

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2013-01851

BETWEEN

HAZEL RAMNANANSINGH

Claimant

AND

**RONNY MOHAMMED
VANESSA MOHAMMED**

Defendants

Before The Honourable Madam Justice Margaret Y Mohammed

Dated the 13th November 2015

Appearances

Mr. Marlon Moore instructed by Ms. K Alexander and Ms. C Pottinger for the Claimant

Mr. Riad Ramsaran for the Defendants

JUDGMENT

1. The parties in this matter were the children of Kayam Mohammed (“Kayam”) who until his death on the 28th of June 2009 lived at No. 8 Dry River Trace, St Augustine (“the property”). At the time of his death he owned one half undivided share in the property. The Claimant instituted the instant action seeking a declaration that she is entitled to an equitable interest in the ground floor apartment (“the apartment”) and the property; possession of the apartment, damages for trespass and/or conversion, partition of the property or sale in lieu of partition, injunctive relief restraining the Defendants from preventing her from entering on or enjoying the property, interest and costs of the action.

2. The Claimant's case is that prior to 1984, the dwelling house on the property was a wooden shack. In 1984 Kayam broke down the said dwelling house and built another wooden dwelling house, which stood on pillars, on the property. The First Defendant left the property in 1977 at the age of 14 years to reside with their aunt, Hamida, in Diego Martin; and he returned to the property in 1984 where he resided for 4 months until he got married.
3. In 1985 the Claimant got married and in 1986 she and her family returned to live with Kayam in the upstairs of the dwelling house when he expressly permitted the Claimant to build the apartment downstairs of the dwelling house on the property. Pursuant to the permission, the Claimant and her husband constructed the apartment and in or about 1989 they entered into occupation. They had employed a family friend Deosaran Persad to assist in its construction, and so built a concrete structure consisting of two bedrooms, a drawing room, a gallery and a kitchen. He also constructed a closed shed.
4. In 2002 the First Defendant returned to the property where he resided upstairs for 6 months before leaving. During this time the Claimant averred that she cooked and extended courtesies for Kayam and the First Defendant. From November 2006 to April 2007 the Claimant's sons with the guidance of Deosaran Persad constructed a toilet and bath downstairs. The Claimant and her family resided peaceably in the apartment until 2008 when disagreement arose among the family which culminated in proceedings at the Tunapuna Magistrate's Court. As a result of the said proceedings the Claimant and Kayam executed an agreement dated the 28th of May 2008 ("the mediation agreement") in respect of the Claimant's occupation of the apartment. The Claimant also averred that the Defendants were invited by the mediator to attend the mediation but they both neglected and/or refused to do so. In pursuance of the mediation agreement, the Claimant constructed a concrete annex ("the annex") measuring 20 ft by 24 ft which was connected to the apartment by a steel door and which was used as a study for the Claimant's sons. The annex was also constructed by Deosaran Persad. Kayam lived with the Claimant in the apartment for a short

period to facilitate repairs to the upstairs of the dwelling house but in July 2008 he informed her that he did not wish to reside with her anymore.

5. Subsequent to Kayam's death the Defendants engaged in a course of negative conduct which involved abusive and threatening language, assault, acts of intimidation and damage to the Claimant's property. The Claimant was of the view that such conduct was calculated to force her out of the apartment.
6. The Claimant admitted that the upstairs of the dwelling house started to deteriorate prior to Kayam's death, by way of leakage from the roof. However, the Claimant averred that the situation was exacerbated on the 2nd of August 2009 when the Second Defendant together with her agents broke down the upstairs of the dwelling house rendering the apartment exposed to the elements, with the consequence that appliances and other items belonging to the Claimant were damaged by rain and floods despite her efforts to secure them. She also asserted that the Defendants also caused damage to certain parts of the property including a retaining wall which was erected to protect against flooding. As a consequence of the Defendants' actions, the Claimant has been kept out of occupation of the apartment and she and her sons have collectively incurred rental expenses in the sum of \$4,200.00 per month since August 2009. The Claimant has also pleaded particulars of damage to the apartment and the flood wall in the sum of \$9,400.00, particulars of items which the Claimant has alleged the Defendants have unlawfully and without her consent converted to their respective use in the sum of \$6,908.00 and particulars of items which the Claimant alleged she had stored on the property and which the Defendants caused to be destroyed in the sum of \$935.00.
7. The Second Defendant has since rebuilt the upstairs of the dwelling house and she uses and occupies the entire property including the apartment.
8. The Defendants deny the Claimant's version of the facts. They deny that the Claimant constructed the apartment. They averred that Kayam and the First Defendant first built the dwelling house on the property in 1978 and it was the First Defendant who

built the apartment with a living room and kitchen where he lived until he left the property in 1984. In the year 2000 the First Defendant returned to the apartment due to his marital problems when he constructed a toilet and bath before he reconciled with his wife and returned to his marital home. They also pleaded that it was in 2000 that the Claimant sought the First Defendant's permission to occupy the apartment since she was encountering difficulty with paying her rent, and it was the First Defendant who permitted her to occupy the apartment for a period of two years. In breach of their agreement and despite repeated demands for possession, the Claimant continued to reside there until the 10th of August 2009.

9. During the period 2002 to August 2009 the Defendants made several requests for the Claimant and her family to vacate the apartment. In 2007, Kayam and the First Defendant sought to renovate and repair the dwelling house and the apartment since the roof and walls of the wooden part of the dwelling house were damaged by wear and tear over time. The Claimant, however, refused to vacate and ignored the notices to quit which were served on her. As a result, save and except for one room the repairs were not effected. This caused parts of the dwelling house to leak during excessive rainfall, which eventually drained into the apartment through the wooden floor boards. By the 20th of August 2009 the dwelling house had substantially collapsed but the Claimant had already moved her possessions out of the property.
10. The Defendants also averred that during the Claimant's occupation of the apartment, she, her husband and their sons were verbally and physically abusive to Kayam which caused him to file several applications in the Tunapuna Magistrate's Court in 2008. They denied the authenticity of the mediation agreement on the basis that Kayam was coerced into signing it, he could not properly attest to it since his vision was impaired due to cataracts, he had diabetes and he was diagnosed as an epileptic and as such they averred that it was not entered as a consent order before the Tunapuna Magistrate's Court.
11. They also denied that Kayam permitted the Claimant to construct additional rooms to the apartment. They denied that they harassed the Claimant and her family but instead

stated that it was the Claimant and her family who continuously harassed them including at their respective places of work. They deny taking, stealing, and or converting any of the Claimant's possessions. They averred that on the 10th of August 2009 there was excessive rainfall which caused a river running nearby to burst its banks, which demolished the retaining wall causing significant damage to the Claimant's possessions. They cannot account for the Claimant's items on the basis that it could have been lost in the flood, damaged or stolen by unknown persons, or hidden by the Claimant or her family. They also pleaded that shortly after the mediation agreement, Kayam executed a will where he left everything he had to the Defendants.

12. At the trial, the Claimant, the parties' mother, Leela Ragoobar; their sister, Alicia Ragoobar; and one Deosaran Persad gave evidence for the Claimant. The Defendants gave evidence in support of their case.

13. The issues arising for determination are:

- (a) Is the Claimant entitled to an equitable interest in the apartment, annex and the downstairs toilet and bath?
- (b) Is the Claimant entitled to damages for trespass and/or conversion?
- (c) Can an order for partition be made in the circumstances?
- (d) What is an appropriate costs order?

14. Although the Claimant pleaded rental expenses of \$4,200.00 per month from August 2009, this matter was not addressed in the Claimant's closing submissions and Counsel indicated that in light of the evidence he was not pursuing this claim.

Is the Claimant entitled to an equitable interest in the apartment, the annex and the downstairs toilet and bath?

15. It was not in dispute that Kayam owned a one half undivided interest of the property, that he owned the dwelling house and that he devised his property to the Defendants

by his will in July 2008. The Claimant's claim to the apartment, the annex and the downstairs toilet and bath was grounded in the equitable doctrine of proprietary estoppel which was re-stated by Rajkumar J in **Fulchan v Fulchan**¹ as:

“ If A under an expectation created or encouraged by B that A shall have a certain interest in land thereafter, on the faith of such expectation and with the knowledge of B and without objection from him, acts to his detriment in connection with such land, a court of Equity will compel B to give effect to such expectation.”
Taylor Fashions Ltd v Liverpool Victoria Trustee Co. Ltd Per Oliver cited in Snell's Principles of Equity 31st Ed. Para 10-16”

16. In **Crabb v Arun DC**² Lord Denning MR explained the nature of this equitable remedy as:

“The basis of this proprietary estoppel –as indeed of promissory estoppel –is the interposition of equity. Equity comes in, true to form, to mitigate the rigours of strict law. The early cases did not speak of it as “estoppel”. They spoke of it as “raising an equity”. If I may expand what Lord Cairns L.C. said in *Hughes v Metropolitan Railway Co* (1877) 2 App. Cas. 439,488: “ it is the first principle upon which all courts of equity proceed,” that it will prevent a person from insisting on his strict legal rights-whether arising under a contract, or on his title deeds, or by statute- when it would be inequitable for him to do so having regard to the dealings which have taken place between the parties.”

17. There are basically four elements which the Claimant must prove in order to benefit under the doctrine, namely: she was encouraged and/ or permitted by Kayam to construct the apartment, the annex and the downstairs toilet and bath by Kayam; she acted on his permission with the expectation and belief that if she constructed it she would enjoy the use of it, she acted to her detriment by doing so and there was no bar in equity preventing her from pursuing this remedy.

18. Owing to the death of Kayam, the Court did not have the benefit of his evidence to assist in determining whether he encouraged the Claimant to construct the apartment, the annex and the downstairs toilet and bath. However, based on the evidence available to the Court, I have accepted the Claimant's evidence that she returned to the property in 1986; at that time Kayam permitted her to construct the apartment; she

¹ CV 2010-03575

² (1975) 1 Ch at page 179

and her family constructed the apartment using their funds which they moved into in 1989; the Claimant also constructed the annex and the downstairs toilet and bath with Kayam's permission; the said construction was undertaken by the Claimant with the expectation and belief that she would have lived there; and I therefore have concluded that she has an equitable interest in the apartment, annex and downstairs toilet and bath for the following reasons.

19. Firstly, the Claimant's evidence in her witness statement and during cross-examination was in a large part consistent with her pleaded case. According to the Claimant's witness statement, in 1975 she lived with Kayam and the Defendants in an old wooden house which consisted of two bedrooms, a dining room, a kitchen, an outhouse and an outdoor bathroom on the property. In 1975 the First Defendant left and went to reside with their aunt Hamida in Diego Martin. He was 14 years old at that time. In 1984 the First Defendant returned to live with them and stayed there for about three months until he left in June when he got married. By that time the house was more dilapidated. In July 1984 Kayam demolished the wooden house and built another wooden house on 12 concrete pillars which consisted of three bedrooms, a kitchen, a dining room and a gallery. The downstairs part of the dwelling house was not built up since it had a dirt floor and they continued to use the outhouse and the outdoor bath.

20. In February 1985 the Claimant left and went to live with her mother, Leela Ragoobar where she stayed for nine months until she married Teddy Ramnanansingh in December 1985. She then lived at Prescott Lane, Tunapuna for about one year. In December 1986 she moved in to live with Kayam upstairs of the dwelling house together with her husband and her first child Terry. Her father then gave her permission and encouraged her to construct the apartment since he wanted more space upstairs as he was expecting his female companion to move in. While I accept that the Claimant was unable to give details of the extent of Kayam's assurances such as how long she could live in the apartment if she constructed it, in the absence of any evidence to demonstrate otherwise, it is reasonable to assume that when Kayam gave

his permission to the Claimant, it was unconditional since he knew that she had to expend funds in its construction.

21. In pursuance to the permission, in late 1986 the Claimant's husband and a man called Terrance dug and cast trenches and cast the entire downstairs in preparation for construction of the apartment. They also built the living room and kitchen. By the latter half of 1987 the gallery was completed. In 1988 the Claimant and her husband contracted the family friend Deosaran Persad to assist with the construction. He built two bedrooms and plastered the walls of the kitchen, living room and gallery. The Claimant and her family moved to the apartment in 1989 by which time the Claimant had three sons, Terry, Tyson and Timmy.
22. In 2002 when the First Defendant returned to live at the property he lived with Kayam upstairs and she cooked for them since Kayam's female companion was ill. He stayed for six months. In 2006 her sons dug and commenced construction of a soakaway pit under the supervision of Deosaran Persad and she expanded the apartment by building a 12 ft x 12 ft room for a toilet and bath which was completed in 2007. In March 2008 Kayam gave her permission to construct the annex.
23. While the Claimant's evidence on Kayam's permission to construct the apartment and the downstairs toilet and bath was unchallenged, the contemporaneous documents during the period January 2008 to July 2008 contradicted the Claimant's position that she also obtained Kayam's permission to construct the annex in March 2008. In the letter dated 4th of January 2008 to the Claimant and her husband, Kayam's attorney called upon them to cease construction of any structure on his property. On the 2nd of April 2008 a notice to quit was served by Kayam on the Claimant and her husband and on the 4th of June 2008 Kayam's attorney wrote another letter to the Claimant and her husband again calling upon them to cease and desist from any construction on the property³.

³ Exhibit RM 2 to the witness statement of Ronny Mohammed filed 28th February 2014

24. However, at paragraph 5 of the mediation agreement, Kayam agreed to allow the annex to be completed two months from the 28th of May 2008 which was the date of the mediation agreement. In my view, based on the aforesaid correspondence, it was clear that Kayam had a change of heart and did not permit the Claimant to construct the annex as she asserted in March 2008. But this changed in May 2008 when he agreed to give her such permission.
25. During cross-examination the Claimant denied that the First Defendant was giving money to Kayam to construct the dwelling house and to do repairs. She denied that the second house on pillars was built in 1978 by Kayam and the First Defendant. She denied that the First Defendant and Kayam gave her permission to occupy the apartment. She also explained that all her receipts to prove that she paid the contractor and purchased materials were destroyed in the flood in August 2009. However she was able to recall that she paid the contractor \$25,000.00 for the annex which was corroborated by Deosaran Persad during his cross-examination.
26. Secondly, material aspects of the Claimant's evidence were corroborated by the Second Defendant, Deosaran Persad, Leela Ragoobar and Alicia Ragoobar which supported the Claimant's case. There are four material admissions made by the Second Defendant during her cross-examination which contradicted her pleading and her witness statement. She admitted the date the First Defendant moved out of the property since she said that he moved out of the property in 1978 when he was about 14 or 15 years old. She admitted that when the Claimant returned to live on the property she only had her first child and that the Claimant's three other children were born while she lived on the property. According to the Claimant her first child was born on the 12th of August 1986 and her other children were born while she was living on the property on the 7th of August 1988, 26th of September 1989 and the 3rd of December 1991 respectively. Therefore, this corroborated the Claimant's evidence that she first returned to live on the property in 1986 and not 2000 as pleaded by the Defendants. She also admitted that Kayam gave the Claimant permission to build the apartment, and the reason he did so was the same reason stated by the Claimant, which was that he had a female companion who was going to move in to live with

him in the dwelling house. She also admitted that after the Claimant moved to the apartment she remained living upstairs.

27. Further, the Claimant's evidence that she and her husband constructed the apartment was corroborated by the family friend, Deosaran Persad, the person who was contracted to assist in the construction. He confirmed that in 1989 he was hired by the Claimant's husband to assist in the construction of the apartment. He also confirmed that he was hired to construct the two bedrooms which were each 12ft by 12ft and to plaster the entire apartment. He stated that he took two weeks to complete this job and he was paid \$10,000.00. He also stated that in 2006 he assisted by lending his guidance in the construction of the 12ft by 12ft room to house the toilet and bath and he supervised the construction of the soakaway pit. He was again hired in 2008 to construct the annex. He built the foundation, walls, doors, and roof and assisted in plastering the walls. He was paid \$25,000.00 for his labour and any materials that he provided.
28. During cross-examination he stated that he was not paid for his role in the construction of the toilet and bath. He acknowledged that he did not charge the Claimant and her family the full price for his services since he knew them and that the \$25,000.00 was paid in parts. He said that he also donated some material which he had during the construction. Although his evidence was challenged during cross-examination, his position on his role in the construction of the apartment, annex and downstairs apartment in terms of labour and materials remained unchallenged.
29. Both Leela Ragoobar and Alicia Ragoobar also gave evidence that they visited the Claimant in 1986 when she resided upstairs the dwelling house and they both saw the Claimant's husband and the contractor Deosaran Persad building the apartment and they saw when the Claimant and her family moved to the apartment. This evidence from either witness was unshaken during cross-examination.
30. Thirdly, material aspects of the First Defendant's evidence during cross-examination contradicted his pleaded case and his witness statement which caused me to conclude

that he was a stranger to the truth. The First Defendant's evidence in his witness statement was that in 1978 he was working as a Bottle Inspector at Cannings Limited and that he and Kayam first built the dwelling house. He took materials on loan from Acme Hardware and built the apartment, which was a self-contained one bedroom apartment with living room and kitchen, where he lived until 1984. Notably absent from his witness statement was that he left in 1978 when he was about 14-15 years old. However during cross examination he denied stating that he was a Bottle Inspector in 1978 when he was about 16-17 years old. Instead he said he started working at Cannings Limited when he was 9 years old and became a Bottle Inspector when he was about 20-21 years old.

31. Apart from the First Defendant contradicting himself, his evidence was highly implausible. The First Defendant was born on the 27th of June 1961 and by 1978 he would have been 17 years old. He would have left when he was about 14-15 years old therefore he could not have been working as a Bottle Inspector for at least 6 years. In my view it was highly unlikely that he could have been elevated to the post of Bottle Inspector and he could have acquired a loan from Acme hardware at this early stage of his life. Clearly the impression he sought to give in his witness statement was that he bore the financial responsibility of the entire dwelling and apartment at a tender age which was not credible.

32. Further, although the First Defendant denied that the Claimant returned to the property in 1986 and that she had one son upon her return, he admitted that three of her sons were born while she lived there. This admission is consistent with the Claimant's position that she was already living on the property before the year 2000 as asserted by the Defendants since her three other sons were all born before 2000.

33. Fourthly, the First Defendant's evidence was also contradicted by the Second Defendant's evidence during her cross-examination. The First Defendant stated in his witness statement that he lived on the property until he was about 23 years old when he got married. However the Second Defendant admitted under cross-examination that the First Defendant moved out of the property at a very young age. Even his

mother, Leela Ragoobar, also stated that she knew that the First Defendant left the property to live with his aunt, Hamida, in Diego Martin since she maintained contact with the said aunt.

34. Fifthly, the First Defendant failed to provide any corroborating evidence. The First Defendant indicated that there was a marital dispute between his wife and himself and as a consequence he returned to the property where he constructed a toilet and bath as an addition to the apartment. However, he failed to provide any evidence with respect to the construction of this toilet and bath. Although he said that his neighbours and his uncle saw when he was doing the construction, he produced no one to corroborate his evidence of this construction. Although the First Defendant stated that the Claimant was given permission to occupy the apartment for two years from the year 2000, there was no evidence of this agreement provided by any of the Defendants.
35. Further, despite the First Defendant's assertions that he was responsible for the construction of the dwelling house and the apartment on the property, he brought no one to substantiate his story. He did not bring anyone from the Acme Hardware where he said he got materials on loan, he did not bring any neighbours whom he said saw when he was building the toilet and bath, he provided no receipts for purchase of materials and no explanation why he did not provide receipts or bring anyone.
36. Sixthly, the contemporaneous documents for the period January 2008 to February 2009, namely letters from Kayam's attorney to the Claimant and her husband to cease construction work on the property, ejectment and protection applications filed in the Tunapuna's Magistrate's Court only demonstrated that the relationship between Kayam and the Claimant deteriorated subsequent to the construction of the apartment and the downstairs toilet and bath but did not dispute Kayam's permission to the Claimant to construct the apartment. Further, even if the mediation agreement dated May 2008 was not entered as an Order of the Court at the Tunapuna Magistrate's Court, the position adopted by the Defendants on Kayam's capacity to enter into the mediation agreement in my view was not plausible and in my view the contents of it were undisputed. They adopted the position that the mediation agreement was not

valid since Kayam was suffering with cataracts, diabetes, epilepsy and he was coerced since the Claimant and her family were outnumbered him at the mediation. However, despite their protestations of Kayam’s poor health they had no difficulty in accepting that his will which was executed a mere eleven days after the mediation agreement was valid and unaffected by his poor health which affected his ability to freely enter into the mediation agreement.

37. Lastly, based on the evidence it was not disputed that by early 2008 until Kayam’s death the relationship between Kayam and the Claimant had deteriorated to the extent that there were several applications at the Tunapuna Magistrate’s Court for ejectment proceedings and protection orders. In my view, both sides engaged in such behaviour and as such it cannot be reasonable to conclude that the Claimant’s claim in equity is barred due to her actions.

Is the Claimant entitled to damages for trespass and/or conversion?

38. In the Claimant’s amended Fixed Date Claim she pleaded damages to her property, trespass to her goods and damages for conversion. Her particulars of damage were :

<u>Particulars of Damage</u>	
Children’s Room Wall which was demolished	\$1,000.00
Mattress which was destroyed by flooding	\$200.00
Ceilings	\$500.00
Wall to prevent flooding which was demolished	\$1200.00
Shed for hanging clothes which was demolished	\$4500.00
Electrical fittings which were removed	\$1100.00
Toilet walls which were demolished	\$900.00
Total	\$9,400.00 ⁴

39. The particulars of items converted were:

<u>Particulars of items Converted</u>	
Face Basin tap	\$45.00
Sink tap	\$95.00

⁴ Paragraph 6 of Amended Fixed Date Claim filed 13th June 2013

6 Outlet power strips	\$40.00
Logitech Speakers	\$549.00
1 Television set	\$2395.00
1 Microwave	\$549.00
4 steel doors	\$3,000.00
1 Garden hose	\$195.00
1 Broom	\$40.00
Total	\$6,908.00 ⁵

40. The particulars of trespass to goods were:

“Particulars of Trespass to Goods

Toilet Bowl	\$500.00
Locks destroyed	\$135.00
Kitchen Sink	\$300.00
Total	\$935.00 ⁶

41. The burden is on the Claimant to prove that as a result of the actions of the Defendants she suffered her pleaded loss.

42. **Clerk & Lindsell on Torts**⁷ described the elements of the tort of conversion as :

“[A]nyone who, without authority, receives or takes possession of another’s goods with the intention of asserting some right or dominion over them, or deals with them in a manner inconsistent with the right of the true owner is prima facie guilty of conversion; provided there is an intention on the part of the person so dealing with them to negative the right of the true owner or to assert a right inconsistent therewith.”⁸

43. In **Pooran Sookdeo et al v Wayne Lum Young et al**⁹ Rampersad J examined the different characteristics of the tort of trespass to goods and the tort of conversion. The claimant’s case was that his motor vehicle and some personal items were wrongfully taken away from him by the police at his premises. Rampersad J gave definitions for both torts respectively at paragraphs 37 and 39 as follows which I adopt:-

⁵ Paragraph 7 of Amended Fixed Date Claim filed 13th June 2013

⁶ Paragraph 8 of Amended Fixed Date Claim filed 13th June 2013

⁷ 19th Edition.

⁸ Page 1008, paragraph 17-09.

⁹ CV 2010-03195

“37. Warner JA in the Court of Appeal in the case of Carlton Rattansingh v The AG of Trinidad and Tobago and Kanahar Doopan - (Unreported) CVA No. 105 of 2000 said at pages 7 and 8:

"...

39. The claim in conversion

To constitute conversion, there must be a positive wrongful dealing with the goods in a manner inconsistent with the owner's rights and an intention in so doing to deny the owner's rights or to assert a right inconsistent with them. The gist of the action is inconsistency. There need not be any intention to challenge the true owner's rights. A demand and refusal is sufficient evidence of conversion."

Halsbury's Laws of England describes trespass to goods as follows:

“Trespass to goods is an unlawful disturbance of the possession of goods by seizure or removal, or by a direct act causing damage to the goods. The subject matter of trespass to goods must be a personal chattel which is the subject of lawful possession. Defences available in an action for trespass to goods include claim of right, jus tertii, and that the act complained of was done by the leave and licence of the claimant or in the exercise of a legal right.”

44. The onus is therefore on the Claimant to prove that the Defendants deliberately dealt with the items she pleaded under “particulars of items converted” and “particulars of trespass to goods” in a manner which was inconsistent with her rights of ownership and excluded her from possession of them. She must also demonstrate that she demanded that the items she claimed were converted be returned and that the Defendants failed to comply with the demand. Further, the failure to comply cannot be justified or excused by proof that the goods are no longer in the control, custody or possession of the Defendants or anyone over whom they exercised control or that they were negligently lost or destroyed or they parted with them without just cause. **Halsbury's Laws of England, Bailment and Pledge volume 4, 5th edition at paragraph 232.**

45. The Claimant admitted that the upstairs of the dwelling house had begun to deteriorate prior to Kayam's death in 2009 and that the floor boards had deteriorated and on the 2nd of August 2009 the Second Defendant together with her agents demolished the upstairs of the dwelling house which rendered the apartment exposed to the elements. They also demolished the wall at the front of the property which served to protect against flooding. The Claimant's witness, Alicia Ragoobar,

corroborated the Claimant's evidence on the destruction of the upstairs of the dwelling house since she said she also witnessed it. As a result of the Second Defendant's actions, the Claimant applied for a restraining order at the Tunapuna Magistrate's Court on the following day and she eventually obtained the order on the 27th March 2012.

46. The Claimant also stated that as a consequence of the demolition of the upstairs of the dwelling house, when there was a massive flood on the 10th of August 2009 the Claimant's appliances and other items were damaged by rain and floods despite having taken reasonable measures to secure them. After the flood the Claimant was forced to stay with her mother, Leela Ragoobar, in Tunapuna. She visited the property to clean the apartment and she secured her refrigerator, television, microwave, steel doors, face basin and sink in the annex to the apartment. However on the 27th of August 2009 when she visited the property, she saw the Second Defendant and her son and others taking the aforesaid items and other items from the apartment. She also observed that the steel doors, bricks and wood which were used to connect the annex to the apartment were missing. She was unable to return to the apartment after the 27th of August 2009 due to the Defendants' acts of violence towards her whenever she visited. She was therefore unable to take her personal effects and other property.

47. On the 20th of January 2013, the Claimant stated that she visited the apartment accompanied by two police officers but was refused entrance to the property by the Second Defendant's son and her uncle Tufeek Mohammed. On the 17th of February 2013, the Claimant again returned to the property. She observed the Second Defendant showering in the bathroom she built downstairs the dwelling house despite there being a restraining order preventing the Second Defendant from using the apartment. During cross-examination she stated that there was not adequate space at her mother's home to store her personal items.

48. The Defendants' evidence on the other hand was that the Claimant prevented Kayam and the Defendants from repairing the house save and except one room and it was as a result of this prevention that the house, the first floor and the flooring deteriorated

so badly over a period of time that it eventually collapsed on the 20th of August 2009. The Defendants' evidence was that due to excessive rain on the 10th of August 2009 the river running in the vicinity of the property burst its banks and demolished the retaining wall which exacerbated the damage on the property.

49. The First Defendant's evidence in his witness statement was that the floods on the 10th of August 2009 destroyed the Claimant's items and that during the clean up in the aftermath of the floods there were several workers who could have taken the Claimant's items. During cross-examination, at first he denied that he and the Second Defendant caused the upstairs of the dwelling house to be removed. Later he stated that although he was not present when the upstairs of the dwelling house was demolished, he admitted that he was aware that it was removed. He then maintained that the removal of the upstairs of the dwelling house did not leave the apartment exposed to the elements. I found the inconsistency in the First Defendant's evidence on this matter served to demonstrate that he was also not forthright with the Court on this matter. I formed the view that the upstairs did not eventually collapse, as he stated in his pleading and witness statement, and that although the First Defendant did not participate in the demolition of the upstairs of the dwelling house, he was fully aware of it and the effect it had on the apartment.

50. The Second Defendant admitted that she has rebuilt the apartment and has used the dwelling house since 2009. She denied that she took any of the Claimant's items and that she could not recall the items that were thrown away after the flood in August 2009. During cross-examination, she stated that on one occasion police officers visited the property and told her that the Claimant had a court order to be present on the property. She admitted that while she had a copy of it she still refused the Claimant access to the property. Although she denied that she was involved in ripping up the floor boards of the upstairs of the dwelling house, she maintained that only the Claimant was present and not Alicia Ragoobar when the upstairs of the dwelling house was being destroyed. She denied that she was in possession of the Claimant's

items. It was her position that the Claimant was forced to leave the apartment not because of the actions of the Defendants but due to the flood which she believed was “an act of God”.

51. It was clear that the Second Defendant was aware of the terms of the order and breached it by refusing to give up possession. Her explanation was she had a deed saying that the property belonged to her. However, she failed to provide any evidence that the order was varied or set aside so as to recognize her interest in the property. Further, the Second Defendant was involved in the demolition of the upstairs of the dwelling house since she admitted that the Claimant was present when it took place, which corroborated the Claimant’s evidence. The Second Defendant was therefore not being truthful to the Court when she stated that the upstairs of the house collapsed. In my view, she knew or ought to have known since she lived on the property for a significant period that the demolition of the upstairs would have exposed the apartment to the elements. Therefore, while the floods may have caused the Claimant to leave the apartment temporarily on the 10th of August 2009, the actions of the Second Defendant in demolishing the upstairs played a role in causing the Claimant’s departure and her subsequent actions caused the Claimant not to be able to enter the property.

52. I have concluded that the Claimant is entitled to recover damages for the loss she suffered under the particulars of damages she pleaded, conversion and trespass to her goods for the following reasons. Firstly, the Claimant’s evidence that she secured her items in the apartment after the flood on 10th of August 2009 was not challenged by the Defendants. Therefore I accept that she did own the items she pleaded she secured. Secondly, although the Claimant did not make a formal demand to the Defendants for the return of the said items, such a demand can reasonably be implied since she made several efforts after the flood to access the apartment and the downstairs of the dwelling house to retrieve her items. Thirdly, by the Defendants, in particular the Second Defendant preventing the Claimant from accessing the apartment, which meant that she was denied access to and possession of her items.

53. Fourthly, even if I accept the Defendants' evidence that the Claimant's items were destroyed in the flood and/ or may have been removed by the persons in the clean up exercise after the flood, they are still responsible for the Claimant's loss since they were responsible for all the items stored on the property. As such, if they cannot account for them they are liable to the Claimant.

54. Having determined that the Defendants are liable to the Claimant for damages in trespass/ conversion I will now turn to the quantum of damages to be awarded. The general rule is that the measure of damages and the value of the property arises from the date of the conversion¹⁰. In the instant matter a reasonable date is the 27th of August 2009, since after this date the Claimant was denied access to the property by the Defendants. However, there is an absence of documentary evidence to prove the value of the items which the Claimant has asserted as loss. She has provided a list of items and their values. Notably during cross-examination the Claimant's evidence on the value of the items was not challenged. In **Grant v Motilal Moonan**¹¹ the Court of Appeal in this jurisdiction accepted that a list of household items with prices and no receipts was sufficient proof of the quantum of damages. I therefore accept the Claimant's evidence on the quantum provided and order the Defendants to pay the Claimant the sum of \$9,400.00 as damages to property, \$6,908.00 as damages for conversion and \$965.00 as damages for trespass to goods.

Can an order for partition be made in the circumstances?

55. Section 3 of the Partition Ordinance¹² provides:

“In a suit for partition, where, if this Ordinance had not been passed, a decree for partition might have been made, then if it appears to the Court that by reason of the nature of the property to which the suit relates, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of some of those parties, or of any other circumstance, a sale of the property and a distribution of the proceeds would be more beneficial for the parties interested

¹⁰ See *BBMB Finance (Hong Kong) Ltd v Eda Holdings Ltd* [1992] 2 AER 129

¹¹ (1988) 42 WIR 372

¹² Chapter 27 No 14

than a division of the property between or among them, the Court may, if it thinks fit, on the request of any of the parties interested, and notwithstanding the dissent or disability of any others of them, direct a sale of the property accordingly, and may give all necessary or proper consequential directions.”

56. I was not satisfied that there were compelling reasons for me to make an order for partition of the property for the following reasons. Firstly, there was no evidence before the Court on the value of the one half undivided interest of the property which is now owned by the Defendants and the value of the apartment and the downstairs toilet and bath which was constructed by the Claimant. Secondly, the history of the relationship between the parties has been tumultuous and not conducive for such an order since it was not in dispute that since 2008 the parties have commenced several actions in the Tunapuna Magistrate’s Court against each other and that the police were often called in to render assistance.

57. In the absence of an order for partition, the Claimant submitted that the Court order the Defendants to compensate the Claimant for her share in the property and that in default a sale be ordered.

58. In **Theresa Henry and anor v Calixtus Henry**¹³ the Privy Council cited the decision in **Gillett v Holt**¹⁴ to explain that the aim of the Court in satisfying an equity arising from a proprietary estoppel was “to look at the circumstances in each case to decide in what way the equity can be satisfied.” In **Jennings v Rice**¹⁵ Lord Walker stated at paragraphs 50 and 51 the extent of the judicial discretion as:

“50. To recapitulate: there is a category of case in which the benefactor and the claimant have reached a mutual understanding which is in reasonably clear terms but does not amount to a contract. I have already referred to the typical case of a carer who has the expectation of coming into the benefactor’s house; either outright or for life. In such a case the court’s natural response is to fulfil the claimant’s expectations. But, if the claimant’s expectations are uncertain, or extravagant, or not of all proportion to the detriment which the claimant has

¹³ (2010) UKPC 3

¹⁴ (2001) Ch 210

¹⁵ (2003) P, & C, R. 8

suffered, the court can and should recognise that the claimant's equity should be satisfied in another (and generally more limited) way.

51. But that does not mean that the court should in such a case abandon expectations completely, and look to the detriment suffered by the claimant as defining the appropriate measure of relief. Indeed in many cases the detriment may be even more difficult to quantify, in financial terms, than the claimant's expectations. Detriment can be quantified with reasonable precision if it consists solely of expenditure on improvements to another person's house, and in some cases of that sort an equitable charge for the expenditure may be sufficient to satisfy the equity But the detriment of an ever-increasing burden of care for an elderly person, and of having to be subservient to his or her moods and wishes, is very difficult to quantify in money terms. Moreover the claimant may not be motivated solely by reliance on the benefactor's assurances, and may receive some countervailing benefits (such as free bed and board). In such circumstances the court has to exercise a wide judgmental discretion."

59. The Court went on to explain the delicate balancing exercise the Court must undertake in weighing the disadvantages suffered by the Claimant against the advantages enjoyed at paragraphs 52-53 as:

"52. In Campbell v. Griffin (2001) 82 P. & C. R. DG23, Lord Walker (Robert Walker LJ, as he then was), when considering the issue as to how the equity which had been found to have arisen in that case should be satisfied, described the court's approach to that issue as a cautious one. The court had to look at all the circumstances in order to achieve the minimum equity to do justice to the claimant. However, he went on to observe (as he also observed in his judgment in Gillett v. Holt (above)) that the court enjoys a wide discretion in satisfying on equity arising under the doctrine of proprietary estoppel. Lord Walker then went on to weigh the disadvantages which the claimant had suffered by reason of his reliance on the defendant's assurances against the countervailing advantages which he had enjoyed by reason of that reliance (including, in that case, rent-free occupation of the property in issue). Lord Walker concluded that the claimant's rent-free occupation of the property had not extinguished his equity, but that in all the circumstances the grant of a life-interest in the property would be disproportionate to his legal and moral claims over the property. In the result, exercising the wide discretion to which he had earlier referred, he concluded that the appropriate form of relief was award of a fixed monetary sum charged on the property.

53. In the instant case the judge should have undertaken a similar weighing process to that undertaken by Lord Walker in Campbell v. Griffin; that is

to say, he should have weighed any disadvantages which Calixtus Henry had suffered by reason of his reliance on Geraldine Pierre's promises against any countervailing advantages which he had enjoyed by reason of that reliance. Had he done so, he would have brought into account on, as it were, the debit side of the account.....”

60. The evidence on the amount the Claimant is to be compensated for in light of her equitable interest in the apartment is very limited. There was no valuation of the apartment and the downstairs toilet and bath. Based on the Claimant's evidence she and her husband paid the contractor \$10,000.00 in 1989 and \$25,000.00 in 2008 to assist in the construction of the apartment and annex respectively. I have already ordered that she is to be compensated for the damage suffered of the apartment. Therefore given the limited evidence before me I can only order the Defendants to compensate the Claimant for the apartment, annex and downstairs toilet and bath in the sum of \$35,000.00.

What is an appropriate costs order?

57. The prescribed costs rule is set out in Part 67.5 which provides:

“(1) The general rule is that where rule 67.4 does not apply and a party is entitled to the costs of any proceedings those costs must be determined in accordance with Appendices B and C to this part and paragraphs (2)-(4) of this rule.

(2) In determining such costs the “value” of the claim shall-

(a) In the case of a claimant, be the amount agreed or ordered to be paid;

(b) In the case of a defendant-

i. Be the amount claimed by the claimant in his claim form; or

ii. If the claim is for damages and the claim form does not specify an amount that is claimed, be such sum as may be agreed between the party entitled to, and the client liable to, such costs or if not agreed, a sum stipulated by the costs as the value of the claim ;or

iii. If the claim is not for a monetary sum, be treated as a claim for \$50,000.00”

61. The main relief in the Claimant's claim was for declaration, possession, damages and injunctive orders. The damages were consequential upon the Claimant's success in the main relief. In the circumstances I treat the claim as one for a non-monetary sum under 67.5 (2) (b) (iii) and award costs in the sum of \$14,000.00

ORDER

62. It is declared that the Claimant is entitled to an equitable interest in the apartment on the property.

63. The Defendants are to pay the Claimant damages in the sum of \$17,243.00.

64. The Claimant is to be compensated by the Defendants in the sum of \$35,000.00 which represents her share and interest in the property.

65. Interest on the aforesaid sums at the rate of 3 % per annum from the date of judgment.

66. The Defendants to pay the Claimant's costs in the sum of \$14,000.00.

Margaret Y Mohammed
Judge