

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2007-02721

BETWEEN

CLEOTHILDA SAMUEL ROWLEY

CLAIMANT

AND

**JOSEPH TIMOTHY PETERS
(wrongly sued as Joseph Timothy Peters)**

DEFENDANT

AND

Claim No. CV 2007-02740

BETWEEN

JOSEPH TIMOTHY PETERS

CLAIMANT

AND

CLEOTHILDA SAMUEL ROWLEY

DEFENDANT

Before the Honorable Mr. Justice Vasheist Kokaram

Appearances:

Mr. Yaseen Ahmed for Joseph Peters

Ms Hyacinth Griffith for Cleothilda Rowley

JUDGMENT

1. The contest in these consolidated proceedings arises out of competing claims being made between siblings to a property known as Light Pole 2 Espinet Street, Success Village , Laventille ("the Espinet Street property"). These siblings are Cleothilda Rowley (for convenience referred to as "the Claimant") and her half brother Joseph Peters (for convenience referred to as "the Defendant"). Their father, Henry James died in 2005 leaving his last will and testament dated 24th November 2004, whereby he appointed the Claimant his executor and devised inter alia his "interest" in the Espinet Street property to her. In that will also the deceased bequeathed to the Defendant the sum of \$500.00 which the deceased stated in his will is as a result "of the animosity and ill treatment he has shown towards me over the years". Other properties were devised to the other children of the deceased in the said will. The Claimant, who is the executor appointed under the said will, seeks to have the will decreed in solemn form. The Defendant, a disappointed beneficiary, seeks to assert an interest in the land and a concrete dwelling house at Espinet Street.
2. There really is no dispute in these proceedings that the said will was the duly executed last will and testament of the deceased. Ordinarily therefore it would be a simple matter to propound for the validity of the will in solemn form. The effect of that would be that the Claimant will obtain all of the deceased's interest in the Espinet Street property¹. The Defendant would be left with a token \$500.00.
3. However, in so far as the said will seeks to devise the deceased's "interest" in the Espinet Street property to the Claimant, the Defendant contends that he is a half owner of the property and seeks an order for possession of half share of the said property. This is his claim in CV 2007-02740. Such a claim is based on a conveyance to him by his grandmother Hilda Morris by Deed of Gift dated 25th January 1982 of a one half undivided share of the Espinet Street property. The Deed of Gift is also not in dispute in these proceedings.²

¹ Among other devises and gifts provided for in the will of the deceased.

1. ² Hilda Morris together with her brother, Moses Lewis became co-owners as tenants in common of the Espinet property by deed dated 20th February 1969.

4. The Defendant goes further to claim that by virtue of the doctrine of promissory/proprietary estoppel³, he is the lawful and/or equitable owner of the house situate on the Espinet property. This is his counterclaim in CV 2007-02721.
5. It is accepted by the parties that the Espinet Street property is divided into two lots, a Northern and Southern lot. The dimensions of these lots are the same and are shown on a survey plan annexed to the Deed of Assent dated 1969. The house which now stands on the Espinet Street property and which is presently occupied by the Claimant, straddles both lots with the majority situate on the Northern lot with some encroachment into the Southern lot. The parties eventually agreed a sketch of the house that is occupied by the Claimant on the Espinet Street property in relation to the two lots. The sketch appears at the end of this judgment. It is not drawn to scale and shows an encroachment of approximately 16ft x 17ft into the Southern lot, lot 2. One of the difficulties in these proceedings is that the Deed of Gift did not specify which of these two lots was conveyed to the Defendant in 1982.
6. Conversely, the Claimant also claims ownership to the Northern lot and so much of the Southern lot on which the house stands. She contends that the one half share of the Espinet Street property which was conveyed to the Defendant was the Southern lot. In so far as the Northern lot was conveyed to Moses Lewis, the other co-owner by the said deed of assent, that title was extinguished by adverse possession by the Claimant and her predecessors. She claims that the interest in the house belongs to the estate of the deceased. Insofar as the house has encroached onto the Southern lot, the Claimant contends that the Claimant has acquired a possessory right or that the Defendant's claim to that part of the property over which the encroachment was made has been extinguished.
7. The central issue in this matter is, therefore, to determine the nature if any, of the deceased's interest in the Espinet Street property at the date of execution of the said will. If the deceased did at that time hold an interest in the Espinet Street property, it must then be determined to what extent if at all, the estate of the deceased is estopped from denying the Defendant's claim that he is the lawful owner of the said house on the Espinet property or a half share of the Espinet property.

³ Although the Defendant pleads promissory/proprietary estoppels, the written submission seems to gloss over the distinction between these legal concepts and appears in fact to be an assertion of a proprietary estoppel claim. This is discussed later in the judgment.

8. There is a sharp factual dispute between the parties as to the nature and quality of the occupation on Espinet Street by the deceased and the parties and the conduct of the deceased in relation to the Defendant. The burden of proof lay on the Claimant to make good her claim of adverse possession as it does on the Defendant to make good his claim of proprietary estoppel. I agree with Counsel for the Defendant that this latter issue is a fundamental one and cuts through all issues raised in this matter.
9. In reviewing the oral and documentary evidence I have concluded that the Defendant failed to prove his claim of estoppel. Although the evidence of the main protagonists were at times unsatisfactory with each prone to exaggerating their claim, I was guided and assisted by the evidence of the Claimant's two witnesses, Elena Hutchinson and Anthony Walters, who were unshaken in cross examination and put to the lie many of the assertions made by the Defendant. The Court could not rely upon the evidence of the Defendant who did not have any corroborating evidence and where several documents were conflicting with his main assertions.
10. The Court was satisfied that at the date when the deceased executed the will he was the owner of the house on the Espinet Street property. This house was situate on the Northern lot and later in the 1970's encroached upon a portion of the Southern lot. The deceased acquired a possessory title to the northern lot as against Defendant and further in so much of the Southern lot on which the extension to the house was built. The deceased was therefore competent to bequeath this interest in the Espinet Street property to the Claimant by his said will. Although the evidence demonstrates a possessory title as having been obtained against Moses Lewis, the Court cannot grant any relief against this co-owner or his estate as he was not a party to these proceedings, this much was conceded by Attorney for the Claimant.
11. The Court pronounces for the force and validity of the will. The inventory which has been filed in Probate Application No. L153 of 2006 in relation to the deceased interest in the Espinet Street property is however wrong. It states that the interest of the deceased is the entire Espinet Street property. That simply is not the case for the Claimant. The extent of her interest is a possessory title to the Northern lot and so much of the Southern lot on which the deceased house stands with an encroachment of 36.5 ft x 17ft into the Southern lot.

12. The Defendant with regard to his interest to the Southern lot or to any part of the Espinet street property, failed to assert any right or title to the land since the encroachment to the southern lot since 1982. I have found that the Claimant and her predecessor in title's possession was "adverse" to that of the Defendant and that his undivided half share and interest in the Espinet Street property has been extinguished to the extent of their occupation. The Defendant's claim to possession of half share of the property therefore fails. The Defendant's undivided half share is now restricted to the "unoccupied" portion of the Espinet Street property shown on the remainder of the Southern portion, lot 2 of the Espinet Street property.
13. The Defendant's counter claim for a declaration that he is the owner of the house on Espinet Street also fails as he failed to establish his plea of proprietary or promissory estoppel on a balance of probabilities. The Defendant's claim and counter claim are dismissed.

The Proceedings

14. In HCA 2007-0721 the Claimant sought an order that the Court decree the said will in solemn form. In his counter claim dated and filed 20th February 2008 the Defendant sought a declaration that he is the lawful and/or equitable owner of the house situate on the Espinet property and a declaration that the Claimant is estopped from denying the Defendant his rightful entitlement to the said house on the Espinet Street property.
15. In HCA 2007 –02740 by fixed date form, the Defendant sought a declaration that he is the half owner of the Espinet Street property and an order for possession of half share of the said property and mense profits.
16. On 13th November 2008 these proceedings were consolidated by my brother Justice Moosai. To understand the context of the rivaling claims, the pleadings in support of each claim must be carefully examined.
17. The Claimant annexed to her statement of case a copy of the said will and application for probate in support of her claim.

18. The Defendant in his amended defence claims firstly that neither the Claimant nor the deceased has a legal interest in the Espinet street property to bequeath.

This plea is supported by the following pleading facts:

- The said property was initially owned by the Claimant's great grandmother, Sara Lewis.
- By deed of Assent dated the 20th February, 1969 and registered as 1982 of 1969 the said property was assented unto the children of Sara Lewis, namely: Moses Randolph Lewis and Hilda Morris as Tenants in Common.
- The Claimant's said grandmother Hilda Lewis, with the assistance of the deceased built a house on the said property at L.P. No. 2 Espinet Street, Success Village, Laventille during her lifetime.
- The Claimant was born in this house and lived there until the 1980's.
- By Deed of Gift dated the 25th January 1982, the said Hilda Morris transferred her ½ share in the said property to the Claimant.
- The other half owner Randolph Lewis died in Venezuela in or about the 1970's/1980's and never transferred his share to anyone.

19. The Defendant states that by virtue of the above matters and of the Deed of Gift referred above, the Defendant has a legal interest in the said property and therefore disputes the Claimant's claim to have the Probate of the Will of the deceased pronounced in Solemn form. I must mention here that in direct response to a question by the Court at the commencement of these proceedings Counsel for the Claimant accepted the validity of the Deed of Gift.

20. Secondly the Defendant relies on the doctrine of promissory/proprietary estoppel as set out in his amended Defence and Counterclaim in CV 2007-2721. I set out verbatim the Defendant's plea:

“14. In further answer to the Claimant’s case or alternatively in the event the deceased is found to be the legal owner of the house on the said property the Defendant will contend that during the deceased’s lifetime, he acquired/renovated several properties including a property at Old St Joseph Road and one at Troumacaque Road, Laventille, both described in inventory filed in Probate Application No. L 153 of 2006 in the Estate of Henry James the Claimant herein and/or the Estate of the deceased Henry James is estopped by promissory and/or proprietary estoppel from denying the Defendant his rightful entitlement to the Espinet Street property (including house and land) by virtue of the following matters.

*15. **As regards the Troumacaque property**, the Defendant will contend that he is entitled to full share and/or interest and/or the house on in the Espinet Street property by virtue of the promises made by the deceased and acting on and reliance placed on these promises by the Defendant and whereby the Defendant acted to his detriment.*

PARTICULARS OF PROMISES:

a. After the Troumacaque property was acquired in the 1970’s, the deceased used to tell the Defendant that he would own and be able to live in the Espinet Street property, provided he assisted the deceased in building the apartment building on the Troumacaque property. Also the deceased acquiesced and encouraged the Defendant in this belief.

PARTICULARS OF ACTIONS/RELIANCE

(a) The Defendant assisted in casting floors, walls, bring materials from the quarry to the site and making bricks.

(b) The Defendant spent continuous evenings some days off and weekends working on this Troumacque property construction free of charge.

(c)Assisting in blocking/fencing around the entire property and building gates for the property.

(d)Cutting of walls for conduit, painting the roof, digging soakaway, plastering walls, digging drains around the house and doing plumbing for the sewer.

(e) Going to the La Basse dump at Betham Highway to cut steel and pick up blue stones to use on Troumacque property.

PARTICULARS OF DETRIMENT:

(a) The deceased had not left any interest/share entitlement in any property to the Defendant.

(b) The Defendant gave up his own time whereby he could have acquired his own property and house, to assist the deceased.

16. As regards the **Old St. Joseph Road property** belonging to the deceased, the Defendant will contend that the deceased again made several promises and/or gave assurances to the Defendant and by virtue of which the Defendant acted on these promises and assurances and acted to his detriment.

PARTICULARS OF PROMISES/ASSURANCES:

a. In or about the 1990's the deceased used to tell the Defendant that he would own and be able to live in the Espinet Street property provided he assisted the deceased in construction in various properties including extensive renovations the Old St. Joseph Road Property.

PARTICULARS OF ACTIONS AND/OR RELIANCES:

(a) The Defendant over 3 years assisted the deceased with doing a complete renovation and/ or makeover to the existing structure at Old St. Joseph Road.

(b) The Defendant helped cast floors, changed the roof, oversaw the workmen, welded 2 gates, built an iron door, installed 4 doors, welding 2 windows, repaired sewer and helped purchased boxing board for casting and some plumbing.

(c) The Defendant devoted all of his evenings and weekends, without salary to assist in this construction.

(d) Helping to convert an old dilapidated house into a 2 storey apartment building.

(e) Going to the La Basse dump at Beetham Highway to cut scrap steel to cast beams and floors.

17. As regards the Espinet Street property, sometime in or about 1980's the deceased and Hilda Morris began renovations to the existing house on the Espinet Street property situate at L.P. No. Espinet Street, Laventille.

18. The flooring was changed and other renovations and the Defendant assisted the deceased there free of charge again on the promise that this house would be his.

19. Throughout the years it was always understood between the deceased and the Defendant that the Espinet Street property would be his.

20. In or about the year 1996 without the assistance of the Defendant, the deceased informed him that he was going to cover the garage that was attached to the said house but in truth and in fact he began construction of a large 2 storey extension to the said property when the Defendant confronted the deceased about this the deceased told the Defendant that he had his plans.

21. Sometime later in 1999 when the deceased discovered that the Defendant was the half owner of the land at the said Espinet Street property, the deceased began to show the Defendant open hostility and began to keep the Defendant out of his affairs.

22. At all material times prior to the year 1996, the deceased had a Bedford Truck and a Ford Truck to do his transportation of construction material and without any remuneration and in furtherance of the several promises above mentioned, the Defendant personally took care of and repaired these two trucks for the deceased."

19. In her Reply and Defence to Counterclaim the Claimant contended that she and her predecessor in title have had the exclusive undisturbed occupation possession and control of the northern portion of the Espinet property. Their acts of occupation were pleaded in its Reply and Defence to Counterclaim as follows:

“6. Sometime between the periods 1950 to 1951 the Deceased and the Defendant’s mother and Hilda Lewis resided in a tapia house on the southern portion and occupied an unspecified, unsurveyed portion of the said parcel of land. Sometime in the years 1954 the Defendant’s mother moved out of the tapia house and went to reside at St. Paul’s Street, Port of Spain. The Defendant continued to reside with the said Ms Hilda Lewis and the deceased in the said tapia house on the southern portion.

c. Neither the Defendant nor the said Hilda Lewis had ever resided on the Northern Portion of the said premises which was always vacant, unoccupied and covered with bramble as the said Hilda Lewis was the owner of one half of the entire lot.

d. Sometime in the year 1956 the deceased, with the knowledge, consent and approval of the said Hilda Lewis, cleared the Northern portion and constructed a concrete house partially situate on the Northern portion and partially upon the southern portion and together with the Claimant moved into the said structure and has remained in undisturbed possession and occupation thereof to date. The Defendant continued to live with Hilda Lewis in the tapia house in the southern portion.

d. The Claimant and her predecessors in title have continually and without interruption resided in a dwelling house constructed sometime on or about 1956 on such portion of the subject property or the parcel upon which it stands.

e. In or around January 1976 the deceased together with the Claimant renovated the concrete structure which included repairs to the roof, flooring, garage and the kitchen. Sometime in or about 1976 the deceased assisted Hilda Lewis to demolish the tapia house on the southern portion and reconstruction of another structure which the Claimant and Hilda Lewis occupied until he vacated same in or about 1974. At that time the Defendant had already ceased residing at the home with the said Hilda Lewis.

e. The said Hilda Lewis continued to reside in the wooden structure on the southern portion until her death in 1984.

f. On several occasions including some time in the year 2002 the Defendant was violent towards the deceased and the Claimant and as a result a protection order was made against him in or about 21st October 2002 restraining the Defendant from threatening, harassing or molesting the deceased at the premises or any place whatsoever for a period of three years from the said date.”

21. The Claimant's claim really is to assert an interest by virtue of undisturbed occupation of the house and land in the Espinet Street property. The main thrust of the Defendant by these pleadings is that he is the owner of a half share interest in the property by virtue of the Deed of Gift and relies on the estoppel for a claim to the house.

22. On the face of these pleadings as well it appears that notwithstanding the Defendant being entitled as a tenant in common to an undivided half share of the Espinet Street property, no claim was made by him to his said undivided half share for some 20 years until he filed a claim in previous proceedings HCA 221 of 2003. On the face of this pleading alone, the question arises whether his title has been extinguished by virtue of the Real Property Limitation Act.
23. On the plea of promissory/proprietary estoppel it should be noted that firstly, the claim is for an interest in the land and/or in the house. At some stages in the cross- examination the Defendant appeared ambivalent about his claim which varied from a claim to the house, to a claim to the entire Espinet Street property. Secondly, it is not exactly clear whether all the repairs or works done on the several properties or the deceased trucks was done on the express promise made by the deceased to the Defendant that those works was in exchange for an interest in the Espinet Street property. Thirdly, at no time did the deceased hold a legal title in the Espinet Street property and a question arises what interest is it that the Defendant claims the deceased promised him in the Espinet Street property since the 1970's when Mr Peters himself was not, nor at any time, the paper title owner of the said property. Finally, this is an unusual set of facts where work was being done by the Defendant on several other properties that is the Troumacaque property and the "Old St Joseph Road" property on the promise allegedly made by the deceased that the Defendant would acquire an interest in another property, the Espinet Street property. A property which the Defendant himself vacated since the 1970's.

Agreed Facts:

24. From the pleadings and the oral evidence the following agreed facts emerged:
- The will of the deceased Henry James was made on the 24th November 2004. Its validity is not in issue.
 - The Claimant and the Defendant are two children of the deceased
 - The Claimant is the duly appointed executor of the estate of the deceased and a beneficiary under the will.
 - The deceased devised by his will his interest in several properties: Light Pole 12 Hitler Trace, Troumacaque Laventille ("The Trou Macaque property"), Upper Butler Trace, Rudolph Charles Link Road, No 264 Old St Joseph Road Laventille, Grange Avenue, 15B Layan Hill,

Belmont and the Espinet Street Property to his children and grandchildren.

- The Defendant previously made a claim for the Espinet Street property to be partitioned and that lot 2 be conveyed to him in HCA 2221 of 2003.
- On 10th January 2006 the Claimant applied for a grant of probate of the will of the deceased.
- The inventory in probate application L153 of 2006 describes as part of the estate of the deceased, the entirety of the Espinet Street property inclusive of the two lots of land.
- The Defendant lodged a caveat on 13th February 2006 and 25th October 2006.
- The title in respect of the property at Espinet Street is as follows: -
 - (a) The Espinet Street property was initially owned by Sarah Lewis, the grandmother of the Defendant.
 - (b) Sarah Lewis died on the 13th May 1935.
 - (c) Letters of Administration were granted to Moses Randolph Lewis and Hilda Lewis.
 - (d) A concrete house was built on Espinet Street in the 1950's.
 - (e) The Defendant's mother moved out of the Espinet Street property in 1954.
 - (f) The Claimant, her mother Doris Samuel and the deceased lived in the concrete house from the 1950's.
 - (g) By Deed of Assent registered as No 1982 of 1969 the Espinet Street property was conveyed to Moses Randolph Lewis and Hilda Lewis as tenants in common. A survey of the subject property being 7396 superficial feet dated 28th January 1969 and which was surveyed for Henry James showed the subdivision of the property into Lot 1 and Lot 2 each measuring 3698 square feet. The survey plan was annexed to the Deed of Assent and marked "A".
 - (h) The co owner, Morris died in the 1970's without disposing of his share of the Espinet Street property.
 - (i) There was an extension of the main house which was on the Northern lot into the Southern lot. This was constructed prior to the death of Hilda Morris.

- (j) By Deed of Gift registered as No 14571 of 1982 Hilda Lewis conveyed her undivided one half share and interest in the subject property to Timothy Peters (the Defendant).
- (k) At the time of that conveyance Hilda Lewis was occupying the southern lot, Lot 2.
- (l) By the Deed of Gift, Joseph Peters holds the legal interest in an undivided one half share of the said lands at Espinet Street.
- (m) Hilda Morris died on the 24th September, 1984.
- (n) The Defendant is not living on the Espinet Street property and had moved out of the premises. At the time of her death the Defendant was living at the deceased premises in Troumacaque rent free.
- (o) The deceased Henry James died on the 20th May 2005.
- (p) The relationship between the deceased and the Defendant were strained and they were not on speaking terms at the time of his death.

Issues

19. The parties in their written submissions identified the issues to be determined. I have “recast” those main issues for determination as follows:

- (a) What is the nature of the interest of the deceased Henry James in the Espinet Street property?
 - (i) Whether the Claimant has made out her case for adverse possession of the northern property and the land on the southern lot occupied by the concrete dwelling house.
- (b) What is the nature of the interest of the Defendant to the house and land at Espinet Street?
 - (i) Whether the Defendant is entitled to a one half share of the land and/or house by virtue of his ownership of an undivided one half share by the deed of gift.
- (c) What, if any, is the share and interest of the Defendant in the building/home constructed on the subject property by the deceased Henry James arising from the claim to a Proprietary/Possessory Estoppel:

- (i) whether the deceased unequivocally promised the Defendant that the entirety of the Espinet Street property will be his on the condition that he performed the works alleged;
- (ii) whether the Defendant acted upon that promise to his detriment;
- (iii) would it be unconscionable not to recognise the Defendant's equity; and
- (iv) how is the Defendant's equity if established to be satisfied?

The evidence

Mr Peters:

- 20. The Defendant's evidence in chief is contained in his witness statement. In brief the Defendant contends that he was born at the Espinet Street property. His mother moved out in the 1950's and he lived with his grandmother, Hilda Morris. He contends that both he and his grandmother lived in the concrete house (downstairs the main house) in a tapia covered shed. He contended that save for a wooden house constructed in the late 1960's on the south portion of the Espinet Street property by Rennie James, there was no other structure on the property.
- 21. In 1972 he was employed with WASA as a mechanic when he was about 18 years of age. He described a close relationship with his father who schooled him in a "lot of things". He learnt plumbing and masonry and carpentry at home and in the neighbourhood growing up.
- 22. In the early 1970s the deceased decided to build the "Troumacaque house". According to the Defendant the deceased discussed this with him and "he and I discussed that I would help build the apartment building and that eventually I would be able to benefit from the house. My father also began to tell me that I could own and be able to live at the Espinet Street property once I provided him with assistance in building the apartment building on the Troumacaque property Due to the close relationship I had with my father and being the only son, I was willing to enter into this project with him"
- 23. The assistance that the Defendant alleged he gave was not of a direct financial one but indirectly by means of his free labour. He "assisted" by among other things, in casting floors, walls, picking up materials and bricks all free of charge. He took time off from his job to help his father. He also said he gave up enrollment with the John Donaldson Technical Institute and he postponed

starting a family until after the apartment was built. He also stated that he went to the La Base dump to get materials for the construction. He claimed that he made bricks, ventilation blocks under the Espinet Street property for the apartment. The father and son enjoyed a good relationship while the Troumacaque property was being built. He estimated the value of his services to be in the sum of approximately \$45,000.00. The property was completed in the 1970's. At that time some repairs were required to be done to the Espinet Street home and he and his mother moved out to live on Lot 2 in a wooden house.

24. He claimed that he did the renovations at the Espinet Street property free of charge "Again this was done free of charge as I was promised by my father that the original house would be mine". He claims that was the entire understanding between himself and his father over the years. There is no evidence, however, that the deceased specifically requested that the Defendant conduct these renovations so that he could get a share in the property.
25. The Defendant then lived on lot 2 until according to him, his father asked him to live in the Troumacaque apartment because of a spate of burglaries.
26. He also claimed to have worked on another property on Old St Joseph Road. He claimed he did this on the same understanding. There is no evidence of any direct representation made by the deceased to the Defendant in relation to these works.
27. The Defendant claims that it was in 1996 that his father built an extension into lot No. 2. It was a 3 storey structure which came close to the wooden structure on lot 2. The Claimant and her family then begun to live there and his father and grandchildren lived in the original house. The downstairs apartments were then "tenanted".
28. In 1999 the Defendant revealed to the deceased his deed of gift. This is when, according to the Defendant, their relationship deteriorated. According to him, the deceased became very angry that the Espinet Street property was not left for him. The Defendant claimed that since 2002 he was trying to claim his half share to the Espinet Street property but was prevented from so doing. He was beaten by the children of the Claimant and was hospitalized. Since the 1980's he was paying Land and Building taxes and WASA rates since 2003.

29. Under cross examination, the Claimant was not a convincing witness. He commenced his cross-examination poorly. There were long pauses and he looked out of sorts, looking around the Court room before he answered his questions. I am of the view that this witness was not a credible witness and his testimony unreliable. My finding is based not only on his demeanour but on an assessment of his evidence adjudged against the contemporaneous documents and pleadings and the plausibility of his version of the facts. I say this for the following reasons:

(a) His answers were disjointed as though he was unsure himself as to what his case really was. When asked what was his claim, he said: "I claim for my share of the property plus what my father promised me". Later he says this in cross examination:

"Q: Mr Peters do you accept that the portion of land that you are claiming is by virtue of the deed of gift from Hilda, you are claiming for one half of Espinet Street property not so? A: No mam.

Q: In your pleading Mr Peters you said that at paragraph 15 which is 31 (b) of the bundle that is what you are claiming? A: My father gave me a property and he say if I work it I will get the Espinet Street property.

Your claim is for the entire Espinet Street property? A: Yes mam".

By his cross examination he makes a claim for the entire Espinet Street property and not merely to the house.

(b) He claimed that there were no shacks at all on the property before the concrete dwelling house was built. He also claimed that he and his grandmother always resided in the northern portion of the Espinet property. Indeed, in his examination-in-chief, he describes the original house as a concrete structure built on the northern portion with an upstairs and downstairs portion. This could not have been the original structure as the concrete dwelling house was built in the 1950's. The family must have lived in a wooden house prior to this construction. In an examination of the 1956 application for permission to build, the deceased stated that there were 4 shacks in existence that needed to be demolished.

(c) When his father began living with Doris Samuel (the Claimant's mother) the Defendant began living with his grandmother in the

downstairs portion in around 1956/57. He does admit that the downstairs was part Tapia on the northern side but stops short of admitting that the Tapia house extended to the South lot. He describes the original house as one concrete house and underneath the concrete house "to the back was my grandmother house". It is more probable that this Tapia house was the existing structure which housed the family before the concrete structure was built rather than, the impression created by the Defendant that the original structure comprised of a concrete dwelling together with the Tapia house.

- (d) He further admits however that his grandmother, Hilda Morris moved from the building when his father began to renovate the concrete structure. He said that this was in the 1980's. However, the Defendant seemed confused as to what exactly was gifted to his grandmother.

"Q: Where did you understand her land to be her one half? A: She was the owner of the whole house". It took several questions to get one answer from the Defendant and I got the impression that he was evasive. He eventually admitted that his grandmother was living on the southern side of the property when the land was conveyed to him by the Deed of gift.

"Q: Isn't it a fact that when Hilda Morris transferred it to you she was in fact residing in a structure on the southern portion of the land? No answer.

Q: In 1982 when Hilda transferred her one half share interest to you she resided in the southern portion of the property? No mam.

Q: In 1982 when Hilda Morris transferred her share to you where was she living? A: She was under the house she just renovated and move to southern part.

Q: In 1982 when she did the deed what part of the property was she residing on? The southern side".

- (e) The Defendant appeared to make up his story as he went along: He was ambivalent about his occupancy of Espinet Street and could not give a straight answer. At one breath he moved out in 1970s and in other he lived in both Espinet Street and Troumacaque for 10 years moving back

and forth and eventually moved out of the Espinet property in 1980's. He claimed to have moved out fully 10 years after 1979, that is in 1989. Then he claims he left in 1984, after Hilda Morris died. Regardless of his last date of occupation however, he never asserted a right or claim to the property since leaving the premises.

“Q: Now in your pleading you said in 2002 you attempted to claim your half share and was prevented from doing so, what prevented you? A: I went and talk to my father concerning it and he said he is the owner of the property.

Q: Your father did not acknowledge you had an interest in the property A: that is correct.”

- (f) He claims that he should have been receiving rent from the Espinet Street property since the 1980's but got nothing and did absolutely nothing to assert his rights.
- (g) In relation to his claim to improvements in the Espinet Street property, his only act of repair was allegedly the replacement of a beam and he was not convincing as to what part he played in the renovations to the Espinet Street property.
- (h) I recorded him as being an untruthful witness when he was shown his own documents filed in previous high court proceedings and he made every attempt to distance himself from it. In those proceedings his claim was clearly restricted to ownership of lot 2, the southern lot of the Espinet Street property and there was no claim made to the house. It is true that unlike the CPR, the statement of claim under the RSC is not signed by the client. However, the fact that there is no allegation of an estoppel in those proceedings or claim to more than just a half share of the property is consistent with the fact that the Defendant's claim to any share in the house only arose recently before the commencement of these proceedings. Since 1970 to 2004 there was unusual and absolute silence from the Defendant as to the alleged promises made by his father to his share of the Espinet Street property. If as he asserts, there was a good relationship over the years why was this alleged promise not communicated to other members of the family. If the relationship was bad as the Claimant contends, this promise as well would certainly have been communicated by the Defendant.
- (i) He admits that the deceased constructed the garage on the southern side of the property without any contribution from the Defendant. It was a big

shed. He admits that the new structure that was built on the southern lot was in fact constructed where the garage was.

- (j) In the face of the documentation that the WASA bills show that they were addressed to him in Troumacaque, he claims that he did not re direct the bills.
- (k) Crucially in relation to the alleged promises, his evidence in relation to the agreement with his father was vague and shifted generally. There was absolutely no corroborating evidence on such a vital and significant aspect of his claim. Indeed in one exchange he **stated:**
“Q: Did your father agree to you remaining at Troumacaque premises? A: Yes mam based on the promise I will get Espinet”. Here there is another version of the estoppel, that the Defendant lived in Troumacaque rent free on the basis that he will get the Espinet Street property. This is not only inconsistent with the pleadings but is not a plausible explanation of obtaining an interest in the Espinet Street property.
- (l) He denied ever being violent to his father yet he admits that his father issued domestic violence proceedings and obtained an injunction against him. He asserts that the relationship only turned sour when he told the deceased about the deed of gift. However, if it is true that the father had in fact made a promise to his son, the Defendant, that he will get the house at Espinet Street if he helped him do work at Troumacaque and other properties, then why should the father get upset to learn that his mother, Hilda Morris, had given the Defendant a half share in the property? In effect this fulfills the deceased very own wishes. I would agree with the Claimant that it is more probable that this relationship was strained well before the deceased learnt of the transfer of the property.
- (m) There is no corroborating evidence of the promises. There is no documentation to support the assertion that he paid land and building taxes and WASA rates over the years. The documents produced were of recent vintage. There is no documentation to support any claims of time off from work and any application made or acceptance of an application to be enrolled in John Donaldson Technical Institute. This Court is left to speculate as to whether these alleged claims of detriment were real or imagined.

Mrs. Rowley:

30. On the other hand I found Mrs. Rowley's evidence credible. I must admit however, that she was prone to exaggeration and there was a determined desire to minimize the Defendant's role in the renovations of various properties in which the deceased had an interest. She also could not attest to the veracity of matters that occurred in her early childhood and relied on what was told to her by her grandmother. Save for this observations she was a witness that responded quickly, clearly and directly to questions unlike the Defendant.
31. This witness in her evidence-in-chief, contained in her witness statement was very clear about the nature of the occupation of the Espinet Street premises. Her information on the early occupation of the premises was that her father was given permission to occupy the northern portion of the Espinet Street premises and remained in possession. She remembered the property being built by her father and was extended over the years. As a child she remembers the Defendant was already living in Troumacaque. She said he resided there until 2003. She said that her father allowed him to live there rent free. Her father migrated in 1974.
32. There was very little in her evidence-in-chief in relation to the construction of the Troumacaque property. She claimed that in 1975 he was behaving in a violent and menacing manner and was abusive toward Doris Samuel and her family. In 1974 he broke down the bedroom door because they refused to let him in the house. She claimed that the claimant would visit the home and intimidate and threaten them while the father was out of the jurisdiction.
33. In 1975 the father returned and they did renovations to the home in 1976. She claims that a permanent home was built in 1976 for the grandmother. She lived there until she died. She claims that it was only in High Court proceedings in 2004 that he made a claim to half share of the property and no mention was made of any promises prior to this litigation. In 1999 the abusive behaviour engaged the attention of the magistrate's court.
34. Under cross examination she painted a vivid description of the concrete house which was situate to the northern side of the property with "My grandmother's Tapia house which was tended in a southerly direction, part under the concrete structure and part exceeding the house".
35. In one of the exchanges with attorney for the Defendant, she quite candidly and instinctively recollected that when she was not working, she was "at home taking

care of my children and my father's business. I will make receipt for tenants, take messages for orders, he used to transport for customers. I take messages for sand or gravel for transport" Contrary to the Defendant's written submissions rather than interpret this as a fabrication, I noticed the instinctive and forthright manner in which she gave this evidence.

36. In a very interesting exchange in cross-examination she explained the nature of the occupation:

"Q: When did she move to the southern side, when did she leave the Tapia house and go to the southern side? A: In 1974.

Q: What happened to the Tapia house? A: It was demolished.

Q: Something else was constructed? A: The garage was constructed on the extension.

Q: Did Ms Morris go to live in another structure in 1974 on the lands? Yes sir.

Was something built for her to live in? My father renovated a house for her to live in?

Q: Before he renovated what did the house comprise of? A: A wooden and galvanize structure.

Q: The house was there before 1974? A: Yes.

Q: Who occupied the house before 1974? A: Renee James and Dean Belgrove".

37. She admitted that the Defendant did assist in the construction of the Troumacaque property although she claimed that this was a minimal role. However, she was very clear that her father instructed her mother to let him "remain there in Hitler Trace".

38. She described the relationship between the Defendant and the deceased as hostile, "as far back as late 1980s to 1990s it became increasingly worse but as far back as late 1980s and 1990s he was extremely hostile". However, the only time his father took legal action was in 2002.

39. She claims that the first concrete house was built in 1956. This is indeed consistent with the documentary evidence: the application for planning permission to build the house. It is noted on this document the deceased states that he was the owner of the property.

40. The Defendant was the more inconsistent of the two especially in the face of the documentation of his own bills, the town and country planning approvals for two

periods of construction (the first in 1956 and the second in 1976) and the previous high court action.

41. Further, I found that the two witnesses for the Claimant very helpful and assisted in making a determination of the various issues in this matter.

Elena Hutchinson

42. Ms Elena Hutchinson had no interest to serve and was an independent witness. She was a very elderly woman but her memory appeared to be still very sharp and when her memory was tested by attorney for the Defendant in reference to what she did the day before coming to court, she gave a very detailed and witty response. I found her to be unshaken in cross-examination. Indeed, the more she spoke the more credible the Claimant's version of the occupation of the Espinet property became.
43. She established the locations of the houses during the stage of construction. In contrast to the Defendant's version, there were shacks on the property before the concrete house was built. She corroborates the claimant's version that the Defendant lived with his grandmother to the south of the Espinet Street property and that there was in existence in the 1980s, the extension of the main house unto the southern lot. She also confirmed that the original concrete dwelling house was built by the deceased and Doris Samuel, his wife.

Anthony Walters

44. Anthony Walters was the final witness for the Defendant. He is the half brother of the Defendant. I also considered him as someone with no interest to serve. Although he was a beneficiary under the will he had nothing to gain under the will from the Espinet Street property. He was a very simple man and under cross-examination was very forthright and candid. He of course, did not know anything about any promise made between the Defendant and his "old man". He gave evidence in direct response to the alleged contributions of the Defendant. He also alleged that the defendant was abusive to the father and harassed the family when the father left the jurisdiction in 1975. He gave evidence that he assisted his father in building the Troumacaque property.
45. He too was unshaken in cross-examination. I do not agree with the submissions of the Defendant's attorney-at-law that he came to Court to deceive or sing with one voice with the Claimant. He gave a very candid account of both himself and

the Defendant growing up as children, helping their father where they could as they grew up juggling their duties with school and their chores at home. Their chores included working with their father as directed. Although he knew nothing of any promise made to the Defendant by the deceased, the contribution that the defendant made to the building of the Troumacaque property was consistent with their role as assisting the father as the children of the family. There could be no reward for this save natural love and affection, not to obtain a substantial benefit to any property. There was no giving up of free labour or any assessment of the cost of labour. The deceased had his workers and Mr Walters explanation of the role they played in constructing Troumacaque was consistent with work naturally done by children of the family.

“Q: At What point the Troumacaque property you see him working on Troumacaque property? A: When Troumacaque started for us it was chores, we did not have to do that it was to really assist. It was our chores, we were small fellas.....Sometimes we make a few blocs and sometimes the old man teach we to make bow tie blocks...When we come from school in the evening we assist mih old lady”.

46. He denied however, that they made any blocks for the old St Joseph Road property. “Old St Joseph Road was an old building. He get guys to fix it I did not do nothing on that...Mr. Peters did not participate either...”.

47. In another exchange under cross-examination: “Q: Is it that when Mr Peters finish school he did not assist your father with the truck? When we both finish school at the same time, we still assist him, we all still assist him...It was me and he together.”

48. He put to the lie the assertion that the Defendant assisted with the trucks continuously pursuant to some promise by the deceased:

“Q: When was the last time you know Mr Peters assist your father with the truck? I will say 1973 after that he used to assist me. If I wasn’t anything to do with the truck I go by him

Q: So after 1973 he did not assist? A: No because the old man leave in 1974 and come back in 1976, so Peters eh help at all in 1974 to 1976”.

49. He painted a very vivid picture of the Defendant being an abusive man towards his father.

“Q: Mr Walters I am putting it to you that Mr Peters is not a violent and abusive man? A: He not violent to me but to his father very abusive to his father.

In a moment of sincerity he said:

Q: Why you say he is abusive? A: Because of his behaviour when he come home he pelt and curse and get on. The love I had for he and father I never go that way with my father but Mr Peters had a distrustful way to his father.

Q: Why would he be disrespectful? A: I don’t know why he will be on his own endeavour.⁴

50. He was unshaken on his denial of the Defendant’s role in the renovations of the Espinet Street Property:

“Q: You don’t know what took place in Espinet Street? A: Mr Peters was not involved in Espinet Street...I know fully well I was part and parcel of those renovations.

Q: Mr Peters was involved in the renovations to Espinet Street in 1970s A: No sir he was not involve in that at all. I get the full shaft of that. I never leave”.

51. He also corroborated the Claimant’s testimony that the Defendant left to go to Hitler Trace in 1974.

Findings of fact from the evidence:

56. From these exchanges, as I had earlier pointed out, although both the Claimant and Defendant were prone to exaggeration, I found the Claimant more credible, consistent and convincing. Her version of the facts was supported on the material issues by the two witnesses. Ms Elena Hutchinson moreover had nothing to gain by this litigation. Mr Walters was another family member who worked closely with his brother, the Defendant and I paid close attention to their testimony. Based on the foregoing the following facts are found:

⁴ Why would he be disrespectful? I don’t know why he will be on his own endeavour.

I am putting to you also that Mr. Peters did not go to his funeral with a wrench and want to mash up his father face? I was there we even have it on film. We could arrange for you to see it. They call me inside, he had a wrench and wanted to mash up his face.

While he was making his remarks during eulogy I was outside. When the service started I was outside. Some ladies come inside and ask me to come and cool down mih brother. He had a wrench in his hand.

He did not behave in a threatening or menacing manner? I don’t know what else he could mean, a man have a wrench in he hand and he want to mash up he face.

- (a) The Defendant, his mother, the deceased and grandmother lived in a shack on the property before the concrete dwelling was built. The Defendant's mother moved out when the Claimant's mother began cohabiting with the deceased.
- (b) The deceased and the Claimant's mother built the concrete structure on the northern lot in 1956. This is consistent with the application for approval to build a concrete dwelling house with two storeys. The Deceased named himself as owner of the property. The fact that there was a Tapia house suggests that this was indeed one of the shacks on the property at the time which they occupied before the house was built. This is indeed consistent with the plausibility of the family living on the land while the house was being constructed. It was eventually extended to the Southern lot in the 1970's.
- (c) The Defendant being the child of a former wife did not stay in the main house and lived in the Tapia house with his grandmother Hilda Morris to the south of the property. The Defendant left the Espinet property in 1974 when the deceased undertook renovations on the said property and a structure was built on the southern side for the grandmother. The Defendant went to Hitler Trace. There was a bad relationship between the deceased and the Defendant even from this time and not as alleged by the Claimant as arising in the late 1990's.
- (d) No one knew about any agreement that he had with his father. He, helped his father when they were young with the other members of the family. The whole family chipped in after school on the properties where they could.
- (e) The grandmother, Hilda Morris was in occupation of the southern lot when she conveyed her half share interest to the Defendant.
- (f) The Defendant made no contribution to the Espinet Street property or to the Old St Joseph road properties. His contributions to the Troumacaque property and in repairing the trucks was consistent with that as a member of the family and fulfilling his duties in assisting his father like Mr Walters, not in furtherance of any promises made to him.

The co-ownership of the Espinet Street property

57. The Espinet Street property comprised 7,345 square feet of land. The Deed of Assent revealed that it comprised of two parcels of land (lots 1 and 2) and is co-owned by Hilda Lewis and one Moses Lewis. The construction and extension of

the concrete house has been in this litigation referenced against the lots that were demarcated in the survey plan.

58. The construction of the concrete house commenced around 1956 on what was demarcated as Lot 1. The Claimant submits that by virtue of the principles set out in *Mitchell v Cowie* (1964) 7 WIR 118 the house that was constructed is to be considered part of the land, notwithstanding the absence of any reference to the house in either the deed of assent or deed of gift.
59. The building was then extended in 1976. This was when renovations were done to the main house. There is an application for building permission though no evidence that it was completed as there is no completion certificate. But it is consistent with the evidence that in 1974 three things happened (a) the Defendant moved out; (b) the main home was repaired; and (c) the grandmother was accommodated in another structure. The house which presently existed was completed in the 1980's. The car park was covered and extended in the 1970 to 1980s.
60. The Claimant submits that Hilda Morris was the owner of lot 2 and that this represented her half share of the Espinet Street property that was conveyed to the Defendant by the Deed of Gift. This submission, however, ignores the fact that the shares held in the property are undivided half shares.
61. It is not in dispute that the legal title in the said property is now in the names of the Defendant and Moses Randolph Lewis as tenants in common. A tenancy in common resembled joint tenancy in matters depending on unity of possession. The occupation was undivided, and neither owner could claim a separate part save by obtaining partition⁵. One tenant in common who received more than his share of the rents and profits was liable to account to the others⁶, and a tenant in common would be restrained by injunction from destructive waste⁷⁵. See Halsbury Laws of England 2nd ed Vol 26.

“Land belonging to co-owners may be partitioned by agreement if all the parties are sui jeneris or have power conferred on them by law or by act of a

⁵ 1 Co Lit 189a; 2 Preston's Abstracts of Title 75. As to the four unities of title, interest, possession and time see PARA 193 ante.² See Challis's Law of Real Property (3rd Ed) 370.3 This followed from the consideration that each share was a separate freehold: Challis's Law of Real Property (3rd Ed) 370. Accordingly, it could be limited in any way possible for a freehold independently of the other shares. As to limitations of cross-remainders in undivided shares see Challis's Law of Real Property (3rd Ed) 370–373.4 2 Bl Com (14th Edn) 194.5 Thus if one tenant in common ousted the other he was guilty of trespass: see *Jacobs v Seward* (1872) LR 5 HL 464.

predecessor in title. In default of agreement any co-owner could before 1926 commence a partition action and the Court could order a partition or order a sale of the land in lieu of partition” See Halsbury Laws of England Vol 26 2nd ed paragraph 743.

62. There has been to date no partition of the said property. There is no pleading by the Claimant seeking a partition by agreement nor relief sought to partition same.
62. Ordinarily the matter will end here and the Court will have to declare that the Defendant is entitled to his undivided half share of the said property. However the relevance of the Claimant’s plea of adverse possession is that if she succeeds in demonstrating that she and her predecessors in title have been in undisturbed occupation of the land with the required animus then it ousts the co-owners’ rights and the Defendant would not be able to assert any claim to that portion of the property in occupation by the Claimant.

Adverse possession

61. The Defendant submits that the concept of adverse possession is misconceived. Hilda Morris, one of the co-owners occupied the land until her death in 1984. She had conveyed her undivided one half interest to the Defendant in 1982. Further, the Claimant’s case is that the co-owners, Hilda and Moses Lewis gave their consent to the construction of the main building. This submission is confirmed by the Claimant’s attorney-at-law in her skeleton arguments in which she acknowledges that the concrete dwelling house was built with the permission of both, Hilda Lewis and Moses Lewis. I agree with the submission of the Defendant that no adverse possession can arise when the owner, that is Hilda Morris, is in possession. Further there is no animus if the possession of the Claimant is with the consent of the true owners. However the real question in this case is on animus which must be determined from the character of the occupation as well.
62. The difficulty in this case, is this. Firstly, when the concrete house was built in 1957 the land was owned by Sarah Lewis and not Moses Lewis and Hilda Morris. They became owners by Deed of Assent only in 1962 after the deceased built the main house on Espinet Street. Second, accepting that the permission of Moses Lewis and Hilda Morris was relevant, the deceased however described himself as the “owner” in his application for permission to build the main building clearly demonstrating at least an intention to possess and at the highest evidence to

support an intention to exclude the paper title holder. Third, the deceased and the Claimant remained in undisturbed occupation of the premises after the death of both co-owners and after the conveyance of the undivided half share to the Defendant in 1982. More than 16 years had elapsed before the Defendant commenced the first high court proceedings by his previous attorneys at law.

63. The onus is on the Defendant to prove (a) factual possession of the land for 16 years before the commencement of an action by the paper title owner for recovery of possession; and (b) the animus possidendi, the intention to possess the land and exclude the paper title owner so far as is reasonably practicable⁶ See **Wills v Wills**, [2003]1 P. C.R., 37, and **Higgs v Lershel Maryas Investment Company Limited**, 2009 WL 3829376 **JA Pye (Oxford) Ltd v Graham**, [2002] UKHL 30 and **Ali, Manzoor [plaintiff/respondent] v Tobago House of Assembly** CA 43 of 2008 **Latmore Smith, Grace v Benjamin, David** [C.A.CIV.67/2007]

64. What falls for determination in my view, in relation to the Defendant's undivided half share, is the nature and quality of the occupation of the premises after 1982 (when the undivided half share was conveyed to the Defendant). At that time the Defendant was not residing on the premises and any issue with regard to permission being sought or obtained from Hilda Morris is irrelevant. Hilda Morris was no longer the owner. There was no consent sought by the deceased from the Defendant to continue his occupation and the evidence of occupation

⁶ In *Powell's* case at pp 470-471 Slade J said:

'(3) Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed ... Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so.....'

With regard to the second element, Slade J in *Powell* defined the intention to possess as follows⁴:

"What is really meant, in my judgment, is that the animus possidendi involves the intention, in one's name and one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow."

demonstrated a treatment of the land as the deceased's to the exclusion of others. This can be seen from the repairs and renovations executed by of the Espinet Street property. The evidence of the bad relationship between the deceased and the Defendant would support the case of the Claimant's occupation being adverse to the Defendant after 1982. The facts in this case demonstrate that the Defendant as a co-owner of the property was (a) not in actual possession of the premises from 1982 to the present and (b) never asserted a claim between 1982 to 2003 (when he filed his first action) a period of 21 years (c) the deceased continued to treat the land as his.

64. In the case of co-ownership adverse possession equally applies where the ownership of one co owner can be effectively ousted by the possession of land by another co-owner subject to the qualification that the possession is not for the benefit of the ousted co-owner. The proposition was summarized by Justice Malone in **Dookharan v Babonee** (1971) 18 WIR 101 following the Privy Council's decision in **Paradise Beach and Transportation Co Limited v Price Robinson** [1968] AC 1072. See also **Riley v Braithwaite** (1979) 37 WIR 66 and **Bowes v Spencer** (1976) 23 WIR 122.
64. The evidence reveals that the Defendant did not do anything to assert his title to the said property since 1982 when the deceased maintain open possession of the said land as his own.
65. There is no claim by the Claimant however for a possessory title for the Espinet Street property and this Court cannot so declare as the co-owner, the estate of Moses Lewis, is not a party to these proceedings. Insofar as the Defendant is concerned this Court finds that the Claimant and her predecessor in title has been in exclusive and undisturbed possession of the Espinet Street property to the extent shown on the sketch that is the northern lot with an encroachment into the southern lot. To the extent that the Defendant is the paper title owner of an undivided half share, his right to assert such an interest or title is extinguished to the extent of the said occupation to the land occupied by the Claimant. As a consequence of this the Defendant's claim in CV 2740 of 2009 seeking a declaration that he is a half owner and order for possession of half of the Espinet Street property cannot be sustained. I agree with Counsel for the Defendant however that his claim can be saved through the plea of promissory/proprietary estoppel, however based on the evidence that plea also fails.

Promissory/Proprietary Estoppel

65. The recent decisions of the House of Lords in **Thorne v Major & Others** [2009] UKHL 18 and the Privy Council in **Henry v Henry** clarifies the law of proprietary estoppel. This as well as promissory estoppel is a doctrine developed to deal with unconscionable conduct and developing a method to rectify any inequality caused by unconscionable conduct. In **Gillett v Holt** [2000] 2 All ER 289, [2001] Ch 210 Lord Walker of Gestingthorpe (Robert Walker LJ, as he then was) discussed the nature of the doctrine of proprietary estoppel and the general principles underlying that doctrine. There should be a representation upon which the other relies to his detriment (i.e) an encouragement, assurance or any conduct which makes the other believe that he has or will have title or some other interest in land. The main ingredients of this doctrine are set out as-

- (1) In the first place the plaintiff must have made a mistake as to his legal rights.
- (2) The plaintiff must have expended some money or must have done some act (not necessarily upon the defendant's land) or suffered some detriment on the faith of his mistaken belief
- (3) The defendant, the possessor of the legal right, must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff. If he does not of it, he is in the same position as the plaintiff, and the doctrine of acquiescence is founded upon conduct with a knowledge of your legal rights.
- (4) The defendant, the possessor of the legal right, must know of the plaintiff's mistaken belief of his rights. If he does not, there is nothing which calls upon him to assert his own rights.
- (5) The defendant, the possessor of the legal right, must have encouraged the plaintiff in his expenditure of money or in other acts which he has done, either directly or by abstaining from asserting his legal right.

66. In the course of his judgment in that case Lord Walker said this ([2000] 2 All ER 289 at 301, [2001] Ch 210 at 225):

'... although the judgment is, for convenience, divided into several sections with headings which give a rough indication of the subject

matter, it is important to note at the outset that the doctrine of proprietary estoppel cannot be treated as subdivided into three or four watertight compartments. Both sides are agreed on that, and in the course of the oral argument in this court it repeatedly became apparent that the quality of the relevant assurances may influence the issue of reliance, that reliance and detriment are often intertwined, and that whether there is a distinct need for a “mutual understanding” may depend on how the other elements are formulated and understood. Moreover the fundamental principle that equity is concerned to prevent unconscionable conduct permeates all the elements of the doctrine. In the end the court must look at the matter in the round.'

67. In **Thorne**, Lord Walker simply concluded that “the relevant assurance must be clear enough” and “what amounts to sufficient clarity is hugely dependent on context”. The relevance of context is something that Lord Neuberger also referred to as being of real importance. Lord Walker also observed that trial judges recognise the need to subject the evidence to careful scrutiny, citing **Jones v Watkins** as a good example of an exaggerated claim being rightly dismissed.
67. The Defendant’s legal submissions on proprietary estoppel are undisputed. However, in the context of this case, the plea is unsustainable on the facts. The Defendant fails on the first hurdle to satisfy the Court on a balance of probabilities that the deceased made the, or any assurance or representation as alleged by the Defendant.
68. The defendant speaks of promises by his father and a “general understanding between my father and I over the years that the Espinet Street property would be left for me.”
- There has been no allegation that this promise was made to him in the presence of any living person at any time.
 - This promise of the father is one which the defendant contends was made repeatedly over the period 1970’s to 1999 when their relationship broke down (after he informed him of the gift)
 - The promise was made from as early as the construction of the Troumacaque property when the defendant was a teenager.

- There is no allegation that the deceased at any time prior to his death acknowledged such promise nor is there any documentation to support such.
- The defendant has never prior to the claim in 2010 made such claim to entitlement even after the breakdown in relations between the defendant and the deceased
- In fact the contrary is supported by the omission in the previous proceedings where there was never any claim or allegation made of such promise.

These fact make it more probable that no assurance was ever made to the Defendant.

69. No promise could have been made in such a poor relationship. Despite the suggestion advanced by the defendant, the evidence of the claimant is that the relationship of the defendant and the deceased was not good.

- The defendant lived with the grandmother and even after the death of grandmother never resided with the deceased.
- The defendant left Espinet Street and went to live in Trou Macaque in 1974 and resided there never returning to Espinet Street
- The personal relationship of the defendant and his father was always abusive.
- The defendant and the deceased were on more than one occasion during the lifetime of the deceased been engaged in litigation including Domestic Violence Proceedings.

70. In this respect I accept the evidence of Anthony Walters and the claimant given in cross-examination that the defendant did not share a good or close relationship with the deceased and neither did he assist him. This case therefore is in contrast to other cases on proprietary estoppels which were against a backdrop of a good relationship between the representor and representee.

71. The detriment the Defendant alleges consist of not being able to enroll in John Donaldson Technical Institute; delayed starting his family; sacrificed evenings and weekends holidays and days off. This evidence is not supported and is inconsistent and unreliable in many respects. There is no application to enroll in John Donanldson

Institute, the alleged sacrifice was no more than what the other siblings did to assist their father, there is no evidence to corroborate a delayed start to his family or that it was done in furtherance of any promise made to him by the deceased. The Defendant's claim to any share or equity in the house built on Espinet Street therefore fails.

Conclusion

72. In the circumstances therefore the Defendant's undivided one half share in the Espinet Street property conveyed by the Deed of Gift has been extinguished to the extent of the Claimant's occupation of the Northern and Southern lots, lots 1 and 2. The Defendant is only entitled therefore to a one half interest in the unoccupied portion of the Espinet Street property. The Defendant's claim and counterclaim is dismissed.

73. The Claimant is entitled to probate of the will in solemn form. In light of my findings however of the deceased's interest in the Espinet Street property at the date of making the will, prudence would dictate that an appropriate application should be made against the other co-owner, Moses Lewis, to obtain a declaration of the deceased's right and interest in the land before it can be included as part of the deceased's inventory. Attorney for the Claimant was content in this case only to seek to assert her interest as against one co-owner the Defendant. Of course the estate of Moses Lewis also has a right to file a caveat to have its interest in the Espinet Street property determined before the estate is administered. Unfortunately I can make no final declaration as against the interest of Moses Lewis in these proceedings as they are presently constituted.

Costs

74. I will hear counsel on costs.

May 27,2011

Vasheist Kokaram
Judge