

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-01636

BETWEEN

CARLTON MAYNARD

Claimant

AND

CECIL CUMBERBATCH

Defendant

Before the Honourable Mr. Justice V. Kokaram

Date of Delivery: Wednesday 8th November 2017

Appearances:

Ms. Beverley A. Lushington for the Claimant

Mr. Shastri A. Roberts instructed by Ms. Allison E.L. Roberts for the Defendant

JUDGMENT

Introduction

1. The problem of the competing rights of landowners with that of their statutory tenants or squatters can be a vexing one. Unless landowners take the trouble to ensure that their tenants conform to the terms of their tenancies or that immediate steps are taken to lawfully recover possession, equitable doctrines and limitation periods may well debar the landowners from recovering possession of their land. Land in this context no doubt is a valuable asset representing a landowner's investment or inheritance. It is a place to call home for the tenant or occupant. The desire to regard one's occupation as being permanent naturally gives rise to tension between the landowner and occupant. Often times as seen in this case close knit relations between occupants and landowners create that familiarity from which springs perceptions or misconceptions of the acquisition of interests in land superior to that of

landowners. Such close knit relations however soon fall apart when the possibility and trauma of losing a home becomes imminent. While negotiations and mediations are often times the most appropriate method of working out practical solutions for such disputes, the Court, guided in the most part by a wide equitable jurisdiction, can safely and¹ innovatively navigate these competing rights in land ownership to fashion appropriate remedies. Even then, the Court should approach the task of dealing with families embroiled in such land disputes therapeutically.

2. The Maynard and Cumberbatch families are embroiled in their own land dispute over ownership of the tenanted land.² These families at one time shared a close relationship. It is not in contest that the Claimant, Mr. Carlton Maynard, is now the owner of the tenanted land (for convenience I will refer to Mr. Carlton Maynard as Mr. Maynard). The Defendant, Mr. Cumberbatch Junior, is an occupier living on the tenanted land which his father Mr. Cumberbatch Senior held as the statutory tenant of Mr. Maynard.
3. In the year 1991, the families got together to discuss the sale of the tenanted land from the Maynards to the Cumberbatch family. The Maynards were in need of money and once the price was agreed, they then put “everything in their respective attorneys’ hands”. Although the correspondence passing between the parties’ attorneys in this case reflected an agreement to sell the said tenanted land for forty three thousand dollars (\$43,000.00), the contract for sale which was tendered by attorneys for Mr. Cumberbatch Junior, was not formally executed by Mr. Maynard. It is not altogether clear why the sale was not completed but nothing seemed to come of the sale despite the repeated calls on Mr. Maynard’s attorney to complete the sale over the period 1991 to 1997. There was eventually stone silence from Mr. Maynard’s attorney who was dealing with that transaction.
4. Nevertheless, since 1991, the Cumberbatch family stopped paying rent at the behest of Mr. Maynard. Since that time, Mr. Cumberbatch Junior and his family believed themselves to be the owners of the tenanted land by virtue of what they believed to be their agreement to purchase the tenanted land from the Maynards. Mr. Cumberbatch Junior commenced

¹ As shown recently in the Court of Appeal decision in in **Mary Gomez et al v Ashmeed Mohammed** CA No. S153 of 2015.

² LP 11 Four Roads Broome Street, Diego Martin.

constructing his home on the tenanted land. Mr. Cumberbatch Senior meanwhile passed away in 2006.

5. Mr. Maynard, without terminating the lease for non-payment of rent or calling upon the Cumberbatch family to pay rent, contends that since the statutory tenancy expired by effluxion of time in May 2011, he is now entitled to possession of the said tenanted land. His claim for possession has been met by the Defence of Mr. Cumberbatch Junior raising the issues of proprietary estoppel, adverse possession and a counterclaim for specific performance of the agreement for sale.³
6. At the core of Mr. Cumberbatch Junior's case is that he believed that an agreement for sale to purchase the tenanted land was in effect for the sum of \$43,000.00 and calls upon Mr. Maynard to perform that agreement. However, if Mr. Cumberbatch Junior is right, that both himself and his father, the statutory tenant, stopped paying rent on the basis that they believed themselves to be the owners of the tenanted land pursuant to that agreement, then it is argued that Mr. Maynard's title to the tenanted land may well have been extinguished by virtue of Section 9 of the Real Property Limitation Act Chap. 56:03⁴. If that is so, then not only has Mr. Maynard lost his property to Mr. Cumberbatch Junior, but he would have missed out on receiving any purchase price for the tenanted land as previously envisioned.
7. I raise this at the beginning of the judgment to underscore two important matters in this dispute. First, the exercise that the Court is being asked to conduct more so by the Defendant, Mr. Cumberbatch Junior, is primarily to do equity between the parties. Indeed, the concept of proprietary estoppel is rooted in the concept of fairness and avoiding an unconscionable result

³ Mr. Cumberbatch Junior counterclaims the following reliefs:

- a. A declaration that the Claimant's title to the said lands has been extinguished in favour of the Defendant by virtue of the provisions of sections 3, 9 and 22 of the Real Property Limitation Act Chapter 56:03.
- b. A declaration that the Claimant is estopped by virtue of the doctrine of proprietary estoppel from ejecting the Defendant from the said lands.
- c. Alternatively, a decree of specific performance of the agreement for sale made between the Claimant of the one part and the Defendant's father and predecessor in title Cecil Cumberbatch Senior of the other part.

⁴ Section 9 of the Real Property Limitation Act provides:

"9. When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant from year to year or other period, without any lease in writing, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy shall have been received (which shall last happen)".

having regard to all the circumstances of the case and in particular, both the expectations and conduct of the parties.

8. Second, to underscore the importance of determining whether there was an agreement for sale between the parties. The existence of an agreement not only roots a defence firmly in proprietary estoppel and the counter claim for specific performance, but also arguably raises the question whether the relationship between Mr. Cumberbatch Junior and Mr. Maynard was altered by this arrangement. Altered to the extent of converting Mr. Cumberbatch Junior's occupation from one of a licensee of a statutory tenant to that of occupier by a purchaser of land awaiting completion of the sale. Not only do certain equities arise in such a scenario but conceptually, an occupation which may debar the owner from asserting his title pursuant to the Real Property Limitation Act. To this end, this case is different from a scenario where a squatter's occupation on a tenancy affects the tenancy and does not affect the right of the landlord who is entitled to possession upon the termination of the lease.
9. Moreover, the Court has approached this matter with a therapeutic key. Having regard to the fact that the parties did once share a close relationship⁵, the Court offered and the parties have agreed to a process whereby the Court will deliver this ruling in draft form together with the final order in draft. The order will not be entered immediately. Instead time will be afforded to the parties to reflect upon the draft judgment and the order and to enter into "without prejudice" negotiations. Thereafter, they will return to the Court within fourteen (14) days to indicate whether they will enter into a consent order on such terms as they agree to finally settle their disputes. If so, their consent order will be entered representing their final and binding agreement. If there is no agreement, the Court will then formally enter its draft order as a final order. I referred to this mechanism in **Wayne Greaves v Joseph Wilson and Alma Greaves** CV2016-02213 as a useful way of assisting parties in arriving at a final resolution of their dispute saving them the expense of an appeal when the acrimony in their dispute may still fester after a ruling by the Court. Therapeutically, much can be gained by parties accepting to be bound by an agreed result rather than one being imposed on them.

⁵ See the cross examination of Carlton Maynard "Mr. Cumberbatch was like my brother Daniel's father."

10. In my view, the parties were ad idem on a sale of the tenanted land to the Cumberbatch family, Mr. Cumberbatch Junior in particular, for the sum of \$43,000.00. In any event, if I am wrong on that conclusion, it is clear to me that the evidence demonstrates that both Mr. Cumberbatch Senior and Mr. Cumberbatch Junior genuinely believed themselves as having entered into an agreement for the sale and acquisition of the tenanted land based on Mr. Maynard's actions and representations. Based on this belief, they treated the tenanted land as their own, not as tenants and at the least, as purchasers, awaiting their executed agreement for sale. Indeed, they stopped paying rent and no rent was sought from them after 1991. Mr. Cumberbatch Junior invested and constructed a significant concrete structure as his home. Clearly, a state of affairs had been created by both families that engendered the belief that the 'landlord and tenant' relationship was now 'land owner and occupier'. Mr. Maynard took no steps to enforce his rights as landlord nor terminate the tenancy nor to disabuse the mind of the Cumberbatch family that he had resiled from the agreement to sell or that he would have evicted the Cumberbatch family as tenants.
11. It is unconscionable in the circumstances for Mr. Maynard to now be heard to say some twenty five (25) years later that "Although I have not asked for rent while you failed to pay and although you have constructed buildings on the tenanted land without my permission and although I took no action against you to recover rent or to terminate our relationship and although I never unequivocally indicated to you that our arrangement to sell the tenanted land to you was off, I am still to be treated as the owner entitled to vacant possession notwithstanding my representations and actions". Applying the principles of equity, it must be unconscionable and inequitable for a landlord to so conduct his affairs with his tenant.
12. However, from my analysis, it is not a proper case for the application of the doctrine of adverse possession as the statutory tenancy once created in 1981 continues in existence until terminated in 2011. Notwithstanding the belief held by Mr. Cumberbatch Junior and Mr. Cumberbatch Senior, it does not alter their legal status as tenant in the first instance of Mr. Cumberbatch Senior and a licensee of the tenant in the case of Mr. Cumberbatch Junior. Until the sale was executed, they remained tenant and licensee respectively awaiting completion of the sale. To hold otherwise would be to ignore the agreement for sale which is the main plank of the

Defendant's defence and their own willingness to pay Mr. Maynard the agreed purchase price for the tenanted land.

13. For the reasons set out in this judgment, the claim would be dismissed and the counter claim succeeds for the specific performance of the agreement to sell the tenanted land to Mr. Cumberbatch Junior. This must be done within six (6) months of the date of this Order. In default of the Claimant completing the sale, the Court declares that the Defendant has acquired an estate in fee simple in the tenanted land.

Brief Synopsis of the Claim

14. Mr. Maynard's pleaded case is straight forward. He claims that the statutory tenancy expired by effluxion of time on 31st May 2011. In recognition of the chattel house constructed by the statutory tenant, he was willing to pay the market value for the chattel house and requested a valuation. He issued notices to quit. In response to these notices, Mr. Cumberbatch Junior sent numerous letters insisting that the tenanted land be sold to him for \$43,000.00. Mr. Maynard acknowledged that in 1991 he attempted to have statutory tenants purchase the lands on which their chattel houses were built. He contends that although discussions commenced for the sale of the tenanted land with Mr. Cumberbatch, it was with Mr. Cumberbatch Senior and not Mr. Cumberbatch Junior and in any event it never materialized.
15. Mr. Cumberbatch Junior in his Defence⁶ contended firstly that Mr. Maynard's rights and title to the tenanted land have been extinguished in favour of the Defendant. Mr. Cumberbatch Junior relies on his continuous occupation since birth on the tenanted land, the failure by Mr. Maynard to assert any right to the tenanted land notwithstanding the non-payment of rent after 1991 and the treatment by himself and his family of the tenanted land as their own. Second, he pleads that after extensive negotiations and correspondence the parties concluded an agreement in writing for the sale of the tenanted land. Third, in raising the plea of proprietary estoppel, he relies on the representations made in 1991 by Mr. Maynard to sell the tenanted land, their acceptance and their treatment of the tenanted land as their own. He pleaded that:

"In the year 1991 and prior thereto the house was a simple 3 bedroom bungalow comprising a living room, kitchen, porch and toilet and bath. After the Defendant got

⁶ Filed 30th June 2016.

married in the year 1995, his father allowed him to add to the house and he constructed a 27 feet x 55 feet addition at the side of but attached to the main house with a living area on top with a garage below. The top area comprises 2 bedrooms, and a living room, study, kitchen, porch and toilet and bath. The Defendant, with the assistance of his wife, between the period 1995 to 1998 constructed this addition using personal savings and monies earned from their respective jobs. Indeed, the Claimant's attorney in her letter to the Defendant's Attorney dated the 20th April, 2013, acknowledges the existence of the additional structure ".... As being constructed in or about 1993 to 1996". Since that time, the Defendant and the members of his family have also carried numerous small renovations and improvements on a piecemeal basis to the house including having the roof completely redone in the year 2004 and rewiring the premises. The Defendant avers that he expended upwards of \$200,000.00 improving the house standing on the said lands and contends that it is worth a considerable sum today. A valuation is being undertaken by the Defendants in this behalf from a recognised valuator and this valuation report will be relied on at the trial of this action. Indeed, the receipts which remain in the Defendant's possession for the renovation works, which represents only a fraction of the total cost of materials, amount to approximately \$140,000.00. The Defendant intends to rely at the trial of this action on those receipts (as remain in his possession) for materials which were purchases for renovations over the years."

16. At the trial there was no attempt by the Claimant to contradict this evidence and the Defendant's evidence of this significant investment remained unchallenged. In his Reply⁷, Mr. Maynard insists that no contract was signed to sell the tenanted land and no purchase price or deposit was paid. He also contends that he took no step to obtain possession prior to the expiration of the statutory tenancy as he wanted to avoid the expense of eviction proceedings under Section 5 of the Land Tenants (Security of Tenure) Act Chapter 59:54.
17. At the trial, Mr. Maynard led evidence through himself and his brothers, Mr. Phillip Maynard and Mr. Daniel Maynard. Mr. Cumberbatch Junior led evidence through himself, his wife, Mrs. Cleghon Cumberbatch and his sister, Ms. Gloria Finley-Morgan. There was an agreed bundle

⁷ Filed on 29th July 2016.

of documents⁸, the respective parties' statement of facts and issues⁹, and the list of unagreed documents.¹⁰ Usefully, before the trial commenced, the parties filed their respective propositions of law.¹¹

The Narratives

18. In Mr. Maynard's evidence in chief¹², he stated that he became the registered proprietor of the tenanted lands on 6th May 1991. His family always lived on the said lands along with some of his siblings together with the tenants. After the death of his father, he wrote to the tenants informing them that he was now the owner of the tenanted lands. He contended that in 1991, he needed money for legal fees for his grandfather and father's estate so he and his brothers approached two of the tenants with the intention of selling the portions of tenanted lands on which the tenants' houses were built. Mr. Cumberbatch Senior was one of the tenants who agreed to purchase a portion of the said lands. According to Mr. Maynard, he never had any discussions with the Defendant, Mr. Cumberbatch Junior, concerning the sale of the tenanted land.
19. While negotiations were ongoing with Mr. Cumberbatch Senior, a construction of a building adjacent to Mr. Cumberbatch Senior's began which he gave no permission for nor did he give permission to the Trinidad and Tobago Electricity Commission (T&TEC) to install electricity in the said building. He contended that the agreement for the sale of the said lands was never finalized and he never received any deposit for the sale of the said lands. He also never received any notice from Mr. Cumberbatch Senior nor his son for the renewal of the Statutory Lease.
20. In his cross examination, Mr. Maynard agreed that by July 1991, he and Mr. Cumberbatch Junior arrived at an agreement about the sale of the tenanted land and the formalities of the sale were also agreed upon by virtue of his attorney's letters in 1991. It was his position that communication had broken down with regard to the sale of the tenanted land and which culminated into an outright refusal by Mr. Cumberbatch Senior about the said sale. He was firm in his stance that he did not give permission for the building to be constructed adjacent to

⁸ Filed on 10th April 2017.

⁹ Filed on 10th April 2017.

¹⁰ Filed 10th April 2017.

¹¹ Defendant and Claimant's propositions of law filed on 24th April 2017.

¹² Filed on 4th May 2017.

Mr. Cumberbatch Senior's house. He testified that Mr. Cumberbatch Junior was not a tenant of his but rather his father was the statutory tenant and as such Mr. Cumberbatch Junior illegally built his house on the said lands.

21. Mr. Phillip Maynard is the Manager of the said lands. In his evidence¹³ he stated that in 1991, Mr. Cumberbatch Senior agreed to purchase the tenanted lands on which his house was built on for the sum of \$47,000.00. He stated that he told Mr. Cumberbatch Junior to stop the construction of the building next to Mr. Cumberbatch Senior since it was done without their permission. However, since he was not living in the vicinity of the tenanted land during 1990-2000, the construction of the building was recommenced and he discovered that it was completed when he visited the said lands in 1992.
22. In his cross examination, he stated that the price for the sale of the said lands was reduced to \$43,000.00 during the discussions. He was also adamant that his family was not doing business with Mr. Cumberbatch Junior but only with Mr. Cumberbatch Senior. He however could not explain why his own attorney's letters were addressed to Mr. Cumberbatch Junior. He testified that he knew Mr. Cumberbatch Junior was doing business on the land by running a garage and he stopped him from building on the tenanted land but Mr. Cumberbatch Junior ignored him. He was firm in his stance that they had no agreement with Mr. Cumberbatch Junior to purchase the tenanted land and that Mr. Cumberbatch Junior was squatting on his father's tenancy. He testified he made complaints to T&TEC when Mr. Cumberbatch got the meter for the electricity.
23. Mr. Daniel Maynard stated in his evidence in chief¹⁴ that he was responsible with his brothers for the discussions with Mr. Cumberbatch Senior regarding the sale of the said lands and that he never had any discussions with Mr. Cumberbatch Junior. In his cross examination, he testified that he was not aware if a draft agreement was prepared for the sale of the tenanted land. He stood by his position that he did not have any negotiations with Mr. Cumberbatch Junior for the sale of the said lands. A key aspect of the Claimant's narrative is that they entrusted the negotiation with regard to the sale with their attorney Mr. Saunders.

¹³ Filed on 4th May 2017.

¹⁴ Filed on 4th May 2017.

24. For the Defendant, Mr. Cumberbatch Junior in his evidence in chief¹⁵ stated that it was agreed between his father and himself that they would purchase the said lands and that he would pay for same. He contended that his lawyer made a number of attempts to contact Mr. Maynard's attorneys about finalizing the sale agreement but they did not receive any response. During the period 1992-2014, he and his family carried out renovations on the house on the said lands. He was assisted by his wife in that regard when they got married. He stated that he built two rooms in the downstairs of the house for him and his first wife during his early 20's. In 1992, he began renovating the house more regularly and after he married his second wife, Mrs. Clevhon, his father gave him permission to make an addition to the house. This addition or annex has two bedrooms, a living room, study, kitchen, porch, toilet and bath. He stated that Mr. Maynard treated him like the owner of the said lands and further that Mr. Maynard did not prevent him from conducting constructions and renovations on the said lands.
25. In his cross examination, he testified that he was present with his father when negotiations were on going about the sale of the said lands and that his father told him that he would be the one responsible for paying for the said lands. He was firm in his position that no one prevented him from constructing on the said lands.
26. In Ms. Clevhon's evidence in chief¹⁶, she stated that she assisted her husband in constructing the annex of the house. She further contended that extensive renovations were carried out on the annex and the family home during the period 1995-2014 and that she was not aware of Mr. Maynard stopping Mr. Cumberbatch Junior from building on the land. In cross examination, she testified that construction was taking place on the property in the said lands before she got married to Mr. Cumberbatch Junior. She stated that by 1998, the construction of the property was completed.
27. Ms. Finley-Morgan stated in her evidence in chief¹⁷ that during the period 1991-2014 extensive renovations were carried out on the house by Mr. Cumberbatch Junior which included the renovation of the kitchen, addition of a room at the back, changing the wooden flooring to concrete, addition of indoor toilet and bath, changing the roof, doors and door frames, painting

¹⁵ Filed 4th May 2017.

¹⁶ Filed 4th May 2017.

¹⁷ Filed 4th May 2017.

the house, addition of railings on the steps, constructing a front wall with gates and steps at the back and side of the house. She further stated that Mr. Maynard never said anything about the renovations which were being conducted on the house.

28. In her cross examination, she testified that she was aware that in 1991 an offer was made to her father about the sale of the said lands.

29. I turn now to the relevant issues to be determined.

The Issues

30. The issues raised by the parties which fall for determination are:

- a) **The Tenancy:** Whether the Defendant is a statutory tenant under the Land Tenants (Security of Tenure) Act. If not, what is the nature of his interest?
- b) **The 1991 Agreement:** Whether the parties entered into an agreement for sale evidenced in writing for the sale of the tenanted land.
- c) **Specific Performance:** Whether the Defendant is entitled to specific performance of the said agreement if it was made.
- d) **Proprietary Estoppel:** Whether in any event, the negotiations for the sale of the said land and the conduct of the parties give rise to an estoppel debarring Mr. Maynard from possession.
- e) **Adverse Possession:** Whether in any event Mr. Cumberbatch Junior occupied the tenanted parcel with the intention of owning it in his own right for more than 16 years effectively extinguishing Mr. Maynard's title under the Real Property Limitation Act.

31. I have analysed the evidence advanced by both parties in considering each of these issues below.

The Tenancy

32. It is not in contest that Mr. Maynard is the owner of the tenanted lands by inheritance. Mr. Maynard's grandfather, Mr. Joseph Maynard, was the previous owner and died testate. Mr. John Maynard, his father, was the sole beneficiary of the estate but he died before he could

obtain probate of his father's Will. By Memorandum of Assent No. 52 dated 6th May 1991 the lands which is part of a larger parcel of land was transferred to Mr. Maynard.

33. From the evidence it appears that while Mr. Maynard exercised ownership over the tenanted land, his brother Mr. Phillip Maynard was deputised to manage the tenanted lands to ensure no illegal structures were constructed nor trespassers came unto the land and to pay the relevant land and building taxes. Both parties accept that in 1991 Mr. Maynard sought to regularise the status of his tenants. He issued a letter to them informing that he was now the owner and that he was prepared to honour the existing tenancy arrangements. It was conditional, however, on ascertaining proper boundaries and that all arrears of rent be paid. At that time, Mr. Cumberbatch Senior was in arrears since 1981. He also extended an option to purchase to Mr. Cumberbatch Senior to purchase the tenanted land at half the market value. This Mr. Maynard explained in his testimony was due to his dire need to settle expenses in relation to the estate.
34. It is not in dispute that Mr. Cecil Cumberbatch Senior was the statutory tenant under the Land Tenants (Security of Tenure) Act and he constructed a simple house on the tenanted lands. He resided there from 1956 until his death in 2006 and his son, Mr. Cumberbatch Junior, who lived there since he was a child (1953), continued to reside on the said lands with his family.
35. Mr. Cumberbatch Senior in response to Mr. Maynard's invitation, paid rent up to 1991 but since then no rent has been paid. Moreover, the invitation to pay up the arrears of rent was tied into negotiations with Mr. Cumberbatch Senior to purchase the tenanted lands.
36. Mr. Cumberbatch Senior by his last Will and Testament dated 13th April 1998, bequeathed all his right, title and interest in the said lands unto his son. Mr. Cumberbatch Junior obtained a grant of probate for the said Will. There is however, no deed of assent of the interests in the tenanted land to Mr. Cumberbatch Junior. There is no evidence by Mr. Maynard despite his pleadings to the contrary that he ever called upon the Cumberbatch family to pay rent after 1991. Additionally, it is not in dispute that Mr. Cumberbatch Junior and Mr. Cumberbatch Senior between the period 1991-2006, carried out extensive renovations, improvements and additions to the house on the said lands. This included the construction of a two storey concrete dwelling house by Mr. Cumberbatch Junior in full view of the Maynards.

37. The statutory tenancy expired on 31st May 2011 as no notice (form 6) in accordance with section 4(3) of the Land Tenants (Security of Tenure Act)¹⁸ was received by Mr. Maynard for the renewal of the said tenancy. Two notices to quit were served on Mr. Cumberbatch Junior on 27th June 2011 and 7th December 2015.
38. It is not in contest that at the expiration of the term of the statutory lease Mr. Maynard would ordinarily be entitled to recover possession of the tenanted lands that are the subject of the statutory tenancy unless the principles of equity debar him from so doing or his title has been extinguished by adverse possession. Mr. Cumberbatch Junior contends that his father was willing to complete a sale agreement for the tenanted land with Mr. Maynard but it was by the failure of Mr. Maynard that the agreement was never finalized and as such, he is entitled to specific performance of the agreement. He also contends that Mr. Maynard is estopped from denying him any interest in the tenanted land because his father accepted the offer of purchase made by Mr. Maynard. As such, in reliance on the representations made by Mr. Maynard that Mr. Cumberbatch Junior would be able to purchase the said lands, they subsequently conducted extensive renovations, improvements and additions to the house on the said lands. He further states that Mr. Maynard made no attempt to stop or prevent him or his father from carrying out renovations on the house.
39. The case for both parties therefore turns upon whether there was between them an agreement for the sale of the tenanted land or a representation that the tenanted land would be sold to him.

The 1991 agreement

40. Both Mr. Maynard and his brother Mr. Phillip Maynard agreed in their evidence that the person designated to deal with the sale of the tenanted land to the Cumberbatch family was their brother, Mr. Daniel Maynard. All three gentlemen, however, agreed that they did enter into an agreement with Mr. Cumberbatch Senior for the sale of the tenanted land to Mr. Cumberbatch for the price of \$43,000.00. They all agree that they were in dire need for the money and that motivated them in 1991 to approach the Cumberbatch family and make this agreement. Rent

¹⁸ Section (4)(3) of the Land Tenants (Security of Tenure Act) provides:

In order to exercise the right of renewal conferred by subsection (2), the tenant shall serve on the landlord a written notice of renewal on or before the expiration of the original term of the statutory lease.

was paid up to 1991 and no further rent was asked for or paid since 1991 primarily, as the parties were in the mode of negotiating and carrying out a sale of the tenanted land.

41. He indicated that there were negotiations and correspondence with regard to the sale of the tenanted land. An offer was made by Mr. Maynard to Mr. Cumberbatch Senior for the sale of the tenanted land which Mr. Cumberbatch Senior agreed to purchase for the sum of \$43,000.00. A deposit of \$16,000.00 was to be made upon the execution of the formal agreement.

42. What was put in dispute by Mr. Maynard was that (a) there was no agreement because no formal contract was signed by them (b) in any event the agreement was made with Mr. Cumberbatch Senior and not Mr. Cumberbatch Junior and (c) it was Mr. Cumberbatch Senior or Junior who was not serious about this sale and failed to complete or to pay the down payment. For these three reasons no agreement came into being nor is capable of enforcement. However, based upon the evidence neither of these propositions can be sustained.

43. First, there is no need for a formal executed contract between the parties for there to be an agreement in relation to the tenanted land. What is simply required is that there is a memorandum in writing for the purposes of Section 4 of the Conveyancing and Law of Property Act Chap. 56:01. Section 4 provides:

“4. (1) No action may be brought upon any contract for the sale or other disposition of and or any interest in land, unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged or by some other person thereunto by him lawfully authorised.

(2) This section applies to contracts whether made before or after the commencement of this Act and does not affect the law relating to part performance, or sales by the Court.”

44. To comply with the statute, the memorandum must evidence all the material terms of the contract that is (a) who are the parties (b) what is the property and interest that is being disposed of and what kind of disposition is being made (c) what is the consideration for the disposition or how is it to be ascertained (d) any other material terms of the contract except as such as would be implied by law. See Halsbury Laws of England Volume 42 paragraph 31. The statute can be satisfied by correspondence in letters or a receipt. See **Timmins v Moreland Street Property Co Ltd** (1958) Ch 110, [1957] 3 All ER 265.

45. In an exchange of correspondence, once there is unequivocal offer and acceptance, a concluded agreement comes into being. See **T. Malcolm Milne and Co. et al v Phillip Nigel Crane** CV2006-00006. Such a concluded agreement evidenced by correspondence would constitute a sufficient memorandum in writing so long as it identifies the four matters set out above.

46. A critical issue is the parties' intention to enter into legal relations and the certainty between them as to their contractual obligations. See paragraphs 29 to 31 of **Cyril Archibold Capron v Government of Turks and Caicos** [2010] UKPC 2 which provided:

“29. These exchanges point unmistakably to acceptance on the part of the partners that the government had not intended to bind itself contractually to convey to them their desired parcel of land.

30. This history is of particular importance in considering the appellant's reliance on what he claimed were the applicable legal principles. It is, of course, true, as the appellant has contended, that an agreement to execute a document incorporating terms previously agreed can in itself constitute a binding and enforceable contract – see, for instance, *Morton v Morton* [1942] 1 All E.R. 273. It is equally the case that where some facts on which the operation of an agreement will depend are not known, this will not necessarily render the agreement unenforceable, if the parties clearly intended it to have legal effect - *Hillas & Co Ltd v Arcos Ltd* (1932) 147 L.T. 503. Likewise, an agreement will not be regarded as too uncertain to bind the parties solely because it requires further agreement between them and the resolution of certain points of detail, provided the court concludes that the parties' intention at the time of entering the agreement was that it should be legally binding upon them - *Neilson v Stewart* (1991) S.L.T. 523.

31. The critical issue is the parties' intention. The trial judge and the Court of Appeal were emphatic in their conclusion that the parties in this case did not intend to enter an agreement that would be legally binding on them. From an examination of that evidence the members of the Board have decided that no other conclusion was possible. While Mr Taylor intended that there should be an agreement, we are entirely convinced that that was something that he had in contemplation for the future. There were simply too many matters to be further discussed and too many outstanding hurdles to be surmounted before even the broad

framework of a binding agreement could be settled. The Board considers, therefore, that both the trial judge and the Court of Appeal were correct in their determination of the enforceability issue.”

47. The authority of **Attorney General of Hong Kong v Humphreys Estate (Queen’s Gardens) Ltd** [1987] A.C. 114 relied upon by the Claimant’s Attorney-at-law is clearly distinguishable from these facts. In that case, the parties clearly entered into an agreement “subject to contract”. That was a clear expression that there was no intention to enter into binding legal obligations. That can hardly be said in this case. The correspondence exchanged between the parties set out in detail the four matters required to be proven to satisfy the basic ingredients of a memorandum in writing for the purposes of Section 4 of the Conveyancing and Law of Property Act. It sets out a clear intention to enter into legal relations as they were correspondence exchanged by authorised Attorneys-at-law. Their discussions were detailed and left nothing to chance. The fact that a formal agreement was not executed by the Claimant does not alter the fact that the parties were ad idem on key terms of contract for the sale of land.
48. On 13th May 1991, Mr. Cumberbatch Junior’s attorneys received a draft of the sale agreement dated 13th May 1991 from Mr. Maynard’s attorney. By letter dated 29th May 1991 Mr. Cumberbatch Junior’s attorneys revised the draft agreement and proposed certain amendments. In reply, by letter dated 9th July 1991, Mr. Maynard’s attorneys indicated that he had agreed to the changes and requested Mr. Cumberbatch Junior’s attorneys to settle and engross the agreement which was done on 25th July 1991 and forwarded to Mr. Maynard’s attorneys by letter of the same day. However, they received no response to that letter.
49. By letter dated 13th March 1992, a fresh sale agreement executed by Mr. Cumberbatch Junior was forwarded to Mr. Maynard’s attorneys but there was no response to the letter. Subsequent letters were also sent to Mr. Maynard’s attorneys on 30th January 1995, 2nd March 1995, 30th March 1995 and 22nd June 1995. By letter dated 7th July 1995, Mr. Maynard’s attorneys informed Mr. Cumberbatch Junior’s attorneys that they were trying to contact Mr. Maynard with regard to the sale of the tenanted land. Follow up letters were sent on 17th January 1996, 23rd February 1996, 2nd April 1996, 24th July 1996, 20th September 1996 and 25th September

1996. Mr. Maynard's attorneys responded on 15th October 1996 that they were still experiencing difficulties in contacting Mr. Maynard.

50. At this stage however the parties were ad idem on the fundamentals for the agreement for sale of land. The following exchange with Mr. Daniel Maynard in cross examination who was the one entrusted by the Maynards to negotiate the agreement is instructive:

“Mr. Daniel Maynard: Yes I see a letter addressed to Mr. Cecil Cumberbatch Junior

Mr. Roberts: Written on behalf of Carlton Maynard. See that?

Mr. Daniel Maynard: Yes I am seeing it says here on behalf of Carlton Maynard.

Mr. Roberts: So you accept that is the letter written on your family's behalf? Yes?

Mr. Daniel Maynard: I accept that the letter is a signature resembling that of Mr. Saunders. I am not privy to this letter.

Mr. Roberts: Now Mr. Saunders you are aware sent a draft agreement also. He did a draft agreement?

Mr. Daniel Maynard: I am not aware that an agreement or a draft agreement was ever prepared. What I know is that Mr. Cumberbatch's lawyer made other requests. Each time we would agree to it and he would send another one and that continued for some time. We agreed to all that the suggestions all the counteroffers he raised.

Mr. Roberts: Sir I am putting it to you that Mr. Saunders sent the draft agreement to Mr. Cumberbatch's attorneys and Mr. Cumberbatch's attorneys made only one reply with some changes to the draft agreement. One reply.

Mr. Daniel Maynard: I am not aware of that.

Mr. Roberts: And by letter dated 9th July 1991 which is C.C.7 See that letter there? Your lawyer agreed to the changes. See that letter there Sir?

Mr. Daniel Maynard: I am guided by the document. I know that our arrangements was somewhere between later '88 and '91. I am not surprised if you say Mr. Cumberbatch responded to them.

Mr. Roberts: And so you say Sir in your evidence in chief that in paragraph 10, that you accepted all the demands but you say there is this one request to change and then there was an agreement. So when you say there was an agreement this is what you are speaking about? The agreed terms. As of July 1991 you had agreed everything with Mr. Cumberbatch.

Mr. Daniel Maynard: We had agreed all their suggestions. They did not record it in this document but we had agreed because we were trying to get this matter expedited. I said we were in dire need of the income.

Mr. Roberts: Excellent. So pursuant to that agreement Mr. Cumberbatch Junior went ahead in late 1991 and built up his whole place right next door to his father place. You are aware of that. He built his place in 1991.

Mr. Daniel Maynard: I am not aware of when the place was built. My brothers would better be able to tell you that. I am not aware that we ever give permission to anybody to build or sign any document with respect to that. I am not aware that any of the requirements of the law would conform with. These things are better answered by my brothers and they.

Mr. Roberts: Very good Mr. Maynard. So as far as you are concerned you never dealt with Mr. Cumberbatch Junior?

Mr. Daniel Maynard: To the best of my recollection I never dealt with Mr. Cumberbatch Junior with respect to the offer to purchase the land.

Mr. Roberts: And your lawyer wrote, drafted an agreement including Mr. Cecil Cumberbatch Junior.

Mr. Daniel Maynard: I am seeing a document here. I don't know what arrangement the lawyers had between themselves. I have no recollection of same. The letter that you just showed me.

Mr. Roberts: And you never recognise Mr. Cumberbatch Junior as having any interest in one of your property?

Mr. Daniel Maynard: I know Mr. Cumberbatch Junior was the son of Mr. Cumberbatch Senior.”

51. Importantly, they all agree that Mr. Saunders was their Attorney-at-law assigned the task of negotiating and carrying out their instructions with regard to the agreement for sale. There is

nothing to rebut the inferences that Mr. Saunders' letter reflect the intention and instructions of the Maynards. The letters all demonstrate an agreement with Mr. Cumberbatch Junior that there was an agreement and the only formality that was left was for Mr. Maynard to sign the agreement upon which the down payment will be paid. Importantly, in the exchange in correspondence it is clear that the agreement was being made with Mr. Cumberbatch Junior. In **Waugh v HB Clifford & Sons Ltd** [1982] Ch.374 at page 387 it was stated that:

“The law became well established that the solicitor or counsel retained in an action had an implied authority as between himself and his client to compromise the suit without reference to the client, provided that the compromise does not involve matter “collateral to that action.”

See also **Joash Morris** CV2007-00987 and **Matthews and another v Munster** [1886-90] All ER Rep 251.

52. Second, although all the witnesses for the Claimant asserted that their negotiations were with Mr. Cumberbatch Senior and not Mr. Cumberbatch Junior, it is clear Mr. Saunders was authorised to enter into negotiations and to represent their interests in the sale. Furthermore, as Mr. Daniel Maynard deposed, Mr. Saunders was given instructions by them with regard to the sale. The correspondence itself revealed that the negotiations were with Mr. Cumberbatch Junior and not Mr. Cumberbatch Senior.
53. Third, it is not plausible that Mr. Cumberbatch Junior was not interested in completing the sale. The correspondence by the Cumberbatch's attorney bears it out. Such a proposition that Mr. Cumberbatch Junior was not interested is based on the single evidence by Mr. Maynard that when he spoke to Mr. Cumberbatch Senior, he turned his back and walked away. If this is accepted as true, this is not an equivocal statement or act that the sale was off or that Mr. Cumberbatch Junior was not interested in completing. I say so for the following reasons (a) the correspondence of Mr. Cumberbatch Junior's attorneys after this alleged incident calling upon Mr. Maynard to complete the sale (b) the non-payment of rent by the Cumberbatch family and the failure by Mr. Maynard to call upon them to pay the rent (c) no equivocal statement whether by Mr. Maynard that the deal is off and (d) the stone silence by Mr. Maynard's attorney and uncertainty created by him of Mr. Maynard and not Mr. Cumberbatch Junior's intentions.

54. The correspondence set out a clear offer and acceptance by Mr. Maynard. A table of the relevant correspondence and their contents are set out in an appendix to this judgment.

55. I am satisfied by the contents of the exchange of correspondence between the attorneys who both had the authority to enter into negotiations and to conclude a contract on behalf of their clients that there emerged an agreement for sale which was certain as to the subject matter, terms and payment. It satisfied the requirements of memorandum in writing for the purposes of Section 4 of the Conveyancing and Law of Property Act. For these reasons, the Claimant cannot resist the submission that there was extant between the parties an agreement for sale for the said land.

The conduct of the parties after the exchange of correspondence

56. By his Reply to the Defence¹⁹, Mr. Maynard contends that he and his agent objected to the renovations which were done by Mr. Cumberbatch Junior and his father. He stated that he visited the site and demanded that the construction be stopped and it was stopped for a while. However, Mr. Cumberbatch Junior was not residing in the area at the time so he did not know when the construction re-started. As such, he denies that he acquiesced to renovations being done on the house.

57. In this case, there is very little cross examination by the Claimant's attorney on the conduct of Mr. Maynard after the agreement was made in 1991. The following therefore forms undisputed parts of the Defendant's evidence:

- a. That he commenced construction of his own home on the premises in 1991;
- b. That the home was completed in 1995 or 1998;
- c. That Mr. Maynard did not stop him from completing the home;
- d. That the home was built in clear and open view of Mr. Maynard who lived next door;

¹⁹ Filed on 29th July 2016.

- e. That Mr. Maynard was on friendly terms with Mr. Cumberbatch Junior and did not ask for rent nor did they discuss the agreement for sale personally between themselves after 1991;
- f. Nevertheless, Mr. Maynard asked Mr. Cumberbatch Junior for permission to encroach on his land by 1 foot;
- g. That Mr. Cumberbatch Junior expended considerable sums of money in the construction of his home in the belief that the tenanted land would be transferred to him pursuant to the 1991 agreement.

58. Such conduct raises the live issues of proprietary estoppel and estoppel by acquiescence. Indeed, after all of this time, in the face of his silence and the open encouragement or acquiescence in the construction of his home, it is unconscionable for Mr. Maynard to now insist on his strict legal rights as landlord to terminate the tenancy and evict Mr. Cumberbatch Junior.

Proprietary Estoppel

59. In **Esther Mills v Lloyd Roberts** Civil Appeal No. T 243 of 2012, Jamadar J.A summarized the principles of proprietary estoppel as follows:

“20. The seventh edition (2008) of The Law of Real Property adequately summarises “the essential elements of proprietary estoppel”, as follows:

(i) An equity arises where:

- (a) the owner of land (O) induces, encourages or allows the claimant (C) to believe that he has or will enjoy some right or benefit over O’s property;
- (b) in reliance upon this belief, C acts to his detriment to the knowledge of O; and
- (c) O then seeks to take unconscionable advantage of C by denying him the right or benefit which he expected to receive.

(ii) This equity gives C the right to go to court to seek relief. C’s claim is an equitable one and subject to the normal principles governing equitable remedies.

(iii) The court has a wide discretion as to the manner in which it will satisfy the equity in order to avoid an unconscionable result, having regard to all the circumstances of the case and in particular to both the expectations and conduct of the parties.

21. The eighth edition of A Manual of The Law of Real Property explains the ‘modern approach’ as follows:

“Since 1976, the majority of the judges have rejected the traditional approach and have regarded these three situations as being governed by a single principle. They have adopted a very much broader approach which is directed rather at ascertaining whether, in particular individual circumstances, it would be unconscionable for a party to be permitted to deny that which, knowingly or unknowingly, he has allowed or encouraged another to assume to his detriment than to inquiring whether the circumstances can be fitted within the confines of some preconceived formula serving as a universal yardstick for every form of unconscionable behaviour. This broader approach has been developed into the principle that a proprietary estoppel requires:

- (i) an assurance or a representation by O;
- (ii) reliance on that assurance or representation by C; and
- (iii) some unconscionable disadvantage or detriment suffered by C.”

22. In proprietary estoppel therefore, the focus shifts somewhat from the search for a clear and unequivocal promise and for intentionality, to whether the party claiming the benefit of the estoppel had a reasonable expectation induced, created or encouraged by another, and in those circumstances acted detrimentally to the knowledge of the other. For proprietary estoppel to operate the inducement, encouragement and detriment must be both real and substantial and ultimately the court must act to avoid objectively unconscionable outcomes.”

60. Having found the doctrine of proprietary estoppel is applicable in a given case is but one aspect of the Court’s analysis. It must go further to determine how best to satisfy the equity. This too will vary depending upon the circumstances of each case with an “eye to avoiding

unconscionable results.” The Court must satisfy “the minimum equity to do justice” to the party claiming the benefit of the estoppel. In such a task a wide discretion is conferred on the Courts to discover and apply the fair and just remedy. Jamadar JA further explained:

“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.

26. Sir Jonathan Parker in **Theresa Henry’s** case also drew extensively from Lord Walker’s discussion of proprietary estoppel in **Gillett v Holt, Jennings v Rice** and **Cobbe v Yeoman’s Row Management Ltd**, adopting approvingly the following observations:

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

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

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

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

27. Because the relief fashioned must be fair, proportionate and operate to satisfy the minimum equity required to do justice, and because there is a wide discretion to be exercised, it is clear that individual judges can disagree in what is an appropriate order to satisfy the equity.”

61. Of course, equitable estoppel being a flexible doctrine is no warrant to call to its aid in every case as a panacea for real or imagined grievances. See **Cyril Archibold Capron**.

62. The illuminating judgment of **Esther Mills** demonstrates that the relief to be fashioned in equity must be fair, proportionate and operate to satisfy the minimum equity required to do justice. In fashioning the appropriate remedy, the Court must conduct a balancing exercise between the disadvantages suffered and the advances enjoyed as result of the reliance. In **Esther Mills** the Court of Appeal was of the view that conferring a life interest unto the Appellant did not do the minimum equity to do justice to the parties. The Appellant had in that case, demolished an existing home and constructed a dwelling house of \$65,000.00. There was no objection by the landowner to the construction of the house or to making it her home. It was clear that acting on the promise of the landowner, the Appellant acted to her detriment believing that the house belonged to her and that she would have an interest in the land not just for life, but for all time.

63. The undisputed facts as pointed out above in relation to the conduct of the parties in this case makes an irresistible case that Mr. Cumberbatch Junior has an equitable interest in the tenanted land. He acted in the belief that the tenanted land would be his pursuant to the contract for sale. It is after the negotiations for the sale and the agreement was entered he laboured under the apprehension that the investment in a new home on the land was worth his time and effort as it would soon be his. Certainly Mr. Maynard did not give him permission to build but he did not object to it nor did he take an action to stop the construction of the considerable building which on the undisputed evidence cost Mr. Cumberbatch Junior approximately \$200,000.00.
64. The greater challenge in such cases as these is to determine how the Court should satisfy the equity. In a novel judgment of the Court of Appeal in **Mary Gomez et al v Ashmeed Mohammed** Ca No. S153 of 2015, the equity was satisfied by reference to the legal rights of a statutory tenant under the Land Tenants (Security of Tenure) Act. It demonstrates how wide the direction of the Court is and in a real and practicable way, demonstrates how tangible and palpably altruistic the equitable principle is and can be so fashioned to serve therapeutic ends.
65. In **Mary Gomez**, the Appellants were occupiers of land situate at Maracas Valley and claimed that in 1966, 1958 and 1963 they were beneficiary of separate agreements with the predecessors in title of the Respondent for the land that each Appellant occupied. They contended that under those agreements it was agreed that they would at their own expense, clear a parcel of land, prepare it and build their home on it, be responsible for all the physical infrastructure necessary for them to build their homes and maintain the land and they would pay a small land rent and in the future they would have the right to purchase the occupied parcel of land at its open market value as undeveloped lands without the value of their homes and improvements. Rent was paid by the Appellants up to 2011. It was not disputed that there were renovations and improvements on the parcels of land. The trial judge rejected that the Appellants had established rights under proprietary estoppel and stated that they would not be protected under the Land Tenants (Security of Tenure) Act having failed to serve any notice of renewal of statutory tenancies under the said Act. The Court of Appeal adopted a different view. The Appellants were not protected under the Land Tenants (Security of Tenure) Act because at the time they entered into occupation the Act was not passed nor did they have any protection under the Rent Restriction Act. However, because of the special circumstances of

the case, with the Appellants residing on the land for over 50 years and building their homes on rented land with monies being spent towards its development (which was not objected to by the Respondent or their predecessors) and the belief in an option to purchase the said lands, the Court of Appeal found that while the Appellants were not statutory tenants, their situation was “in practical terms” similar to persons who had renewed their statutory tenancies. As such, they stated that it would be consistent with equity to give effect to an option to purchase the parcels of lands and in giving effect to the security of tenure which they enjoyed over 50 years, the Court of Appeal quantified their interest to be a tenancy for a 15 year period with an option to purchase the parcels of land.

66. Importantly, that decision confirms the importance of Mr. Maynard’s acquiescence in the case for Mr. Cumberbatch Junior. On a balance of probabilities, it is more likely that Mr. Maynard did nothing while Mr. Cumberbatch Junior built his extensive home in open view of all. There is fleeting reference in Mr. Cumberbatch Junior’s last letter of interference in his occupation but this does not go so far as to say that the Maynards were asserting title or preventing Mr. Cumberbatch Junior’s right to occupy and to treat the place as his home. Mr. Cumberbatch Junior’s account of his relationship with Mr. Maynard was not contested. The evidence of the Maynards demonstrated that they either did not pay attention to Mr. Cumberbatch Junior or observed the construction and did nothing about it. Indeed, after the 1991 negotiations it is reasonable to accept that the Cumberbatches’ were led to believe that their interest and tenure in the tenanted land was secure and they were no longer to be treated as a tenant or licensee but indeed as purchasers of land.

67. In **Mary Gomez**, Rajkumar J.A. made the following observations on the law on proprietary estoppel by acquiescence:

“69. Apart from proprietary estoppel based on a promise it is well established that proprietary estoppel can arise also from conduct and acquiescence. See for example Snell’s Principles of Equity 33rd Ed. Para. 12-034.

70. 12-034 (all emphasis added)

(a) An acquiescence-based principle

In Fisher v Brooker, (2009 UKHL 4) Lord Neuberger stated that: “The classic example of proprietary estoppel, standing by whilst one’s neighbor builds on one’s land believing it to be his property, can be characterized as acquiescence”.

The principle is certainly long-established: its operation can be seen, for example, in The Earl of Oxford’s case. It applies where B adopts a particular course of conduct in reliance on a mistaken belief as to B’s current rights and A, knowing both of B’s belief and of the existence of A’s own, inconsistent right, fails to assert that right against B. If B would then suffer a detriment if A were free to enforce A’s right, the principle applies. It therefore operates in a situation in which it would be unconscionable for A, as against B, to enjoy the benefit of a specific right.

The application of the principle can be seen in Lord Carnworth L.C.’s statement in Ramsden v Dyson that:

“[i]f a stranger begins to build on my land supposing it to be his own, and I, perceiving his mistake, abstain from setting him right, and leave him to persevere in his error, a court of equity will not allow me afterwards to assert my title to the land on which he had expended money on the supposition that the land was his own.”

*71. In that example, the **acquiescence principle** operates so as to preclude A’s assertion of a right and it can therefore sensibly be seen as an example of “**proprietary estoppel**”. Nonetheless, decisions such as Ramsden that developed the principle made no reference to estoppel and the principle can certainly apply **even in the absence of any specific representation or communication made by A to B**. It also seems, moreover, that it can operate not only so as to impose an equitable restraint on A’s assertion of a right, but may also be **capable of imposing a liability on A** and thus lead, for example, to A’s being ordered to grant B a particular right.....”*

68. He further went on to say at paragraphs 74 and 76:

*“74. In **Ramsden v Dyson (1866) LR HL 129 (1866)** at page 170 Lord Kingsdown stated as follows:*

*“If a man, under a verbal agreement with a landlord for a certain interest in land, or, what amounts to the same thing, under an **expectation, created or encouraged** by the landlord, **that he shall have a certain interest**, takes possession of such land, with the consent of the landlord, and **upon the faith** of such promise or expectation, with the knowledge of the landlord and without objection by him, lays out money upon the land, a Court of equity will compel the landlord to give effect to such promise or expectation.”*

(Although this was a dissenting judgment it was adopted and approved by the Privy Council in **Plimmer v. Wellington Corporation** (1884) 9 A.C. 699 and applied in *Inwards v Baker* infra.)

76. The respondent and his predecessors in title stood by without any evidence of objection while the appellants proceeded to construct permanent structures on the land, and proceeded to further renovate, extend and improve those structures such that in one case one house is now valued in excess of one million dollars. It is therefore clear that that expectation was **encouraged** by the respondent and all of his predecessors in title, who had **knowledge** and were well aware of the investments of the appellants in their homes.

69. In **Nester Patricia Ralph and Esau Ralph v Malyn Bernard** Civil Appeal No. 131 of 201, Jamadar J.A. commented:

“59. As I mentioned, an element of proprietary estoppel is an assurance or representation. That may take the form of an express assurance or representation as the respondent established in this case. However, acquiescence may also form the basis of a claim in proprietary estoppel. This can arise for example where A stands by and says nothing while B builds on A’s land believing it to be his (B’s property). This is described in **Fisher v Brooker** [2009] 4 All ER 789 by Lord Neuberger (at para 62) as a classic example of proprietary estoppel and it applies “*where B adopts a particular course of conduct in reliance on a mistaken belief as to B’s current rights and A knowing both of B’s belief and the existence of A’s own inconsistent right fails to assert that right against B*” (see **Snell’s Equity** (33rd ed at para 12-034). In **Thorner v Major** Lord Walker opined that if all proprietary estoppel cases are to be analysed in terms of assurance, reliance and detriment then A’s conduct in standing by in silence may serve as an element of assurance. It is also relevant to note that whether the claimant relies on acquiescence or an express assurance

or representation that the essence of proprietary estoppel is to do what is necessary to avoid an unconscionable result.”

70. In this case, the Court as advised by the Privy Council, should adopt a cautious approach. However, the evidence overwhelmingly points towards an agreement being entered into between the parties which has not expressly nor impliedly been made “subject to contract”. One party considered themselves bound to its terms and the other did not disabuse the other that the sale is off. Indeed, the attorney, Mr. Saunders, never so indicated to the attorney for the Defendant. Even if there was no binding agreement for sale, the conduct of the Claimant in this case makes it unconscionable for him to now deny that such an agreement existed or that the Defendants acted on that representation to their detriment. Certainly to do the minimum equity required to achieve justice in this case calls for the sale of the tenanted property to Mr. Cumberbatch Junior of the terms as negotiated in 1991.

Specific Performance

71. Mr. Cumberbatch Junior and Mr. Maynard having entered into an agreement for sale of the tenanted land now becomes, vendor and purchaser. Both having their respective interests. In Gibson’s Conveyancing, 11th Edition, the learned authors noted at page 80:

“The result of a valid contract for the sale of property is that the beneficial ownership passes to the purchaser, and the vendor becomes a trustee of the property for him, the vendor having a right to the purchase-money, a lien on the property to secure it and a right to retain possession of the property until it is paid.

The purchaser being in equity the owner of the property, is entitled to any benefits that may accrue to the estate between the contract and the conveyance- such as an increase or improvement in the value of the land, even though it arise through the expenditure of the vendor; and subject to what is said below, will have to sustain any loss or deterioration which results to the property between contract and conveyance.”

72. Where it is sought to enforce specific performance the Court must be satisfied that (a) there is a concluded contract which is binding at law and in particular that the parties have agreed expressly or impliedly on all the essential terms of the contract and (b) that the terms are sufficiently certain and precise that the Court can order and supervise the exact performance

of the contract. See **Halsbury Laws of England Volume 95 Paragraph 540**. The grounds on which specific performance will be refused do not fall into rigid categories but if a contract is illegal, oppressive or the person seeking its performance have failed to do an act that amounts to repudiation or is guilty of undue delay, it is impossible to perform.

73. Mr. Maynard's Attorney-at-law has advanced only one ground in answer to the claim of specific performance which is that there was no agreement for sale. In any event, the contract cannot be said to be oppressive as the terms are ordinary terms for a contract for sale of land. There is no undue delay by Mr. Cumberbatch Junior as he was continuously calling on Mr. Maynard to complete his end of the bargain even in the pre-action process. There is no impossibility of performance by Mr. Maynard. Mr. Cumberbatch Junior is not in breach by not paying the deposit as the agreement expressly stated the purchase money was payable upon execution of the agreement. Mr. Maynard failed to execute the agreement and thus no payment was possible.

74. Exercising the Court's wide discretion in this manner and to do minimum equity to do justice to the Defendant, the Court will order specific performance of the agreement for sale on the terms set out in the agreement exchanged in 1992 at the purchase price of \$43,000.00.

75. Indeed the uncontroverted evidence is that Mr. Cumberbatch Junior spent considerable sums of money in the belief that they would complete this sale agreement and it is not unconscionable nor unjust for him to pay the purchase price as agreed to Mr. Maynard. Similarly, it is not unfair for Mr. Maynard to complete this transaction as indeed he receives in the balance a return on his own investment as landlord and owner of the tenanted property.

76. Having concluded that there is an agreement between the parties for the sale of the tenanted land, it would be inconsistent to say that the title in the land was extinguished. I turn now to the last issue.

Adverse Possession

77. Section 3 of the Real Property Limitation Act bars the right to make an entry or bring an action to recover lands after the expiration of sixteen years from the date the right to make such an entry or bring such an action shall have first accrued either to the person making the entry or bringing the action or someone through whom he claims. When the sixteen-year period has

expired, Section 22 of the Real Property Limitation Act provides that the right and title of the person to the land is extinguished. To succeed in this action Mr. Cumberbatch Junior would, therefore, have to establish that he was in possession of the tenanted land for a period of at least sixteen years from the date when the right of Mr. Maynard or someone through whom he calls to bring an action against him for the recovery of the said land first accrued and he had the intention to possess the said land as his own. See **Goomti Ramnarace v Harrypersad Lutchman** (2001) 59 WIR 511 (at para 10)).

78. The onus is therefore on a person who claims adverse possession to show:

- (i) Exclusive physical possession
- (ii) An intention to “possess” the land not necessarily, to “own;” See **Powell v Mc Farlane** (1979) 38 P & C R 452 and **Pye (JA) (Oxford)Ltd v Graham** (2002) 3 All ER 865 and;
- (iii) Absence of consent
- (iv) To stop time from running an action for the recovery of possession must be filed. “Nothing else will suffice thus, evidence of payments of rates and outgoings or even issuing notices to quit or letters threatening action is insufficient to stop from running so as to displace Section 3.” Pemberton J in **Maria Jones v Hemnarine Santo** H.C.2176/2005
- (v) In **Toolsie Persad Ltd v Andrew James Investment Ltd**. CCJ App. Cv 1 of 2007 (unreported) a judgment of the Caribbean Court of Justice which dealt with the subject of adverse possession. The Court said:

“In our view, if a dispossessed landowner is to stop time running favour of the person in undisturbed possession of the land he must bring proceedings against that person. Alternatively, of course, the landowner could physically enter the land and take possession thereof, but the danger of breaches of the peace and resultant criminal proceedings are better avoided, especially if the person in possession is likely to resist the landowner.”

79. The elements of actual possession and the intention to possess are present in this case save that Mr. Cumberbatch Senior was a tenant for 30 years of Mr. Maynard. Mr. Cumberbatch Junior clearly was not a tenant but a licensee of the tenant. The question therefore arises does the doctrine of adverse possession by a licensee relate to the tenant or to the landlord such that it extinguishes the latter's title.

80. The fact that the Cumberbatch family intended to pay for the tenanted land does not negate the fact that they treated the land as their own. As Lord Browne-Wilkinson noted in **Pye**:

“In a number of cases (such as the present case) squatters have given evidence that if they had been asked by the paper owner to pay for their occupation of the disputed land or to take a lease they would have been prepared to do so. In *Ocean States Estates Ltd. v. Pinder* [1969] 2 AC 19, 24 Lord Diplock giving the advice of the Privy Council said that an admission by the squatter to that effect “which any candid squatter hoping in due course to acquire a possessory title would be almost bound to make” did not indicate an absence of an intention to possess. In my judgment in the present case the Court of Appeal did not give full weight to that decision. . . . Once it is accepted that the necessary intent is an intent to possess not to own and an intention to exclude the paper owner only so far as is reasonably possible, there is no inconsistency between a squatter being willing to pay the paper owner if asked and his being in the meantime in possession. An admission of title by the squatter is not inconsistent with the squatter being in possession in the meantime.”

81. In **Hemnarine Santo v Maria Jones** C.A 99 of 2006 however, the Court of Appeal noted that the Respondent continued in possession and there was no evidence of payment of any rent to anyone. Although there may have been passive acquiescence in the Respondent's occupation, there were no overt acts referable to a licence. Applying the reasoning in **Pye**, the fact that the Respondent would have been willing to purchase the freehold if allowed to do so, does not negate her intention to possess.

82. Mr. Cumberbatch Senior and Mr. Cumberbatch Junior had by 1991 been in a position to no longer considering themselves statutory tenants. It is demonstrated from the evidence that they considered themselves at the highest purchasers in waiting and as far as they were concerned awaiting the formalities to conclude their sale and treated the tenanted land as their own without reference to Mr. Maynard.

83. Of course, analysing the entire set of circumstances through the lens of equity, it would not be fair or just for Mr. Maynard knowing that they have made such bold representations to now say that the tenancy has now expired and they are entitled to possession after taking no step during the course of the tenancy to either properly disabuse the minds of the Cumberbatch family that the sale is off and that they were requesting their rent for the tenanted land as landlord. The owners were hedging their bets not taking rent simply perpetuated a belief that no rent was due and they were no longer tenants. Equally in the fact pattern they had become possessors and owners in their own right. The onus lay on Mr. Maynard in law under the Land Tenants (Security of Tenure) Act or Real Limitation Act to take some step to recover possession or in equity to take a step to disabuse their minds that they were no longer entitled to occupation or ownership.

84. However, in **Chan Tin Shi v Li Tin Sung et al** FACV No. 7 of 2005 it is noted that in the case of land subject to a lease, the person entitled to possession is the lessee. The freeholder has no right to possession until the lease comes to an end. In this case, Mr. Maynard had no right to possession until 2011 and hence his right to bring an action commences in 2011 and not 1991 when there was non-payment of rent. In **Chan Tin Shi** it was explained at paragraphs 17-20:

“17.....Adverse possession by a squatter may therefore bar the remedy of the lessee but will not affect the right of the freeholder to claim possession when the lease falls in.

18. The lessee’s right to possession derives from the lease being an estate in the land. The leasehold estate is the lessee’s title to possession. Conversely, if the right to possession is barred by s.7(2) of the Limitation Ordinance, then the lessee’s estate is destroyed by s.17:

“at the expiration of the period prescribed by this Ordinance for any person to bring an action to recover land . . . the title of that person to the land shall be extinguished.”

19. The lessee’s “title” is his estate....But the title is extinguished only as against the squatter. As against the landlord it remains in existence, so that the lessee remains liable upon the covenants of the lease.

20. It follows from these well-established principles that when the period of limitation expired, the lessee of the land occupied by a squatter was barred by s.7(2) from bringing proceedings for possession and his title was, as against the squatter, extinguished by s.17. This did not however affect the interest of the government, against which time could not commence to run while the leasehold interests subsisted. As between the government and the lessees, the lease continued to subsist, notwithstanding the expiry of the limitation period”.

85. Similarly our Court of Appeal has adopted this reasoning. In **Josephine Jordon v Phillip Lucas** Civil Appeal No. 189 of 2009 demonstrates that in light of the conclusion on the creation of a statutory lease, possession can only be adverse in relation to the tenant and as against the statutory lease. Jamadar J.A commented at paragraph 33:

“The law on this is clear. Where a tenant is dispossessed, the adverse possession runs immediately against the tenant, and only against the landlord on the expiry of the tenancy or lease. In this case the contractual tenancy only expired on the 22nd May, 2003 when notice to quit was served on the Administrator General; and the statutory lease only expired on the 31st May, 2011, if there was not a renewal. In either of these scenarios sixteen (16) years have not elapsed so as to extinguish the title of the landowner/landlord.”

86. In this case, arguably, the contractual tenancy could have come to an end with the non-payment of rent but the statutory tenancy continues to subsist until the mechanisms of the Land Tenants (Security of Tenure) Act were invoked to terminate it or it ended by effluxion of time in 2011.

87. In **Hindaye Pooran v Kenneth Roop** Civil Appeal No. 223 of 2010 there is an interesting analysis which suggests that adverse possession may yet be applicable in the case of statutory tenancies if such tenancies are construed as a tenancy of “a period” as described in the legislation. The Court of Appeal observed:

“22.....where a tenant is dispossessed by a squatter, the squatter is not in adverse possession against the landowner as the latter has no right of possession until the lease in favour of the tenant is determined. Adverse possession by the squatter does not bar the remedy of the landowner to recover the lands when the lease comes to an end. The right of the landowner to bring an action against the squatter in those circumstances, therefore, does

not accrue where there is a subsisting tenancy. It follows therefore that in this case, the earliest date from when time would run against the Respondent would be when the tenancies in respect of the lands came to an end or were deemed to have come to an end for the purposes of the Limitation Act. To determine when that occurred in this case section 9 of the Limitation Act is relevant.

23. Section 9 is as follows: “9. When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant from year to year or other period, without any lease in writing, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy shall have been received (which shall last happen).” This section lays down a special rule for the running of time for periodic tenancies where there is no written lease. If rent ceases to be paid, time starts to run at the end of the first period for which rent was paid or at the last time when any rent was received whichever shall happen last (see *Ramroop v Ishmael and Heerasingh* [2010] UKPC 14). In this case the last payment of rent was made on February 4th 1985 for the period June 1st 1984 to May 31 st 1985. For the purposes of the Limitation Act time would therefore start to run from June 1st 1985. However as was noted in the *Ramroop* case (at para. 16):

“The effect of section 9 is however limited. It does no more than meet the objection that time cannot run in favour of a tenant because his possession as a tenant is not adverse to the interest of his landlord. It is still necessary, under the law of Trinidad and Tobago as under the law of England and Wales for him to be in actual, exclusive possession of the property in question.”

In other words for time to run in favour of the Appellant for the purposes of the Limitation Act, she would have to be in actual exclusive possession of the lands on the determination of the tenancies. The question then that arises is whether the Appellant in her personal capacity was in actual exclusive possession from June 1st, 1985.

24. In *Williams v Jones* [2002] EWCA Civ. 1097 it was held that the effect of the determination of the tenancy under a similar provision to section 9, was to deem the tenancy

at an end for the purposes of the Limitation Acts so that the paper title owner could not object to time running on the sole ground that the former tenant was there by grant. The possession of the tenant obtained by operation of law on the creation of the tenancy expired with the expiry of the tenancy. The tenant was however to be treated as continuing in possession (albeit adverse possession) without having to satisfy the requirement of factual possession and the intention to possess unless the case was an extreme one such as where the tenant may have severed all connection with the demised premises (see paras, 15, and 19-21). In this case the tenant was the estate of the Appellant's mother. The Appellant, on the determination of the tenancies, was in possession as legal personal representative of the estate and not in her personal capacity. She should be treated as continuing in possession in that capacity. There is nothing on the facts of Page 11 of 19 this case that would suggest otherwise. Indeed, the facts clearly support the proposition that the appellant should not be regarded as being in possession of the lands in her personal capacity.”

88. That was however, not a case analysing a statutory tenancy although, important in this case is that this was not simply Mr. Cumberbatch Junior “squatting” on his father’s property and remaining in adverse possession in relation to his father. This is a case where both Mr. Cumberbatch Senior and Mr. Cumberbatch Junior had entered into negotiations for the sale of the tenanted land with the Maynards with Mr. Cumberbatch Junior took the lead and entered into an agreement or at the very least believed that an agreement was made to become the owner of the tenanted land as against the landlord.

89. However, while it may be an inviting proposition to consider the title as having been extinguished for the purposes of Real Property Limitation Act, it would be inconsistent with the main plank of the Defendant’s case to acknowledge an agreement for sale is enforceable yet contend that the title of the purchaser is extinguished. However, such a result is not a just one in considering Mr. Cumberbatch Junior’s own belief and understanding which is that he was willing to pay at a moments notice the purchase price of \$43,000.00.

Conclusion

90. In considering all the circumstances of this case, the Defendant, Mr. Cumberbatch Junior, has made out his case that the Claimant, Mr. Maynard, is estopped from asserting his strict rights as landowner in seeking possession without first acknowledging and treating with Mr.

Cumberbatch Junior in completing the sale for the tenanted land. The Court doing equity to achieving the minimum justice between the parties will treat the parties as having entered into the agreement for sale exchanged in 1991.

91. The parties will have six (6) months to complete this sale for the sum of \$43,000.00 as agreed. I have determined six (6) months to give both sides ample time to complete this agreement. Should the Defendant fail to complete within this time he cannot complain if he is then ordered to give vacant possession. In such a case, he was not serious in meeting his end of the bargain. In the case of the vendor, Mr. Maynard, if he fails to complete or to comply with the terms of the agreement then the Defendant would be entitled to an estate in fee simple in the said tenanted land. I considered the solution as in **Mary Gomez** in treating Mr. Cumberbatch Junior as a statutory tenant. In such a case a default by Mr. Maynard in his obligations under the agreement for sale would leave him as the landlord. Unlike **Gomez**, it would not be practical to perpetuate the landlord and tenant relationship in these circumstances and to consider the landlord's title for all intents and purposes to have been conveyed to Mr. Cumberbatch Junior.
92. The claim will be dismissed and the order for specific performance in the terms described will be granted.
93. The Defendant would be entitled to his prescribed costs of the claim and counterclaim.

Vasheist Kokaram
Judge

APPENDIX

DATE OF CORRESPONDENCE	CONTENTS OF CORRESPONDENCE
27 th February 1991	<p>To Cecil Cumberbatch</p> <p>Greetings,</p> <p>Please be advised that I am now the legal owner of the lands at Broome Street, Four Roads, Diego Martin, previously occupied by Joseph Maynard and brought under the R.P.O in his name.</p> <p>.....</p> <p>I am prepared to honour the tenancy of persons who lawfully occupy the lands by virtue of contract made with Joseph Maynard providing the following conditions are met:-</p> <p>.....</p> <p>(3) That all arrears of rent be paid.</p> <p>I shall be happy to assist in reasserting the boundaries at one (1) Refusal to meet the conditions stated above by Sunday 31st March, 1991 will result in legal action.</p> <p>I look forward to a peaceful and harmonious co-existence but will invoke legal means to ensure enjoyment of my property.</p> <p>N.B Option to Purchase is available.</p> <p style="text-align: right;">With best wishes Carlton Maynard</p>
5 th April 1991	<p>ROBERTS, PRIMUS, PHILLIPS, RAMKISSOON AND CO</p> <p>Mr. Carlton Maynard Broome Street, Four Roads Diego Martin.</p>

	<p>Dear Sir,</p> <p>We act on behalf of Mr. Cecil Cumberbatch, who has handed us your letter to him of the 27th February, 1991 offering to sell to our client the freehold interest in the subject property. As you are aware, our client has been a tenant of these premises for thirty four (34) years namely since the year 1956 and his rent is up-to-date.</p> <p>Under and by virtue of the provisions of the Land Tenants (Security of Tenure) Act, our client is entitled to a thirty (30) year lease and/or acquire the freehold interest of the subject property at one half of the current market value.</p> <p>Our client places the current market value of the freehold interest in property in that vicinity of \$10.00 per square foot. Accordingly, subject to a valuation by an independent chartered valuation surveyor to be agreed upon between the parties, our client is prepared to offer to purchase the freehold interest in the subject property comprising 5,000 square feet at \$5.00 per square foot, namely \$25,000.00.</p> <p>We should be grateful to hear from you at your very earliest convenience.</p> <p>Yours Faithfully, ROBERTS AND COMPANY.</p>
8 th April 1991	<p>Cecil Cumberbatch Junior Four Road Diego Martin</p> <p>Dear Sir,</p>

	<p>We act on behalf of Carlton Maynard who is the registered proprietor in respect of the parcel of land of which you are a tenant.</p> <p>We are instructed that you are desirous of purchasing the said parcel of land. In this regard our client is willing to sell the same to you for the sum of \$47,000.00.</p> <p>We shall appreciate in the event that you find our offer satisfactory if you would enter into an agreement for sale upon execution of which a deposit of \$16,000.00 is payable.</p> <p>So soon as you sign the said document we shall give you copies of our client's documents to take to your attorneys.</p> <p>Faithfully Yours S. Saunders & Co.</p>
<p>12th April 1991</p>	<p>Messrs. S. Saunders and Company, Attorneys at law Ramlal's Building Main Road CHAGUANAS.</p> <p>Dear Sirs,</p> <p>We act on behalf of Mr. Cecil Cumberbatch who has handed us your letter to him of the 8th April, 1991 in which you have indicated that Mr. Carlton Maynard for whom you act is willing to sell the freehold interest of land which is rented to our client for the sum of \$47,000.00</p> <p>In fact the parties have met and agreed on a purchase price of \$43,000.00.</p> <p>They have also agreed that a deposit of \$16,000.00 is to be paid and that an agreement for sale be executed. Kindly be good</p>

	<p>enough to forward to use by return the agreement for sale of the aforementioned terms together with a 90 day completion date for execution by our client and oblige.</p> <p>Yours faithfully, ROBERTS AND COMPANY.</p>
<p>29th May 1991</p>	<p>Messrs. S Saunders and Company Attorneys at law Ramlal's Building Main Road, Chaguanas.</p> <p>Dear Sirs</p> <p>Re: Proposed agreement between Carlton Maynard and Cecil Cumberbatch Jnr.</p> <p>We are in receipt of a proposed agreement dated 13th day of May, 1991 proposed to be made between you client Carlton Maynard and our client Cecil Cumberbatch Jnr with regard to the sale by your client of a parcel of land situate at Broome Street, Diego Martin, and with to comment thereon as follows:</p> <ol style="list-style-type: none"> 1. Paragraph 5 should be reworded as follows "The Vendor shall produce on or before the completion of this agreement the receipts for water and sewerage rates, land and building taxes and all other outgoings paid in full to date in respect of the said parcel of and the final approval from the Ministry of Finance (Town and Country Planning Division) for the sub-division of the said parcel of land to the Purchaser's attorneys Messrs. Roberts and

	<p>Company of "Alwinco House", No.65, Abercromby Street, Port of Spain in the Island of Trinidad.</p> <p>2. Paragraph 7 should be reworded as follows: "The Deposit of Sixteen Thousand Dollars together with interest thereon at the rate of 16% per annum computed from the date of these presents to the date of payment and shall be paid by the Vendor to Purchaser if the Vendor is unable to deduce a good marketable title to the said parcel of land and/or produce the final approval from the Ministry of Finance (Town and Country Division) pursuant to Clause 5 hereof".</p> <p>3. Clause 8 should be reworded as follows: "The Purchaser shall bear the cost of the preparation of/..... Of the said Memorandum of Transfer but the cost of revisiting the Memorandum of Transfer and surveying the said parcel of land shall be for the account of the Vendor.</p> <p>As WITNESS the hands of the parties the day and year first hereinabove written."</p> <p>Should you find the proposed amendments set forth herein acceptable kindly engross the agreement and return same to us for execution by our client and oblige.</p> <p>Yours Faithfully, ROBERTS AND COMPANY.</p>
9 th July 1991	Messrs Roberts and Co, Attorneys at law, Alwinco House, 65 Abercromby Street,

	<p>PORT OF SPAIN</p> <p>Dear Sirs,</p> <p>Re: Agreement for Sale between Carlton Maynard and Cecil Cumberbatch.</p> <p>We refer to your letter addressed to us in connection with the above.</p> <p>Our client has agreed to the changes you propose.</p> <p>We shall be grateful therefore in the interest of expediting proceedings if you could settle the necessary agreement.</p> <p>Faithfully Yours, S. Saunders & Co.</p>
<p>25th July 1991</p>	<p>Messrs. S. Saunders and Company Attorneys at Law Ramlal's Building, Main Road Chaguanas.</p> <p>Dear Sirs,</p> <p>Re: Agreement for Sale- Carlton Maynard in favour of Cecil Cumberbatch Jnr.</p> <p>We thank you for your letter of the 9th July, 1991 in connection with the above matter which was received by us on the 15th July, 1991. We send you herewith the engrossment of the agreement for sale containing the amendments proposed by us and agreed by the parties. Kindly arrange for the execution of same and oblige.</p>

	Yours Faithfully, ROBERTS AND COMPANY
26 th September 1991, 13 th March 1992, 30 th January 1995, 2 nd March 1995, 30 th March 1995, 22 nd June 1995.	Correspondence from the Defendant's attorneys to the Claimant's attorney with a view to concluding the purchase of the said lands.
7 th July 1995	The Claimant's attorney indicated that they were trying to contact the Claimant with regard to the sale of the lands.
17 th January, 1996, 23 rd February 1996, 2 nd April 1996, 24 th July 1996, 20 th September 1996 and 24 th September 1996	Correspondence from the Defendant's attorney to the Claimant's attorney regarding the execution by the Claimant of the sales agreement.
15 th October 1996	Claimant's attorney replied to Defendant's attorney that they were experiencing difficulty in contacting the Claimant.
7 th February 1997 and 6 th July 2005	Further correspondence by the Defendant to the Claimant with regards to the completion of the sales agreement.