

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2016-04453

Between

SAHARDEO CHATTERGOON

Claimant

And

RAMOUTAR CHATTERGOON

Defendant

Before The Honorable Justice David C. Harris

Appearances:

Ms. Pavitra Ramharack **for the** Claimant.

Mrs. Mohani Maharaj-Mohan **for the** Defendant

JUDGMENT

INTRODUCTION

1. The Claimant is the son of the Defendant. The Claimant was born in 1978 and would have been on or around 40 years old at the time of filing this action. His father, the Defendant, Ramoutar Chattergoon, was on or around 72 years old at the time of filing.
2. The Defendant/father acquired certain property – land and dwelling house - in 1977 and is the undisputed registered owner of the property to date. At the time he acquired the property, he was already in business selling haberdashery from a van since 1969. In or around 1982 he carried out renovation works to the house including closing up the downstairs and creating several rooms in which he used to keep his business stock. The Defendant, his wife and the family resided upstairs. In 1986 he converted one of the rooms downstairs to a parlour which his wife operated

until 1996. On or around 1996, his son, one Dhanraj, converted part of the downstairs into “living quarters” and moved in with his wife. Dhanraj moved to the USA sometime after. He appears to reside in Trinidad once again.

3. The Claimant resided with the Defendant all his life. He worked assisting his mother and father along with eventually starting up and developing his own full time thriving haberdashery business. The Claimant got married in 2010 and moved his wife Angelina - into his father’s/Defendant’s premises. The Defendant however, continued to be the substantial operator of his business up until around 2013. The Claimant later started and operated his growing and independent business on his father’s premises, eventually encroaching on and squeezing out, his father’s operations against the wishes of his father. The Claimant operates a similar haberdashery sales business to that of his father. The Claimant also over time carried out certain improvements to the property to facilitate his enjoyment of the property for personal use and business. The pleadings and evidence sets out certain renovations in the amount of on or around \$80,000.00 and miscellaneous purchases of appliances such as fridge, stove and so on. The Defendant repeatedly protested against this. The Claimant disregarded the Defendant’s protestations and pressured the Defendant to convey the property to him exclusively. The Defendant however, indicated to him that the property would be left for all the remaining sons of the family including the Claimant. Whatever the relationship between the Claimant’s wife and the Defendant in the beginning when she moved into the dwelling – around 2012 - it took a turn for the worse thereafter. The Defendant was clear; he did not approve of the Claimant’s wife and simply, did not like her.
4. The relationship between the Defendant and the Claimant and Claimant’s wife got progressively more antagonistic, oppressive and unacceptable. The Defendant alleged that in 2016 he took an inventory of his remaining stock and entered into contractual relations with the Claimant for him to take the goods on consignment and pay him back when they are sold. He expected payment in December. He did not get paid for the goods. The Claimant, although not denying that he received some stock from the father, he denies the existence of the contractual relationship. In around 2017 the Defendant, not being able to accept the circumstances and tensions at the house, left the premises. He now resides in what he referred to as a “poor house”. It appears it is a home for the aged. The Defendant impressed the court as having his faculties entirely intact although showing physical signs of the onset of a “Parkinson-like” condition by the slight trembling/shaking of the

Defendant's arms. There is no admissible medical evidence of the Defendant's condition before the court and neither is the court concluding that he does in fact have the onset of such a condition or such condition so as to render him unfit to take the stand in his own defence and counterclaim. He responded on-point to all the questions put to him in cross examination. His relevant responses suggested he comprehended the questions and their import, fully. There is however, no dispute that he has deteriorating eye sight since 2010 culminating in two operations to his eyes in 2011/12 and 2014 respectively, the last of which the Defendant said did not improve his condition in the specific eye operated on.

ISSUES

5.
 - (i) Whether the Claimant is entitled to an interest in the lands known as and situate at No. 26 Solomon Street, Cedar Hill Village, Princes Town (hereafter "the said property") together with the dwelling house thereon (hereinafter "the equity issue") on the basis of Promissory Estoppel;
 - (ii) Whether the Claimant and Defendant entered into a contract ("for consignment") with respect to the Claimant taking over the Defendant's stock¹; and
 - (iii) Whether the Claimant is in breach of that contract by not paying the Defendant for his stock.

THE LAW

6. Although the breadth of the Claimant's filed written submissions speak to both promissory estoppel and proprietary estoppel, counsel conceded at trial that the Claimant's case is founded upon promissory estoppel alone. Further, counsel for the Claimant indicated that the Claimant is not pursuing the issue with respect to the *promise or assurance* with respect to the Defendant giving the Claimant the business. The Claimant is running the now only existing business, as his own.

¹ See also the alternative claim in 'monies due and owing'.

Promissory estoppel

7. Promissory estoppel was defined by Rajkumar J (as he then was) at page 11 of his written judgment in H.C.A. No. 1621 of 2002 Between ***Raj Mahabir and Ors -v- Radhika Mangatoo*** as follows:-

“Where by his words or conduct one party to a transaction freely makes to the other a clear and unequivocal promise or assurance which is intended to affect legal relations between them (whether contractual or otherwise) or was reasonably understood by the other party to have that effect, and, before it is withdrawn, the other party acts upon it, altering his or her position so that it would be inequitable to permit the first party to withdraw the promise, the party making the promise or assurance will not be permitted to act inconsistently with it. Snell’s Equity 31st ed. 2005 Paragraph 10-08...” (Emphasis mine)

8. Further still; in CV2016-03644 between ***Kurt Farfan and Ors. v Anthony White***, Kokaram J discussed the application of the doctrines of promissory and proprietary estoppel as follows:

“1) For a promissory estoppel to arise there must be a clear and unambiguous promise intended to affect the legal relations between the parties and which is reasonably expected to be relied on by the person to whom it is made. In Snells Equity 31st Edition 2005, the learned author states at paragraph 10-08: “Where by his words or conduct one party to a transaction freely makes to the other a clear and unequivocal promise or assurance which is intended to affect legal relations between them (whether contractual or otherwise) or was reasonably understood by the other party to have that effect, and, before it is withdrawn, the other party acts upon it, altering his or her position so that it would be inequitable to permit the first party to withdraw the promise, the party making the promise or assurance will not be permitted to act inconsistently with it.” (Emphasis mine)

9. As it is in cases involving an estoppel, the instant case in no small part revolves around the facts in support of the Claimant’s *reliance and detriment*.

10. In ***Theresa Henry and Anor v Calixtus Henry***² Sir Jonathan Parker expounded on the principles laid down in ***Gillett v Holt***³, ***Jennings v Rice***⁴ and ***Cobbe v Yeoman's Row Management Ltd***⁵, and made the following observations:

“(i) Reliance and detriment are often intertwined. However, the fundamental principle that equity is concerned to prevent unconscionable conduct, permeates all of the elements of the doctrine.

(ii) Detriment is not a narrow or technical concept; it need not consist of the expenditure of money or other quantifiable detriment, so long as it is substantial.

(iii) Whether the detriment is sufficiently substantial is to be tested by whether it would be unjust or inequitable to allow the assurance to be disregarded; in this regard, the essential test is unconscionability.

(iv) The aim of the court in satisfying an equity arising from a proprietary estoppel is to decide in what way the equity can be satisfied in the context of a broad inquiry as to unconscionability.”

11. The court is guided by this and the broader learning on the law. I appreciate that the principles set out above as taken from the cited cases are largely from cases dealing with proprietary estoppel, but the principles are applicable in the instant case in relation to the concept of an estoppel.
12. The law with respect to the counterclaim by the Defendant for breach of contract (the assignment arrangement for the stock) is simply that of contract. There is also the alternative claim which is arguably one, in tort – *monies due and owing*. The distinction is a fine one in terms of the end result of a determination on quantum.

Contract

13. The four key elements of a binding contract are: offer; acceptance; consideration and intent to create legal relations. The Counter Claimant must prove each of these elements to the civil standard.

² [2010] UKPC 3

³ [2001] Ch 210

⁴ [2003] P & C R 8

⁵ [2008] 1 WLR 1752

THE EVIDENCE

14. The Claimant gave evidence on his own behalf along with his mother-in-law. His wife, an integral part of the whole of the circumstances, did not testify.
15. The Claimant has contended that in or around 1995 the Claimant began working full-time in the Defendant's business. The Claimant did not receive any salary and/or compensation. Further, the Defendant promised the Claimant that the said business and the said property would be given to the Claimant.
16. The Claimant relied on the said promise and worked with the Defendant for no salary and made no attempts to secure different employment and/or a property of his own.
17. In or around 2002 the Claimant alleges he began paying all the outgoings of the said property and in or around 2005 began purchasing appliances and assisting with the general upkeep of the said property. In or around mid-2010 the Claimant in reliance of the promise that the said property would be given to the Claimant began renovation works on the said property.
18. The Claimant expended monies towards changing the wooden ceiling, wall partitions and flooring together with renovating the kitchen and porch area. The Claimant also had the electrical work redone and installed air-condition units in two (2) bedrooms as the Defendant was not desirous of having an air-conditioning unit installed in his bedroom.
19. The witness, Kaulawatee Bachan, was a lifelong neighbor of the Defendant. She claimed she was his confidante and that he revealed all to her, including expressing his intention that her daughter's husband/Claimant, *inherit* the whole property and business. Although she did have some relevant evidence to be considered *in-the-round*, much of her testimony was either historic or was hearsay⁶. She admitted not having personally heard the Defendant make the promises/assurances to the Claimant. She admitted not knowing quite a few pertinent facts about the Defendant. She however painted herself as being in a relationship with the Defendant and his wife, of extreme proximity. The Defendant did not acknowledge expressly or tangentially, the relationship as being so close.

⁶ See also the notice of evidential objections.

The Claimant pleaded the friendship of his mother-in-law with his parents but led no evidence in support of it. Her broadest knowledge of his affairs to which she testified seem to revolve around the promises and assurances.

20. Sometime after the Claimant left school he began his own business. This date was given variously as 1994-1996. Not much turns on the exact date. It is accepted that the Claimant left after CXC level and he described himself as not being as academically inclined as his siblings, who had further education and are professional persons. The Defendant/father testified that after the Claimant's mother's death in 2001, he had *"some remaining monies after closing up the parlor and we gave it to him"*. The Claimant said as time went on he bought goods in Port of Spain and sold them at the Chaguanas market. His business began to thrive. He expanded his business to include the importation and packaging of large quantities of various types of balloons. His business further expanded. The Defendant said that his other children helped the Claimant in packaging the balloons without any pay. The Defendant also assisted him in transporting his workers to and from as well as conducting sales and distributing balloons to his customers for him. The Defendant testified in chief that *"We all did this to make sure that he succeeded"*. The Claimant did not deny that in the beginning he received assistance from his family.
21. The Defendant testified that before his son Dhanraj left the house, the relationship between the Defendant and the Claimant had already become strained because of his and his wife's attitude towards him. The tension in the house was very stressful. He repeated time and time again in evidence that he never promised to give the Claimant his business nor the property at any time.
22. On many occasions the Defendant said he told the Claimant that his business was going good and that he should find a place because they were distressing him.
23. As the Claimant began to expand his business he began to encroach more on more in the Defendant's space and according to the Defendant, *"we began to jostle for it thereby further raising tension between us"*. The Claimant denied that space was ever a contention between them. When the Defendant spoke with the Claimant about his conduct of the business on the premises and attendant issues, he became abusive towards the Defendant.

24. The Defendant testified that after his wife's death in 2001 and while his two other boys were still living at home, the Claimant *"tried to bully me into giving him the property and I resisted him"*. I accept this evidence. The Defendant testified that *"although I begged him to leave he wouldn't go and on my 70th birthday I formalized my intention by the proper preparation of it will."*
25. His abuse towards the Defendant became more and more and the Defendant reduced his communication with him. The Defendant said that he did so for *"my own safety because he threatened me with violence."*
26. The Defendant maintained that he never handed over control of his business to the Claimant in 2010. I accept this evidence. He testified in cross examination that he stopped operating the business in around 2013. At that time they were operating separate and independent businesses. The items purchased by the Claimant were not for the Defendant's business but solely for the Claimant's. The items shown in appendix C of the Claimant's Statement of Case was purchased solely for the Claimant's business, said the Defendant.
27. The Defendant did not dispute that the Claimant made some repairs to the property but it is he, the Defendant, who did extensive work to it. The Defendant testified that he replaced the roof and replaced it with steel in 2010. In 2012 he built a retaining wall at the back of the house measuring approximately 120 feet in length because the land was showing signs of slippage. The roof cost Thirty-Five Thousand Dollars (\$35,000) and the wall cost about Sixty-Five Thousand Dollars (\$65,000). The Defendant testified further, that; *"When I saw him taking it upon himself to do work on the house I protested but he ignored me and continued doing so in an attempt to make a claim to the property. I never encouraged or induced him to do any work on the house. Every time I saw him continuing to do any work I stopped him. He redid the electrical work in order to install the conditioning unit for his own use. I repeatedly told him that I was not in agreement with the work he did"*.
28. The Defendant testified that the furniture that he purchased was for the Claimant's own use. Further he stated that the Claimant's mother-in-law was building her house which is situated a few houses from the Defendant's home and that some of the building materials purchased was used

on her house. Apart from that bald assertion by the Defendant, no evidence was provided in support.

29. The Defendant was clear, time and time again; *“At no time did I ever promise to give Claimant the property therefore there was no need for me to tell him that I was not willing to transfer the property to him any longer. What he was doing is he was always attempting to bully me into transferring the property to him to the exclusion of my other children. I told him that all the other children were already informed that after the death of their mother and my death that the property would be given to our three sons. We always wanted that property to be the family home for any if any of our children or grandchildren who were having problems they could come home. I in keeping my promise to my children even included his name in my will”*. I accept this evidence over any to the contrary.

ANALYSIS/CONCLUSIONS

30. Counsel for the Claimant pointed out discrepancies in the consistency in the evidence between the Defendant and his witness, Dhanraj and, between the Defendant’s testimony in court and his pleaded case, in certain particulars. Indeed this was so. For instance the Defendant stated that his son Dhanraj had fixed up the downstairs and moved in with his wife. He went on to say that the renovations costs about \$20,000.00 and the building of the garage about \$2000.00. Dhanraj said that he spent about \$2000.00 on the renovation and it was given to him by his father. However, the court notes that the defendant’s witness statement did say the renovation costs \$20,000.00 but he did not expressly say that it was Dhanraj that spent it. Certain other variances cropped up with respect to when the claimant stated his full time business and when the defendant stopped operating his business. The variances all, have been considered by the court in ascertaining where the truth lies.
31. However the core case for the Defendant and the Claimant never altered. Both the Defendant and the Claimant struggled through out with the clarity in dates for instance. However, the exactness of the said dates were not pivotal to resolving the central substantive issues in the case or even the credibility of these two witnesses. In the end, the variances in the evidence other than those that appeared to be as a result of the passage of time and fading memories, appear to be more a product of drafting, where the structural/language input of counsel might have been a tad more

robust as was intended. Always a difficult line to walk no doubt, when a case and facts/evidence is being presented with a view to ensuring it is understood by all *end- users*. I did not find the testimony of the Defendant that varied with his pleaded case or that which might have appeared to have varied from his witness statement, to be anything but genuine and truthful. However, no testimony at trial that marks out a *new case* is considered in the court's deliberations.

32. The Defendant from time to time provided what was further detail in the evidence on certain issues when particular questions were put to him by counsel for the Claimant. The fact that it may not have been said earlier in the witness statement, for instance, is of no moment. It was evidence elicited by the nature and intent of the question put by counsel for the Claimant.
33. Much was made of the Claimant's contribution to the family business without pay. I say that it was more like "without a fixed, identifiable and formal salary." The Claimant led no evidence whatsoever of going wanting for anything i.e. food, clothes, toiletries, *liming* money, and any other needs and wants in a young man's life. I accept he did contribute to the family business; *did this and did that*. I accept also however, that this contribution is commensurate with the benefit of living 'free'. The Defendant testified to the Claimant doing his own business all year long with it booming in the Christmas season. This certainly provides an explanation for his apparent capacity to live a normal life and even get married. The Defendant testified that after the Claimant's mother died in 2001 the Claimant had a bout of depression, was warded at hospital and thereafter "*relaxed for a good period of time*". There was no opposition to the testimony concerning the Claimant's spell of mental illness. Certainly when the Claimant was more involved in the business as time went on and as he said, had control of the chequing account (his father/Defendant had none) and the purchasing of goods, he would have even more readily have had access to finances. It is not in dispute also that the Defendant and other siblings helped him out in his independent business from time to time. It is also not in dispute that the Claimant runs his own haberdashery business from the same location for quite some time now. It also has not escaped the court's notice, that the Claimant's independent business is substantially similar to that of his father/Defendant. I do not see the contribution by the Claimant to the Defendant's business as having been made without compensation. The Claimant has merely made a bald statement to that effect. It simply has not been a hotly contested fact in issue in this trial as one would have expected were it to have been seriously relied upon as one example of his "*altering his...position...*" It was not a detriment

suffered by the Claimant so as to rise to support a claim in promissory estoppel as alleged. There is no issue in this court's view arising from the conduct of the business and its evolution into the Claimant's business from which his father/Defendant has received no benefit from at least 2013 it appears, if not before. The Claimant is the significant beneficiary of the Defendant's business.

34. The Claimant's case, in the end and having regard to the relief sought, is that his father made a promise to him and repeated it over the years, that he would give him the business, house and land exclusively and as a result of that he altered his position and remained in the premises seeking no other and spent money on the premises as if it were his own⁷. The Claimant in pursuing that promise/assurance, asks the court to transfer the whole of the property to him now. This in the court's view suggests that the promise/assurance was to make an *inter vivos* gift to the Claimant. The pleadings and relief claimed do not admit of any other interpretation of the 'promise'/assurance'. It is not expressly pleaded, nor is it testified to by the Claimant that the promise/assurance was to leave the property or any share of it to him, only upon the death of the Defendant, for instance. It is the Defendant's evidence however, that the property was to be left to all the sons (including the Claimant) equally and that he did execute a will to that effect in 2016⁸.
35. The law on promissory estoppel requires "*...a clear and unequivocal promise or assurance...*" The alleged promise or assurance testified to by the Claimant is not clear and unequivocal in that it does not fix a date or formula for arriving at this date for this promise to materialize. Taken from the Claimant's pleadings and testimony, at its highest, the promise/assurance does not say that the property will be conveyed to the Claimant, for instance, upon the happening of a specified event, or a specific date. Was that property to be conveyed in 2010; 2013; 2016 or upon the Claimant's demand for it, or upon the death of the Claimant's mother, father/Defendant? On what basis does the Claimant come now and seek to have the court enforce the alleged promise/assurance by filing this action in 2016 to have the property transferred to him now?
36. Not only must the promise or assurance be clear and unequivocal, but it must be reasonably understood or intended to affect legal relations between the Claimant and Defendant and to have, in fact, had that effect.

⁷ See paras 7 and 18 of the claimant's witness statement; But see also 13 and 17 of Kaulawtee Bachan's witness statement.

⁸ The will is exhibited in this matter and its existence and content is not in dispute.

37. What is the evidence that the Claimant understood the promise/assurance to be that he be the beneficiary of the transfer to him of his father's land and house during the life of the legal owner, his father/Defendant and to the exclusion of his father and all others?
38. It is the consistent position of the Defendant that he did not promise the Claimant the house and land but indicated to them all, before their mother died and thereafter, that he had by the 2016 Will, left the property to all the sons equally. I accept this evidence over the contrary evidence of the Claimant. The Defendant did Will the property to all three brothers, notwithstanding the fact that the Claimant's wife would by virtue of this future disposition acquire an interest in the property through her husband/Claimant. I accept that evidence as truthful and internally consistent with the Defendant's case and conventional logic. Alternatively, even as a presumption, I believe this disposition to all the brothers in Trinidad equally, as set out in the Will, holds true and plausible and would require the Claimant to disprove this, albeit rebuttable, presumption.
39. The fact the Claimant remained at the Defendant's home and conducted his business and resided there with his wife does not primarily or at all suggest that he did so on the strength of an alleged promise or assurance. He resided there and conducted business there - much to the growing chagrin of his father - free. That freeness, if I may call it that, itself is a more plausible explanation than any other before this court, for his remaining on the premises for the period he did. That he developed an expectation of entitlement to the property is more the result of his shortcomings and misunderstanding (if not delusion) than it is of the existence of an actual assurance or promise or a reasonable understanding of what appears on the evidence, to be his mother and father's indulgence over the years.
40. Further, on this point of the Claimant's reliance on the promise/assurance; it is the Claimant's testimony that the father/Defendant promised him both the business and the property and that notwithstanding that, as far back as 2006, the father gave over the management of the business to his brother Dhanraj, much to the *confusion* of the Claimant. In fact, the oral testimony from the Claimant was that the FCB bank loan for a vehicle he had taken on the strength of his father's long standing promises/assurances had to be forthwith cancelled and his deposit on the vehicle with Toyota retrieved. At this point if no other (10 years before filing this action and when he would have been 30 years old), if the Claimant was under the impression that he would be given both business and property, he ought to have concluded then, that his impression of the import of the

alleged *promise or assurance* was mistaken. But, perhaps he did indeed form that new impression, for the evidence is, that from around 2006 the Claimant had already ramped up his independent business toward a full time business. It is noteworthy that it is in a period well after 2006 that the Claimant made the investment in the subject house. The 2006 act by the defendant/father of giving the management of the business over to the other brother – Dhanraj - would have been an act of withdrawal of the promise/assurance (which in any event the court holds was not given at all) before the Claimant's alleged reliance upon it. It is also difficult to see how the Claimant could have reasonably seen this *act of withdrawal* as one, distinct from the alleged promise of the house and land. After all, the use of the house for storage etc. at the time, was an integral (albeit not necessary) part of operating the business. Further to this, the Claimant had testified to being first promised/assured the business and house whilst he was still a teen. The Defendant in cross examination said in effect that he would not have made such a promise, the Claimant being too young then to have appreciated the implications of such an undertaking. I accept this logic.

41. I accept and observe that the improvements in the subject building were as much if not substantially, for the Claimant's comfort as it was for the Defendant. This is particularly so in relation to the chattel appliances. I accept the Defendant's testimony that he was taken aback by the commencement of the works that he neither authorized nor commissioned and that he protested against them to no avail.

42. Then there is the inexplicable logic that underlies the implication of the Claimant's assertions. Why would the father/Defendant, a man presumably of sound mind (there is no evidence led to the contrary), deliberately and consciously agree to dispossess himself of his perfectly good property during his life, to a son with whom he had deteriorating relations at least since 2006 when he turned over the business management to his the Claimant's brother Dhanraj, and then to go and live in another part of the island, in the "poor house" as the Defendant describes it. His description of his present residence is important in that it reflects his abhorrence to his present circumstances; it reflects the implausibility of that promise/assurance which the claimant suggests the Defendant had undertaken to have made good; it reflects the implausibility of the defendant haven given effect to such a promise or assurance, or, that the Claimant could reasonably have understood the Defendant to have meant that. An otherwise inexplicable act can no doubt be proved true in the appropriate circumstances, but in the circumstances of this case and the testimony and character

of the Defendant as gleaned from the testimony, the existence of this promise or assurance is simply not plausible.

43. Further still, given the paramount importance of the ‘promise or assurance’ to the case for the Claimant, the court finds that the Claimant’s testimonial reference to the circumstances around the utterances by the Defendant, to be devoid of descriptive detail and particulars of the circumstances in which it was given, consistent with an actual occurrence. The evidence from the Claimant was that this promise or assurance was repeated to him several times over the years and indeed commencing during the years that the court calculated as his teen years. Counsel for the Claimant said that the cumulative effect of all those alleged utterances and conduct by the Defendant were such that the Claimant would not have now focused on a description of any single time the Defendant had made that promise/assurance. I disagree. The threadbare recount of the utterances being made in the very pleadings and witness statement suggests that even counsel – who would have appreciated the importance of setting out the Defendant’s utterances or conduct – was not in receipt of fuller details and particulars from the claimant at the time of settling the pleadings and statements. Following that, this court expects at trial, when presented in cross examination with an opportunity to clarify and expand on the existence, terms and nature of the promise or assurance, that the Claimant would do so as a matter of course. He did not, but maintained a bland, blurry and skeletal assertion of a promise being made to him by the Defendant that the *“said business and said property would be given to me”*.⁹

44. The Claimant’s witness, his mother-in-law, Mrs. Bachan, testified. Her manner of testifying is best described as bordering on zealous¹⁰. Her testimonial support of the Claimant’s case is that in the absence of the claimant, the Defendant indicated to her that the Claimant would *‘inherit’* the *‘business and the house’*. Again, the promise or assurance she refers to is not one that is *clear or unequivocal*. At best, the utterance(s) refer to an inheritance, a concept associated with the passing of the Defendant and not before; alternatively the utterance she refers to is simply unclear and equivocal there being no date for the happening of this inter vivos (if that is what was intended) *‘inheritance’* to take effect. Paragraph 17 of her witness statement perhaps says it all; it expresses impressions and opinion that carry little, if any weight in this deliberation. Finally, in

⁹ See paras 7, 11, 12, 23 of the claimant’s witness statement.

¹⁰ If not ‘rabid’.

local parlance, she came across as *batting* for her daughter. In the round, I do not weight her evidence very heavily.

45. The court does not accept the evidence of the Claimant over that of the Defendant on the most material particulars; i.e. the *promise or assurance*.
46. The Defendant has counterclaimed in breach of contract or alternatively for money *due and owing*; all relying on the same fact circumstances. The Defendant claims that in 2013 he made an inventory of his remaining stock in the business and entered into an agreement with the Claimant for him to take the goods on consignment and for the Claimant to pay him back when he sells the goods. The Claimant denies the said agreement or any arrangement requiring him to pay the Claimant for the goods. At this time in 2013, the Defendant and Claimant had a strained relationship. Further, the Defendant disliked and disapproved of the Claimant's wife and her residence in the house. It is not inconceivable that the Defendant would want to be paid for his stock, whatever quantity it may have been. However, notwithstanding the familial relationship between the parties, I would have expected that the Defendant would have sought to formalize the arrangement and have a written agreement executed or other signed documentary proof of the agreement, the inventory or some part of the alleged understanding between the parties. What we have is no signed agreement or any contemporaneous documentary reference to it (whether a letter or e-mail etc.) and the Defendant's independently taken inventory, unsigned, unverified and now robustly denied by the Claimant. The Defendant/Counterclaimant's burden is to prove the offer, acceptance, consideration and intent to create legal relations, or otherwise, that the claimant received the goods and owed the money. Whereas the existence of the nature of the consideration – the passing of the actual goods and the payment of monies upon sale – may be self-evident, the Defendant/Counter Claimant simply has not proved the other ingredients, whether in contract or tort. The counterclaim is not proved and is dismissed.

DISPOSITION

The Claim

47. The Claimant has not proved his case. The ingredients of the promissory estoppel have not been made out¹¹. This court first of all accepts the evidence of the Defendant that he simply did not

¹¹ Neither those of proprietary estoppel if that were his alternative case.

promise or assure the Claimant that he would be given exclusively, the house, land and business during the life of the Defendant or otherwise. The court accepts that the Defendant only formally undertook, unilaterally, to dispose of his property in his executed Will of 2016, upon his death, to all three (3) of the sons including the Claimant. Secondly, even if the court were to accept that the Defendant made the utterances that the Claimant has alleged in his pleadings, witness statements and oral testimony, he has in any event failed to establish in those utterances the *clarity and unequivocal* character of the said utterances that the Claimant contends amounts in law to an *assurance or promise*. Further still, on the evidence, the court is not satisfied that the Claimant reasonably or ought reasonably to have relied on the alleged promises and assurances even if they were made as he has alleged (the court does not agree they were made) at least from 2006¹² or at all¹³. To be clear; the property (land and house) remain entirely that of the Defendant to do with as he pleases. The Claimant has not acquired any rights or interest in the said property.

The Counterclaim

48. The Defendant has failed to prove his counterclaim. The antagonistic nature of the relations between the Claimant and Defendant at the material time, created in the court's view an evidentiary expectation of documentary or independently verifiable proof of the arrangement and agreement. All the ingredients of a contract or indeed of the alternative claim in tort, were not made out and proved. The counterclaim is dismissed.

49. The proof of the counterclaim is inextricably bound-up in several particulars with the defence to the claim. It is there pleaded as relying on paras 1 -22 of the 22 paragraph defence. Similarly, the Claimant's Defence to the counterclaim relies on paras 1-28 of the 29 paragraph 'Reply' by the Claimant to the defence.

50. For the reasons provided above **IT IS HEREBY ORDERED** that:
 - i. The **claim is dismissed**; with Judgment for the Defendant on the Claim;
 - ii. The **counterclaim is dismissed**; with Judgment for the Claimant on the Counterclaim;
 - iii. The Claimant shall pay the Defendant's costs on the claim on the Prescribed Costs scale;

¹² When the defendant gave the management of the business over to the other brother, Dhanraj.

¹³ Having regard to the effect of doing would result in the in the implausible reality of the defendant not having a house to live in.

- iv. The Defendant shall pay the Claimant's costs on the counterclaim on the Prescribed Costs scale;
- v. That issues (if any) arising in calculating the Costs, which are properly within the jurisdiction of the Registrar or Master of the Court, are to be dealt with before the said Registrar or Master in chambers as the case might be.

DAVID C. HARRIS
HIGH COURT JUDGE
MAY 14, 2019