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⁸ Ibid at page 187

⁹ Ibid at page 187

¹⁰ Ibid at page 187 G

¹¹ Ibid at page 187 G

Lord Denning referred to *Hughes v. Metropolitan and Co.* [1877] 2 App 43g 448; and continued:

"...it is the first principle upon which all courts of equity proceed that it will prevent a person from insisting on his strict legal rights ...when it would be...inequitable for him to do so having regard for the dealings which have taken place between the parties."

37. In *Re Basham*¹³ was also cited by Mr. Doodnath. In that case, the plaintiff was fifteen (15) years old when her mother married the deceased. From that time, the plaintiff assisted both her mother and the deceased in running their businesses. She did so on the understanding that she would inherit the property of the deceased upon his death.

The deceased died intestate and the plaintiff claimed a declaration against two (2) of his nieces who were administrators de bonis non.

Mr. Edmond Nugee Q.C. sitting in the Chancery Division held that the plaintiff was absolutely and beneficially entitled to the residuary estate of the deceased. In the course of his judgment, the learned first instance judge expressed the view that proprietary estoppel:

"is properly to be regarded as giving rise to a species of constructive trust."¹⁴

Edward Nugee Q.C. also identified the elements of the principle as being:

- *a belief held by the plaintiff that she was going to receive a benefit.*
- the encouragement of the belief.
- the plaintiff acted to her detriment.¹⁵

¹² Ibid at 188 A

¹³ In re Basham [1986] 1 W.L.R. 1498

¹⁴ Ibid at page 1504 A.

acts done to her detriment were in reliance on or as a result of the belief which she held.

Gillett v. Holt¹⁶ was an authority was cited by learned attorney-at-law. Mr. Doodnath. 38.

The Court of Appeal heard the appeal of the plaintiff who had worked on the farm of the

defendant for over twenty-five (25) years. The plaintiff had ended his school career

prematurely in order to accept employment with the defendant. The defendant had made

repeated assurances and promises over many years that the plaintiff would be his

successor in the farming business. At first instance, the plaintiff's claim was dismissed

on the ground that there was no irrevocable promise that the plaintiff would inherit the

farm.

Allowing the appeal, the Court of Appeal placed the issue of unconscionability of the

heart of the principle of proprietary estoppel. The effect of this authority is encapsulated

in the head-note of the report in this way:

"...the fundamental principle that equity was conceived to prevent

unconscionable conduct permeated all the elements of the doctrine of

proprietary estoppel. The requirement was to be approached as part of a

broad enquiry as to whether reproduction of an assurance was

unconscionable in all the circumstances..."17

Robert Walker LJ stated

"in the end the court must look at the matter in the round..." "18

¹⁵ In re Basham [1986] 1 W.L.R. 1498 at pages 1504-1506 Gillet v. Holt [2001] Ch. 210

¹⁷ Gillet v. Holt [2001] Ch. 210

 18 Ibid at page 225 D – E

Robert Walker LJ cited Taylor Fashions Ltd. v. Liverpool Victoria Trustees Co. Ltd. [1982] Q.B. 133, and quoted the following words of Oliver J:

"(the principle) requires a very much broader approach which is directed rather at ascertaining whether, in particular individual circumstances, it would be unconscionable for a party to be permitted to deny that which knowingly or unknowingly he has allowed another to assume to his detriment than to enquiring whether circumstances can be fitted within the confines of some pre-conceived formula for every form of unconscionable behavior." (See Taylor Fashions Ltd. v. Liverpool Victoria Trustees [1982] Q.B. 133 at 151 -152)

In *Gillett v. Holt* [2001] Ch. 210, the Court of Appeal considered what was:

"the minimum equity to do justice to the plaintiff..." "19

In that case the minimum equity was held to have been the transfer of freehold interest in the farmhouse together with monetary compensation.

Thorner v. Mayor and Others [2009] 3 All ER²⁰ was a case cited by Mr. Boodoosingh 39. for the claimant. It was a decision of the House of Lords and concerned the claim of the plaintiff who had provided gratuitous assistance on his cousin's farm from 1976 to 2005. His cousin had made indirect statements to the effect that the plaintiff would inherit the farm. When his cousin died intestate, the plaintiff brought a claim against the personal representatives of his late cousin. The plaintiff claimed the benefit of a proprietary estoppel.

 $^{^{19}}$ Gillet v. Holt [2001] Ch. 210 of page 237 A – B 20 Thorner v. Major [2009] 3 All ER 945

Lord Walker of Gestingthorpe delivered the main judgment. At paragraph [54] of his judgment, the learned law Lord contrasted promissory estoppel from proprietary estoppels by quoting from *Treitel Law of Contract* (12th Edition):

"promissory estoppel arises only out of a representation or promise that is "clear" or "precise" and unambiguous" 21

Lord Walker then quoted the learned authors of *Trietel on Law of Contract* in this way:

"Proprietary estoppel on the other hand, can arise where there is no actual promise e.g. where one party makes improvements to another's land under a mistake and the other either knows of the mistake or seeks to take unconscionable advantage of it..."22

Then at paragraph 55, Lord Walker classified the case before him as one of acquiescence or standing-by, and said:

"...if all proprietary estoppel cases (including cases of acquiescence or standing-by) are to be analyzed in terms of assurance reliance and detriment, then the landowner's conduct in standing by serves as the element of assurance...",23

40. Richard Uglow v. Peter Uglow and Others [2004] EWCA Civ 987 was an authority cited by Mr. Boodoosingh. In that authority, Mummery LJ identified the issue on appeal as one which turned on the application of the general principles stated in Gillett v. Holt [2001] Ch 210 and *Jennings v. Rice* [2003] 1 P & CR 100.

 $^{^{21}}$ See Thorner v. Major [2009] 3 All ER 945 at 964b 22 Thorner v. Major [2009] 3 All ER 945 and 964b 23 Ibid. para [55]

The doctrine was regarded as distinguishable from the enforcement of a concluded and binding contract. It was held that no concluded contract had been pleaded in this case, although the mutual understanding reached between the parties in 1976 was regarded as having come close to a binding contract.

In *Uglow*, Mummery LJ identified the following general principles which were expounded in the earlier authorities:²⁴

- "1) The overriding concern of equity to prevent unconscionable conduct permeates all the different elements of the doctrine of proprietary estoppel: assurance, reliance, detriment and satisfaction are all intertwined.
- 2) The broad inquiry in a case such as this is whether, in all the circumstances, it is unconscionable for a testator to make a will giving specific property to one person, if by his conduct he has previously created the expectation in a different person that he will inherit it.
- 3) The expectation may be created by (a) an assurance to the other person by the testator and intended by him to be relied upon that he will leave specific property to him; (b) consequent reliance on the assurance; and (c) real detriment (not necessarily financial) consequent on the reliance.
- 4) The nature and quality of the assurance must be established in order to see what expectation it creates and whether it is unconscionable for the testator to repudiate his assurance by leaving the property to someone else.

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²⁴ Richard Uglow v. Peter Uglow [2004] EWCA 987 per Mummery LJ at para [8]

- 5) It is necessary to stand back and look at the claim in the round in order to decide whether the conduct of the testator had given rise to an estoppel and, if so, what is the minimum equity necessary to do justice to the claimant and to avoid an unconscionable or disproportionate result.
- by will may thus become irrevocable as a result of the other's detrimental reliance on the assurance, even though the testator's power of testamentary disposition to which the assurance is linked is inherently revocable."

Reasoning and Decision

- 41. In these proceedings, the claimant approaches the Court in his capacity as the Legal Personal Representative of the estate of the late Estephany De Four, who had been a tenant of the State in respect of four (4) acres of agricultural land.
- 42. There is no dispute that the State Lease had expired since 1968. It was the uncontroverted evidence of the claimant, Paul De Four that he wished, on behalf of the estate, to have the tenancy renewed.
- 43. It was also Mr. De Four's uncontroverted evidence that a factor which prevented the renewal was a temporary structure which stood on the land and which at the time of the trial was occupied by the defendant and her family. Accordingly, the claimant has approached this court for an order for possession.
- 44. The defendant has mounted a defence of proprietary estoppel and has counterclaimed for a declaration of her entitlement to the four (4) acres.

- 45. By her defence and counterclaim, the claimant relies principally on estoppel by acquiescence or standing by. See *Thorner*²⁵. It is the defendant's case that she first entered occupation of the house when invited to do so by Richard, the nephew of the claimant. The house was then a bare shell. It had been constructed by Francis De Four, the brother of the claimant and father of Richard, the defendant's cohabitating partner.
- 46. In the mid 1990's the cohabitational relationship between Richard and the defendant came to an end. Richard migrated to the U.S.A. Thereafter, the defendant continued to reside in the structure, systematically upgrading it over the years from a mere shell to a fully plastered, completed dwelling house with running water and electricity.
- 47. According to the defendant, she began another common law relationship in the year 1999 with Anthony Gomez. Interestingly, it was in 1999, that a letter was sent to the defendant by Francis De Four. This was the only document which expressed the dissatisfaction of the De Four family with the defendant's occupation of the structure and her efforts of upgrading it.
- 48. Nonetheless, I have accepted, on the basis of the defendant's evidence in cross-examination that the De Four family pressured her to leave. Motivated by her concern for her children's welfare, she resisted the pressure which was being brought to bear on her. She took the step of making enquiries at the Lands and Surveys Division as to the status of the tenancy. The defendant satisfied herself that the tenancy had expired and continued her occupation of the property in the hope that there was nothing that the De Four family could do to remove her.
- 49. The Court considered whether the defendant has acquired an interest in the structure and the surrounding four (4) acres of land by virtue of the principles of proprietary estoppel.

²⁵ Thorner v. Mayor and Other [2009] 3 All ER 945

- 50. The defendant's case did not depend on an explicit assurance. The defendant's case fell into the category of estoppel by acquiescence or standing by. She asserted that the claimant stood by over the years and saw her upgrade the house from a mere shell to the fully completed dwelling house that it is now, and that it is unconscionable to ask her simply to vacate the premises.
- 51. In the case of *Thorner*,²⁶ Lord Walker analysed estoppel by acquiescence in terms of the four (4) elements which constitute estoppel by assurance. Acquiescence was seen by Lord Walker as a form of silent assurance. Accordingly the Court first addressed its mind to the issue of whether there was a silent assurance or standing by on the part of the claimant and other beneficiaries of the estate of Estephany De Four.
- 52. It was the defendant's evidence under cross-examination, that the De Four family pressured her but she resisted over the years for the sake of her children. In spite of their protests the defendant continued both to occupy the property and to upgrade it. In my view therefore there was no acquiescence. The defendant continued her upgrade to the temporary structure in the knowledge that the De Four family objected to her doing so.
- 53. Moreover, it was the unequivocal evidence of the defendant, under cross-examination that she knew that the structure was temporary and had to be demolished. She therefore took the risk of expending her time and money and ploughing her resources into a venture which she knew to be illegal and which she knew would eventually be demolished unless she was lucky enough to withstand the pressure which was being exerted upon her until she could successfully mount a claim of adverse possession against the State.

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²⁶ See Thorner v. Major [2009] 3 All ER 945 and 964 D

54. In my view this last factor goes to the issue of conscionability. In my view, the defendant

took the risk, in the full knowledge that the structure was illegal. She must therefore

accept the losses which follow the risk.

55. The minimum equity to which the defendant would be entitled is adequate time to find

alternative accommodation. It is therefore my view and I hold that the defendant be

allowed a period of 4 months and thereafter must deliver vacate possession to the

claimant.

Dated this 4th day of February, 2014

M. Dean-Armorer Judge²⁷

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