

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Port of Spain

CV 2017-04092

BETWEEN

**Alimuddin Mustapha**

Claimant

AND

**Santie Sadia Mustapha**

Defendant

Before the Honourable Madam Justice Eleanor J Donaldson-Honeywell

Delivered on: 16<sup>th</sup> July 2019

**Appearances**

Mr. Ravindra Nanga, Claimant's Attorney-at-Law for the Claimant

Mrs. Veena Badrie-Maharaj and Mr. Aneel Badri-Maharaj, Defendant's Attorneys at Law

**JUDGEMENT**

**A. Introduction**

1. The Claimant is seeking to recover possession of property at No. 7 Mary Lane, El Socorro, San Juan ["the property"] from the Defendant, an elderly grandmother, who was the second wife of his father.

2. The Claimant's legal title to the property is based on a 1974 conveyance made by his Grandfather to himself as a minor at that time and to his father Sayeed Mustapha as Joint Tenants. Sayeed Mustapha ["the deceased"] having departed this life on August 1, 2016, the Claimant then became the sole title holder of the land.
3. On August 1, 2016 when the Claimant became sole title holder the property was in the possession of the Defendant who together with the deceased had obtained planning approval to build a home there in the late 1990s. She had been in a common law relationship with the deceased since 1982 and they were married in 1996.
4. At the time when the Defendant married his father, the Claimant was an adult who since 1988 resides in the United States of America. The Defendant's first matrimonial home with the deceased was at his family residence at El Socorro Road. In 1999 the Defendant moved with the deceased into the newly constructed home at Mary Lane. They both remained resident there up to the passing of her husband and the Defendant herself continued to reside there afterwards.
5. The Claimant had a pre-action letter served by his attorney on the Defendant on December 14, 2016, six months after the passing of her husband. The letter demanded that she vacate the property within three months, i.e. by March 3, 2017, failing which litigation against her would be commenced.
6. The Defendant's first response, written by her Attorneys, was that she and her husband had built the two-storey building on the property. The Claimant was informed by letter that the Defendant has "a legal and equitable right to the two-storey building". However, an offer was made to purchase the land from the Claimant or to allow him to purchase the

building. These offers were refused. The Defendant did not move from the premises.

7. The instant Claim was filed on November 10, 2017 seeking possession as well as mesne profits of \$7500 per month to be paid by the Defendant from the date of the passing of the deceased in August 2016. No evidence save for the Claimant's own opinion as a Realtor working in Florida was presented as to this quantum of rent.
8. The Claimant's contention that he is entitled to possession and that the Defendant must leave the property and pay rent for the time she remained there is not pleaded based solely on his title. He further contends that there was an understanding based on cultural traditions that the family home at El Socorro Road had to be passed on to the Claimant as the only son born to both his parents. However, the said home was sold by his father, the deceased. Accordingly, there was a sense in which the Claimant had an expectation that his father had to provide an alternate property for him.
9. Additionally, though both father and son were named as Joint Tenants of the Mary Lane property, the Claimant's case is that this also was merely based on a family tradition. The deceased's name was only added as a matter of convenience because the Claimant was a minor in 1974 when the land was conveyed.
10. The Claimant says the intention of his Grandfather was that Mary Lane would belong to the Claimant alone. It is in this context that the Claimant contends his father, the deceased, sought his permission to build what would become the deceased and the Defendant's matrimonial home at Mary Lane.

11. The Claimant's pleading is that the permission sought was to construct the home and "remain there for life, with the promise that the house he constructed will belong to the Claimant upon his death." Accordingly, the Claimant relies on the doctrine of Promissory Estoppel in response to any Claim the Defendant may have to an interest in or entitlement to reside at the matrimonial home she says she helped her husband build. He says the detriment he suffered in reliance on his father's promise is that he did not utilize the property himself but instead allowed his father to build on it and reside there rent free for the remainder of his life.
  
12. The Defendant counter-claimed seeking declarations as to her ownership of the property based either on adverse possession or on an equitable interest. The equitable interest claimed it based on Proprietary Estoppel as she is contending that she was assured of a home at Mary Lane based on which she conveyed the Santa Cruz home she had owned in a prior marriage to her adult son and his family.
  
13. Additionally, the Defendant says she contributed financially with her earnings from a Roti business and rent income. It is not in dispute that the Roti business the Defendant managed was started by the deceased and operated until the mid-1990s. The rent income came from an Aranguiz Villas apartment the deceased bought for the Defendant. She also made non-financial contributions in maintaining the home and taking care of her husband, the deceased.
  
14. The Claimant's case is that the Defendant was a housewife. He admitted she ran the Roti shop but said his father told him it was not successful. The Claimant said, on the other hand, his deceased father was a successful businessman. Accordingly, the Claimant said it was his father alone who constructed the home at Mary Lane with his own resources. Furthermore, the Claimant says that adequate arrangements were made for the

Defendant by the deceased, such that she need not, after his death, reside in her former matrimonial home.

15. The Defendant seeks injunctive relief to prevent the Claimant from evicting her from the dwelling house on the property and an order that the Claimant is to execute a Deed of Conveyance in her favour regarding the property.

**B. Issues**

16. The parties failed to comply with Case Management directions to file a list of agreed issues to be determined. Instead the Claimant filed a list of un-agreed issues. In compliance with directions the parties have both filed written submissions which brought their cases to a close at the end of June 2019.

17. In my determination, the issues to be addressed herein are as follows:
  - a) Whether the Claimant, based on his title, remains the owner of the subject property or whether his title has been extinguished pursuant to **Section 3 of the Real Property Limitation Ordinance** based on continuous exclusive possession of the property by the deceased for over 16 years with the intention of excluding the Claimant.
  - b) Whether the deceased Sayeed Mustapha promised the Claimant prior to commencing building a matrimonial home on the subject property that the building would belong to the Claimant, who would be entitled to dispossess the deceased's wife, the Defendant, upon the death of the deceased.
  - c) Whether based on the Claimant's knowledge of and acquiescence in the expressed intentions of his father, as well as of the expenditure incurred on building a home for the deceased and his wife, the Defendant had acquired an equitable interest in the property situated at Mary Lane.

- d) Whether the Defendant is entitled to have the property conveyed to her based on either adverse possession therein by the deceased and herself or their equitable interest in same.

**C. Applicable Law**

18. The applicable law on all aspects of the Claim and Counterclaim is well established. The summary of relevant principles provided by Counsel for the Claimant in closing submissions was accordingly also applied by Counsel for the Defendant.
19. On the issue as to whether the Defendant has proven entitlement to possession based on extinguishment of the Claimant's title the case of **Helen Clarke v Mitchell Masterson and Shanti Masterson H.C.A 2319 of 2004** is cited. The Court addressed therein the law of Adverse Possession based on the **Real Property Limitation Act 56:03, Sections 3 and 4**. To succeed in a claim for adverse possession, the Claimants must show: -
- a. Factual Possession of the land for sixteen years or more and
  - b. The *animus possessendi*, that is the intention to exclude the world.
20. In order to establish Proprietary Estoppel so as to prove the equitable entitlement to an interest in the property the Defendant is required to prove three main elements. These have been explained in numerous Judgements including **Thorner v Major [2009]1 WLR 776** cited by counsel for the Defendant. The three main elements are as follows:
- a. An assurance –A statement or action (which can include silence or inaction) by the land owner which can reasonably be expected to be relied upon by the person claiming an interest, even if the defendant never so intended;

- b. Reliance - An act by the person relying on the assurance in the reasonable belief that he/she has or will get an interest in land, induced by that statement or action;
- c. Detriment - Consequent detriment to the person relying on the assurance if the assurer is allowed to resile from his/her statement or action.

21. In addition to the foregoing it must also be established by the person seeking the interest that he/she incurred detriment in reliance upon the assurance, in a manner such that the owner's failure to satisfy their expectation is unconscionable.

22. Counsel for the Claimant has argued in closing submissions that without the estate of the deceased having been joined as a party, the Defendant's counterclaim regarding Proprietary Estoppel must fail. The case of **Lochan v Farfan CV2008-02015** is cited in support. However, that case involved the setting aside of a deed in the case where assignees were not made party to the proceedings whereas in the present case, the beneficiary of the legal title in the land is the Claimant.

23. Further, the Defendant's counterclaim is in relation to the property that would have passed automatically to the Claimant as a result of the joint tenancy. It does not involve any property that would fall under the estate of the deceased. From an evidential standpoint there may be a lack of evidence of a verbal promise by the deceased. However, it is clear from a review of the pleadings that it is not solely the deceased's assurances but also the assurances by conduct of the Claimant that the Defendant seeks to have honoured.

24. As to the Promissory Estoppel relied on by the Claimant based on his father and grandfather's alleged promises that the Mary Lane property and building belonged to him solely, Counsel for the Claimant cites **Snell's Equity 31st Edition 2005 Paragraph 10-08** 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”*

**D. Pleadings and Evidence**

25. In addition to the information summarized in the introduction there were other contentions and facts set out in the Claimant’s pleadings. Included therein was information about the Deceased’s testamentary wishes.

26. Firstly, there was his December 17, 2007 Will which named the Claimant as his father’s Executor. The entire estate was bequeathed to the deceased’s children, namely Sayeeda, Nassa, Alice, Saleem and the Claimant. Additionally, in that Will, copies of which are attached to the Statement of Case and as “AM8” to the Claimant’s Witness Statement, the deceased said

*“Further, I declare that I am seised and possessed of a single storey dwelling house standing on a parcel of land at No.7 Mary Lane, El Socorro, San Juan which I hold jointly with my son Alimuddin Mustapha. **It is my express wish and desire that after my death my wife Santie Sadia Mustapha be allowed to live and remain in the said dwelling house until her death.**” [Emphasis added]*

27. The second testamentary document referred to in the Claimant’s pleadings is his father’s Will dated May 15, 2013 which revoked the 2007 Will. In this Will, the Defendant was named as Executor and a parcel of land was



bequeathed to her. A motor vehicle was bequeathed to Sayeeda Mustafa. In the Will the deceased said

*“Further, I declare that during my life, I have already provided for my children Alimuddin Mohammed, Alice Mustapha and Nassa Mustapha”. [sic]*

No other property was specifically referred to by the deceased but if any existed it was expressly bequeathed to his wife, the Defendant.

28. The Claimant contends that his father was ill when he executed the 2013 Will. The illness is not in dispute. The Claimant further claims his father was not mentally sound as evident from the error made as to the Claimant’s surname. He pleads that it is not true that his father provided for his children and sets out certain sale transactions of properties from which he alleges only grandchildren were given \$600,000.00 of the proceeds by the deceased. The remaining \$3,000,000, he claims, went to the Defendant.

29. Varying from the Statement of Case, in his pleadings in Reply the Claimant says the Defendant inherited \$9,000,000 from the estate. However, there has been no evidence presented on any quantum so inherited and the Claimant’s witnesses admitted under cross-examination that he also received money from his father’s property sales.

30. Further, under cross-examination the Claimant admitted that he did not know whether by 2013 most of his deceased father’s assets from 2007 had been reduced as they had been distributed during his life. In any event, the Claimant admits that there has been no challenge by him to the validity of his father’s 2013 Will.

31. The Claimant had three witnesses, himself, his cousin Feisal Mustapha and his sister Sayeeda Mohammed. The Claimant also filed a Hearsay Notice, to which there was no counter-notice. The hearsay thereby admitted into

evidence included second hand reports as to statements as well as promises allegedly made by the deceased and the Claimant's grandfather as well as documents.

32. The documents entered into evidence included four Title Deeds dated 1974 conveying properties from the Claimant's grandfather to his grandchildren. Each of the conveyances was similar to the Claimant's 1974 Deed to Mary Lane in that it was with joint ownership to a parent. Also entered into evidence were the two Wills of the deceased.

33. In support of the alleged agreement by the deceased that the home at Mary Lane would belong to the Claimant there is a pleading in his Reply that the deceased also told the Claimant's sister and cousin about it. Further as it relates to the Claimant's grandfather's alleged intention, the Claimant pleads in his Reply that "the Deceased and the Defendant were fully aware that the said property was in reality a gift from the Claimant's grandfather to the Claimant". There is no pleading as to how the Deceased or the Defendant knew that. Under cross-examination the Claimant said that his father told him that the Defendant was told.

34. The Defendant's pleading in response to the Claim includes the information summarized in the introduction above as well as other alleged facts. Much is made of the relationship between the Claimant and his father by the Defendant in her pleadings which paint a picture of discord. She pleads however, that the Claimant who resides abroad, did visit his father twice a year.

35. The Claimant responded to the allegations of a distant relationship with his father by suggesting that it was the Defendant who always tried to exclude the Deceased's children from his life. He said the Deceased was never allowed to have photographs of his children and grandchildren displayed

in his home. Instead, the Defendant displayed numerous photos of her son and her grandchildren.

36. The Claimant and his witnesses all testified under cross-examination that the 2013 Will only came to their attention after the deceased's death. Prior to that the Claimant admitted that his father had discussed with him the 2007 Will. Prior to that he was also aware of the town and country planning approval documents whereby both his father and the Defendant were named as the persons seeking to build a home.

37. It is clear from the foregoing evidence that the Claimant was aware at the time of his father's death that his only written desire concerning the home at Mary Lane was that after his death, his wife the Defendant would remain in it for life. The evidence as to any other promise to the Claimant was based entirely on hearsay as to statements made by the deceased to him and his sister and the cultural traditions based on which he was to inherit the property as the only son.

38. The Claimant's evidence that it was to him that his father confided information about his finances was somewhat out of sync with the evidence of his Witnesses. His cousin Feisal gave evidence that the deceased turned to him to negotiate the sale of the family home and to keep his 2007 Will. His sister Sayeeda also testified that the deceased turned to her for advice and entrusted her with the 2007 Will. There appears to have been a more arm's length distant relationship with the Claimant as he was not the first to be consulted.

39. The Defendant had two witnesses, herself and her son Stephen Mungal. They were not discredited under cross-examination. The Claimant appeared weary at times but was very calm throughout the proceedings.

She did not attempt in any way to embellish her version of events. She was quietly cooperative when answering questions.

40. At one point Counsel for the Claimant asked her a question that led her to answering that she conveyed her former home to her son after her marriage. This was not correct as the 1966 conveyance was a few months before the marriage. Much was made of this by Counsel for the Claimant. In my view as the evidence unfolded it is clear that the Defendant merely made a mistake regarding this ancient transaction date.

41. Likewise, the Defendant was a bit uncertain about her coming and going dates in the early 1980s during the time when her marriage to her son's father was ending and she was becoming more involved with the deceased. It seems she resided partly in her old Santa Cruz home but stayed more and more with the deceased. That was not to her discredit. Further it was not unusual that although she had conveyed the Santa Cruz home to her son her name still appeared on utility documents. These factors submitted by Counsel as being to her discredit were without merit.

42. The evidence of the Defendant was by and large corroborated by her son who confirmed that just before her marriage she had given him her Santa Cruz home. He from then on lived there with his family of five.

43. The Defendant's pleaded particulars and evidence as to her equitable interest in the property were consistent. Notably however, she did not quantify her financial contributions to constructing and maintaining the home. Though she gave evidence of her roti shop and rent income earnings as the source of her contributions, she presented neither details of the earnings nor documentary proof of same. Overall however, she was not discredited as to having some earnings from these sources as her

supporting witness and the Claimant corroborated her work at the roti shop and her ownership of a villa.

**E. Analysis and Findings**

44. The parties both relied to an extent on hearsay evidence. However, the Claimant's case more extensively was based on hearsay. The Claimant relied on hearsay evidence of verbal promises made both by his father and his grandfather about property ownership. He also based his case on cultural traditions that would have been verbally passed from generation to generation in his family.

45. The Defendant relied more on documentary evidence than on verbal hearsay as to what her husband, the deceased, told her concerning the property and her entitlement to reside there.

46. In weighing the evidence, I considered the alleged verbal promises in the context of the documentary evidence. It is my finding that the agreed documents, such as the 2007 Will and the Town and Country Planning building approval in relation to which authenticity is not in issue, speak with more weight as to the deceased's intentions than the verbal hearsay relied on by the Claimant. This is particularly so as the promises the Claimant and his witnesses testified to were nebulous rather than specific as to the alleged intention of the Deceased and the Claimant's grandfather.

47. Furthermore, the Claimant and his witnesses' evidence of the way the promises were conveyed, particularly by the Defendant's deceased husband, gives the impression of promises made to the Claimant and repeated to his relatives but without also letting the Defendant know of same.

48. There is nothing in the pleadings or the submissions indicating that the Defendant was privy to any promise by her husband to the Claimant that

the Defendant would be dispossessed of the home in favour of the Claimant immediately upon her husband's death. It is apparent that the Claimant purports to rely on inter-family discussions, from which the Defendant was excluded, in order to prove that the deceased's intent was that his son and not his wife should possess the matrimonial home after his death.

49. There is also no indication that the Defendant was present for any discussion where her deceased husband sought permission from the Claimant to build on the property, thereby acknowledging that he was the intended owner. Instead in submissions it is stated "*although her evidence was that her husband did not seek permission, we submit that the Honourable Court should have no difficulty in rejecting that evidence, as the Defendant was simply never privy to any discussions that were held between her husband and the Claimant*".

50. Even in the Claimant's Witness Statement he includes evidence that paints a picture of the Defendant being allowed to act as though the home belonged to her. This was evident from the contention that she displayed photos of her son and grandchildren throughout the home without protest from her husband and did not allow pictures of the Claimant and his other relatives to be displayed.

51. As it relates to the Claimant's evidence that his deceased father turned to him as a financial confidante on matters such as ownership of the home after his death, again his own witnesses shed doubt. The Claimant's case as to this closeness with the deceased is belied by the evidence that the 2007 Will was entrusted not to the Claimant but only to his cousin Feisal and his sister Sayeeda. Feisal testifies that he was the person that the deceased turned to in a property sale matter.

52. The Claimant's evidence that the deceased wanted him to take possession of the home upon his death is belied by the fact that he and his witnesses were aware that the 2007 Will expressed a contrary desire. The deceased made it clear there that, while the land would belong to his son based on the joint tenancy, he wanted the Defendant to continue to reside in the home he built, the matrimonial home, after his death.
53. The documentary evidence of the 2007 Will is to an extent effective in undermining not only the Claimant's case but part of the Defendant's counterclaim. The Defendant is wrong in saying that the deceased gained sole title to the property before he died by adverse possession. This cannot be correct as the deceased by his 2007 Will recognizes the Claimant as the joint owner of the property. Thus there was no intention on the deceased's part to possess or own the property to the exclusion of the Claimant.
54. Additionally, it is undisputed that the Claimant did not abandon the property. Although he resided abroad he visited at least twice a year and sometimes, particularly when the deceased was ill stayed at the property. Exclusive possession by the deceased such as to extinguish the Claimant's title has not been proven. This aspect of the Defendant's case, i.e. proof of adverse possession, fails.
55. In all the circumstances it is my finding that the deceased's expressed intention was that if his son, the Claimant, survived him he would retain the legal title to the property. This would include not just the land but the home that the Claimant made no contribution to build and in which the deceased as well as his wife had equity.
56. However, the deceased's promise regarding the entire property being owned by his son, the Claimant, was expressly subject to fulfilment of a desire that recognizes the deceased's equity. He wanted his elderly wife to reside there until her death. He did not indicate whether such residence

would be rent free. However, since a continuation of living arrangements that existed when he was alive was contemplated, it is my finding that non-payment of rent was implicit in the deceased's expressed intent.

57. In addition to the documentary evidence as to the deceased's intention the Defendant has, by her witness statement, supported her case of proprietary estoppel preventing the Claimant from dispossessing her. She has presented undisputed facts that in my view support the assurance, reliance, detriment and unconscionable elements required to prove that the Claimant was so estopped.

*The assurance*

58. As highlighted by Counsel for the Claimant in submissions, the Defendant has not pleaded any specific words said to her by her deceased husband that amounted to assurances that she could remain in the matrimonial home for life. On the other hand, she has pleaded and given first hand evidence of the conduct of the deceased and the Claimant in standing by and allowing her to believe that she could divest herself of other property and invest in the property as a home for life - a matrimonial home.

59. It appears more likely than not that the deceased would have intentionally given such an assurance by his conduct. This is supported by his allowing for the Defendant to jointly apply for building approval with him as far back as the mid -1990s. Then in 2007 he made a Will which, even though it was subsequently revoked, still serves as corroboration of his intentions at that time. That he wanted his wife to reside in the property after his death makes it more probable that from inception he acted in a manner that assured her that she had a home there for life.

60. The Claimant also acted in a manner that would have reasonably been seen by the Defendant as being in acquiescence to the deceased's assurance.



There is no evidence that the deceased or the Claimant ever told her that she would be required to vacate the premises as soon as her husband died.

61. There is merit to the submission of Counsel for the Claimant that it is for the Claimant who wanted to preserve his interest to do what is necessary to ensure his interest in same. But instead he simply stood by to have the structure built on the property knowing that the deceased had expended considerably and that the Defendant was the deceased's wife, who would have lived over twenty years with the deceased and would have contributed to the property both directly and indirectly.

62. This standing by followed on an alleged giving of permission to the father to build a home where he and his wife would live on condition that the father could reside in the home for life but on his death his wife, the Defendant had to leave. That the deceased could have agreed to such an arrangement defies logic. It is clear from the expressed wishes in the 2007 Will that the deceased wanted his wife to have a home there for life as well. The Defendant has succeeded in proving the required assurances.

#### The Reliance

63. The Claimant's evidence as to reliance on the proven assurances mentioned above is that based on same she and her husband built the home at Mary Lane and moved into it from their prior residence at El Socorro Road. She gave evidence which, though unsupported by documents, was un-contradicted.

64. Her evidence was that she used her private savings and the profits from operating her Roti Shop and contributed to the construction of the house. The Defendant also gave evidence that she used the rent money from her Aranguiz property and the Warehouse to maintain her home at Mary Lane.

65. Additionally, her testimony was that she gave up her home in Santa Cruz by conveying it to her son prior to her marriage. The clear implication from this evidence is that she did so because she would be residing with her husband for life at their Matrimonial Home. As aforementioned, that was firstly at El Socorro Road and then at the home built at Mary Lane. The Defendant's reliance on the assurances has been proven on a balance of probabilities.

#### The Detriment

66. It is more probable than not that the reliance set out above would result in detriment to the Defendant if the Claimant resiles from the assurance. She would then lose the benefit of her contributions and will not be able to live in her matrimonial home. The dollar value of the said Detriment is uncertain as the Defendant's financial contribution to building the home was neither quantified nor supported by documents.

67. However, it is my finding that it is more likely than not that, as the deceased's spouse for decades and having joined with him in seeking building approval, she would have made contributions to construction of their matrimonial home. There is undisputed evidence as to the sources of her contributions.

68. Additionally, the cohabitation and then marital relationship between herself and the deceased endured from the 1980s to 2016. It is my finding on a balance of probabilities that she is truthful in saying she also contributed in kind by looking after her husband and maintaining the home. The resulting detriment if her assurance of a home for life is not fulfilled has been proven by the Defendant.

#### The Unconscionability

69. Whether the detriment is sufficiently substantial to justify an order that the assurance relied on must be honoured is to be tested based on whether it would be unconscionable to allow the assurance to be disregarded. In the instant case consideration must be given to whether the detriment to the Defendant is substantial enough that the Claimant ought not to be allowed to resile from the assurances given by the deceased's conduct and his own. It is my finding that resiling from the said assurances would be unconscionable in the context of the Defendant being an elderly woman who a few years after the death of her husband is being evicted from a home she built with her husband after giving up her own.

70. There is merit to the submission by counsel for the Claimant that underscores the need to examine not only unconscionability as it relates to the person relying on the promise but also the person seeking to resile from it i.e. the Claimant in this case.

71. In ***Mills v Roberts; Civil Appeal No. T 243 of 2012***, pages 10 – 12, paragraphs 25 and 26 the Court of Appeal addressed how the Court, having established assurance, reliance and detriment, must consider matters relevant to unconscionability. It was explained as follows:

*“25. The Privy Council in ***Theresa Henry and Anor. v Calixtus Henry*** has carefully explained that in cases of proprietary estoppel, when it comes to determining **how** the equity is to be satisfied, the following are relevant guidelines:*

*(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.*

*(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.*

(vi) *Though in the abstract reliance and detriment may be regarded as different concepts, in applying the principles of proprietary estoppel they are often intertwined.” [Emphasis added]*

72. In light of the contentions herein by the Claimant that the Defendant’s detriment has not been adequately substantiated by proof of her roti shop earnings, rental income, household work and the quantum of financial contributions, I have also considered whether the expected relief will be unconscionable to the extent that it may be disproportionate to the detriment suffered.

73. Useful guidance is provided in the first instance and Court of Appeal Judgements in **Suggitt v Suggitt 2011 WL 1151608 (2011); Suggitt v Suggitt, 2012 WL 3491826(2012)**. At first instance in **Suggitt** it was noted that the detriment relied on by a son who said his father promised him a farm included his work on the farm. However, “The work he did was barely, vaguely and weakly particularized”. It was noted though that from the evidence the son “positioned his whole life on the basis of the assurances given to him and reasonably believed by him”. Despite the lack of clarity as to work done to his detriment the Court ruled in the son’s favour that Proprietary Estoppel had been proven.

74. The rationale for this first instance decision was approved and explained in the Court of Appeal Judgement in **Suggitt** at paragraph 43. The decision of Walker LJ, as he then was, in **Jennings v Rice [2002] EWCA Civ 159** was cited as follows:

*“50. To recapitulate: there is a category of case in which the benefactor and the claimant have reached a mutual understanding which is in reasonably clear terms but does not amount to a contract. I have already referred to the typical case of a carer who has the expectation of coming into the benefactor’s house, either outright or for life. In such a case the court’s natural response is to fulfil the claimant’s expectations. **But if the claimant’s expectations are uncertain, or extravagant, or out of all proportion to the detriment which the claimant has suffered, the court can and should recognise that the claimant’s equity should be satisfied in another (and generally more limited) way.**” [Emphasis added].*

75. Applying this approach in considering unconscionability, it is relevant in this case that there will be no unconscionable impact on the Claimant if the Defendant’s equity in the home is realized by allowing her to reside there for life, rent free. This is so because the Claimant acquiesced in her residence there rent free with the deceased for twenty years. Had the deceased not fallen ill and died the couple would have continued to reside there rent free to this day.

76. It will not be unconscionable that the Defendant be allowed to live out her years at her matrimonial home especially if the Claimant remains the legal title holder. He will on the death of the Defendant benefit from taking possession of a home he stood by and allowed his father and the

Defendant to build. He made no contribution and was willing to forego rent for the use of the land.

77. In this case as in **Suggitt**, the quantum of the Defendant's detriment is uncertain. Accordingly, in my view her equity must be satisfied in a more limited way than the relief claimed. The conveyance of the title to the property to the Defendant will not be appropriate. Instead the equity of her contributions and having built a life at the property will be met if she is allowed to remain there for the rest of her life.

#### **F. Order**

78. The Claim for possession of the property and mesne profits from the date of the deceased's death fails and is dismissed. The Defendant is awarded the costs of the Claim in the prescribed amount of \$14,000.

79. Judgement is awarded to the Defendant as to part of the Counterclaim as follows: "A declaration that the Defendant has acquired an equitable interest in the property situated at No. 7 Mary Lane, El Socorro San Juan ["the property"] by virtue of her contributions made towards the construction of the dwelling house and her reliance to her detriment on assurances by the deceased and the Claimant."

80. The Defendant's Counterclaim for a declaration that the Claimant's Legal Title to the property has been extinguished as a result of adverse possession by the deceased and for an order that the Claimant do execute a Deed of conveyance of the property in her favour are dismissed.

81. The Defendant is awarded a continued license to remain in possession of the property for life without payment of rent. If necessary and subject to any agreement between the parties I will hear further argument as to the actual form of this part of the order and its consequences and as such there is liberty to apply.

82. The Injunction sought by the Defendant restraining the Claimant whether by himself, his servants and/or agents from evicting or attempting to evict the Defendant, her servants or agents from the dwelling house and the parcel of land situated at No 7 Mary Lane, El Socorro, San Juan, is hereby awarded.

83. The Claimant having succeeded partly in defending the Counterclaim is to pay 50% of the prescribed costs to the Defendant in the amount of \$7000.00.

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Eleanor Joye Donaldson-Honeywell

Judge

Assisted by: Christie Borely JRC 1