

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

CV2017-01759

**IN THE MATTER OF THE PARTITION ORDINANCE, CHAPTER 81:02**

AND

IN THE MATTER of all that dwelling house comprising 4 bedrooms standing on all and singular that certain piece or parcel of land situate in the Ward of Savana Grande in the Island of Trinidad Unity Avenue, Garth Road, Princess Town being portion of a larger parcel of land comprising THIRTY FOUR PERCHES with a width of 69 feet a depth of 71 feet on the Eastern Boundary line and 80 feet on the Western Boundary line and bounded on the North by other lands of Garth Estate known as Plot A-18 on the South by lands now owned by Alana Kimberly Hansraj on the East by other lands formerly of Garth Estate known as Plot A-17 and on the West by other lands formerly of Garth Estate known as Plot A-18 and partly by Plot A-12

Between

**ABIDH EMAMALIE**

Claimant

And

**MELISSA NATASHA RAMSAMOOJ**

Defendant

**Before The Honorable Justice David C. Harris**

Appearances:

Mr. Kweku Wilson **for the** Claimant

Mr. Rennie Gosine with Ms. Katrina Choon **for the** Defendant

**JUDGMENT**

1. This is an action in Proprietary Estoppel. The claimant and defendant were in an intimate relationship between the years 2012 to 2015. They were both married previously and obtained their respective divorces on or around 2013. The defendant came into receipt of a sum of approximately \$300,000.00 as a settlement in her divorce. The claimant is a professional man and possesses a university degree in management. He is employed in management at the airport and also has an income generated from a private company providing accounting/financial services. During this period they built a house over a period of about one year from April/May 2014 to July/August 2015 on a portion of land in Williamsville initially owned by the

defendant's parents. They utilized the services of a contractor well known to the defendant's parents. They lived together in the said house for approx. one year. At the time of commencement of construction the property was vested in the parents of the Defendant. Before the break-up of the relationship of the parties in late 2015 the property was conveyed in July 2014 by the said parents to the defendant and her sister with her parents retaining a life interest. The claimant was aware of the ownership of the lands and its subsequent conveyance. The claimant did not contribute to the purchase of the lands. The claimant never entered into any discussions with the defendant's parents before or at any time with respect to the use of the land. There is no allegation that the defendant's parents made any promise or representation to the claimant or acquiescence.

2. I accept the defendant's evidence that at the onset she had conferred with her parents and sought permission to build a house on the subject lands. This is the most plausible version of events and stands to reason. The land belonged entirely to the parents and was located to the back of their house on Unity Street. They agreed and subsequently took her to meet with and engage a contractor-Bosco- known to them for over 30 yrs. The claimant accompanied them on that first occasion. She engaged him and he did substantially construct a house upon the said property. The claimant offered to help her with the finances, which she resisted somewhat but nonetheless accepted when he represented that it was a gift. The gift was on or about \$350,000.00. No discussion was entered into by the claimant with the owners known to him to be the defendant's parents, at the onset or at any other time. The claimant sold a property he owned previously, for the sum of \$1,200,000.00. It is not known if there was a mortgage on the property and for how much. The portion of that sale price that was retained by the claimant is unknown.
3. The defendant did at times resist the claimant's further contributions in an effort to limit his commitment to the construction and her commitment to him. The defendant places the cost of the construction as \$750,000.00<sup>1</sup>. The claimant says the cost of construction was \$1.5m of which he contributed about \$1.1m. He was unsure of the exact amount. He did not tender any documents in evidence in support of his dollar claim in the nature of invoices etc. The court accepts the evidence of the defendant as more plausible and finds that the defendant received the sum of \$350,000.00 in contribution from the claimant pursuant to the claimant's persistent gratuitous commitment to assist the defendant to build the house. The defendant acquiesced in the continued contribution of the claimant, but maintained that it was always clear that it was a gift from the claimant to her. Where she resisted his contribution same was not accepted by her and forms no part of the sum of \$350,000.00 that she admits was contributed by him. She testified that she was the main driver behind the construction process. I have considered her testimony in chief on this amount and

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<sup>1</sup> This figure is more consistent with the builders labour estimates from any one of the two estimates provided the court. The court accepts that the second estimate is that of the builder. His explanation that it is not his is absolutely implausible.

find that her words are clear, that it was her estimation of his contribution. The use of the word, estimation, invokes an element of deliberate consideration of the information she received from the claimant and elsewhere. She did not say that he told her it was 350,000, but that it was her understanding of what he told her that she estimated that amount.

4. The claimant had disclosed a large quantity of receipts, invoices, bank statements and credit statements. These did not make it to trial. In any event he has not identified with any specificity, the amount of the contribution he claims and which of these documents or details in them relate and support his claim. The court does not do that. It is for the claimant to prove its case and make the necessary cross references between the debits, credits, payments, invoices, goods and services etc. He intended to throw the bundle of documents at the feet of the court and requests that the court work out the relevant debits and credits purchases and crystalize his claim.
5. In September 2015 the claimant went to a commissioner of affidavit on his own and instructed the commissioner to prepare a statutory declaration, where the claimant there declares that notwithstanding his contribution of monies and other resources to the construction of the house, he makes no claim and has no right, interest and title to the subject property.
6. He indicated that the defendant requested he execute such a document for she was fearful that if their relationship came to an end she would have no interest in the house. He said as a result of this he executed the declaration never intending to give up his interest in the property. Other than this suit, there is no other words, documents or conduct that support the position that the claimant did not give up or did not intend to give up his interest in the property. The defendant on the other hand said that she, from the start, resisted the claimant's contributions. She indicated to him that she did want him to acquire an interest. He had repeatedly over the course of construction and thereafter indicated to her that his contribution is a gift. This she says was buttressed by the execution of the Stat Decl. Indeed, the defendant's version is consistent in several material particulars with that of the claimant's. It is not denied by the claimant that the defendant was averse to his acquiring an interest in the property by his gifts/ alleged contribution. Further, the property was initially owned by the defendant's parents and this was known to the claimant. At the beginning when the claimant alleges he entered into an agreement with the defendant that they share the expense of the construction, she had no interest to divest. The claimant continued to offer his assistance.
7. The claimant moved into the premises with the defendants knowledge on completion of the construction in July August of 2015. The defendant testified in cross examination that she knew he had assisted her so when he moved in she did not have any problem with that. However, she said they never had any discussion about they both moving into that house together. And indeed they did not do so. On the dissolution of the relationship between the parties on or around December that same year, the claimant left the premises and shortly thereafter removed his belongings

after communication with the defendant. In a telephone conversation with the defendant at her mother's house the claimant demanded his furnishings and other movables he had purchased for the house and the monies he had contributed to the construction. The Defendant indicated that she told him to email the details of what he was requesting. He did so. It is exhibited in this case. It included a list of chattel goods but no monetary claim for his contribution to the construction. She returned the chattels. She maintained that his entire contribution for both construction and furnishings etc. were gifts.

### **THE ISSUES**

8. The issues are whether the claimant has satisfied each of the ingredients of a Proprietary Estoppel and more particularly whether the defendant, by her words and/or conduct created an expectation in the claimant that his contribution would give rise to an interest in the subject property.

### **THE LAW**

9. Proprietary Estoppel developed from common law estoppel by representation, and has been described as follows in CV 2014-02598 between Mary Gomez (suing in her personal capacity and as administrator of the estate of Michael Gomez who died on the 18<sup>th</sup> day of October 1999) & Ors –v- Ashmeed Mohammed per Jones J (as she then was) at paragraph 30 of her judgment:-

*“With respect to the estoppel, to succeed the Claimants must establish that (i) there was a representation made which is binding on the Defendant; (ii) the Claimants relied on such representation and (iii) pursuant to such reliance acted to their detriment and (iv) to deny the Claimants and equitable remedy in the circumstances would be unconscionable.”*

10. This concept is further described in Halsbury's Laws of England as:

“The owner of land, A[the defendant in the instant case], in some way leads or allows the claimant, B, to believe that he has or can expect some kind of right or interest over A's land (or, more generally, his property). To A's knowledge, B acts to his detriment in that belief. A then refuses B the anticipated right or interest in circumstances that make that refusal unconscionable. In those circumstances, an equity arises in B's favour which gives B the right to go to court and seek relief. The court has a very wide discretion as to how it will give effect to this equity.

Principles derived from proprietary estoppel have been used in commercial contexts not involving land but it remains the case that only where the promise of an interest in land has been made and relied on can proprietary estoppel constitute a cause of action in itself.”<sup>2</sup>

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<sup>2</sup> Halsbury's Laws of England/Estoppel (Vol. 47 (2014)) at para. 309

11. As the editors of Halsbury's note, the test was originally a five-fold test, however, now has largely been abandoned in favour of a three-fold inquiry based not on B's mistake, but on an agreement between A and B or on A's encouragement of B's expectation. The court now, will inquire: (a) *whether an equity in favour of B arises out of the conduct and relationship of the parties;*(b) *what is the extent of the equity, if one is established; and (c) what is the relief appropriate to satisfy the equity.*<sup>3</sup>
12. Not much if anything is lost in this shift. Indeed the first limb now merely consolidates if you will, the objectives of the first three *probanda* of the five-fold test.
13. The issue of whether the promise of an interest in the land has been pleaded, asserted in the evidence and/or proved, involves the consideration not only of the pleadings but the import of the claimant's testimony and the whole of the evidence. This process requires adherence to a certain regimen amplified by Rajkumar J when he revisited the doctrine of proprietary estoppel in CV2009-01825 between Vondell Taylor and Annmarie Taylor –v- Vincent N. Taylor Construction Limited where in delivering his judgment at paragraph 52 cited with approval the *dicta* of Scott LJ in Thorner –v- Major & Ors where Scott LJ in delivering the judgment noted:-
- “Lord Walker, in paragraph 29 of his opinion (at page 957) below identified the three elements requisite for a claim based on proprietary estoppel as first a representation made or assurance given to the Claimant; second a reliance by the Claimant on the representation or assurance; and third some detriment incurred by the Claimant as a consequence of that reliance.*
14. *These elements would, I think, always be necessary but might, in a particular case, not be sufficient. Thus, for example, the representation or assurance would need to have been sufficiently clear and unequivocal; the reliance by the Claimant would need to have been reasonable in all the circumstances; and the detriment would need to have been sufficiently substantial to justify the intervention of equity”.*

## **EVIDENCE-CONCLUSIONS**

15. There is no dispute that the claimant contributed to the construction of the house both financially and by his labour. The defendant has admitted this, but says that it was a gift to her. The testimony of Jason John and Avanash Deonarine support the claimant's involvement in the house construction that goes beyond mere financial contribution.
16. The core of the claim is captured in the second sentence of para 2 and the first sentence in para 3 of the statement of case: “...*the parties agreed to construct a dwelling house on a parcel of land...*” and in para 3; “*the parties agreed that they would jointly though not equally incur the expense associated with the construction of the house on the said parcel of land*”.

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<sup>3</sup> Halsbury's Laws of England/Estoppel (Vol. 47 (2014)) at para. 392

17. The first order of the day is that the claimant plead and prove the 1st limb of Proprietary Estoppel; that a representation was made or assurance given that the claimant would acquire an interest in the property by virtue of the contribution to its construction. This representation or assurance is required to be clear and unequivocal. Further the reliance on it would have to have been reasonable in all the circumstances.
18. The representation/assurance is not clear or unequivocal in this case. The high water mark of the representation/assurance is set out in the said para 2 and 3 of the statement of case and buttressed in para 4 of the witness statement. Taken at its highest, the claimant's assertions are clear enough as to the fact of a 'joint' contribution, but entirely silent on the purpose and benefit to the claimant of this contribution. Several purposes can be inferred from his contribution e.g. love and affection; solidification of love and affection; ulterior and hidden intent to ensnare the affections and commitment to matrimony of the defendant; unilateral intention to acquisition of proprietary interest through 'stealth'; open and agreed intention to acquire proprietary interests in the property and so on. Even in cross examination, the claimant failed to elevate the clarity of his claim against the backdrop of his narrowly and softly pleaded case and evidence in chief.
19. The claimant has portrayed in para 6 of his witness statement, in his oral testimony and by virtue of his statutory declaration to the effect that the defendant resisted his contributions, and in essence, indicated his contributions would not give him an interest or any claim in or too the property. The evidence is that the claimant did also make some expenditures on the property on his own and without the knowledge of the defendant. The contractor, Bosco, confirmed he did receive a few payments directly from the claimant. The defendant said that the claimant did some works on the building without her authorization. There is no doubt that the claimant did spend substantial sums on the house.
20. In normal circumstances, this would tend to excite the court's scrutiny in relation to a possible equity. Neither party has testified to the depth and quality of the relationship being one that was expected to persist indefinitely or not, or otherwise would bring clarity to a logic that would have informed the claimant's financial commitment to the extent evidenced on the evidence. One does not usually expend such sums of money (whichever value is relied upon) on the property of another without a discernable reason for doing so, which could include the claimants allegation of the intended and mutually understood acquisition of a proprietary interest. However, in this case the testimony of the claimant and the plain and intended meaning of the statutory declaration leave no room for that conclusion I am afraid. I do not accept that the claimant forgot that he had executed the statutory declaration. This document is plainly significant and relevant to his case. I conclude that he did not raise it in his pleadings of his witness statement because of the incriminating evidence it contains. His credibility is greatly shaken by this.
21. The preponderance of the evidence supports the conclusion that the defendant did not by her conduct or words encourage the claimant to expend his funds in the

expectation of the acquisition of an interest of any kind in the property. This is the import of the defendant's evidence which on the balance of probabilities I accept over that of the claimant where he challenges this position. Further to this, the evidence reflects that the claimant was fully aware of the ownership of the property at the time he commenced his contributions and thereafter, such that he could not reasonably have concluded that the defendant either would have or could have conveyed an interest in the property.<sup>4</sup> The defendant never engaged in any conversation with the lawful owners, the defendant's parents and thereafter the defendant's sister, nor has he alleged that the defendant indicated on behalf of the other owners their consent, promise, representation, or otherwise brought to his attention evidence of their acquiescence. The claimant did not testify to his being of the view that any of the other owners were aware of the nature and extent of his assistance. The defendant's mother testified however, that she was aware that the claimant was assisting the defendant but was unable to say exactly in what way and to what extent. In the absence of the specifics, such as for instance, the nature and quantum of the 'assistance', this general notion of gratuitous 'assistance' is not inconsistent with an intimate relationship. So, to be clear, the claimant has not alleged either, that any person other than the defendant, did anything or said anything that has given rise to the estoppel alleged in this case.

22. That the claimant had no reasonable expectation of acquiring an interest in the property – a crucial limb of the Estoppel - is further borne out by the testimony in para 6 of the claimant's witness statement - and supported by his oral testimony - that he was aware of the defendant's fears that if their relationship "*...came to an end she would have no interest in the said house*", and that in essence, she was opposed to his acquisition of such interest and she desired he execute a statutory declaration to allay her fears as he had done before. This is the testimony of the claimant, no less. It reflects the clear intention of the defendant and the claimant's knowledge of it. Indeed it is tantamount to an admission by the claimant to the absence of one of the crucial limbs of a Proprietary Estoppel – that a representation was made or even, that he relied on that representation. He did not rely on any representation, if any were made at all, for in the end he executed the Declaration, albeit, as he testified, when he gave in to 'constant pressure'. He has not to date denied executing the Declaration exhibited before the court. He did not testify to executing it against his will under duress or even having misunderstood the import of the declaration. He thereafter made the bald assertion that he never intended to give up his future claim for an interest in the property and he never had the benefit of legal advice. Well, neither did the defendant when according to the claimant, she entered into this arrangement with him for him to assist her to finance the construction and acquire an interest in the house. To be clear, the court holds that in all the circumstances, neither of the parties required an attorney at any time, the subject of this case. If the continued contributions and/or the execution of the declaration was for example, a tactical move

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<sup>4</sup> See *Ramsden v Dyson and Thornton* (1866) LR 1 HL 129

on the claimant's part, in order to ingratiate himself further with the defendant, it was alas, a failed tactic in the end.

23. The fact that for the preparation and execution of the declaration the claimant had no legal advice is of no moment in the circumstances of this case for: he, even up to this trial is clear as to what she said were her intentions that he alleges she conveyed to him; he went to the commissioner without the defendant; there was no lawyer present for any one of them; the words used in the declaration are plain English words; the claimant(as was the defendant) was familiar with property issues, he being the owner of another property and there is no indication that he was on the verge of homelessness for instance; the claimant is a university graduate and of mature age and experience having himself gone through an earlier divorce settlement with his wife prior to the subject relationship between him and the defendant. In relation to his evidence admitting that notwithstanding the execution of the declaration he none the less never intended to give up his future interest in the house; this smacks of a concealment of what it implies was his true intention. The claimant does not call on the assistance of *equity* with 'clean hands' in that sense. On the other hand a person of character in the stead of the defendant would be expected, I would think, to have refused the "gifts" when offered. But so be it. It is true that were it not for the execution of this declaration and the adoption of its contents and import by the claimant at trial, the defendant would have been hard-pressed to establish her conduct as anything else but acquiescence (if not even 'representation') as contemplated by the learning on Proprietary Estoppel.<sup>5</sup>

#### DISPOSITION

24. The burden of proof is on the claimant to prove his case on the civil standard. He has not done so.
25. Where is the representation or promise that he acted upon to his detriment? There is no such representation or promise, express or implied, that he would acquire an interest. What about *acquiescence*; likewise the claimant's admission that the defendant expressed to him that she did not want him to acquire an interest is inconsistent, on the facts of this case, with her acquiescence(as alleged) or indeed the alleged promise or representation. In any event it appears to this court, that if the claimant was laboring under an impression from a promise or representation, of an acquisition of an interest, he purged himself of that with his testimonial acknowledgment and admission at trial of her expressed fears and protestations against it and his execution of the very telling and incriminating Statutory Declaration. Upon proper construction, the declaration relates back to his actions and contributions for the entire relevant period. The content of the declaration was accepted by the claimant. There are no words there used that are entirely terms of art. The words used are all defined in the ordinary Oxford dictionary with the same meaning ascribed to them in any law dictionary; perfectly understood by a lay person.

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<sup>5</sup> See *Inwards and Others v Baker* [1965] 1 All ER 446



In any event as I noted earlier, the claimant, in the witness box here including in cross examination, adopted the words in the Declaration as representing the agreement between himself and the defendant. The court cannot enter into the mind of the claimant as to why he would have executed such a declaration with his *eyes wide open*, if not for the plain meaning of the contents therein. But he did so, with the result embodied in this judgment.

26. For the reasons provided above **IT IS HEREBY ORDERED** that:

- i. The statement of case for the claimant is dismissed;
- ii. Judgment for the Defendant with Costs;
- iii. The Costs to be paid to the Defendant by the Claimant on the Prescribed Costs scale if not otherwise agreed between the parties.

**DAVID C HARRIS**

**HIGH COURT JUDGE**

**NOVEMBER 15, 2018**