

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**(Sub-Registry San Fernando)**

**CV 2017-01541**

BETWEEN

**MICHELLE TEELUCKSINGH**

Claimant

AND

**KAMALDAI SINGH**

Defendant

**Before The Honorable Justice David C Harris**

Appearances:

Ms. Soraya Nanan instructed by Ms. Sherise Hosein **for the** Claimant

Mr. Ved Trebouhansingh with Ms. Shalini Teekasingh **for the** Defendant

### **JUDGMENT**

#### **INTRODUCTION**

1. This is a claim for possession of a parcel of land together with the buildings and appurtenances thereto by the registered proprietor, the Claimant. The Defendant and her husband, one Baldeo Singh, lived on the parcel of land from on or about 1985 until he died in 2016. During the subsistence of their marriage they erected two structures, one being an apartment building which

commenced as late as in 2012. The parcel of land was originally gifted to the deceased and his brother from family lands prior to the relationship between the Defendant and the Claimant and remained that way until Baldeo's death in December 2016. The deceased Baldeo's parents, resided on a parcel of land adjacent to the subject parcel. The Claimant is the deceased daughter from a previous relationship. The Claimant and the Defendant did not have a relationship from the inception. Indeed, the Claimant and Defendant were hardly known to each other. Unlike the Defendant, the Claimant and her mother had a very good relationship with the deceased parent on the adjacent lands. The deceased and his brother, Hardeo Teelucksingh (now a resident in the USA) as joint registered proprietors of the subject parcel of land conveyed the said parcel along with the buildings and appurtenances thereto, to the Claimant in January 2016. The deceased died in December 2016.

2. The Claimant alleges that Baldeo Singh (deceased), her father, was the owner of the lands along with his brother Hardeo, prior to the Defendant's relationship with Baldeo and that Baldeo thereafter was the sole financial and physical labour contributor to the development of the property resulting in the erection of the two buildings and at no time did he give the Defendant the assurances or expectation that she would acquire an interest in the parcel of land nor did she and the deceased Baldeo form an express or common intention that they would share equally or in any proportion, in the subject parcel and buildings thereupon.
3. The Defendant, Kamaldai Singh, the lawful wife of the deceased Baldeo Singh, one of the registered proprietors of the subject parcel of land prior to it being conveyed to the Claimant in 2016, contends that she resided on the premises before she got married to Baldeo, since around 1985 and that together with Baldeo they constructed the matrimonial home and the subsequent apartments for their joint benefit. She said that Baldeo had always told her that he wanted to provide a roof over her head and that no one could remove her from the property and in reliance on that representation she committed herself to the development of the property; invested her monies earned from her employment from on or around 1985 to 1994, when Baldeo requested that she stop working and carryout the functions of a housewife. She spent money on purchasing building material and contributed her physical labour in helping carry cement buckets, clean buckets, plastering etc. The Defendant and the deceased had no children together.

4. The Defendant is in effect saying that there was a common intention between herself and her husband that the property and improvements would be for their joint benefit. Further, the Defendant is in effect saying as between her husband's brother the joint owner, they or those claiming under them are estopped from claiming the whole or any interest in the subject lands having regard to (i) her direct and indirect input in the development of the property and (ii) the assurances given by the deceased and expectations held by her, the Defendant, that she would have an interest in the whole of the deceased property and the reliance she placed on that to her detriment.

### **THE LAW**

5. The Defendant, in her counterclaim has sought a relief that by the virtue of the doctrine of proprietary estoppel the Defendant is entitled to a right, share, title and interest in the said property. The defendant is placing reliance on the application of equitable doctrines and remedies.

6. Promissory and proprietary estoppel were 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:-

*"Promissory Estoppel: 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.***

7. A working definition of Proprietary Estoppel is: *"If A under an expectation created or encouraged by B that A shall have a certain interest in land thereafter, on the faith of such expectation and*

*with the knowledge of B and without objection from him, acts on his detriment in connection with such land, a court of Equity will compel B to give effect to such expectation.”<sup>1</sup>*

8. Further still, in CV2016-03644 **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 Snell’s 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. 2) The principles of proprietary estoppel are neatly summarised in the recent Privy Council decision of **Henry v Henry** [2010] 75 WIR. There must be representation, reliance and detriment. The element of each will vary with the circumstances of the case and the Court must take into account all of the circumstances and adopt a broad approach to these questions with the overriding test of unconscionability of conduct. Reliance and detriment are often intertwined. In **Henry v Henry**, Sir Jonathan Parker noted at paragraph 55:*

*‘[55] As to the relationship between reliance and detriment in the context of the doctrine of proprietary estoppel, just as the inquiry as to reliance falls to be made in the context of the nature and quality of the particular assurances which are said to form the basis of the estoppel, so the inquiry as to detriment falls to be made in the context of the nature and quality of the particular conduct or course of conduct adopted by the claimant in reliance on those assurances. Thus, notwithstanding*

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<sup>1</sup> Snell’s Equity 31<sup>st</sup> Ed. 2005 at paras. 10-16 and 10-17 citing Oliver J in Taylor Fashions Ltd v Liverpool Victoria Trustee Co. Ltd [1982] QB 133; see also Raj Mahabir and Ors. (supra)

*that reliance and detriment may, in the abstract, be regarded as different concepts, in applying the principles of proprietary estoppel they are often intertwined.....In the instant case, that is certainly so.”<sup>2</sup>*

9. Further still, in **Knowles v Knowles** [2008] UKPC 32 Sir Henry Brooke citing Robert Walker LJ in Jennings v Rice<sup>3</sup> at para. 56 stated that:

*“....the essence of the doctrine of proprietary estoppel is to do **what is necessary to avoid an unconscionable result**..... While recourse to the doctrine of estoppel provides a welcome means of effecting justice when the facts demand it, it is equally important that the courts do not penalise those who through acts of kindness simply allow other members of their family to inhabit their property rent free. In *E & L Berg Homes Ltd v Grey* (1979) 253 EG 473, [1980] 1 EGLR 103 Ormrod LJ said at p 108: ‘I think it important that this court should not do or say anything which creates the impression that people are liable to be penalised for not enforcing their strict legal rights. It is a very unfortunate state of affairs when people feel obliged to take steps which they do not wish to take, in order to preserve their legal rights, and prevent the other party acquiring rights against them. So the court in using its equitable jurisdiction must, in my judgment, approach these cases with extreme care.’” [Emphasis mine]*

10. In **Theresa Henry and Anor. v Calixtus Henry** [2010] UKPC 3 at paras. 52-55, the Privy Council, no less, laid down the following guidelines in cases of proprietary estoppel:

- (i) The court should adopt a cautious approach.
- (ii) The court must consider all of the circumstances in order to discover the minimum equity to do justice to the claimant.
- (iii) The court however enjoys a wide discretion in satisfying an equity arising from proprietary estoppel.

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<sup>2</sup> See paras. 23-24 of Kokaram J’s judgment

<sup>3</sup> [2003] P. & C. R. 8

- (iv) Critical to the discovery of the minimum equity to do justice, is the carrying out of a weighing process; weighing any disadvantages suffered by the claimant by reason of reliance on the defendant's inducements or encouragements against any countervailing advantages enjoyed by the claimant as a consequence of that reliance.
- (v) In determining the balance in the relationship between reliance and detriment: just as the inquiry as to reliance falls to be made in the context of the nature and quality of the particular assurances, inducements and encouragements which are said to form the basis of the estoppel, so also the inquiry as to detriment falls to be made in the context of the nature and quality of the particular conduct or course of conduct adopted by the claimant in reliance on the assurances, inducements and encouragements.

11. This court is mindful of the learning set out above.

12. It is an important element to be proved by the Defendant that she relied on the deceased and his brother's representations, to her detriment. Sir Jonathan Parker expounded on the principles laid down in *Gillett v Holt*<sup>4</sup>, *Jennings v Rice*<sup>5</sup> and *Cobbe v Yeoman's Row Management Ltd*<sup>6</sup>, and made the following observations<sup>7</sup>:

- (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."** [Emphasis mine]

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<sup>4</sup> [2001] Ch 210

<sup>5</sup> [2003] P & C.R. 8

<sup>6</sup> [2008] 1 WLR 1752

<sup>7</sup> See paras. 37-42 in *Theresa Henry v Calixtus Henry* (supra)

13. *"The first and fundamental question which must always be resolved is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially. **The finding of an agreement or arrangement to share in this sense can only, I think, be based on evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been.** Once a finding to this effect is made it will only be necessary for the partner asserting a claim to a beneficial interest against the partner entitled to the legal estate to show that he or she has acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or a proprietary estoppel." (emphasis mine)*

### **THE EVIDENCE**

14. I accept that Baldeo came into ownership of the parcel prior to his relationship with the Defendant. This fact is of no moment in the circumstances of this case. There was no common intention clearly, upon receipt of the parcel to share it with the Defendant or Claimant at that time. In any event it belonged to him, Baldeo, and his brother Hardeo, jointly. Baldeo (deceased.) had only his half share to dispose of if that were ever his intention.
15. The evidence from the Defendant is that after her union with Baldeo, starting with the common law union, Baldeo, and herself pooled resources and developed that common intention to develop the lands for their mutual benefit. What benefit was that? The Defendants uncontradicted evidence suggests that Baldeo's intention was to provide a roof over her head so that no one could move her even after his death. There is no plausible evidence to the contrary. Further still, this arrangement and intention is perfectly consistent with, and logical in, a marriage.
16. The Defendant was married to Baldeo for some 31 years. Now, there is no evidence that the Defendant did not know that the lands belonged to Baldeo and Hardeo. I find it implausible that the common intention formed between herself and Baldeo included her benefit from her deceased husband's brother, Hardeo's half share. At best the assurance given and her expectation derived from that would have been in relation to her husband's 50% joint share which would include the matrimonial house as part of the 50% share.

17. As late as 2016 Baldeo recognized Hardeo's interest in the property when they both purported to conveyed the whole of the interest in the property to the Claimant. It cannot be said that an estoppel was created against Hardeo in relation to Baldeo. It is unlikely that the Defendant possessed an expectation of an interest greater than that of her husband in relation to the jointly owned parcel of land.
18. That Baldeo (deceased) also never intended to pass an interest in the parcel of land in which he and his brother had a joint interest is the more plausible scenario here. I accept on the evidence that the common intention between Baldeo (deceased) and the Defendant was to provide the Defendant a proprietary interest in her husband, Baldeo's share which would include a roof *over the Defendant's head* and an income to her. This intention is not only borne out in the evidence of their conversations but accords with reasonable and logical expectations in a 31-year marriage, even an abusive one, if not more so in an abusive relationship. Indeed the rentals from the property appear to have been pooled in a joint account between the deceased and the Defendant and not the deceased and the Claimant. Absolutely nothing physically prevented the deceased from allocating all or any part of the rent to his daughter or to an account in his and/or his daughter's name if that were his intention at the onset or thereafter. There is no evidence that the rental income or indeed even the work income of the deceased was expended on anything else but for the benefit of both the Defendant and himself. Not even the Claimant has alleged that during the deceased lifetime he expended any monies on her including the period between when she became the paper title owner and Baldeo's death some 8 months or so after. During this period the Claimant appeared to have sat quietly, and waited.
19. The Defendant never testified as to the deceased intention or to her own understanding, that the deceased was given any assurances by his brother as to he, Baldeo(deceased), acquiring a greater interest (equitable) in the property to the exclusion of his brother Hardeo. There is an important distinction here as to the express/common intention or assurances moving between the brothers Hardeo and Baldeo and those moving between Hardeo and the Defendant or the deceased and his wife, the Defendant. Clearly, in the court's view, the intention remained between the brothers that they held in equal shares all that parcel of land with buildings and appurtenances thereto up until that surreptitiously changed, evidenced by the disposition to the Claimant in 2016.



20. Given this conclusion above, that the Defendant could have held an expectation based on assurances from either or both brothers, or, formed a common intention with Baldeo that they, Baldeo and the Defendant, would hold the developed property to the exclusion of Hardeo, although this 'intended exclusion' is theoretically possible, is not on the facts of this case, a conclusion arrived at by this court.

#### **Apportionment of interest**

21. The evidence from the Defendant as to the actual dollar value of what she contributed is unclear and imprecise. She has provided her income during her working years and testified that she expended the excess toward the development that she and her husband had undertaken with the clear assurance that she would share in its benefits, if only after his death. In fact there is no evidence to suggest that she did not benefit from the property during the life of the deceased even. She resided in the premises and is in receipt of the rental income. The income of the deceased is also provided. That he was the greater income earner is not in dispute. However imprecise the Defendant's evidence of her contribution may be, it must be taken into account that she did make a contribution, both direct and indirect, over a life time of 31 years; that was not insignificant. The precision is not as significant when considering a constructive trust or even proprietary estoppel as much as if one were considering a resulting trust situation. This case is one more akin to a constructive trust; is one of conscience and equity. It is said loosely that equality is equity.

22. Therefore at worst, it seems, the Defendant had a claim for the deceased share in the property. This is based on the contribution of the Defendant, monetarily, construction labour, and through her efforts as a wife, housekeeper and caregiver. Further, conscience/fairness/equity support this conclusion.

23. The contribution referred to above was made as a result of the deceased representations and assurances that she would be taken care of and would be registered on the Deed with him. I accept her evidence of this. Again, there is no sufficient evidence to contradict this evidence either expressly or by inference. The Defendant has recounted the representations made by the deceased during his life, both before and after their formal marriage. It is set out in her witness

statement and maintained in her testimony (in chief and in cross) in court and further set out for ease of reference in the written submissions of Counsel for the Defendant. That the fact and content of the representations and assurances made by the deceased to the Defendant was not sufficiently contradicted is significant. A mere bald statement to the contrary is not sufficient to enable the Claimant to surmount her evidential burden on this point. I accept that the initial statements made by the Defendant describing the utterances of the deceased are difficult for the Claimant to assail, but the circumstances and also the logic borne out of common human experience, lend credence and plausibility to the content of that testimony of the Defendant. That the deceased had early on succumbed to the blight of the excesses of liquor and then to acts of aggression against the Defendant is on the balance of probability proved if not otherwise tacitly acknowledged by the Claimant. That despite this, she remained married to the deceased for 31 years is not in dispute. That she assisted in the development of the property over a lifetime, no matter how imprecisely described, is proved. That her persistent financial contribution no matter how small at each contribution, along with her physical labour contribution (albeit limited to her capacity and skill set) to the actual construction works and to the maintenance of the deceased and the house hold in kind, amounted to a detriment to her is in the court's view, established on the evidence. Further still, she committed to him and the union as a result of the representations and assurances, such that she had forgone otherwise providing for herself and her sustenance. These actions to her detriment were based on the belief that either she already owned an interest in the property or would have obtained a full interest of her husband's share upon the death of her husband, Baldeo<sup>8</sup>. Baldeo could only pass his interest and not that of his brother.

24. The Defendant testified as to certain utterances made to her by Hardeo concerning her remaining on the premises forever. For the court's part, I do not construe that to mean that he was representing to her that she was entitled to his (Hardeo's) share of the property, but was merely confirming what she has testified to as the deceased representations and assurances in relation to his (Baldeo's) own share of the property.

25. There is no evidence that either the Claimant, and/or Hardeo or anyone else for that matter contributed financially or indirectly to the development of the property. There is also no evidence

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<sup>8</sup> See Mendonca J.A. at para 40 in *Nester Patricia Ralph and Esau Ralph v Malyn Bernard* Civil Appeal 131/2011 on assurances of inheritance.

of any arrangement between the co-owners Hardeo and Baldeo that detracts from the fact that they were in law equal joint owners of the whole of the property. This court does not conclude that as between the owners either expected that one should hold an interest greater than the other, even in light of the development efforts that may appear on its face, to be underwritten by Baldeo and by extension, his wife and Defendant herein. There is also no direct evidence that Hardeo did or did not contribute through his brother. Indeed, the Defendant has neither pleaded nor otherwise contended that her husband (deceased) or she, during the deceased life, ever asserted an equity in the whole of the property that was greater than an equal share between the brothers. Hardeo was not joined as a Defendant by either the Claimant or by the Defendant in her counterclaim or otherwise, to defend his interests or refute the Defendant's claimed interest. He stands as 50% share joint owner of the whole of the property. A share that he could have disposed of to the Claimant. He did so in 2016.

26. The promises and assurances of Hardeo and then of Baldeo to his wife, the Defendant, remained consistent up to the time of his death. This would no doubt have led to a belief by the Defendant, that no one could put her out of the of the said premises and that she was entitled to an interest in the whole of the said premises to the full extent of her husband's. She live there without knowing that the said premises were conveyed to the Claimant by the deceased and his brother Hardeo.

27. Several witnesses were brought by the Claimant in an attempt to contradict the Defendant's assertion that she contributed financially and to question her work product. Their evidence is not particularly persuasive or at times even relevant. The often times imprecise description of her contribution – money and labour – does not render the Defendant's testimony weightless. The law set out above is quite clear on this point. The Claimant's witnesses' assertions attempting to diminish the Defendant's work contribution are not particularly helpful for reasons including; that they could not possibly know the entire contribution of the Defendant both in her labour output, financially or generally in-kind, during the 31-year marriage of the Defendant and her husband, the deceased. These witnesses could only testify to these snippets of time in their observations. In the circumstances of this case, the testimony as a whole and the legal guidelines applicable to the distillation of evidence, the court is unable to draw the inferences on the evidence, requested by the Claimant.

## **DISPOSITION**

28. I find that the Defendant is entitled to the whole of her husband's interest at the time of disposition in December 2016 and also upon his death. That is in relation to the 50% interest the husband, Baldeo, had in in the whole of the property in December 2016.
29. This leaves the Defendant's interest in the parcel of land and buildings thereto at 50% of the value of the parcel and buildings (including the rental income potential) in the open market or as otherwise agreed between the parties.
30. The legal holder of the parcel is the Claimant. She remains the paper title-holder for now. The Claimant pleads several reliefs: **(i)** possession of ALL of the subject lands and property; **(ii)** Profits and rents received by the Defendant from 1<sup>st</sup> December 2016; **(iii)** interest and costs. Suffice it to say, she has not succeeded on any ground including her claim to possession of all (not part) of the property<sup>9</sup>.
31. Either party can pay the other their share of their respective interests. However, the Paper Title holder is that of the Claimant.
32. The property is to be valued and the Defendant paid for her 50% share. Fifty percent (50%) of rents actually collected to date, from January 2017<sup>10</sup> and those that shall be actually collected representing the period between judgment and the date of payment to the Defendant for her 50% share (or her payment to the Claimant for her share) are to be kept by the Defendant, for it was the common intention that not only that she should acquire a share in the property for the provision on accommodation but also for her income. The valuation shall take into account the income bearing character of the property and by this, that income bearing component will be subsumed by the valuation price and on payment to her be in effect passed onto her by virtue of that. To be clear, from the date of this judgment, 50% of the rents/profits after related expense

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<sup>9</sup> But see the findings on the counterclaim in respect of the interests of the respective parties.

<sup>10</sup> The date of the Claimant's pre action letter to the Defendant informing her of the 2016 transfer of the property which was prior to this unknown to the Defendant.

that are actually received from the whole of the property is to be forthwith paid over to the Claimant. Further, after payment in full, for her share, the Defendant shall not be entitled to receive rents/profits from the said property. The court notes that the lands upon which the two physical structures are situate are not, on the evidence, sufficiently demarked either on a plan or by description, to allow the court to make a definitive partition if it was minded to do so at all.

33. The Defendant is to remain in undisturbed possession of the property until she has been paid in whole for her interests in the property upon which she shall forthwith vacate the said property or as otherwise agreed between the parties in writing only.

34. For the reasons provided above; **IT IS HEREBY ORDERED THAT**

- (i) Judgment on the Counterclaim for the Defendant/Counterclaimant, Kamaldai Singh for 50% of the value of the whole of the subject property upon an independent valuation of the property;
- (ii) The Claim and Statement of Case for the Claimant is dismissed;
- (iii) The Claimant, her servants and/or agents or those otherwise claiming through her are hereby restrained from interfering with the Defendant's possession of the whole of the subject property until such time she is compensated in whole for her 50% share;
- (iv) The Claimant to pay the Costs of the Defendant on the Prescribed Costs scale or as otherwise agreed between the parties.

**DAVID C HARRIS**  
**HIGH COURT JUDGE**  
**JANUARY 9<sup>TH</sup>, 2020**