REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. 2015-02345

IN THE MATTER OF AN APPLICATION MADE PURSUANT TO PART 68 OF THE CIVIL PROCEEDINGS RULES 1998 (AS AMENDED)

AND

IN THE MATTER OF ALL AND SINGULAR THAT CERTAIN PIECE OF PROPERTY SITUATE AT NO. 7 KING STREET ARANGUEZ

BETWEEN

PHYLLIS HARRYPAULSINGH **Claimant**

AND

ANTHONY HARRYPAULSINGH

SHARON RAMNATH

AVINASH HARRYPAULSINGH

NICHOLAS SINGH **Defendants**

Before the Honourable Madam Justice Margaret Y Mohammed

Dated the 28th July 2017

APPEARANCES

Mr. Kirk Bengochea instructed by Mr. Charles Law Attorneys at law for the Claimant.
Mr. Russell Warner instructed by Ms. Renuka Sagramsingh-Sooklal Attorneys at law for the Defendants.

JUDGMENT

1. The Claimant is the owner of a property situated at No. 7 King Street, Aranguez ("the property"). She and her late husband lived and operated a business, P& W Singh Grocery and Liquor Store ("the business"), until it was closed in 1990. She is also the mother of the First Defendant and the grandmother of the Fourth Defendant. The Second Defendant is the First Defendant's wife and the Third Defendant is the son of the Second Defendant. The Claimant has initiated the instant proceedings against the Defendants for damages for trespass and for an order for possession of the property.

2. The Claimant contends that on the 17th July 2001 she permitted the Defendants to move into the property to live with her as an act of generosity since the father of the Second Defendant had told the Defendants that they were to leave where they previously lived in Tunapuna which belonged to the Second Defendant's family. During the period 2007 to 2015 the Claimant began to suffer from various medical ailments and as a result she left the property to reside with her daughters Margaret Harripaulsingh ("Margaret') where she spent 6 months in New York and the other 6 months with Ester Ramklewan ("Ester") who resides at 42 A-2 Sookia Street East extension Aranguez. In 2009 the Claimant fell ill and subsequent to a short period of hospitalization she went to live with Ester where she has continued living at present.

3. The Claimant averred that during the period 2007 to 2009 the First Defendant excluded her from the property and denied her several requests to return to it. She was only able to return to the property for short periods of time, with the assistance of Ester. However, after 2009, the Claimant made several visits to the property but she was prevented from gaining access since the First Defendant had changed the locks to the property.

4. In December 2014, for the first time, the Claimant noticed that the First Defendant was engaging in construction on the property. On the 27th December 2014 the Claimant requested the Defendants to vacate the property and to stop all works on the property but the First Defendant has refused. As a result the Claimant caused her attorney at law to issue a pre action protocol letter to the Defendants calling upon them to vacate the property but they responded

through their attorney at law resisting her request on the basis that she gave the First Defendant assurances that he would get the property and it was based on these assurances the First Defendant undertook repairs and renovations to the property.

5. The Defendants' case is that for the past sixteen (16) years, the First Defendant, his wife and their two children have resided at the property with the knowledge, consent and approval of the Claimant. In particular, the First Defendant averred that he has resided at the property for from 1975 to present. The Defendants averred that the First Defendant made financial contributions to the property in 1982 when he took the decision to repair and renovate the property. Between 1982 and 1985 the Claimant and the First Defendant jointly applied for and obtained loans. As the property owner, the Claimant was a signatory to those loans and the proceeds were used to affect the said repairs and renovations.

6. The Defendants also averred that the First Defendant effected substantial repairs and renovations to the property during the period 2009 to 2015 in the sum of $1,008,859.84 with the knowledge, consent and approval of the Claimant and that the substantial renovations were visible to neighbours, visitors and passersby.

7. The Defendants asserted that the Claimant caused the First Defendant to believe that she would leave the property to him since on the 23rd November 1995 the Claimant executed a will ("the 1995 will"), in which she left the property solely for the First Defendant and she named him as the executor. In particular, the Defendants averred that after execution of the 1995 will, the Claimant spoke with the First Defendant and told him that she was satisfied with the manner in which he had taken care of the family and the property and that she had given the property to him. She also told him that she would eventually convey the property to him and that he should not worry. On each occasion that the Claimant travelled abroad, she reminded the First Defendant that should anything happen to her while she was away, that the 1995 will was in her wardrobe. These reminders reinforced the Claimant's promises and assurances that the property would be transferred to the First Defendant.

8. The Defendants dispute the Claimant's allegations that they have excluded her from returning to the property. They averred that in 2009 the Claimant underwent surgery and it was agreed between the Claimant, the First Defendant and Ester that the Claimant would stay at Ester's home, for the Claimant's comfort. The Claimant voluntarily moved to Ester's home and notwithstanding this move, the First Defendant continued to maintain a close relationship with the Claimant since he visited her regularly and kept her abreast of all the happenings with the property.

9. Based on the pleadings the issues which arose for determination are:
   (a) Did the Claimant create a reasonable expectation in the First Defendant that he would obtain an interest in the property and if yes, did the First Defendant act on such expectation to his detriment?
   (b) Do the Defendants have an equity in the property?
   (c) Who should get possession of the property the Claimant or the Defendants?

10. At the trial, the Claimant, and her children Ester, Margaret and David Harripaulsingh ("David") gave evidence on behalf of the Claimant. The First Defendant gave evidence on his own behalf and he called Savish Gajdahar ("Savish"), Sateesh Dial ("Sateesh") and Ricardo Youk See ("Ricardo") as his witnesses.

Did the Claimant create an expectation in the First Defendant that he would obtain an interest in the property and if yes did the First Defendant act on such expectation to his detriment?

11. The Defendants' defence was that the First Defendant has a proprietary interest in the property and therefore the Claimant is not entitled to the reliefs which she has sought namely possession of the property and damages. Therefore the onus was on him to prove his assertion and this must be examined in the context of the law on promissory and proprietary estoppel.

12. **Snell's Equity** describes the doctrine of Promissory Estoppel as:

> "Where by his words or conduct one party to a transaction freely makes to the other a clear and unequivocal promise or assurance which is intended to affect legal relations between them (whether contractual or otherwise) or was reasonably understood by the other party to have that effect, and, before it is withdrawn, the other party acts upon it , altering his or her position so that it would be inequitable to permit the first party to withdraw the promise, the party making the promise or assurance will not be permitted to act inconsistently with it".[1]

13. To succeed on the basis of the doctrine of promissory estoppel the onus was on the Defendants to establish that: (a) There was a clear and unambiguous promise made by the Claimant to the First Defendant; (b) The First Defendant relied on that promise to his detriment and (c) It is unconscionable to permit the Claimant to act in a manner inconsistent with her promise.

14. A distinction on the nature of the promise between the law of promissory estoppel and proprietary estoppel was considered in the Court of Appeal decision of **Ester Mills v Lloyd Roberts** [2] where it was stated that:

> "19. Whereas in promissory estoppel there must be a clear and unequivocal promise or assurance intended to effect legal relations or reasonably capable of being understood to have that effect, <u>in the law of proprietary estoppel there is no absolute requirement for any findings of a promise or of any intentionality</u>.
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> 20. The seventh edition (2008) of The Law of Real Property adequately summarises "the essential elements of proprietary estoppel", as follows:
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> (i) An equity arises where:
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> (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;
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> (b) in reliance upon this belief, C acts to his detriment to the knowledge of O; and

[1] 31st ed. 2005 Para 10-08
[2] Civil Appeal No. T 243 of 2012 at para 19 and 22

(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 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:
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> (i) an assurance or representation by O;
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> (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." (Emphasis added)

15. It was argued on behalf of the Defendants that the Claimant made clear and unequivocal promises and assurances that she would leave the property for the First Defendant; the First Defendant relied on those promises and assurances by expending $1,008,859.84 in repairs renovations to the property and it is now unconscionable to permit the Claimant to exclude the Defendants from the newly repaired and renovated home.

16. Counsel for the Claimant submitted that the Defendants failed to establish that the Claimant gave the First Defendant any assurance that he would have a beneficial interest in the property. The First Defendant was aware that the Claimant did not make a final decision as to whom she would give the property to and that at best the Claimant only permitted the Defendants to stay temporarily on the property which was indicative of a generous family arrangement rather than an assurance that the property would be conveyed to the First Defendant.

17. Did the Claimant cause the First Defendant to believe that he has or will enjoy some right or benefit over the property? The First Defendant's evidence in support of this assertion surrounded the 1995 will. The First Defendant stated at paragraphs 11, 12, 13, 25, 26 and 34 of his witness statement that:

> "11. The Claimant visited Wilson & Co., Attorneys at Law and made her last will and testament dated 23rd day of November 1995 wherein she appointed me the sole executor and left the said property for me. The Claimant told me that she had made the will and left the property for me because she was satisfied about how I had taken care of both the family and the said property. She told me that I should not worry she would eventually convey the property to me but if anything happened to her I should look in her wardrobe where I would find the said will. A true copy of the said will is hereto annexed and marked **"A.H.4"**. The Claimant told me she wanted to go to Mr. Wilson and I drove her there, I found out about the will thereafter.

12. Thereafter before the Claimant went away on every occasion she would remind me that if anything should happen to her the will was in her wardrobe. The Claimant travelled to the United States of America on several occasions. She obtained her green card in 2004. She left Trinidad to visit her daughter Margaret for one year. She returned and remained six months at home and then left to go New York in May 2006. She returned in January 2007 and left in April 2007 and returned to Trinidad in November 2007. In November 2007 I installed a package for free overseas calls and whenever she was abroad I called her twice per month.

13. The Claimant returned to Trinidad in November 2008. At each time she returned she came home to No. 7 King Street. When she returned to the said property in 2008 the ceiling was infested with pigeons. The Second Defendant and I had to clean out the Claimant's room because of the pigeon dust, feathers and droppings. Daily the Claimant had to chase pigeons out of the said property. When the Claimant saw that my room was infested with pigeon droppings from the droppings for the exposed ceiling the Claimant told me to fix the house part by part because the pigeon living in the said property was not good for the children.

25. In April 2014 before the Claimant left for the United States I requested her to make a deed giving herself and Margaret life interest in the property. The Claimant told me that she would see about that when she returned.

26. On Glorious Saturday 2015 Esther told me that the Claimant had made a will for her and Margaret and that they were not interested in selling the property and that they wanted me out of the property. She told me that the Claimant had made a will. I spoke to the Claimant about it. The Claimant told me that that could change anytime. A true copy of the said will is hereto annexed and marked **"A.H.6"….**

34. I do not know anything about the 2009 will. I did not see same prior to these proceedings."

18. In cross examination the First Defendant denied that he took the Claimant to Wilson & Co, Attorney at law for her to convey the property to him. He stated that before that visit, Wilson & Co had done legal work for the Claimant concerning the removal of a tenant from another property and that if the Claimant wanted or did not want to do something nobody could force her to do it. He also stated that after the Claimant made the 1995 will, every time she was about to leave the country she told him that if she died the property is his and to look after it and the rest of her children. The First Defendant conceded that he understood that there was a distinction between a transfer of the property by deed and the devising of the property by will and that a will could be changed at any time. He also admitted that he had requested that the Claimant execute a deed giving herself a life interest in the property with the remainder to him.

19. In my opinion, the First Defendant's evidence on the Claimant's repeated assurances from 1995 to 2009 that she would leave the property to him was unshaken in cross examination. His responses in cross examination were consistent with the evidence in his witness statement and he was forthright. I therefore formed the view that the First Defendant was a witness of truth and that the Claimant caused him to reasonably expect that she would give him an interest in the property.

20. In contrast, the Claimant's pleadings disclosed that only on one occasion she reminded the First Defendant that the 1995 will was lodged in her wardrobe before leaving the property. At paragraph 16 of her affidavit filed on 25th November, 2015, the Claimant deposed that:

> "In response to paragraph 20, on one occasion I did tell the First Defendant that the will was in my wardrobe."

21. The Claimant's evidence on this matter was set out in paragraphs 8, 9 and 15 of her witness statement which stated:

> "8. I never told Anthony that I was satisfied about how he had taken care of both the family and property because he had never done this. Anthony kept asking me to transfer the said property to him. He carried me to Wilson & Company Attorneys-at-Law. I never did transfer the said property to him and I saw no reason why he should be entitled to the said property. I made no promises that the said property would go to

him but I went ahead with signing a will on the advice of the attorney who said that I could change it at any time I wanted.

9. In or about 2002, I made the decision that I wanted to change my will and leave the said property for my 2 daughters, Margaret and Ester instead. I asked them to find someone to prepare a new will for me but they never got around to doing this. In June 2009 and before my surgery, I had a new will prepared and I left the property for my 2 daughters, Margaret and Ester. I knew for certain that I wanted the property to go to them. A copy of the will dated the 27th June 2009 is herewith attached and marked **"P.H.4."**. This will was not prepared by an attorney-at-law and on the 1st May 2015, I went to Mr. Anand Seepersad to have one drawn up by an attorney-at-law confirming my wishes. A copy of the will dated the 1st May 2015 is herewith attached and marked **"P.H.5"**…..

15. I had my Attorney-at-Law send a pre-action protocol letter dated the 27th March 2015 to Anthony and his family setting out my claim for possession. A copy of the said pre-action is herewith attached and marked **"P.H.7."**. On the day before Easter Sunday 2015, Ester woke me up and told me that Anthony was outside and that he wanted to speak to me. I went outside. He asked me if the property was for sale. I said that I was not interested in selling it and that I had willed it to Ester and Margaret because I wanted it to go to them. I asked Ester to bring out a copy of the will for me to give to Anthony which Ester did. He refused to take it and left it. He took a copy of it at a later date. I never indicated to Anthony that this could change at any time.

22. In cross examination, the Claimant confirmed that the First Defendant went with her to Wilson & Co when she made the 1995 will giving the property to the First Claimant. She denied that she named the First Claimant as the executor in the 1995 will. She acknowledged that after she made the 1995 will, she travelled every 6 months to stay with her daughter Margaret in New York. She accepted that she told the First Defendant every time before she travelled abroad that the 1995 will was in the wardrobe in her room. She admitted that in the 1995 will she gave the property to the First Defendant and she gave her jewelry to Ester, Margaret and Elizabeth.

Yet she denied that when she made the 1995 will she knew what she wanted to do with the property. She also did not recall before 2009 telling the First Defendant that she would transfer the property to him and she never told him that she would have deed prepared transferring the property to him. She admitted that between 1995 to 2015 she had no discussions with the First Defendant that she changed the 1995 will and that before 2009 she was interested in giving the property to the First Defendant since he was her eldest child.

23. In my opinion, the Claimant was not a witness of truth. Her admissions in cross examination that she reminded the First Defendant of the existence and location of the 1995 will in her wardrobe on numerous occasions before she travelled contradicted her pleading and her evidence in chief and this material contradiction undermined the credibility of the Claimant's assertion that she never promised the First Defendant the property. In **The Attorney General of Trinidad and Tobago v Anino Garcia**[3], the Court of Appeal stated that where that there existed stark discrepancies between the Claimant's pleaded case and his written and oral evidence, it entitles the Court, to question the credibility and reliability of the evidence of the party.

24. It was also material that the Claimant admitted in cross examination that she did not tell the First Defendant in 2009 that she wanted to change the 1995 will since based on her won admissions she caused the First Defendant to believe that she was going to leave the property for him in the 1995 will.

25. I formed the view that the Claimant's action during the period 1995 to 2015 caused the First Defendant to reasonably believe that she was going to give him the property. The First Defendant lived with the Claimant at least from 1975. He is her eldest son and based on the Claimant's own admissions in cross-examination since 1995 she intended to give the property to the First Defendant. She communicated her intention to him on several occasions after she made the 1995 will and every time she left the jurisdiction. She changed her will in 2009 some 14 years after the 1995 will without informing the First Defendant. The first time the First Defendant became aware that the Claimant changed her will was in 2015. Therefore it was

[3] Civ. App. No. 86 of 2011, unreported at paragraph 31

reasonable for the First Defendant to believe from 1995 to 2015 that the Claimant promised him the property.

26. Did the First Defendant rely on the promises made by the Claimant as the basis for him expending the sum of $1,008,859.84 in renovation and repairs to the property? The First Defendant's evidence was that he always informed the Claimant of the repairs and renovations to the property and that the renovations and repairs were obvious to a passer-by or visitor since they were substantial in nature. Paragraphs 13, 17, 21, 23 and 24 of the First Defendant's witness statement stated:

> "13. The Claimant returned to Trinidad in November 2008. At each time she returned she came home to No. 7 King Street. When she returned to the said property in 2008 the ceiling was infested with pigeons. The Second Defendant and I had to clean out the Claimant's room because of the pigeon dust, feathers and droppings. Daily the Claimant had to chase pigeons out of the said property. When the Claimant saw that my room was infested with pigeon droppings from the droppings for the exposed ceiling the Claimant told me to fix the house part by part because the pigeon living in the said property was not good for the children.
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> 17. While the Claimant was at Ester's home I visited her there regularly at least once per month as her pension cheques came to the property and I would take it for her at the end of each month. I would chat with her and keep her informed of all that I was doing with respect to the property. She would ask me for bush medicine and I would take it for her. At election time in May, 2010 I took her to vote and we stopped with the property. I invited her in, the Claimant said she preferred to remain in the car. Neighbours came out and spoke to her while she was seated in the car.
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> 21. In January 2009 I started taking down the ceiling and in May 2009 while the Claimant was still at home I removed the galvanise from the gallery and started the renovation of the gallery. I paid Ainsworth Williams Fifty-Two Thousand Dollars ($52,000.00) to break down pigeon infested roof and do a ceiling between the roof and gallery.

23. In April 2011 I broke down the old shed at the back to erect a storeroom. I had to cut down a nooni tree, a guava tree and a cherry tree. The Claimant asked me if I had to cut down those trees and I indicated to her that the trees had to be cut. I had told her before of my plans.

24. Throughout the construction I was always in contact with the Claimant and my siblings. I telephoned the Claimant when she was abroad spending time with Margaret and spoke with both her and Margaret about the construction. I also spoke to Esther regularly. I visited her to assist her in her plumbing and fixing her doors.

27. In cross examination, the First Defendant denied that he did not keep the Claimant informed of the works he was doing on the property. He stated that he visited the Claimant regularly since she had been staying by Ester and that he always updated her on the works which he was doing.

28. The Claimant pleaded that the first time she observed that the First Defendant was carrying out renovations to the property without her consent was in the latter part of December 2014 after returning from New York. This was when she observed that the First Defendant was doing renovations to the front of the property and also by adding an extension to the front of the property.

29. At paragraph 14 of the Claimant's witness statement she stated that:

> "14. In the latter part of December 2014, when I returned from New York I was able to observe whilst passing by the said property that Anthony was carrying out renovations to the front of the said property and also adding an extension to the front of the said property without my consent. I never consented to these renovations, nor was I consulted or informed of them."

30. During cross examination when the Claimant was probed as to when she first saw the renovations she said that she first discovered them when she went to a funeral since she was passing on King Street with Ester and she saw men at the home. She then asked the First Defendant about this when he came to see her. The Claimant did not state anything about

stopping to collect a pension cheque. She also denied that she discussed the work she saw being done on the property with Margaret and Ester or that Margaret and Ester told her that work was being done on the property.

31. Ester's evidence from her witness statement was that after the Claimant's surgery in 2009, the First Defendant visited her home once a month to drop off the Claimant's pension cheque. However in 2010 the First Defendant stopped doing so and instead she went to the property to collect the cheques. She stated that she would call the First Defendant when she was outside the property and he would come and give her the cheque. She was never invited inside. On several occasion she took her mother outside the property but she was unable to enter the property since the locks were changed.

32. The impression Ester sought to give in her evidence in chief was that she and the First Defendant had a strained relationship and that she had limited knowledge of any repairs and or renovations to the property. However her evidence in cross examination painted a different picture. Ester's evidence in cross examination was that the mechanic she took her car to operated opposite the property. She said that from her observations she notice that there were few changes to the property since 2009 and that the changes did not alter the property substantially. She admitted that in 2010-2013 she visited the property to collect the Claimant's pension cheques and during the time she stopped she did not observe that repairs/ renovations were going on. She first observed scaffolding on the property, the driveway was tiled and the carport was covered in 2014. She acknowledged that she did not refer to these renovations in her witness statement. She denied that the First Defendant spoke with her regularly and she stated that they never spoke about construction on the property. She stated that the only time they spoke was when she collected the Claimant's pension cheque. She admitted that on one occasion the First Defendant assisted her in unclogging the kitchen sink and on another occasion she installed a deadbolt on the front door of her home.

33. I accept that since Ester's observations were limited to the exterior of the property. However, it was not plausible that Ester who visited the property once a month from 2010 to 2014 to collect the Claimant's pension cheques first observed scaffolding and other substantial

renovations/changes such as tiled driveway and covered carport only in 2014. It is more probable that Ester would have observed changes were taking place *before* 2014 either when she visited the property once a month to collect the pension cheques or when she visited her mechanic who lived opposite the property. Further, both Ester and the Claimant shared a close relationship and they both knew since 2009 that the Claimant had changed the 1995 will to give Ester an interest in the property therefore it was also highly probable that Ester would have told the Claimant of any changes she observed being made to the property before 2014. In my view it is also highly probable that the First Defendant would have told Ester about the renovations and repairs he was having done to the property since he knew that she would have observed the work being done when she went to collect the pension cheques.

34. Margaret's evidence in cross examination was that she migrated in 1993 and she has visited Trinidad every year after she migrated. She stated that since 2008 she has not seen the inside of the property. However she admitted to seeing the outside of the property in 2015 when she noticed a lot of changes. According to Margaret she did not see any renovations in 2011-2013. In 2014 she observed that the gate had changed, scaffolding was erected and an extension to the house on the property was being built. She stated that she did not discuss with Ester whether there was work being done on the property. Margaret also stated that she had an issue with the First Defendant excluding the Claimant from the property and how the Claimant was not permitted to eat at the dining table when she lived at the property and she admitted that she did not include this inn her witness statement.

35. It was not in dispute that the Claimant spent 6 months a year at Margaret's home and at the other 6 months at Ester's home and that the three of them were aware that the Claimant changed the 1995 will in 2009 where she gave the property to Ester and Margaret. They were and are still close. In my opinion, it is very probable that Ester would have shared her observations with Margaret since they both had a vested interest in knowing the status of the property and even if Margaret did not observe any changes to the property before 2014, she knew that repairs and renovations were being done before 2014.

36. David evidence in cross examination was that he had a good relationship with his brother and he is also close to his mother. He has not visited the property for a long time. He was aware that renovations were done to the house on the property but he did not know if the renovations to the house made it different. I accept that David shared a close relationship with both the Claimant and the First Defendant. However I found that David was not being truthful with the Court when he stated that he did not know about the extent of the renovations to the house on the property. In my opinion, even if David did not visit the property, it is very plausible that the First Defendant would have indicated to David the nature of the repairs and renovations to the property since they had a good relationship and the property was the home where David once lived. It is also very probable that David shared this information with the Claimant, and his sisters Ester and Margaret.

37. In my opinion the Claimant and her witness were was not being truthful with the Court when she stated that she first discovered that renovations to the property were being done in late December 2014 when she passed by the property, with Ester, to attend a funeral since this evidence was contradicted by Ester, who said that she first saw the renovations when she went to the said property to collect a pension cheque. Ester said nothing about discovering the renovations when she attended a funeral, nor did she say anything about attending a funeral with her mother. Further, it appeared to me that the Claimant and her children Ester, David and Margaret all shared a close relationship and it was very probable that if the Claimant was being excluded from the property since 2009 which Ester, Margaret and David said they were aware off, they would have shared any information or observations they had of changes to the property with the Claimant.

38. Therefore I have concluded that from 1995 to 2015 the Claimant led the First Defendant to believe that the property would be his and it was based on those promises or overtures the latter expended funds in repairing and renovating the property during that period. The Claimant was well aware that work was being done on the property during that period and it was only after she changed her will in 2015, and she told the First Defendant that she had changed her will she then started to take steps to recover possession from the Defendants.

Do the Defendants have an equity in the property?

39. The onus was on the Defendants to establish that they have an equitable interest in the property. The Defendants case was that the First Defendant has spent money on repairing and renovating the house on the property since 1982. In 1985 he secured a loan in the sum of $235,000.00 which he used to finance repairs to the property and in 1988 he used his own income to repay the loan. Then between 2008 and 2015 he spent approximately $1,008,859.84 on repairs and renovations to the property.

40. The First Defendant's evidence on his contribution to the property during the period 1982 to1996 was set out at paragraphs 7 to 10 of his witness statement where he stated that:

> "7. In 1982 I made a decision to renovate the house as it needed repairs. The roof was pigeon infested and leaking. The celotex ceiling was falling apart, the flooring was termite infested and there was no proper toilet or kitchen. I approached the Bank negotiated and secured a loan to carry out the renovations. I changed the entire roof, the windows from wooden jalousie type to sliding windows and I also changed the flooring boards. I sanded, sealed, stained and varnished all the boards myself. I blocked up the downstairs with a kitchen, living room, toilet and bath and painted the entire house. The Claimant was not the person to have obtained the loan from Bank of Nova Scotia, it was me. The land was owned by her so that had to be a signatory to the said mortgage. The Claimant did not give to me any proceeds of the said loan as I had all the monies having applied for and received the loan. A true copy of a letter dated 20th March 1985 from Bank of Nova Scotia Trust Company confirming our mortgage is hereto annexed and marked **"A.H.3".**
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> 8. In 1985 I secured another loan and installed ceilings both upstairs and downstairs with suspended interlocking tiles. I installed a built in closet and added dressers in the master bedroom and one additional bedroom. Installed kitchen cupboards and terrazoed the downstairs. The loans totaled $235,000.00.

9. In 1988 with the economic downturn and the loan repayments, the business was not enough to take care of us and I secured a job as an Area Manager at Arawak. I used my salary to repay the loan and the profit from the business was used to increased capital and investments. While I was on the road with Arawak I would regularly pass in at the business to check on it.

10. In 1990 during the coup attempt the business was looted and vandalised. I used my money and the remnants of the business to effect some repairs to the building at 94 Nelson Street. The Bank refused me a loan to re-open the business as they felt that the area was too risky. I repaid the instalments from my salary and kept the house running with it. From the proceeds of sale the Claimant and I paid off the loan leaving a balance of $50,000.00 which I repaid in 1996 out of my own monies. I was still the only family member working and taking care of the family expenses."

41. The First Defendant also stated that from 2009 to 2015 he did additional repairs and renovations to the house. At paragraphs 19, 21 and 23 of his witness statement, he described the nature and extent of the works. In paragraphs 19 he stated that he installed an electronic gate. In paragraphs 21 and 23 he stated that:

"21. In January 2009 I started taking down the ceiling and in May 2009 while the Claimant was still at home I removed the galvanise from the gallery and started the renovation of the gallery. I paid Ainsworth Williams Fifty-Two Thousand Dollars ($52,000.00) to break down pigeon infested roof and do a ceiling between the roof and gallery…..

23. In April 2011 I broke down the old shed at the back to erect a storeroom. I had to cut down a nooni tree, a guava tree and a cherry tree. The Claimant asked me if I had to cut down those trees and I indicated to her that the trees had to be cut. I had told her before of my plans.

42. The First Defendant was challenged on the nature and extent of the aforesaid works and his financial and non–financial investment in the property. He said that he came to live on the property in 1975 and he denied that he did not reside on the property between 1996 to 2001. He admitted that his mother and father ran the business and after his father died he took on his father's role in the business. In 1988 he stopped working in the business and he started to work at Arawak Company where he earned an income of approximately $5000.00 per month. He acknowledged that although he stated in his witness statement that his father left debts he did not particularize the nature and extent of the debts in his witness statement. He accepted that the 1985 deed which he referred to in his witness statement had the Claimant's name and that his name is not stated as a borrower. He also admitted that the Claimant contributed to the paying off of the 1985 loan since she used the proceeds from the sale of her property at Nelson Street. When questioned by Counsel for the Claimant how he was able to spend $52,000.00 on repairs and renovation to the property on a salary of $5,000.00 per month he responded that his wife, the Second Defendant, had started a business and that this information was not in his witness statement and that his wife, the Second Defendant was not giving evidence in this matter. He denied that the sums he spent on repairs and renovations which he listed in his witness statement were exorbitant. He said that the sums he paid the contractors and workers were made by cash and not by cheques and there were no receipts. He also denied that he asked the Claimant to purchase the property.

43. The First Defendant's evidence on the nature and value of the work he did as repairs and renovation to the property between 2009 and 2015 in my opinion was unchallenged in cross examination.

44. Sateesh is 48 years old. He is the Defendants neighbour who has lived opposite the property all his life. The back of his property is the front of the property. His evidence was that several years ago the First Defendant undertook major renovations to the property. He said that scaffolding was erected on the property for two years. The construction took place in phases. Prior to the construction, the house on the property was dilapidated since it was approximately 60 years old, the roof was not good, the concrete on the walls was chipping away and the yard was "in a mess". He stated that as far as he was aware the First and Second Defendants did all

the repairs. He also stated that he could not attest to the value of the house on the property prior to or at present but he knew that the value had increased significantly. He was not cross examined. Therefore his evidence was unchallenged on the nature and extent of the renovations and repairs done by the Defendants to the property.

45. Sanish is another neighbor who lives next door to the Defendants. He is 36 years old and he has lived next door to the property at No 5 King Street Aranguez all his life. His evidence was that he has known the First Defendant for all his life and he also knows the Claimant but he has not seen her at the property for some time. He stated that the house on the property was dilapidated for some time but the First and Second Defendants undertook major renovations to it for over two years during which time they had scaffolding erected around the house. According to Sanish he had conversations with the workmen who were working on the house where they exchanged ideas about the house. At the time of the renovations only the Defendants lived at house and he did not see the Claimant or the First Defendant's siblings. He too stated that he could not attest to the value of the house on the property prior to or at present but he knew that the value had increased significantly. He too was not cross examined. Therefore his evidence was unchallenged on the nature and extent of the renovations and repairs done by the Defendants to the property.

46. The Defendants also relied on the evidence of Ricardo, the managing director of Y. C. G Landscaping. According to Ricardo he first visited the property in 2010 when he went to do a site visit to do some repairs to the house. At his first visit he noticed that the house was infested with pigeons, parts of the wooden floor had to be replaced and the kitchen was in a deplorable state since the kitchen cupboards were affected by termites. It was his opinion that the entire house needed repairs. During the period 2010 to 2015 he conducted major repairs to the house on the property. The work was done in phases. He used scaffolding for a while and the painters also used scaffolding. The work his company did at the property were: replaced the rotted parts of the wooden floor upstairs; changed roof; built a garage; changed wooden inside stairs and railing; tiled entire downstairs; tiled one half of front yard; replaced all kitchen cupboards; installed mouldings on the corners of the house and windows, built arches over the garage; cast the entire yard, installed toilets/baths upstairs, cast and tiled the prayer room, installed a

verandah extension, all plumbing in bathrooms and kitchen, chipped upper external walls and re-plastered same, caste entire back yard, installed posts and enclosed same. Ricardo also stated that the First Defendant paid him or his father Ronald Youksee and that while he was working at the property he only saw the Defendants and he never knew or met the Claimant. Ricardo's evidence on the nature and extent of the work done by his company was not challenged in cross examination.

47. The Claimant's position was that the First Defendant has not acquired any equitable interest in the property since she denied that the First Defendant made any financial or non-financial contribution.

48. At paragraphs 5, 6, 7, 10 and 12 of the Claimant's witness statement she challenged the First Defendant's contribution to it. She stated that:

> "5. Anthony left school in 1981, not on account of his father's passing but because he was unable to attain the required grades in the Pre Agriculture program to allow admission into the Degree of Agriculture program. I know this because he told me. I was in charge of running of the business whilst Anthony was studying for the Pre Agriculture program and after he left the program. My daughter Elizabeth was the one who was most involved and worked full time in the business P & W Singh Grocery and Liquor store. I also had 3 employees. Anthony did assist part time in a limited capacity in the business after he left the program. All of my other children did the same. My husband did not leave any debts in the business and our family was not in need of any support because the business was running efficiently both before and after my husband's passing. After Elizabeth migrated to Canada in 1985 my other daughter Margaret ran the business with me until 1990.
>
> 6. In 1988, Anthony secured a job and used his salary for his own needs and/or wants. At this time, the business continued to operate efficiently and it was the business that was repaying the loans. In 1990 the business was looted and vandalised. I paid to effect the repairs to the building at No. 94 Nelson Street. Anthony never used any of his money for this. The properties at No. 92, No. 94 and No. 94A Nelson Street were

sold to repay the outstanding balances on the loans and was also settled by the sale of one of the vehicles which was paid for by me. I asked my daughter Margaret to make arrangements for the sale of the properties which was done.

7. I paid for the works to the house in the early and middle of the 1980's with the proceeds from the loans from the Bank of Nova Scotia. It was not Anthony who took the loans. Copies of the Deeds of Mortgage evidencing this are herewith attached and marked **"P.H.3"**. Anthony did not do the works he alleged he did. These works were carried out because Anthony was getting married to his first wife and she was coming to live at the house. I also gave part of the proceeds from the loan to Anthony to pay for his wedding expenses and to start his own business which he told me required him to travel to several countries. His business turned out to be unsuccessful.

10. Sometime in 2008, I was able to visit the property. I saw that pigeons were living in the ceiling. This was because Anthony was not looking after the house properly and was allowing it to fall into a state of disrepair. He told me that he would be putting some wire to prevent the pigeons from entering the roof. I paid for someone to purchase and put in the wire and to also purchase and change the galvanise to solve the problem. The receipts were at the said property…

12. I again made subsequent attempts to visit the said property with the assistance of my daughter Ester Ramkhalawan but was prevented from entering because Anthony changed the locks on the gate. I contacted Anthony to ask him to remove the locks but he refused. To date, Anthony and his family continue to remain in possession of the said property without my permission. I also asked him about my belongings that were in the said property and he told me that he "threw them out." These belongings included my clothing, furniture, dishes, curtains and 2 beds, 1 on the ground and the other on the upper floor of the said property."

49. The Claimant was tested in cross examination about the loans in 1982 and 1985. She stated that she took both loans in order to renovate the house on the property. She was adamant that

the First Defendant had nothing to do with the loans. She said that she went alone to the bank to negotiate the loans and to sign the deeds herself. Yet when she was shown the deed for the 1985 loan she acknowledged that the First Defendant was there when she signed the 1985 deed and she acknowledged that the First Defendant's name was in the recital of the 1985 deed. When Counsel for the Defendants questioned her on how the First Defendant's name appeared in the 1985 deed if according to her evidence he was attending the UWI she provided no response. Instead she volunteered to the Court that the First Defendant's name was included in the 1985 deed by "accident". The Claimant was shown a letter dated the 20th March 1985 from Scotia Trust Bank to Messrs Fitzwilliam, Stone, Attorneys at law for the Bank and copied to the Claimant and the First Defendant wherein the said attorneys were instructed to prepare the mortgage documents for a proposed mortgage loan to the Claimant and the First Defendant. The Claimant stated that the First Defendant's reference by the bank in the letter was another "mistake" since the bank would not lend the First Defendant any money due to his lack of interest in the property.

50. The Claimant also denied that the First Defendant fixed the roof and ceiling. She said that she paid someone to repair the roof on the eastern side of the house and to change the galvanize. She was unaware if the First Defendant fixed the ceiling in 2008. Yet she admitted that in 2008 she saw pigeons in the ceiling and the First Defendant fixed the gallery area. She acknowledged that she saw the First Defendant's witness statement with the bills for materials he purchased to repair the property.

51. In my opinion the credibility of the Claimant's evidence on the 1985 loan was undermined by her own exhibit **"P.H.3"** which was the 1985 deed which recited at paragraph two (2) that *"By the Deed (hereinafter referred to as "the Trust Mortgage") dated the 29th day of May 1985 registered as No. 10212 of 1985 made between the Borrower and Anthony Harrypaulsingh of the First Part the Borrower of the Second Part and the Trust Company of the Third Part…".* PH 3 was a contemporaneous document made at the time of the 1985 loan which illustrated that the First Defendant was a party to the 1985 deed. The Claimant's explanation that the inclusion of the First Defendant's name in the 1985 deed was simply a "mistake" was unsatisfactory and not credible.

52. I formed the view that the Claimant was not a witness of truth with respect to the First Defendant's role in obtaining the loan in 1985 and the manner in which he used the proceeds. In my opinion the Claimant's explanations that the inclusion of the First Defendant's name on the documents associated with the 1985 loan was less than plausible.

53. Ester's evidence according to her witness statement was that the First Defendant did not live at the property since 1975 and that he only started to stay at the property sometime between 1994 and 1995 and in 1996 he left the property to live with the Second Defendant. She said that the First Defendant returned to live at the property in July 2001 which was when the Claimant gave the Defendants permission to live there temporarily until they could find alternative accommodation.

54. It was also Ester's evidence that she too assisted in the business on week nights, weekends, public holidays and school vacations whilst she was in secondary school and pursuing her undergraduate degree at UWI. She said that the First Defendant had a limited role in the business since he only assisted during the weekends , holidays for a few hours and when it was about to close during the week. On the issue of the renovations in the 1980s Ester's evidence was that only the Claimant and not the First Defendant who paid for such renovations. She also denied that the First Defendant effected repairs to the Nelson Street property. This aspect of her evidence was not challenged in cross examination.

55. According to Margaret's witness statement she assisted in the business between 1978-1982. In 1982 she was more involved in the business and in 1984 she worked full time in the business. After 1985 she and the Claimant ran the business since they worked from 9am to 11:30 pm and David and Ester assisted. The First Defendant assisted occasionally on some week nights, some weekends and some public holidays. She was responsible for the accounts and in her opinion the business was successful since it took care of the needs of the family and repaid the loans. The First Defendant did not carry out any works on the property in 1982 or 1985 since it was the Claimant who took the loans and repaid them from the income earned from the business. In 1982 the First Defendant was supposed to supervise the works on the property but he did not and instead David did the supervision. Like Ester she too stated that the Claimant paid for

repairs to the Nelson Street property and after she sold it she used the proceeds to repay her loans. The Claimant also gave the First Defendant proceeds she obtained from the loans to pay for the expenses for his wedding and to start his own business. When the First Defendant got a job in 1988 he made no contribution from his salary towards the business.

56. However, Margaret's evidence in cross examination contradicted her evidence in her witness statement that the First Defendant did not make a financial contribution to the property in the 1980's.In cross examination, Margaret admitted that the First Defendant was a party to the 1985 deed and that he signed it. She also admitted that the First Defendant was a party in the 1982 loans and that both loans were with Scotiabank and Scotia Trust. When asked by Counsel for the Defendants why she did not state this in her witness statement her response was that the First Defendant did not have collateral. She also admitted that the 1985 loan was distributed to the First Defendant who used the money to repair the house. She admitted that the business was a family business and that sometimes it employed either 1-3 employees and that the First Defendant assisted in the business. . During cross examination Margaret accepted that the First Defendant was party to the 1985 transaction and that he did in fact receive the loan proceeds.

57. David's evidence was that he assisted in the business on the weekdays, weekends and public holidays, and that he carried out and supervised construction on the property in the 1980s. This aspect of his evidence was not tested in cross examination.

58. Counsel for the Claimant submitted that there was no evidence of detriment since the Defendants were afforded rent free accommodation in circumstances where it was clear that there was no assurance of beneficial interest and that the actions the Defendants took were not to their detriment since the monies expended were to make their occupation of the property more comfortable. It was also submitted that it cannot be said that the Claimant acquiesced to the monies allegedly expended on the property since the Claimant was not allowed unto it and she was excluded from the property.

59. I do not agree with Counsel for the Claimant's submission since this was not the Claimant's case and in any event there was no evidence led by the Claimant to demonstrate that the monies

spent by the Defendants in the repairs and renovations to the property was to make their occupation of it more comfortable.

60. In my opinion the Claimant's case that the First Defendant did not contribute to the property was not supported by the evidence of the Claimant's witnesses. The Claimant stated in her pleadings and evidence in chief that the First Defendant was not a party to the 1982 and 1985 loans and that he did not receive the loan proceeds. Her evidence was that the First Defendant did not sign any deeds. However, this was contradicted by the Claimant's daughter Margaret, who admitted in cross examination that the First Defendant signed the 1985 deed and he had received the loan proceeds. The Claimant's evidence on the 1985 loan was also contradicted by her own exhibit "P.H.3", which stated that the First Defendant was a party to the 1985 loan. The Claimant contradicted herself as she stated on one hand that the First Defendant was not a signatory to the 1985 deed and then on another that he was "there" as the bank wanted a second person. These contradictions with respect to the 1985 loan demonstrated that the Claimant was not a witness of truth. Further none of the Claimant's witnesses were able to successfully challenge the nature and extent of the repairs and renovations done to the property by the First Defendant.

61. For the aforesaid reasons, I have concluded that the weight of the evidence supports the position that the First Defendant acted to his detriment by making financial substantial contribution to the repairs and renovation of the premises.

How should the Defendants' equity in the property be satisfied?

62. In the First Defendant's affidavit in response to the Fixed Date Claim, the Defendants only asserted an equitable interest in the property. In the closing submissions, Counsel for the Defendant asked the Court to dismiss the Claimant's claim and order that the property be conveyed to the First Defendant.

63. The Claimant argued that if the Court were to find that there did exist some manner of equity, such equity should, in ordinary circumstances, be strictly limited to the amount which the Court

accepts was in fact expended on the property. However the Defendants have not pleaded an alternative relief and they have not properly proved their expenditure.

64. The learning in **Esther Mills v Lloyd Roberts** is instructive on the approach which is to be adopted on how the equity is to be satisfied in proprietary estoppel cases. At paragraphs 25 and 26 the Court stated that:

> "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:[15]
>
> (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 clamant 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 Jennings v Rice**[17] and **Cobbe v Yeoman's Row Management Ltd**,[18] adopting approvingly the following observations:[19]

(i) Reliance and detriment are often interlined. 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."

65. In my opinion the property cannot be conveyed to the First Defendant for two reasons. Firstly he did not seek an order that he be declared to be the owner of the property by virtue of his equitable interest and for the property to be conveyed to him. All the First Defendant asked for was for the Claimant's action to be dismissed on the basis that he has an equitable interest. In my opinion in the absence of seeking a declaration that he is the owner of the property or by extension for it to be conveyed to him he cannot succeed in obtaining such orders since this was not the case the Claimant had to meet and to make such orders would be prejudicial to the Claimant.

66. Secondly, there was no evidence before the Court to state what the value of the property was *before* the First Defendant undertook substantial repairs and renovations between 2010 and 2015. I accept that the First Defendant made a contribution to the property in the sum of $1,008,859.84 on repairs and renovations. However, there was no evidence placed before the Court to make an assessment of the value by which the property increased. Therefore I am

unable to state with any conviction that the First Defendant's financial contribution can be equated with the total value of the property.

67. On the other hand the Claimant did not seek an order for vacant possession.

68. What is the "conscionable" thing to do in the given circumstances? I have accepted the First Defendant's evidence that the value of the repairs and renovation to the property was in the sum of $1,008,859.84. The extent of the works and the costs were not shaken in cross examination and it was corroborated by his witnesses. There was no evidence before the Court of what was the value of the property before the First Defendant expended the aforesaid sum on repairs and renovations. It is reasonable to conclude that with the injection of such a substantial sum into the property the value of the property would have increased but the Court is not in a position to state by what percentage.

69. The First Defendant has not disputed that the Claimant is the owner of the property. He stated categorically in his evidence in cross examination that the Claimant is the owner of the property and that if he had to pay someone to take care of the Claimant he would do so. He said that he had invited the Claimant to return to the property but she has refused. He agreed the Claimant requested to visit the property and that when he installed the electronic gate he did not give her a control for the gate.

70. The Claimant's main grievance appears to be that she has been excluded from returning to live on the property for various reasons. The Claimant stated in her pleadings and in her evidence in chief that during the period 2007 to 2009, she was excluded from the property. At paragraph seven (7) of her affidavit dated and filed on 9th July, 2015, the Claimant deposed that during the period 2007 to 2009 the First Defendant excluded her from the property and denied her several requests to return. She also deposed to that during that period she was only able to gain access to the property for "short periods" and only with the assistance of Ester.

71. These contentions were again made at paragraph ten (10) of the Claimant's witness statement where she stated that:

> "During the period 2007 to 2009, I made several requests to Anthony to allow me to return and spend time at the said property. He however denied all of my requests. On occasions, I was however able to visit the property with the assistance of my daughter Ester Ramkhalawan and remained there for short periods of time. Sometime in 2008, I was able to visits the property."

72. The Claimant's case was that during the period 2007 to 2009 the First Defendant intentionally excluded her from the property and denied her several requests to return to it. However, during cross examination the Claimant contradicted herself when she admitted that she in fact resided at the property for the entirety of that period. She was therefore not excluded.

73. On the other hand, it was the First Defendant's case that he never excluded the Claimant from the property. The Claimant has always maintained that he did. However, the Claimant's evidence concerning the beginning of this exclusion was unreliable since at paragraph eight (8) of her witness statement the Claimant stated that:

> "In or about June 2009, I underwent surgery to remove my gallbladder. Immediately after the surgery I again requested that I be able to return to the subject Property which the First Defendant again denied."

74. According to the Claimant's evidence in chief she was excluded from her property *immediately* after her surgery. However, this changed during cross examination where she stated that it was about one month after her surgery that she spoke with the First Defendant and requested that she return home and he then denied her request. Ester's evidence was that the Claimant went to the property after the surgery and was excluded but this was not the Claimant's evidence which in my view undermined the credibility of the Claimant's assertion that the First Defendant excluded the Claimant from the property. If indeed the Claimant's assertions of being deliberately excluded from the property were true then there ought to have been some sort of action taken between 2009 to 2015 such as a report to the police or a letter from an Attorney at law to the Defendants prior to 2015.

75. Having found that the First Claimant has an equitable interest in the property and that the property is still owned by the Claimant the conundrum the Court finds itself is how to satisfy the said equity.

76. In my opinion the equitable and conscionable thing to order is to award possession to both the Claimant and the First Defendant. The First Defendant's evidence was that he did not exclude the Claimant from the property. He stated that he was willing to prepare a room suitable for her needs and he was prepared to pay a person to stay home to look after the Claimant. I have found no reason to conclude that the First Defendant would do otherwise. Indeed he struck me as a person who still held the Claimant in high regard and who shared a great deal of love and respect for her. I did not form the view that the Claimant would not be welcomed by the Defendants back to live on the property. With respect to the Claimant, I did not detect that she had a difficulty in returning to the property to live with her son, the First Defendant and his family. There was no evidence from the Claimant that while the Defendants were living with her at the property during the period 2001 until 2009 that she was made to feel unwanted or uncomfortable.

77. Further, I had no evidence before me that the Second, Third and Fourth Defendants had made any contribution to the property as the First Defendant did and it is for this reason that I am not prepared to make any such order with respect to them.

Order

78. Possession of the property to both the Claimant and the First Defendant.

79. Each party is to bear his/her own costs.

……
Margaret Y Mohammed
Judge