TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV. 2008-4220

BETWEEN

MARVA BARROW	1st Named Claimant
RANDOLPH BARROW-SCANTLEBURY (By his lawful Attorney Marva Barrow under Power of Attorney Registered as no. DE 20081927746)	2nd Named Claimant

AND

VANESSA SHEPPARD	1st Named Defendant
HILTON SAMUEL	2nd Named Defendant

BEFORE THE HONOURABLE MADAM JUSTICE DEAN-ARMORER

APPEARANCES

Mr. Yaseen Ahmed, Attorney-at-Law for the Claimants
Ms. Leandra Ramcharan, Attorney-at-Law for the Defendants

REASONS

Introduction:

1. This action pertains to residential premises situated at No. 30, Balthazar Street, Tunapuna. The claimant sought a declaration that she was the legal owner of those premises. She also sought an order for possession of the premises together with injunctive relief. Although the first defendant entered an order by consent, the second defendant built his defence and counterclaim on the principle of proprietary estoppel.

2. In the course of my decision, I therefore considered whether the defendants were successful in establishing an entitlement to the premises by virtue of the principle of proprietary estoppel.

3. On the 31st January, 2014, I delivered an oral ruling in favour of the defendants. My reasons are set out below.

***Procedural History**:*

4. By the claim form filed on the 24th October, 2008, the claimant, Marva Barrow instituted these proceedings on her own behalf and on behalf of her son, Randolph Barrow-Scantlebury, for whom she held a Power of Attorney. Proceedings were initially instituted against the first defendant only.

5. By her claim, Ms. Barrow sought the following relief:

> *"1. A declaration that the property situated at Balthazar Street…together with the buildings thereon is lawfully owned by the second claimant and presently held by the first claimant as statutory guardian of the second claimant.*
>
> *2. An order for possession of the above-mentioned property.*
>
> *3. An injunction against the defendant…from remaining in and /or from occupying the above mentioned property.*
>
> *4. Damages for trespass.*
>
> *5. Mesne Profits.*
>
> *6. Interest.*
>
> *7. Costs."*

6. The claimant's statement of case accompanied the claim form.

7. This matter was initially docketed to Justice Tiwary-Reddy and on the 26th February, 2009, the claimant applied for summary judgment against the defendant, Vanessa Sheppard. Submissions were filed and on the 11th May, 2010, Tiwary-Reddy J. reserved her ruling.

8. Meanwhile, the second defendant, Hilton Samuel applied to be joined as a defendant.

9. On the 23rd January, 2009, parties entered a consent order, whereby Mr. Hilton Samuel was joined as the second defendant. The first defendant, Vanessa Sheppard also agreed by way of the very consent order that there be judgment against her for the claimant as follows:

> *"3. i. That there be a Declaration that the property comprising ALL AND SINGULAR that piece or parcel of land situate at Balthazar Street…is lawfully owned by the Second Claimant and presently held by the First Claimant as Statutory Guardian of the Second Claimant for the use and benefit of the said Second Claimant.*
>
> *ii. An Order for possession as against the first defendant, Vanessa Sheppard.*
>
> *iii. An Injunction against the First Defendant by herself, her servants and/or agents from remaining in and/or taking possession and/or from occupying the said above mentioned property.*
>
> *iv. Damages for trespass.*
>
> *v. Mesne profits.*
>
> *4. That there be a stay of the Order at paragraph 3 above pending the determination of the proceedings against the Second Defendant, Hilton Samuel.*

5. *All rents for the downstairs apartment and the small house situated on the above mentioned property collected by the First Defendant, Vanessa Sheppard from May, 2009 to date to be paid into a joint account to be held in the names of the Attorneys for the Claimants and the Defendants pending the determination of this matter.*

6. *All rents from today's date from the downstairs apartment and the small house situated on the above mentioned property to be collected by the Claimants or their agent and to be deposited into the above joint account pending the determination of this matter."*

10. There was no appeal against the consent order and there was no action to have it set aside. There was however, an application by the claimant to amend her claim form and statement of case. Pursuant to the order of Justice Tiwary-Reddy, the claimant filed her amended claim form and statement of case on the 25th November, 2009.

11. On the 29th December, 2009, the second defendant filed his defence and counterclaim.

12. By notice of application dated the 14th January, 2010, the claimants sought an order that the defence and counterclaim be struck out on the ground that it was frivolous, vexatious and an abuse of process.

13. Parties relied on written submissions. On the 14th June, 2010, Justice Tiwary-Reddy struck the defence and counterclaim and directed that the issue of damages be referred to a Master.

14. The order of Justice Tiwary-Reddy was successfully appealed. In the interim, Justice Tiwary-Reddy proceeded on retirement and the action was transferred first to the docket of Justice Aboud and subsequently to the docket of this Court.

15. I gave standard pre-trial review directions on the 10th March, 2011. After the hearing of evidential objections, this matter was listed for trial in May, 2013. Directions were given for filing written submissions and the Court adjourned the matter to the 25th July, 2013 for the hearing of final submissions.

16. The second defendant failed to file submissions as directed. The Court nonetheless reserved its decision on the 25th July, 2013 to a date to be fixed by notice.

The Evidence:

17. The claimant relied on her own witness statement and that of her friend and agent, Frank Letren and of Valuator, Faizal Hosein. The second defendant, Mr. Samuel relied on his own evidence and that of Vanessa Sheppard, the first defendant. Witnesses were cross-examined. Mr. Ahmed applied successfully to adduce into evidence documents which were referred to in the witness statements but not exhibited thereto. The Court allowed the documents to be tendered into evidence because they were identified in the witness statements by reference to the Claimant's Un-agreed Bundle. It was my view that the documents were adequately identified for the purpose of Part 29.5 (e) of the ***Civil Proceedings Rules 1998***.

Facts:

18. The facts as stated below were gleaned from the witness statements, evidence adduced under cross-examination and documentary evidence. Parties agreed as to the facts relating to the general history of the subject premises.

Undisputed Facts:

19. The subject parcel of land may be found at No. 30 Balthazar Street, Tunapuna. On it, there stands a two (2) storey dwelling house. The upper floor is divided into a number of rooms

including a living room, three (3) bedrooms, a dining room, a living room, a kitchen and a toilet and bath. The lower floor is a separate living unit and comprises three (3) bedrooms, living room, toilet and bath. Adjacent to the two storey building is a flat concrete dwelling house. It is not disputed that both the flat structure, as well as, the ground floor of the 2 storey structure were rented throughout the years to individual unnamed tenants.

20. Prior to 1990, the legal and beneficial ownership of the subject premises had been invested in Miriam Scantlebury. Miriam Scantlebury had virtually adopted the first defendant, Vanessa, who at the age of five (5) had been abandoned by her mother.

21. Vanessa lived with Miriam Scantlebury until the latter had died in 1990. Miriam Scantlebury had one son, Calvin, who also lived on the subject premises with his mother, Vanessa and another person.

22. Upon the death of his mother, Calvin obtained Letters of Administration on the 18th January, 1991. After having executed the requisite Deed of Assent, Calvin succeeded to ownership of the premises. He continued to occupy the subject premises with the second defendant, Vanessa, who referred to him as "Uncle Callie". There is no dispute that Vanessa and Calvin enjoyed a good relationship. Under cross-examination, Ms. Barrow told the Court that Calvin referred to Vanessa *"a good child"*.

23. The claimant, Marva Barrow and Calvin became friendly and developed a visiting relationship. From this relationship was born the second claimant, Randolph.

24. In 1999, Calvin died intestate. On the 1st February, 2002, Ms. Barrow obtained Letters of Administration on behalf of her son, the second claimant. By the clear words of the grant of Letters of Administration, the first claimant received the grant until the second claimant attained the age of eighteen (18) and applied for Letters of Administration.

25. Under cross-examination, the first claimant told the Court that her son's date of birth was 22nd October, 1987, placing him at approximately twenty-six (26) years old at the time of trial. Nonetheless, Randolph never applied on his own behalf for Letters of Administration. He never appeared in these proceedings and has altogether been both silent and absent as a party.

26. Regardless of the Grant of Letters of Administration, it emerged in cross-examination that the claimants had no real connection with either the late Calvin Scantlebury or the premises.

27. Under cross-examination, the first claimant was unable to say when her relationship with Calvin came to an end.

28. She told the Court that the second claimant was born in New York and that they had lived in New York for thirty (30) something years. They are both residents in the United States of America.

29. During the lifetime of Calvin, the claimant would make annual visits to Trinidad. On such occasions she would stay with her mother in Diego Martin and not at the subject premises. Ms. Barrow told the Court that on such occasions Randolph did not accompany her to Trinidad. Neither claimant attended Calvin's funeral.

30. Vanessa Sheppard by contrast, lived at the premises from childhood. In 1993, she began a relationship with the second defendant, Mr. Hilton Samuel. There is no dispute that of the time of the trial, Mr. Samuel lived at the subject premises.

31. The issue as to whether his residence began in 1993 is considered below. In January, 2007, the claimant served a notice to quit on the first defendant. This led to an exchange of correspondence between their respective attorneys-at-law. There is no dispute as to the

content of the letters which were exchanged. A dispute arose however as to proper inferences to be drawn from the letters. This is considered below. Ms. Leandra Ramcharan, writing on behalf of the first defendant in order to resist the Notice to Quit, wrote:

> *"We write on behalf of our client Vanessa Sheppard…*
>
> *We are instructed that at no time whatsoever did our client become your tenant of will…*
>
> *We are further to advise that our client has acquired a legal interest in the said property buy (sic) virtue of which she is entitled to exclusive possession of same…*
>
> *Further you have commenced collecting rent from tenants of the premises to which you are not entitled."*

32. Attorney-at-law, Drigard Singh replied on behalf of Ms. Barrow. Mr. Singh referred to the Deed of Assent, by which Calvin became entitled to ownership of the premises. He referred as well to the grant of Letters of Administration and to the subsequent Deed of Assent by which Ms. Barrow came to hold ownership of the subject premises for the use and benefit of her son.

33. On the 16th June, 2007 Ms. Leandra Ramcharan responded to Mr. Singh claiming that the first defendant had acquired a possessory title.

Issues of Fact:

34. The following issues of fact arose in these proceedings:

- whether Mr. Hilton Samuel lived at the subject premises since 1993;
- whether Vanessa collected payments of rent from tenants of the premises;

- whether Calvin made a promise to the defendants and encouraged them to remain on the premises;
- whether the second defendant spent $100,000.00 in renovating the premises or in any other way acted to his detriment.

First Issue of Fact: The Residence of Mr. Samuel

35. The claimant contends that Mr. Samuel lived at the subject premises as the agent of the first defendant. The claimant, without specifying the date when he began residing there, insists that it was not 1993.

36. Accordingly an issue of fact arose as to whether the second defendant lived on the premises since 1993. In support of her denial that Mr. Samuel lived at the subject premises, the first claimant relied on her own testimony at paragraph 20 of her witness statement and that of her friend Frank Letren.

37. The first claimant stated as follows:

> *"The second defendant did not reside on the premises from the year 1993. After Calvin died, whenever Frank Letren and I visited the premises we always spoke to the first defendant who took charge of matters concerning the subject property."*

The first claimant continued at paragraph 20:

> *"I did not see signs of the second defendant living there at the time. In this respect, there is a typographical error in paragraph 15 line 4 of my Reply in that the words "Second Defendant" ought to read "First Defendant"."*

38. In resolving this issue of fact, it is first to be observed, that paragraph 15 of the Reply and Defence and Counterclaim cannot be amended without the permission of the Court. The claimant attempted to effect an amendment to her Reply and Defence and Counterclaim by passing reference in her witness statement to a typographical error. It was my view that this attempt was ineffective. The claimant was bound by her pleading at paragraph 15 of the Reply and Defence and Counterclaim, at which she contended as follows:

> *"Paragraph 13 is denied in that the second defendant did not reside in the premises from the year 1993. The claimants will contend further that whenever the first claimant and/or Frank Letren and/or Leonie Noel visited the premises they always spoke to the second defendant who took charge of all matters concerning the subject property."*

39. The Court observed further that the witness statement of the first claimant was filed in October, 2011. The trial of this action took place in May, 2013. This claim was aggressively pursued from the inception, with one application for summary judgment and another to strike out the first defendant's defence. It was therefore curious and inconsistent with the momentum of the claimant's prosecution of the claim to omit to seek an amendment to correct a mistake with such far-reaching consequences. This left the Court wondering whether the reference to *"the second defendant"* at line 4 of paragraph 15 of the Reply and Defence and Counterclaim was an error at all or whether it was a Freudian slip.

40. Moreover, at paragraph 2 of her Witness Statement, the first claimant made the following allegation:

> *"The first defendant presently resides in the said property and the second defendant resides therein also as the agent of the first defendant."*

41. Later in her witness statement at paragraph 20, the first claimant asserted that the second defendant did not reside in the premises from 1993. The first claimant fell short however, of specifying the year in which Mr. Samuel took up residence in the subject premises. In this way the claimant left the Court to speculate whether the admitted residence of Mr. Samuel, as agent of Ms. Sheppard began prior to 1993 or some year thereafter.

42. Accordingly, by her evidence in chief alone, untested by cross-examination, Ms. Barrow had failed to contradict Mr. Samuel's allegation that he resided in the premises from 1993.

43. I also considered Ms. Barrow's responses in cross-examination. Ms. Barrow denied that she ever saw Mr. Hilton of the subject premises, but admitted that she was aware that he lived there.

44. In support of her assertion that Mr. Samuel did not live at the subject premises, the first claimant relied on the testimony of Frank Letren, who described himself as a *"family friend of Marva Barrow…since 1960."*[1]

45. Mr. Letren stated that he maintained close communication with the first claimant while she lived in the USA and spent a lot of time with her when she visited Trinidad.[2]

46. Mr. Letren claimed that in 1980's he also became good friends with Calvin. Mr. Letren testified that during the 1990's he would see Calvin at the subject premises and in Diego Martin at the home of the Claimant's mother.[3] Mr. Letren claimed that Vanessa Sheppard lived alone in the upstairs apartment and Mr. Samuel was never present.

47. Mr. Letren was cross-examined by learned attorney-at-law, Ms. Ramcharan. Under cross-examination, Mr. Letren indicated that he visited Calvin once per month during the evening time and that on such occasion he never saw Mr. Samuel. Mr. Letren admitted

[1] See paragraph 2 of the Witness Statement of Frank Letren
[2] Ibid at paragraph 3
[3] Ibid at paragraph 4

that he was aware that it was Mr. Samuel's position that he resided at the subject premises from 1993. Under cross-examination Mr. Letren was asked whether he had any reason to dispute that Mr. Samuel resided at the property. His answer was that he had no such reason.

48. It was the contention of both defendants that Mr. Samuel lived on the subject premises since 1993. This was a position which Mr. Samuel maintained under cross-examination.

49. On a balance of probabilities, it was my view that the evidence of Mr. Samuel on this issue was preferable to that of the claimant. The claimant provided evidence through the testimony of Mr. Letren and through her own testimony, that neither she nor Mr. Letren ever saw Mr. Samuel at the subject premises. The claimant did not provide evidence that Mr. Samuel resided at another address, nor did she testify that anyone, having 24 hour surveillance of the premises found Mr. Samuel absent at all times. Instead the claimant began on the premise that Mr. Samuel was absent during occasional visits by the claimant and Mr. Letren. From this, the claimant asked the Court to infer that Mr. Samuel did not reside at the premises.

50. The claimant's testimony however, is weakened by her admission under cross-examination that she visited Trinidad only once per year and that she stayed not at the subject premises but at her mother's home in Diego Martin. She does not allege visits of any regularity to the premises in the 1990's.

51. Mr. Letren testimony was more cogent in that he testified that he made monthly visits to Calvin during the 1990's and that he never saw Mr. Samuel. Mr. Letren however accepted under cross-examination that he could not dispute Mr. Samuel's claim that he resided at the subject premises.

52. I found it difficult to infer that Mr. Samuel's absence from the premises one afternoon per month negated his claim that he lived there. More cogent evidence may have been an allegation as to the actual address of Mr. Samuel during the 1990's. This could easily have been procured by conducting simple investigations. No such evidence was forth coming. On the evidence before me, therefore, I found on a balance of probabilities that Mr. Samuel entered into a cohabitational relationship with Ms. Sheppard in 1993 and took up residence at the subject premises from that year.

Payments of Rents:

53. By their Amended Statement of Case the claimants contended that from March, 2007, Vanessa, the first defendant wrongfully collected rental payments in respect of the separate flat house and of the ground floor of the two (2) storey home. The second defendant traversed this allegation at paragraph 12 of the Amended Defence. The defendants there alleged that Vanessa, the first defendant began collecting rents when Calvin died and continued until April, 2006.

54. Under cross-examination, however, Vanessa, the first defendant admitted the claimant's case as to the collection of rent. My findings of fact as to the payments of rents are set out below.

55. Prior to his death, Calvin collected all rental payments.

56. Following Calvin's death, rental payments were collected by Selwyn Clarke between 1999 and 2002. Selwyn Clarke was a cousin of the deceased. Under cross-examination, Vanessa told the Court that they took advice and made a decision that Mr. Clarke should collect the rent.

57. Between 2002 and 2006 payments were collected by Max Senhouse, who had been appointed to act on behalf of the claimant by her then attorney-at-law, Noel John. Payments were used to defray the debt which was due by the claimant to Mr. John as legal fees.

58. Following receipt of the Notice to Quit in 2007, the first defendant took over the collection of rents. This she continued until November, 23, 2009, when the parties entered a consent order before Justice Tiwary-Reddy.

The Promise:

59. The limb of the defence advanced by the second defendant[4] was a classic proprietary estoppel defence and consisted of the following allegations:

- The second defendant, after having moved into the premises, undertook significant repairs and renovations amounting to more than $100,000.00.
- Because of this expenditure Calvin Scantlebury told the second defendant that the subject premises "*was the defendants*"[5], meaning belonged to the defendants.
- Based on the representation that the property would be theirs, the second defendant continued to reside on the premises and continued to expend significant sums of money on the subject premises.[6]
- Based on the representation and further encouragement, the second defendant never made any effort to obtain…his own property nor did he make financial provisions to do the same, expending his financial resources on the maintenance, upkeep and renovations of the subject premises.[7]

[4] The defence advanced by way of the Amended Defence filed on 30th July, 2010.
[5] See paragraph 17 of the Amended Defence and Counterclaim filed on 30th July, 2010.
[6] See Amended Defence and Counterclaim at paragraph 18.
[7] See the Amended Defence and Counterclaim at paragraph 19.

60. In her Reply and Defence and Counterclaim the first claimant denied that any promise had been made by the late Calvin Scantlebury. The claimant alluded to conversations between herself and the late Calvin Scantlebury and alleged that Calvin always indicated an intention to leave all his property to his son, Randolph. Further, in these conversations, Calvin never mentioned any promise to the defendants. [8]

61. The claimant referred to the bills and receipts which were attached to the Amended Defence to Counterclaim and contended that they did not tend to prove expenditure by the second defendant.[9]

62. The claimant in her Reply and Defence to Counterclaim alleged that the defence in equity was an afterthought on the part of the second defendant:

> *"…to remain in the premises rent free when the first defendant has already accepted she has no interest…in the said premises and has consented to Judgment in favour of the claimants…"*[10]

63. The allegation of the promise was supported by the evidence of both defendants. Notwithstanding the order to which the first defendant, Ms. Sheppard had consented, she nonetheless testified on behalf of the second defendant and provided evidence that the second defendant financed improvements to the subject premises. I considered whether her concession reduced the probability that there was either a promise by Calvin or detrimental reliance by the defendants.

64. At paragraph 12 of her witness statement Ms. Sheppard testified as follows:

> *"We did extensive improvement to the house over the years and invested well over $100,000.00 most of which came from the second defendant…"*

[8] See the Reply and Defence to Counterclaim filed 25th August, 2010 at paragraphs 17 to 19
[9] Ibid at paragraph 20
[10] Ibid at paragraph 21

65. The second defendant also testified[11] that he assisted with renovations to the premises. He stated that he got along well with Calvin from the start. He stated further that he and Vanessa were Calvin's only family and that Calvin discouraged them from leaving. I accept this aspect of Mr. Samuel's evidence since there was no counter evidence.

66. At paragraph 9 of his witness statement the second defendant stated that as Calvin got older, the defendants took over more responsibility, that Calvin said to him one day that "*the house was for us*".

67. Mr. Samuel testified further that he and Vanessa never attempted to own their property and invested over $100,000.00 in improving the house and that they took care of Calvin until his death.

68. Mr. Samuel was cross-examined. He stated that he began doing repairs from 1993. He stated that he spent money on painting the house inside and out.

69. Mr. Samuel was questioned as to the time the promise was made by Calvin. He answered that the promise was first made in 1994.

70. Learned Counsel, Mr. Ahmed put the following question to the second defendant:

> *"It was a promise by Calvin if you join with him to repair the house, both you and Vanessa would be owners of the house…"*

Mr. Samuel answered in the affirmative.

71. The defendants were cross-examined extensively on their allegations that the second defendant expended large sums of money in reliance on a promise made by Calvin.

72. Under cross-examination by learned attorney-at-law, Mr. Ahmed, Vanessa Sheppard, testifying on behalf of Mr. Samuel, agreed that her witness statement alleged that several promises had been made by Calvin that the property would be theirs. Ms. Sheppard agreed

[11] See the Witness Statement of Hilton Samuel at paragraph 8

further that paragraph 9 of her witness statement contained the allegations that the defendants expended large sums on the property and that the property would still belong to Mr. Samuel even if the couple were separated.

73. Ms. Sheppard stated under cross-examination that the promise had been made 25-30 times. This witness was confronted with the attorney's letter dated the 16th June, 2007 which had been sent on her behalf to Ms. Barrow[12]. It was drawn to Ms. Sheppard's attention that the attorney's letter made no mention of a promise or reliance thereon. It was then put to Ms. Sheppard that the reason for this omission was that there was no promise.

74. Ms. Sheppard's response was significant. The Court's record of her answer is set out below:

> *"That is not true. They were made numerous times. We lived as a unit in that house, we lived as a family, we were close…"*

75. Later in the course of cross-examining Ms. Sheppard, learned attorney-at-law, Mr. Ahmed put the following suggestion to Ms. Sheppard:

> *"There was no promise either to yourself or to Hilton Samuel concerning ownership by Calvin Scantlebury…"*

Ms. Sheppard responded that she totally disagreed.

76. Learned attorney-at-law, Mr. Ahmed then put the following suggestion:

> *"No $100,000.00 was invested either by you or Hilton Samuel either separately or jointly…"*

To this, Ms. Sheppard responded that she totally disagreed.

[12] See paragraph 31

77. Mr. Samuel was cross-examined as to expenditure on the premises. He stated that Calvin started making promises in 1994. When asked exactly what was promised, Mr. Samuel gave this evidence:

> *"He said fix the house, we would fix the house together and the house would be ours."*

78. Mr. Samuel was confronted with paragraph 17 of the amended defence and counterclaim where the following allegation was made:

> *"Because of the expenditure of the defendants over an extended period of time the said Calvin Scantlebury told the second defendant on several diverse occasions that the subject premises was the defendants."*

79. It was put to Mr. Samuel that his evidence under cross-examination alleged a promise conditional on work being done in the future and that this was inconsistent with the pleaded defence which alleged a promise in consideration of work already done. Mr. Samuel disagreed that there was an inconsistency.

80. Mr. Ahmed alluded to this inconsistency in his written submission, suggesting that the Court ought not to believe Mr. Samuel because his evidence conflicted with his pleaded case.

81. The Court considered this submission, accepting of course as a matter of principle that evidence is inadmissible to the extent that it is inconsistent with the pleaded case. Moreover, it was correct to suggest that paragraph 17 of the amended defence placed the promise as occurring after renovations had been made.

82. The Court considered the whole Amended Defence. At paragraph 18, the second defendant alleged:

"Based on the above representation and not otherwise the second defendant continued to reside on the premises and continued to expend significant sums of money on the subject premises…"[13]

83. Having considered all the circumstances, it was my view that the disputed facts were to be resolved in the context of those which are undisputed. There was no dispute that Ms. Sheppard and Calvin lived as a family and that latterly Ms. Sheppard began cohabitating with Mr. Samuel. Calvin, having retired was not only older but would undeniably have experienced a diminution in income. These parameters are analogous to the corners of a jigsaw puzzle from which the Court found it reasonable to make inferences as to the disputed matters. The defendants had lived with Calvin for many years. I found it acceptable on a balance of probabilities that Calvin may have discussed the upkeep of his property, which according to the evidence was 65 years old. I also accept on a balance of probabilities that Calvin may have found it convenient to make the alleged promise in consideration of the financial assistance and the companionship provided by both defendants. Accordingly, I accepted on a balance of probabilities that Calvin made the alleged promise on several occasions that the house would belong to the defendants if they assisted him in renovating it.

84. I also accepted that Calvin encouraged the couple to stay with him at the subject premises. This they did and in so doing they acted to their detriment not only in expending their resources in renovating the house, and also in foregoing opportunities to acquire a place of their own.

85. In arriving at the foregoing finding of fact I considered the effects of the exchange of correspondence between Matthew Ramcharan and Company on behalf of the first

[13] See the Amended Defence and Counterclaim filed 30th July, 2010 at paragraph 18

defendant and Mr. Drigard Singh on behalf of the claimant. I also considered the responses of the first defendant to questions put to her in cross-examination.

86. It is clear that the attorney's letter omitted altogether to raise a defence of proprietary estoppel and claimed instead that Ms. Sheppard had acquired a possessory title. I weighed this factor against the evidence put forward by the defendants and considered whether the omission of the attorney to mention a possible defence of proprietary estoppel implied that there was no foundation for such a defence.

87. It was however my view that the responses of Ms. Sheppard under cross-examination were both emphatic and strong. Her evidence under cross-examination tilted the scale in favour of the second defendant and led to the conclusion that her *viva voce* evidence and not the content of the attorney's letter reflected the true position in this matter.

The Consent Order:

88. I considered also the effect of the consent order, to which the first defendant entered in November, 2009 and the extent to which it compromised the defence advanced by the second defendant. It was my view for the following reasons that the consent order had no effect on the defence of the second defendant.

The consent order was not entered on the merits of the claim and in entering it the Honourable Justice Tiwary-Reddy made no findings of fact or law.

In my view it signified no more than the willingness of the first defendant at the relevant moment in time to enter a concession. There is no indication as to the factors which led to her willingness.

There was no argument on behalf of the claimant that the consent order presented any barrier to the defence of the second defendant. Indeed the very terms of the consent

order included permission to Mr. Samuel to be joined as a defendant and to have the defence amended.

Accordingly it was in my view that the consent order did not in any way compromise the defence on which the second defendant relied.

Whether there was detrimental reliance:

89. The last remaining issue of fact is whether the second defendant expended $100,000.00 on improvements to the property.

90. The second defendant was cross-examined extensively on the receipts which were produced in support of his contention that he spent more than $100,000.00 on renovations to the property.

91. The following emerged from an examination of the receipts:

- Many of the receipts were dated after the death of Calvin that is to say 2000 and beyond.
- Many receipts did not specify either a date or a name of a purchaser.
- Many receipts were in the name of Vanessa Sheppard.
- Moreover the receipts when taken together did not approach a total of $100,000.00.

92. The evidence by both defendants was however that renovations were made to the premises. Both defendants have made such allegations in their respective witness statements and there were no counter allegations by the claimant or Mr. Letren that on their many visits to the subject premises they ever found the premises to be in a state of disrepair.

It was my finding therefore, on a balance of probabilities that the defendants assisted the now retired Calvin with the upkeep of the premises.

93. Moreover, under cross-examination Ms. Sheppard stated that the repairs were financed by Mr. Samuel. Many receipts were in Vanessa's name and I accept the explanation of Mr. Samuel that he provided the money for those purchases.

Issues:

94. In my view the following issues arose for my determination that is to say whether the defendants have proved on a balance of probabilities:

(i) That they were the beneficiaries of a promise by the late Calvin Scantlebury that the subject premises would be theirs if they stayed with him and assisted him with repairs and renovations.

(ii) Whether the late Calvin Scantlebury made a promise in particular to the second defendant, Mr. Samuel that the property would be his if he assisted with renovations.

(iii) Whether the late Calvin Scantlebury discouraged the defendants from finding premises of their own promising them that if they continued residing with him the property would be theirs.

(iv) Whether the defendants and particularly the second defendant relied on the promises or any of them to his detriment.

(v) Whether there was any bar in equity against the second defendant

(vi) Whether it was unconscionable either to grant an order of possession in favour of the claimants.

Submissions and Law:

95. The Court only had the assistance of written submissions on behalf of the claimant. The defendant failed to file written submissions as directed and failed to obtain my permission to file the submission out of time.

96. On behalf of the claimant, learned attorney-at-law, Mr. Ahmed cited and relied on a number of authorities on the principle of proprietary estoppel. These are summarized below.

- ***Raj Mahabir and others v. Radhika Mangatoo***[14] was a decision of the Honourable Justice Rajkumar. In that case the plaintiff commenced an action against the defendant for recovery of possession of premises situate at Percy Street, Caroni Savannah Road. The plaintiffs claim was premised on the fact that the defendant was only given a permission to occupy the premises rent free. The defendant on the other hand, contended that she was given permission by her mother to live on the premises as long as she wished.
- The defendant began occupying the premises from or about January 1998 and lived thereon for a number of years, incurring expenditures as a result of her occupation. The defendant raised the defence of having an equitable interest in the property on the basis of proprietary estoppel.
- Allowing the Plaintiffs' claim, Rajkumar J found that the defendant only had a personal licence to occupy the upstairs apartment rent free. He held that the licence was terminated when the defendant began to assert rights which were inconsistent

[14] Raj Mahabit and others v. Radhika Mangatoo H.C.A 1621 of 2002

with the licence. Rajkumar J in dismissing the defence of proprietary estoppel decided as follows:

- there was no promise made by the plaintiffs or their predecessors in title to the defendant encouraging her to occupy any part of the premises for life
- the expenditures (however minimal) carried out by the defendant did not give rise to an equitable right to remain in possession for life,
- the expenditures were outside the terms of her initial permission.
- some of the expenditures that were carried out by the defendant were for the purpose of enhancing the defendant's occupation of the premises,
- by not confining her occupation to the upstairs apartment and by carrying out permanent additions to the property, the defendant's actions constituted bars to any equity arising.

Taylor Fashions:

- Learned attorney-at-law, Mr. Ahmed relied on ***Taylor Fashions Ltd. v. Liverpool Victoria Trustee Co. Ltd***[15]**.** In that case, the first plaintiff, Taylor Fashions Ltd sought against the defendants, Liverpool Victoria Trustees Co Ltd, the determination of, inter alia, the question whether the defendants were estopped from denying that Taylor Fashions were entitled to exercise an option to renew a lease notwithstanding that the option to renew had not been registered under the Land Charges Act 1925 at the date the defendants' predecessors acquired the reversion of the original lease.

[15] Taylor Fashions Ltd. v. Liverpool Victoria Trustee Co. Ltd [1981] 1 All ER 914

- The second plaintiffs, Old & Campbell Ltd,, sought against the defendants a declaration that two notices dated 23 June 1976 purporting to determine their tenancies under s.25 of the Landlord and Tenant Act 1954 were null and void on the grounds that (i) in respect of one tenancy they had validly exercised their option to renew a lease dated 22 March 1963, and (ii) in respect of the other tenancy the defendants' right to determine the tenancy had not arisen.
- The defendants contended that the doctrine of estoppel did not apply because the estoppel alleged was proprietary estoppel or estoppel by acquiescence and, for such an estoppel to arise, it was an essential prerequisite that the representor knew what his rights were and that the representee was acting in the belief that those rights would not be enforced. The defendants argued that such an estoppel did not arise where both parties were acting under a mistake as to the representor's rights.
- The judgment of Oliver J was a landmark decision in that the learned Judge examined earlier authorities and re-defined the boundaries of the principle of proprietary estoppel. Oliver J referred to the decision of the Privy Council in ***Sarat Chunder Dey v. Gopal Chunder Lala***[16]**.**

  Oliver J quoted the following words of Lord Shand in ***Sarat Chunder Dey***:

  > *"What the law and the Indian statute regards is the position of the person who is induced to act; and the principle on which the law and the statute rest is that it would be most inequitable and unjust to him that if another, by representation made, or by conduct amounting to a representation, has induced him to act as he would not otherwise have done, the person who*

[16] Sarat Chunder Dey v. Gopal Chunder Lala [1892] LR 19 Ind. App. 203
Referred to at [1981] 1 All ER 897 at 913

made the representation should be allowed to deny or repudiate the effect of his former statement, to the loss and injury of the person who acted on it. If the person who made the statement did so without full knowledge, or under error, sibi imputet. It may, in the result, be unfortunate for him, but it would be unjust, even though he acted under error, to throw the consequences on the person who believed his statement and acted on it as it was intended he should do."[17]

- Oliver J referred as well to the decision in ***Willmott v. Barber***[18]and to the five probanda formulated by Fry J and quoted the following passage

  "A man is not to be deprived of his legal rights unless he has acted in such a way as would make it fraudulent for him to set up those rights. What, then, are the elements or requisites necessary to constitute fraud of that description? In the first place the plaintiff must have made a mistake as to his legal rights. Secondly, the plaintiff must have expended some money or must have done some act (not necessarily upon the defendant's land) on the faith of his mistaken belief. Thirdly, the defendant, the possessor of the legal right, must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff. If he does not know of it he is in the same position as the plaintiff, and the doctrine of acquiescence is founded upon conduct with a knowledge of your legal rights. Fourthly, the defendant, the possessor of the legal right, must know of the plaintiff's mistaken belief of his rights. If he does not, there is nothing which calls upon him to assert his own

[17] Quoted by Oliver J at [1981] 1 All ER 897 at 914 C.
[18] Willmott v. Barber [1880] 15 Ch. D referred to by Oliver J at [1981] 1 All ER 897 at 910 j.

rights. Lastly, the defendant, the possessor of the legal right, must have encouraged the plaintiff in his expenditure of money or in the other acts which he has done, either directly or by abstaining from asserting his legal right. Where all these elements exist, there is fraud of such a nature as will entitle the Court to restrain the possessor of the legal right from exercising it, but, in my judgment, nothing short of this will do." [19]

- Oliver J referred as well to ***Crabb v. Arun District Council***[20] and to ***Ramsden v. Dyson***[21] and had this to say:

  "...the more recent cases indicate, in my judgment, that the application of the ***Ramsden v Dyson*** *principle ... requires a very much broader approach which is directed to 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 or encouraged another to assume to his detriment rather than to inquiring whether the circumstances can be fitted within the confines of some preconceived formula serving as a universal yardstick for every form of unconscionable behaviour."*[22]

- Reference by Oliver J to a pre-conceived formula was an allusion to the five probanda identified by Fry J in ***Willmott v Barber***[23]. In determining the factors which the Court should consider when applying this broad approach, Oliver J said:

[19] [1981] 1 All ER 897 at 911 e.
[20] [1975] 3 All ER 865
[21] [1866] LR 1 HL 129
[22] [1981] 1 All ER 897 at 915 j.
[23] Willmott v. Barber [1880] 15 Ch. D. 96

"Knowledge of the true position by the party alleged to be estopped becomes merely one of the relevant factors (it may even be a determining factor in certain cases) in the overall inquiry."[24]

Oliver J referred to ***Ives Investments Ltd v. High*** [1967] 1 All ER 504, a decision of Lord Denning. At page 913 Oliver J formulated the principle in this way:

"The fact is that acquiescence or encouragement may take a variety of forms. It may take the form of standing by in silence whilst one party unwittingly infringes another's legal rights. It may take the form of passive or active encouragement or expenditure or alteration of legal position on the footing of some unilateral or shared legal or factual supposition. Or it may, for example take the form of stimulating, or not objecting to, some change of legal position on the faith of a unilateral or a shared assumption as to the future conduct of one of other party.

I am not at all convinced that it is desirable or possible to lay down hard and fast rules which seek to dictate, in every combination of circumstances, the considerations which will persuade the court that a departure by the acquiescing party from the previously supposed state of law or fact is so unconscionable that a court of equity will interfere." [25]

- Oliver J relied on the following statement by Lord Denning MR in ***Moorgate Mercantile Co Ltd v Twitchings*** [1975] 3 All ER 314[26]:

"Estoppel is not a rule of evidence. It is not a cause of action. It is principle of justice and of equity. It comes to this. When a man, by his words or

[24] Ibid at page 916 a.
[25] [1981] 1 All ER 897 at page 913 a –d.
[26] Lord Denning quoted by Oliver J at [1981] 1 All ER 897 at 918 C.

conduct, has led another to believe in a particular state of affairs, he will not be allowed to go back on it when it would be unjust or inequitable for him to do so."

- Having considered the authorities, Oliver J formulated the issue which engaged his attention in this way:

  "The inquiry which I have to make therefore, as it seems to me, is simply whether, in ***all the circumstances of this case****,(emphasis mine)it was unconscionable for the defendants to seek to take advantage of the mistake which, at the material time, everybody shared, and, in approaching that, I must consider the cases of the two plaintiffs separately because it may be that quite different considerations apply to each."*[27]

In Re Basham:

- In ***Re Basham***[28] 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:

[27] Per Oliver J. At [1981] 1 All ER 897 at 918 g.
[28] In re Basham [1986] 1 W.L.R. 1498

"is properly to be regarded as giving rise to a species of constructive trust."[29]

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.*
- *acts done to her detriment were in reliance on or as a result of the belief which she held.*[30]

Gilletl v. Holt:

- In ***Gillett v. Holt***[31], 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

[29] In re Basham [1986] 1 W.L.R. 1498 page 1504 A.
[30] Ibid at pages 1504-1506
[31] Gillet v. Holt [2001] Ch. 210

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…"[32]

The Court of Appeal also considered what was:

"the minimum equity to do justice to the plaintiff…"[33]

- In ***Elaine Knowles v. George Knowles as Executor and Beneficiary of the Estate of Oliver Knowles, deceased,*** the Privy Council Appeal was concerned with an action in respect of a house built on a parcel of land at Powell's Estate in the parish of St George in Antigua which Elaine Knowles (Appellant) occupied as her home since 1984. Powell's Estate used to be owned by George Knowles's (George) 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.

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.

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

[32] Gillet v. Holt [2001] Ch. 210
[33] Ibid at page 225 D – E

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.

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.

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, roof works were done and the house was repainted inside and out.

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 trial judge found that the case should be determined on the principles of proprietary estoppel. The trial judge found that the sole issue to be determined was "whether in all the circumstances of the case George had ever made any form of

representation capable of giving rise to a proprietary estoppel in John's and Elaine's favour."

The trial judge 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 that they were there and raise no objections to them carrying out such significant improvements.
- 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.
- 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
- John and Elaine had expended substantial sums in the belief that George had impliedly consented to his mother's intended gift,...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
- 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, by virtue of her contributions to the improvements and repairs which she and John had been encouraged to undertake.

George appealed the trial judge's decision to the Court of Appeal. The Court of Appeal set aside the judge's order and ordered George recovery of possession of the property.

The case became the subject of a Privy Council Appeal. In agreement with the Court of Appeal, the Privy Council found that:

- 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.
- 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, could not possibly be true.
- 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

Elaine's Appeal was dismissed.

- The Privy Council relied on the case of ***Jennings v Rice***[34] and the statement of Robert Walker LJ where he observed at page 54 of that case:

> *"the essence of the doctrine of proprietary estoppel is to do what is necessary to avoid an unconscionable result.*

[34] [2002] EWCA Civ 159

On the basis of the above principle the Privy Council found that :

> *"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."*[35]

In the words of Sir Henry Brooke where his Lordship cautioned:

> *"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."*[36]

- These words were relied upon by learned attorney-at-law, Mr. Ahmed:

The Privy also relied on the case of E&L Berg Homes Ltd v Grey37 and echoed this statement of Ormond LJ:

> *"...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."*[38]

[35] Elaine Knowles v. George Knowles Privy Council Appeal No.28 of 2007 at page 7
[36] Ibid
[37] (1979)253 EG473, [1980] 1 EGLR 103
[38] Ibid at page 108

97. The law in respect of the principle of proprietary estoppel is to be found in the decided cases. The earliest of these cases were delivered in the 19th Century.[39] The principle of proprietary estoppel has however continued to evolve and has been the subject of authorities delivered by the House of Lords and the Privy Council within the past decade.[40]

In my view the authorities clearly assert that the principle of proprietary estoppel is the interposition of equity, which comes to mitigate the rigors of the law. See words of Lord Denning in ***Crabb v. Arun D.C.*** [1975] 3 All ER 865 at 871 c-d.

98. The more recent authorities starting with ***Taylor Fashion*** have moved away from emphasizing the traditional elements of promise and detrimental reliance to considering what is conscionable, in all the circumstance of the case.

Issue:

99. Accordingly the issue for my determination was having regard to my findings of fact on a balance of probabilities that he relied on promises made by Calvin to his detriment and whether it would be conscionable to order that the second defendant yield possession to the claimant.

Reasoning and Decision:

100. In January, 2009, the first defendant entered an order by consent with the claimants. One of the items of relief was a declaration that the first claimant, as statutory guardian of the second claimant is the owner of the subject premises.

101. This order was never the subject of an appeal. There was never any attempt to have it set aside by way of another action. It was my view that the ongoing validity of the grant of

[39] Dillwyn v.Llewelyn 45 E.R. 1285 and 1286/ Wilmot v. Barber [1880] 15 Ch. D 96
[40] For exampleThorner v. Major [2009] 3 All ER 945/ Henry v. Henry [2010] 75 WIR 254/Knowles v. Knowles PCA 28/2007.

Letters of Administration to Ms. Barrow was highly questionable having regard to the age of the second claimant. It was my view however that the declaration had been made by a Court of competent jurisdiction. It was my view that I had no jurisdiction either to question it or to set it aside. Accordingly my reasoning and decision began on the premise that the first claimant has been declared to be the lawful owner of the subject premises, for the use and benefit of the second claimant.

102. I decided further that it would be otiose to grant another declaration in identical terms. I declined to do so.

103. The second defendant has however, advanced a defence of proprietary estoppel which also forms the basis of the counterclaim of the second defendant.

104. The principle of proprietary estoppel has been considered by courts of the highest authority in this and other commonwealth jurisdictions and it is widely accepted that in order to be successful, the person who relies on the doctrine must prove the existence of four (4) elements:

- A promise or assurance.
- That the claimant relied on the promise.
- In reliance on the promise the claimant acted to his detriment.
- There was no bar in equity.

105. It was my view that the second defendant had established the presence of these elements. Both defendants alleged that promises were made by the late Calvin on diverse occasions.

106. The substance of the promise was that the subject premises would belong to the defendants if they assisted him in renovating the house and if they stayed with him. I had accepted as a matter of fact that such promises were made by Calvin.

107. It was the evidence of the second defendant that the promises were first made in 1994 and that he acted to his detriment by spending more than $100,000.00 in renovating the subject premises. I had found as a matter of fact that the second defendant had not established expenditure in the sum of $100,000.00. That was not however the end of the matter. There was uncontroverted evidence that the defendants had carried out repairs to the subject premises. This was one not only with Calvin's knowledge and acquiescence but with his collaboration.

108. Even if I am wrong however, I also found as a matter of fact that the second defendant also acted to his detriment in omitting to find alternative premises of his own. In this way, the second defendant satisfied the element of detrimental reliance.

109. The claimant, Marva Barrow was altogether incapable of refuting the allegations of the second defendant as to the promise and detrimental reliance. This was because Ms. Barrow has not been present in Trinidad for much of the material time. Her attempts at contradicting the allegations of the defendants were limited to alleging that Calvin never mentioned the promises to her and that they were therefore never made.

110. The claimant also relied on the evidence of Frank Letren, who as a friend of Ms. Barrow testified that he visited Calvin during the 1990's and saw only Vanessa Sheppard. Mr. Letren's evidence was similar to that of Ms. Barrow. The thrust of his testimony was that his not having seen Mr. Samuel at the premises meant that Mr. Samuel did not reside there.

111. There was no dispute that Mr. Samuel participated in a cohabitational relationship with Vanessa, who Mr. Letren claims he saw at the premises.

112. Mr. Letren did not testify that he was ever present when Mr. Samuel was at home. Mr. Letren's evidence does not however negate the possibility that Mr. Samuel may simply

have been away from home during the afternoon visists of Mr. Letren. This evidence also does not negate the possibility that Calvin may have made promises during conversations with Mr. Samuel, during the many occasions when both Ms. Barrow and Mr. Letren were elsewhere, and about their own business.

113. There was an attempt to attack the testimony of the second defendant by minute and detailed questions as to receipts. By authorities such as ***Taylor Fashions*** and such as ***Gillett v. Holt/ Henry v. Henry*** the Court is required to consider all circumstances.

114. Having considered all circumstances, I was satisfied that on a balance of probabilities, that during the years 1993 when Mr. Samuel began his cohabitational relationship and in 1999 when Calvin died, the defendants shared a home with Calvin and he recognized them as his only family. There was no suggestion or allegation of any acrimony or discord between Calvin and the defendants. In this familial setting it was eminently probable that the aging Calvin may have made the alleged promises to secure both companionship and financial assistance. Accordingly it was my view and I held that the promises were made twenty-five (25) to thirty (30) times according to the testimony of Ms. Sheppard and that the second defendant acted to his detriment in assisting with renovations and omitting to look for alternative accommodation.

115. In his written submissions learned attorney-at-law, Mr. Ahmed argued that there was no evidence that the party making the promise had withdrawn therefrom.[41]

116. In my view it was not necessary for the defendants to prove that the promisor had withdrawn from the promise. Mr. Ahmed's authority for his proposition was taken from ***Snell's Principles of Equity*** which was cited by the Honourable Justice Rajkumar in ***Raj***

[41] See page 21 of the Written Submission filed on behalf of the Claimant on 14th June, 2013.

Mahabir v. Radhika Mangatoo.[42] It was in my view that the case of ***Raj Mahabir*** is distinguishable from the instant case. In the instant case, unlike ***Raj Mahabir***, the promisor has died and the contest was against those who act through the estate of the deceased. The instant case was more comparable to the facts in ***In Re Basham*** (which is only one example, others include ***Inwards v. Baker*** [43]and ***Pascoe v. Turner***[44] In such cases, the promise had been made in the context of cordial relations. The cordiality was not shared by those who succeeded to the estate of the deceased. Following the promisors death there was a move by the personal representatives to evict the beneficiary of the promise. In those cases, there was and could be no withdrawal of a promise by the promisor after his demise.

117. Later cases on the principle of proprietary estoppel have exhorted the court to consider what is conscionable in the circumstances. In considering this element, I was mindful that the claimants had been disconnected over the years from both Calvin and the subject premises. The disconnect of the second claimant was so vast that he never attended Court over the six (6) years that passed between filing of the claim and the Court's decision on 31st January, 2014. The first claimant, by her own evidence, came to Trinidad annually and never stayed either with Calvin or at the subject premises. By contrast, there is no dispute that Vanessa grew up with Calvin, stayed with him and latterly remained in the premises during her cohabitational relationship with the second defendant. There was no dispute that they provided the fellowship which Calvin as an aging bachelor would have needed. They looked after him when he suffered a massive stoke and took care of his funeral. These factors not only buttress the possibility that their claim is true: that is to say

[42] Raj Mahabir v. Radhika Mangatoo HCA 1621 of 2002
[43] Inwards v. Baker [1965] 2QB 29 at 36, 37
[44] Pascoe v. Turner [1979] 2 All ER 945

that they relied on Calvin's promise to their detriment, but render it unconscionable to ask them to yield possession to persons who have no more than a dubious paper connection to the property.

118. Learned attorney-at-law, Mr. Ahmed relied on the words of Sir Henry Brooke at paragraph 7 of their Lordships Judgment in ***Knowles v. Knowles***[45].

> *"While recourse to the doctrine of estoppels provides a welcome means effecting justice when the facts demand it, it is equally important that the Courts do not penalize those who through their act of kindness simply allow other members of their family to inhabit their properly rent free…"*

It was my view that the picture painted by the evidence in this case was far removed from the claimants or indeed Calvin having allowed *"other members of their family to occupy premises rent free…"*

The picture which emerged was one of a virtual family, with Ms. Sheppard and her common law husband both providing to Calvin the emotional and material support that family members provide for each other. It was therefore my view that the words of Sir Henry Brooke were not in any way applicable to this case.

119. In my view, the minimum equity would require that the claimants transfer the whole interest in the premises to the defendants.

120. There is no argument that the first claimant held the legal title to the subject premises. She was declared to be the legal owner by the Honourable Justice Tiwary-Reddy. On the authority of ***In re Basham***, it was however my view that the defendants, having established the elements of the proprietary estoppel became beneficiaries of a constructive trust, with the claimants being the constructive trustees.

[45] Knowles v. Knowles PCA #28 of 2007

121. I recognized that the entitlement of Mr. Samuel was grafted on the many years during which Ms. Sheppard spent with Calvin. This Court was unable to make any orders in favour of Ms. Sheppard because of the order by consent which had been made by Justice Tiwary-Reddy on the 23rd November, 2009. It was the hope of this Court however that Mr. Samuel would in the fullness of time give to Ms. Sheppard her due.

Orders:

122. I therefore made the following orders:

1. The second defendant is the beneficial owner of the subject premises comprising All and Singular that piece or parcel of land situate at Balthazar Street, Tunapuna in the Ward of Tacarigua in the Island of Trinidad measuring 40 feet on the frontage and 200 feet in depth and abutting on the North upon lands of W. Agard on the South upon lands of Walker and the East by a Ravine and on the West upon Balthazar Street together with the building thereon; and
2. The legal title of the subject premises is held on trust for the second defendant.
3. The claimant take such steps as are necessary to rectify the legal title to the subject premises and thereafter to execute a Deed of Conveyance transferring the subject premises to the second defendant;
4. The claimant to pay the second defendant's costs quantified in the sum of $14,000.00; and
5. There be a stay of execution for forty-two (42) days pending appeal.

Dated this 21st day of February, 2014.

M. Dean-Armorer
Judge