

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV2016-00268

BETWEEN

LOUISE BORRICE-CUMMINGS

CLAIMANT

AND

TERRANCE SHEPPARD

(in his personal capacity and in his capacity as the Executor of the Estate of Iva Ethelin Duncan-Sheppard also called Iva Ethelyn Duncan-Sheppard also called Ethlyne Iva Shepherd, deceased)

DEFENDANT

Before the Honourable Madame Justice Margaret Y Mohammed

Dated the June 21 2019

APPEARANCES:

Mr. Colvin Blaize instructed by Mr. St. Clair O' Neil Attorneys at Law for the Claimant.

Mr. Lemuel Murphy Attorney at Law for the Defendant.

JUDGMENT

1. Iva Ethelin Duncan-Sheppard ("the Deceased") was the mother of the Claimant and the great grandmother of the Defendant. During her lifetime she owned a chattel house ("the chattel house") measuring approximately 941/2 feet by 156 feet built of concrete on a concrete

base foundation situated on approximately 1.5 lots of State Land at LP 4 Bacaday Road, Garden Village, Arouca (“the property”). She gifted the chattel house to the Defendant and Sherry Ann Sheppard, the Claimant’s daughter by way of Deed of Gift dated 20 November, 2012¹ (“the Deed of Gift”). The main issue in this action is the ownership of an annex (“the annex”) to the chattel house which was constructed by the Claimant.

THE CLAIMANT’S CASE

2. The Claimant primarily lives in Canada. She contends that in 2002, the Deceased unequivocally promised her the back (western) portion of the property. In reliance on the promise made by the Deceased, the Claimant expended approximately \$100,000.00 to construct the annex which comprised two bedrooms and which she has occupied since 2002. In 2012, she took steps to extend the annex for the purpose of obtaining an independent electricity supply from the Trinidad and Tobago Electricity Commission (“T&TEC”). She contends that she has always to date paid all utilities for the property.

3. According to Claimant, the Defendant, his servants and/or agents harassed and/or molested her affecting her peaceful and quiet enjoyment of the annex by abusing her and her workers. The Defendant physically destroyed pillars and fences constructed to secure and protect the annex. The Defendant also demanded that the Claimant cease construction of the annex.

¹ Registered as DE2013020038687D001

4. As a result, the Claimant instructed her attorney at law to write the Defendant warning him of legal proceedings if he continued to interfere with her enjoyment of the annex.
5. The Claimant asserted that in August, 2014 the Defendant his servants and/or agents entered the annex and vandalised it. The Defendant also changed the locks on the front gate of the property preventing the Claimant from accessing the annex from the eastern side of the property and causing her to use an entrance on the northern side of it which does not have vehicular access.
6. On 8 June, 2015 the Claimant's attorney at law wrote the Defendant calling upon him to give an undertaking not to take any further steps which would adversely affect the Claimant's quiet enjoyment of the property. The Defendant's attorney at law responded denying that the Claimant had permission to construct the annex since the Defendant was unaware of any promise made to the Claimant by the Deceased.
7. The Claimant also contends that on 30 January, 2016 the Defendant, together with his servants and/or agents broke into the annex by destroying the locks on the front door, the burglar proofing and a lock on the external gate and proceeded to remove the Claimant's belongings which included household items, personal items, body products and power tools from the annex. The Claimant contends that the Defendant placed her belongings on the front (eastern) portion of the property. On the 31 January, 2016, at approximately 8 pm, the Defendant's servants and/or agents returned to the property and without the consent of the Claimant, removed the Claimant's belongings from the annex by loading them on a truck.

8. Based on the aforesaid facts the Claimant seeks the following orders from the Court:
- (a) A declaration that she has a beneficial interest in the property;
 - (b) An order that the Defendant do transfer a share and interest in the property to the Claimant upon such terms and subject to such conditions as the Honourable Court may deem fit;
 - (c) An injunction restraining the Defendant whether by himself, his servants and/or agents or otherwise whosoever from entering or remaining on the portion of the property occupied by the Claimant
 - (d) Damages for trespass and/or illegal distress and/or replevin
 - (e) Exemplary and/or aggravated damages;
 - (f) Costs.

THE DEFENCE AND COUNTERCLAIM

9. The Defendant disputes the Claimant's claim based on the following facts:
- (a) The Claimant did not have expressed consent from the Deceased to construct the annex, since the Deceased did not promise her that the back portion of the property.
 - (b) The Claimant started construction of the annex in 2002 without the consent of the Deceased while the latter was vacationing abroad. In 2012, the Claimant waited until the Deceased left the property due to illness, and whilst staying at the Defendant's home, she purchased material to renovate the annex.
 - (c) The Deceased caused a Pre-action letter dated 15 January, 2013 to be sent to the Claimant requesting that she desist from erecting the annex.

- (d) Prior to passing away the Deceased expressed her intention to bequeath the property to the Defendant and Sherry Ann Sheppard but despite this intention the Claimant continued to do construction on the annex.
- (e) The Defendant sought assistance from the Arouca Police Station on several occasions to advise the Claimant's workers to stop further construction of the annex, and while it stopped, it would begin again.
- (f) The Claimant has not continuously occupied the annex since 2002 since she ordinarily resides in Canada but visits during the year.
- (g) The Claimant has not paid all utilities except for 3 WASA bills and 1 Land and Building Taxes in the later part of 2012. The Defendant was entrusted by the Deceased to pay all utilities and since her death and he continues to do so.
- (h) The Defendant has not harrassed the Claimant and vandalised the annex but admitted using the remedy of self-help.

10. The Defendant has counterclaimed since he contends that he has been deprived of use of the property and he has suffered loss due to the Claimant's action. He seeks the following reliefs:

- (i) Damages;
- (ii) An injunction restraining the Claimant whether by herself, her servants and/or agents or otherwise whosoever from entering and/or remaining on the property;
- (iii) Costs and interest.

THE REPLY TO THE DEFENCE AND DEFENCE TO THE COUNTERCLAIM

11. The Claimant contends that the Defendant's Defence and Counterclaim should be struck out pursuant to Parts 26.2(1)(b) and/or (c) Civil Proceedings Rules 1998 ("CPR").
12. The Claimant also contends that she did not commence construction of the annex in the absence of the Deceased but that the Deceased assisted by collecting money from the bank on the Claimant's behalf to pay builders and permitted her to use electricity and water during and after the construction of the annex. She was not aware of the Deceased's intention to bequeath the property to the Defendant and Sherry Ann Sheppard. She was also unaware of any transfer of the property to the Defendant when she commenced and/or continued construction of the annex.
13. The Claimant further contends that the Defendant did not seek assistance from the Arouca Police Station but rather she contacted the police station and also sought a restraining order against the Defendant in the Arima Magistrate's Court. She did not obstruct the Defendant from entering the chattel house on the property and she denies that the Defendant has suffered any loss.

THE ISSUES

14. The issues to be determined are :
 - (a) Has the Claimant acquired an equitable interest in the portion of the property where the annex is situated?
 - (b) Is the Claimant entitled to damages for trespass?
 - (c) Is the Claimant entitled to exemplary and/or aggravated damages?
 - (d) Is the Defendant is entitled to damages.

HAS THE CLAIMANT ACQUIRED AN EQUITABLE INTEREST IN THE PORTION OF THE PROPERTY WHERE THE ANNEX IS SITUATED?

15. The Claimant has grounded her claim in proprietary estoppel and there was consensus on the tenets of this doctrine by the parties. The elements of proprietary estoppel were repeated by Mendonca JA **Nester Patricia Ralph and Esau Ralph v Malyn Bernard**² at paragraph 38 where he referred to the dicta in **Thorner v Major and Ors**³ where Lord Walker pointed out that “while there is no universal definition of proprietary estoppel, which is both comprehensive and uncontroversial, that most scholars agree that the principle of proprietary estoppel is based on “three elements, although they express them in slightly different terms; a representation or assurance made to the claimant; reliance on it by the claimant and detriment to the claimant in consequence of his (reasonable) reliance...” For a claimant therefore to properly plead his case in proprietary estoppel, he must set out those three elements; a representation or assurance, reliance on that representation or assurance and detriment as a consequence.
16. In **Mills v Roberts**⁴ Jamadar JA explained that the elements of proprietary estoppel must be examined holistically in the round and are not “watertight compartments”. The Court will examine the alleged inducement, encouragement and detriment to determine if they are both real and substantial and the Court “must act to avoid objectively unconscionable outcomes”. Jamadar JA stated at paragraphs 19 and 22 that:
- “19. In respect of the law of proprietary estoppel we are more troubled about the correctness of the application of the law. Whereas in promissory estoppel there must be a clear and unequivocal promise or assurance intended to effect legal relations or reasonably capable

² Civil Appeal No. 131 of 2011

³ [2009] UKHL 18

⁴ CA T243 of 2012

of being understood to have that effect in the law of proprietary estoppel there is no absolute requirement for any findings of a promise or of any intentionality.

17. 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.

18. Kokaram J in **Kurt Farfan and Ors v Anthony White**⁵ at paragraph 26 stated the extreme care the Court should adopt when examining the questions of promise, reliance and detriment. Kokaram J referred to Sir Henry Brooke in the Privy Council decision of **Knowles v Knowles**⁶ at paragraph 27 who stated:

“In *Jennings v Rice* [2002] EWC Civ 159 [2003]1FCR 501...Robert Walker LJ said at para 58 that the essence of the doctrine of proprietary estoppel is to do what is necessary to avoid an unconscionable result. In the opinion of their Lordships it would be unconscionable in this case to deprive George of his property when he had done nothing at all to encourage any belief that his brother and sister-in-law could treat the property as belonging to them. While recourse to the doctrine of estoppel provides a welcome means of effecting justice when the facts demand it, it is equally important that

⁵ CV 2016-03644

⁶ [2008] UKPC 30

the courts do not penalise those who through acts of kindness simply allow other members of their family to inhabit their property rent free.

In *E & L Berg Homes Ltd v Grey* (1979) 253 EG 473, [1980] 1 EGLR 103 Ormrod LJ said at p 108: 'I think it important that this court should not do or say anything which creates the impression that people are liable to be penalised for not enforcing their strict legal rights. It is a very unfortunate state of affairs when people feel obliged to take steps which they do not wish to take, in order to preserve their legal rights, and prevent the other party acquiring rights against them. So the court in using its equitable jurisdiction must, in my judgment, approach these cases with extreme care.' " (Emphasis added)

19. The Court must examine the inducement, encouragement and detriment to determine if they are both real and substantial. The Court must act to avoid objectively unconscionable outcomes⁷.
20. It was not in dispute that the Claimant had built the annex. The area of disagreement by the parties is whether the Deceased promised the Claimant the portion of the property on which the annex was constructed before the Claimant built it. In order for the Claimant to succeed she must prove that the Deceased promised her the portion of the property where the annexed is situated and she relied on this promise to her detriment.
21. It was submitted on behalf of the Claimant that the Claimant and the Deceased shared a close relationship and in 2002 the Deceased gave her expressed approval to the Claimant that the back/western portion of the property would be hers and based on this approval the Claimant constructed the annex on it.

⁷ Jamadar JA in *Esther Mills v Lloyd Roberts* Civ Appeal No T 243 of 2012

22. Counsel for the Defendant argued that the Claimant's case on the promise was an expressed unequivocal promise made by the Deceased to her before she constructed the annex and not that the Deceased saw the annex being constructed and she did nothing to stop it from being constructed. His contention was that the Deceased never made any unequivocal promise to the Claimant that she would give her that portion of the property where the annex was constructed.
23. The parties gave two different versions. The determination of this issue is fact driven. According to the learning in **Horace Reid v Dowling Charles and Percival Bain**⁸ when determining questions of fact the Court must weigh the versions of the events, on a balance of probabilities, in light of the evidence and in doing so the Court is obliged to check the impression of the evidence of the witnesses on it against: (1) contemporaneous documents; (2) the pleaded case; and (3) the inherent probability or improbability of the rival contentions.

The Claimant's witnesses

24. The Claimant gave evidence and she also relied on the evidence of Mr Garnett Jack ("Mr Jack") and Ms Veronica Harry- Mills (Mrs Mills") on this issue.
25. The Claimant testified that by the Deed of Gift, the Defendant and her daughter, Sherry Ann Sheppard became the joint owners of the property. She was unaware of the Deed of Gift while she was constructing the annex and she only became aware of it in 2014 when she, acting as lawful attorney of her son, pursued an action seeking to set aside the Deed of Gift

⁸ Privy Council Appeal No. 36 of 1987.

on the grounds of fraud and/or undue influence. The Claimant stated that prior to the Deed of Gift, the property was owned and occupied by the Deceased. In cross-examination, the Claimant stated that she found out about the Deed of Gift in 2013 and that she was in possession of a copy of a Will of the Deceased.

26. According to the Claimant she shared a close relationship with the Deceased since the latter assisted in caring for her children. The Deceased took care of the Claimant's son Otis for 3 ½ years while the Claimant was having difficulties while she was living in Canada. The Claimant stated that over the years she assisted the Deceased by paying the light, water and telephone bills and house repairs.
27. The Claimant testified that in 2002 she received the consent of the Deceased and with the expressed and unequivocal promise that the back (western) portion of the property would be hers and she proceeded to construct the annex. In cross-examination the Claimant stated that after the Deceased promised her the western portion of the property she did not explain to the Deceased that she was going to construct the annex.
28. The Claimant said that in 2002 the Deceased offered to build the annex at first but she was hesitant to accept it. The Deceased told her she was leaving the property for the Claimant's two children and gave her a Will which confirmed her intentions. She later learned that the Will of the Deceased was changed. The Claimant stated in cross-examination that the Deceased gave her the Will after the construction of the annex had started. She could not recall the exact year but she had a copy of it.
29. According to the Claimant on reliance on the consent and the promise made by the Deceased, she expended approximately \$100,000.00 to

construct the annex. She listed the works which were done during the course of construction as:

- (a) Concrete block walls, plastered the internal walls and the front external wall;
- (b) Casting of the ground floor to bring same to a level reading for tiling;
- (c) Tiled using porcelain tiles;
- (d) Installed electrical fittings;
- (e) Installed plumbing fittings, toilet and a sink;
- (f) Installed glass front together with burglar proofing;
- (g) Installed two doors-one security door and a metal clad door;
- (h) Built some planters for plants at the bottom of the front wall and planted flowers;
- (i) Installed an electricity pole and splinterbox for the purpose of obtaining an electricity connection;
- (j) Painting of portion of the property occupied by the Claimant.

30. In cross-examination the Claimant testified that annex was built in stages. She said that she started the construction in the early 2000s when she was living in Canada. At that time she visited Trinidad about twice a year. In 2002 when she visited she stayed by the Deceased for around 5-6 weeks. She could not recall if it took 1 or 2 years to build the first part of the annex. She said that Mr Sharpe built the first party and Mr Jack was responsible for obtaining the materials for the construction but she did not know if Mr Jack assisted in any other way. She denied that Eric Sheppard ("Eric") assisted her in getting a contractor. Instead, she testified that the Deceased got Mr Sharpe.
31. According to the Claimant, she left the construction works in the hands of the Deceased and Mr Jack who purchased the materials since she sent

money to the Deceased. They gave her receipts for materials purchased and she submitted some to her attorney at law. She believed that the receipts were from the first stage of construction. The Claimant also stated in cross-examination that Mr. Jack purchased the materials for the 2012 works and she believed she has some of those receipts. She stated that her estimate of \$100,000.00 was for the first part of the annex which was spent over time. She could not indicate at what point she had spent the \$100,000.00 but believed it may have been by 2008. She averaged that she spent about \$20,000.00 on labour but could not recall an exact amount. She stated that the money was given to Mr. Sharpe and paid over time. She did not take all the receipts for materials bought into account in calculating the \$100,000.00. She later admitted that the sum of \$100,000.00 was a guess.

32. The Claimant also admitted in cross-examination that the annex now looked differently from 2002 and 2005. She stated that the second stage of the annex was built earlier than 2012.
33. The Claimant testified that she could not recall the Deceased not being in Trinidad in 2008 since she explained that she stayed by the Deceased when she visited Trinidad. In 2012, she took steps to extend the annex for the purpose of obtaining an independent electricity supply from T&TEC. According to the Claimant when she commenced construction of the annex the Deceased was present in Trinidad and she assisted by collecting money from the bank on the Claimant's behalf to pay builders and the Deceased also permitted her to use electricity and water from the chattel house during and after construction.
34. The Claimant stated that during the construction of the annex, she stayed with the Deceased until 2005 when the annex was ready for habitation.

She then visited from time to time making additions as her finances permitted. She testified that until recently she paid all utilities for the property.

35. The Claimant testified that the Defendant, his servants and/or agents harassed and/or molested her which affecting her peaceful and quiet enjoyment of the annex by abusing her and her workers and physically destroying pillars and fences constructed to secure and protect the annex. She stated that due to the Defendant's actions she and her workers waited until the Defendant left the property before resuming work on the annex. She denied that the construction of the annex was stopped by the police.
36. In cross-examination the Claimant admitted that she was first told to stop construction work on the annex in 2012. She stated that the work she did after she was told this was repairs. She also admitted that she did some work on the annex in 2017 by painting and repairing leaks.
37. The Claimant stated that the Defendant demanded that she cease construction of the annex. As a result, on the 10 April 2014, the Claimant instructed her attorney at law to write the Defendant warning him of legal proceedings should if he continue to interfere with the Claimant's enjoyment of the annex.
38. According to the Claimant, in August, 2014 the Defendant his servants and/or agents entered the annex and vandalised it. The Defendant also changed the locks on the front gate of the property preventing the Claimant from accessing the annex from the eastern side of the property. The Claimant then uses an entrance on the northern side of property which does not have vehicular access to enter the annex.

39. The Claimant stated that on 8 June, 2015 her attorney at law wrote the Defendant calling upon him to give an undertaking not to take any further steps to adversely affect her quiet enjoyment of the annex.
40. The Claimant denied that she obstructed the Defendant from entering the chattel house on the property previously occupied by the Deceased, which is situated on the eastern side.
41. The following aspects of the Claimant's evidence were not contradicted in cross-examination: the Deceased promised the Claimant in 2002 that she would give her the portion of the property where the annex was constructed; the annex was constructed in 2 stages; the first stage was constructed in the early 2000s; while the annex was being constructed the Claimant lived in Canada but she visited and stayed by the Deceased; the Claimant sent money to the Deceased to purchase material for the construction of the annex; Mr Jack and the Deceased purchased the material at the Aranguez Hardware; and in 2012 the Claimant constructed the second stage of the annex.
42. The Claimant's evidence that she spent \$100,000.00 in the construction of the annexed was undermined in cross-examination since she admitted that she could not recall the amount she spent and that this sum was based on a guess. For this reason this evidence was unreliable.
43. Mr Jack testified that he was the nephew of the Deceased and the cousin of the Claimant. He stated that on several occasions between 2002-2005 he assisted the Claimant during the periods of construction on the annex. He collected funds on behalf of the Claimant and based on interactions with the Claimant and the Deceased during this time, he was aware that

the said funds were being used to finance the construction of the annex. During the construction, he accompanied the Deceased and the contractor to the Aranguet Hardware on a couple of occasions to purchase material.

44. In cross-examination, Mr Jack explained that when he assisted in the purchasing of materials at the Aranguet Hardware the Claimant was not present. The purchases were not made with his money but with money the Claimant sent. He said that Deceased telephoned him and she met him at the Croisee where they first collected the money at MoneyGram in Royal Bank in the Croisee, and then they went to the hardware to purchase the materials to build the annex, so he did not have the receipts but the Deceased had them. He said he personally never gave any receipts or bills to the Claimant.
45. Mr Jack stated that he was present while the construction was in progress and on almost every occasion, the Deceased who was present did not communicate to him at any point that she was not in agreement with the construction undertaken by the Claimant. In cross-examination Mr. Jack stated that he was only present between 2 to 4 times when the annex was being constructed and that neither the Claimant nor the Deceased were present and he only saw the Deceased about 3 times each year.
46. In cross-examination, Mr Jack agreed that the annex was built over time but he could not recall when the first part was constructed. He could not recall when the construction of the second part began. He stated that the original construction took about 2 to 3 years.
47. Mr Jack's role was limited to the purchase of the material for the first stage of the construction of the annex. His evidence corroborated the Claimant's evidence that she financed the first stage of the construction of the annex

by sending money to the Deceased who gave it to Mr Jack and who also accompanied him to purchase the materials.

48. Ms Mills testified that she was a friend of the Deceased for over 30 years when she moved to Maloney and they were neighbours. When the Deceased lived in Maloney Gardens she visited her everyday but when she moved to the property, she saw her occasionally. During her visits she became familiar with the Claimant as the Deceased's daughter. She was not present for any specific conversation where the Deceased gave the Claimant consent to build the annex on the property but she saw improvements. She was present while construction was in progress on the annex and on almost every occasion the Deceased was present and did not communicate to her at any point that she was not in agreement with the construction of it.
49. In cross-examination, Ms Mills testified that she was a close friend of the Deceased and she knew that the Deceased travelled abroad later on in life. She did not know the Defendant. She said the first part of the annex was built over a period of time. She was unable to indicate when it started but she said probably in the 2000's. She said the second part of the annex was built maybe about 5 years ago. She said the Deceased was alive for the construction of the first part but could not recall if she was alive when the second part was built. She said that when she was at the property 2 years ago the construction was not completed. She said at the present time she did not think construction was ongoing.
50. Mrs Mills evidence corroborated the Claimant's evidence that she shared a close relationship with the Deceased; that the annex was constructed in stages with the first stage in early 2000s and that the Deceased knew of the construction of the annex in the early 2000s.

The Defendant's witnesses

51. The Defendant gave evidence and he relied on the evidence of Eric to support this aspect of his Defence.

52. The Defendant testified that he knew the Deceased all his life and he visited her regularly. He shared a very close relationship with her over the last five years of her life. In cross-examination he explained that the Deceased depended on him during the last 5 years of her life.

53. According to the Defendant around 2008 the Deceased left the jurisdiction and while overseas the Claimant began construction of the annex. He asked the Claimant what was going on. The Claimant indicated to him that she had permission from the Deceased. He said that he could not ascertain whether this was true as he did not have a contact number for the Deceased who was abroad. In cross-examination the Defendant was shown his Defence and Counterclaim which stated that the Claimant started the construction of the annex in the early 2000s when the Deceased was outside of the jurisdiction. He was asked to clarify the inconsistency between his pleading and his evidence. He indicated that there was no inconsistency.

54. According to the Defendant, when the Deceased contacted him several months after, she told him that she never gave the Claimant permission to do any construction. By that time, the construction of the annex was completed. In the latter part of 2012, the Deceased left the property and to stayed at the Defendant's home. While she was there, the Claimant purchased materials and began extending the annex. On the 20 November 2012 by the Deed of Gift the Deceased transferred her interest in the property to him and Sherry Ann Shepherd.

55. In cross-examination the Defendant stated that he could not recall when in late 2012 the Deceased went to live with him. He was referred to the Schedule in the Deed of Gift which only referred to the chattel house of the Deceased and not the annex. He was asked on what basis he was challenging the Claimant for the annex, to which he responded that the Claimant did not have permission to build, as he was told by the Deceased. He agreed that there was no claim by the Claimant for an interest in the property on which the chattel house was built on, and there was no reference to the annex in the Deed of Gift.
56. The Defendant testified that he caused a pre-action letter dated 15 January, 2013 to be sent to the Claimant requesting that she desist from erecting the annex. In cross-examination the Defendant stated that prior to 2013 and before the Deceased went to live with him he did not recall if the Deceased sent any letter to the Claimant asking the latter to desist from the construction of the annex.
57. According to the Defendant, within one year thereafter, the Deceased passed away leaving a Will. He obtained a Grant of Probate in February, 2015. He stated that despite the said letter and requests, the Claimant has refused to stop doing work and on several occasions he sought assistance from the Arouca Police Station. He has paid the utility bills and land and building taxes while maintaining the property.
58. In my opinion, the Defendant was not a witness of truth when he testified that the construction of the annex starting in 2008 when the Deceased was out of the jurisdiction. This evidence did not support his case that the construction was in the early 2000s. Further, there was no evidence from

the Defendant that the Deceased was not in Trinidad in the early 2000s which undermined his pleaded Defence. It was clear from the Defendant's evidence that he had no knowledge of the promise made by the Deceased to the Claimant in 2002 with respect to the portion of the property upon which the annex was constructed.

59. Eric testified that he was the grandson of the Deceased. In 2008, the Deceased left the jurisdiction and the Claimant came into the jurisdiction and asked him to get a contractor to build the annex. He agreed to assist her and he got a contractor. The Deceased returned to the jurisdiction in 2008 and in March, 2009, she told him that she would not take any action against the Claimant as the annex was already there. She also said that she did not give permission to the Claimant to build the annex.
60. In cross-examination Eric testified that the annex was not constructed in the early part of 2008 but in the latter part of 2008. All of the construction on the annex took place between the time the Deceased went out of the jurisdiction. He said Mr. Jeff did the construction but he could not indicate if he did all of it. He accepted that in his witness statement he did not state that construction of the annex took place after 2009. He stated that after the Deceased's return to the jurisdiction in 2008, he visited her nearly on a daily basis until 2010 and from around 2010 the Deceased stayed a lot by the Defendant. He did not think that any other information on the annex outside of 2008-2009 would have been relevant.
61. Eric's evidence that the construction of the annex was started in the early part of 2008 contradicted the Defendant's Defence that the construction was in the early 2000s.

The Promise

62. I have concluded that the Deceased promised the Claimant that she would give her the portion of the property where the annex was subsequently constructed in 2002 for the following reasons.
63. First, there was no evidence to dispute the Claimant's evidence that she shared a close relationship with the Deceased in 2002 when the latter made the promise to the Claimant. The evidence of Mrs Mills corroborated the Claimant's evidence on the closeness of this relationship. In my opinion, it was more probable that given the close relationship between the Claimant and the Deceased in 2002 the latter made the said promise to the Claimant. In any event, the Defendant's evidence was that he only had a close relationship with the Deceased 5 years before she died in 2014. At best, his close relationship with the Deceased was in 2009. It was more probable that the Defendant would not have known about the promise in 2002 since at that time he did not share a close relationship with the Deceased.
64. Second, the contemporaneous document, namely the Deed of Gift demonstrated that in 2012 the Deceased knew that she had promised the Claimant the portion of the property where the annex was constructed. By 2012 the first stage of the annex had already been constructed. The Deed of Gift only transferred the chattel house from the Deceased to the Defendant and Sherry Ann Sheppard which showed that in 2012 the Deceased did not consider the annex to be hers but that of the Claimant based on her promise made in 2002.
65. Third, the Deceased's actions during the construction of the first stage of the annex demonstrated her knowledge of her promise to the Claimant in 2002. The cogent evidence from the Claimant and Mr Jack was that the construction of the annex was financed by the Claimant who was living in Canada. The Claimant sent money to the Deceased who withdrew it and

met Mr Jack and they collectively went together to purchase the material. In my opinion, it was more probable that the Deceased took such an active role since she knew she made the promise to the Claimant in 2002. In any event, there was no evidence to dispute the Claimant's evidence that she stayed by the Deceased when she visited Trinidad while the annex was being constructed. There was also no cogent evidence that the Deceased was not in the jurisdiction in the early 2000s when the first stage of the annex was being constructed.

66. Fourth, it was immaterial if by 2012 the Defendant was under the impression that the Deceased did not give her permission to the Claimant to construct the annex since the Claimant had already acted on the 2002 promise to her detriment.

Detrimental Reliance

67. It was not in dispute that the Claimant had constructed the annex. The dispute is the sum she spent on it. The Claimant's evidence on the sum of \$100,000.00 was not supported by any receipts and her own evidence in cross-examination was that this was a guess. However, the list of the type of work which she did in the construction of the annex was not challenged by the Defendant.
68. In my opinion, given the nature and extent of the work which was done, I am satisfied that the Claimant acted to her detriment.

Satisfying the equity

69. Having concluded that the Claimant has proven that she has an equitable interest in the property and in particular on that portion on which the annex is situated the question is how is the Claimant's equity to be satisfied.

70. Counsel for the Defendant argued that due to the poor relationship between the parties, if the Court finds that the Claimant has an equitable interest in the property the Court should not force the parties to continue to occupy the property but should order a clean break. In support he relied on a decision of the High Court decision from the Northern Ireland Chancery Division of **Mc Dermott v Mc Dermott**⁹ where the Court found that the Claimants had an equitable interest in certain property and it adopted a clean break approach.
71. Counsel for the Claimant submitted that to satisfy the Claimant's equitable interest, the property can be partitioned by placing a fence even though there is a common wall.
72. Lord Justice Aldous in **Jennings v Rice**¹⁰ stated that:
"The value of the equity will depend upon all the circumstances including expectation and the detriment. The task of the court is to do justice. The most essential requirement is that there must be proportionality between the expectation and the detriment."
73. Lord Walker in **Jennings v Rice** considered what factors are appropriate to be taken into account when deciding upon the appropriate remedy to satisfy the equity. There appears to be no specific list or hierarchy of factors.
74. I accept that the relationship between the parties is not healthy and the best solution would be for a clean break. However, I am not in a position to make such an order for the following reasons. First, there is no valuation evidence of the value of the annex to enable me to make an order for the

⁹ [2008] NICH 5 (10 March 008)

¹⁰ (2002) EWCA Civ 159 at paragraph 36

Defendant to pay the Claimant for her equitable interest. Second, I have no evidence of the Defendant's means to determine if indeed he can pay the Claimant for her equitable interest. Third, the Claimant has not requested to be paid any monetary sum for her equitable interest.

75. In my opinion, the only appropriate remedy to satisfy the Claimant's equity in the property which will be just for both parties is to declare the Claimant's equitable interest in the annex on the property and grant the injunctive relief sought by the Claimant. A consequence of these orders is that the fence as suggested by Counsel for the Claimant is to be erected with if necessary appropriate easements.

IS THE CLAIMANT ENTITLED TO DAMAGES FOR TRESPASS ?

76. The particulars of loss of stolen and/or removed items which the Claimant pleaded in her Amended Statement of Case were:

Black & Decker Power Saw	\$2,394.00
1 Bottle Coco Chanel (noir) perfume	\$ 840.00
1 Bottle Mademoiselle (Chanel) perfume	\$ 870.00
1 Bottle Calvin Klein men's cologne	\$ 720.00
Este Lauder Body Perfume Cream	\$ 390.00
Grinder Disc (Black & Decker)	\$ 500.00
Total	\$ 5,714.00

77. The action of trespass to goods has always been concerned with the direct, immediate interference with the Claimant's possession of a chattel¹¹. **Halsbury's Laws of England**¹² on trespass to goods stated that:

¹¹ Clerk & Lindsell on Torts, 22nd Edition at paragraph 17-130

¹² 5th ed Vol 97 at paragraph 687

“687. The Defendant must be responsible for some physical contact with the Claimant's chattel in order to be liable for trespass to goods... Although physical contact often results in damage to the Claimant's chattel, in the sense of physical change, it need not. Mere unauthorised physical contact, not causing damage, can be sufficient for liability in the tort...”

78. Apart from the requirement that the interference must be of a direct nature, there must be some blameworthy state of mind in the trespasser. An accidental interference of a non-negligent nature is not a trespass... On the other hand, to be liable the defendant need not appreciate that his interference is wrongful¹³ .
79. The Claimant testified that on 30 January, 2016 the Defendant, together with his servants and/or agents broke into the annex by destroying the Claimant's locks on the front door, the burglar proof and a lock on the external gate and proceeded to remove her belongings from the annex. Her belongings were then placed on the front (eastern) portion of the property and on the 31 January, 2016, at approximately 8pm, the Defendant's servants and/or agents returned to the property and without the consent of the Claimant's consent, removed her belongings by loading them onto a truck.
80. In cross-examination, the Claimant testified that prior to signing her witness statement she checked the items which were removed from the annex by the Defendant and which were not returned. She said that most of the items were returned but that the items which were not returned

¹³ Clerk & Lindsell on Torts, 22nd Edition at paragraph 17-132

were 2 gas tanks, some perfumes, an area rug, a knife set, the Grinder, liquor, the television and the Black and Decker power saw. She stated that she purchased the power saw in Canada and she did not know the costs in Trinidad. Notably missing from her pleaded loss were the 2 gas tanks, the area rug, the knife set, liquor, the television and the Black and Decker power saw.

81. The Defendant testified that after the Claimant's action challenging the Deed of Gift was withdrawn he visited a bailiff with a copy of the Order and sought advice to remove the Claimant's personal effects from the annex. He notified the Claimant of his intentions through relatives. In cross-examination, the Defendant testified that based on his experience as a police officer, he knew that the Court was to determine the rights between the parties but he did not know he needed a Court order to remove the Claimant's belongings.
82. According to the Defendant, on 30 January, 2006 he entered the annex together with a bailiff and agents and removed the Claimant's personal effects. He placed them at the front portion of the chattel house where they were properly secured. He witnessed a list of the Claimant's personal effects taken by the Bailiff and he was given a copy. He testified that he did not have some of the items the Claimant stated he had taken since they were replaced and that subsequent to the Deceased's death the Claimant had secretly gone onto the property and continued construction.
83. Mr Felix Williams ("Mr Williams") was the Defendant's witness. He testified that in January, 2016 his services were requested by Eric Williams to removed household items from the annex. Apart from assisting with removal of items, he also documented the items being removed. On 30

January, 2016, he, the Bailiff, the Defendant and other persons went to the annex. He assisted with removal of personal effects and they were safely placed at the front portion of the chattel house. He recorded the items whilst they were being removed. At the end of the exercise which took approximately 45 minutes to 1 hour, he placed his signature, together with the date on the list of items removed and provided the Defendant with a copy.

84. In cross-examination, Mr Williams stated that his role with the Bailiff was to find workers to move the items and take a catalogue. He helped move some of the items after cataloguing everything. He was referred to the attachment in his witness statement which showed the list of items which were removed and he asked about a missing gas tank. He said that he could not account for any gas tank, as the list did not have any. He explained that the word “miscellaneous” in his catalogue of items which were used since the items were too many to catalogue or was insignificant to he catalogued. He did not recall seeing a television, liquor or groceries. He admitted that the missing items could have been in the annex but that he did not see them.
85. In my opinion, Mr Williams evidence in cross-examination demonstrated that he did not keep any proper records of the items which were removed from the annex. Therefore, he was in no position to account for the items which the Claimant pleaded were not returned to her. For this reason I am satisfied that the Claimant has made out her case for damages for loss of trespass to those items. There was no evidence from the Defendant to challenge the value of the items which the Claimant asserted. Therefore, on a balance of probabilities I find that the damages for trespass to the items which the Claimant loss was as pleaded in the total sum of \$5,714.00. I have not considered the other items which the Claimant stated in cross-

examination which were not returned since this was not part of her pleaded loss.

IS THE CLAIMANT ENTITLED TO AGGRAVATED AND/OR EXEMPLARY DAMAGES

86. In awarding damages, the Court can award aggravated damages where there are factors which can justify an uplift in the form of an award for aggravated damages. In **Bernard v Quashie**¹⁴, it was held that a single figure is awarded for all heads of compensatory damage, including aggravated damages. In **Thompson v Commissioner of Police of the Metropolis**¹⁵ Lord Woolf MR in giving the judgment of the court stated at page 516:

“Such damages can be awarded where there are aggravating features about the case which would result in the Plaintiff not receiving sufficient compensation for the injury suffered if the award were restricted to a basic award. Aggravating features can include humiliating circumstances at the time of arrest or the prosecution which shows that they behaved in a high handed, insulting, malicious or oppressive manner either in relation to the arrest or imprisonment or in conducting the prosecution.”

87. Exemplary damages may be awarded where there is the presence of outrageous conduct disclosing malice, fraud, insolence and cruelty. In **Rookes v Barnard**,¹⁶ Lord Devlin stated that exemplary damages are different from ordinary damages and will usually be applied –

- (i) where there is oppressive, arbitrary or unconstitutional conduct by servants of government;

¹⁴ Civ App. No. 159 of 1992, at page 9

¹⁵ [1998] QB 498

¹⁶ [1964] AC 1129

- (ii) where the defendant's conduct had been calculated to make a profit; and
- (iii) where it was statutorily authorised.

88. Lord Carswell in the Privy Council case of **Takitota v The Attorney General of Bahamas**¹⁷ stated that, "[T]he awards of exemplary damages are a common law head of damages, the object of which is to punish the defendant for outrageous behaviour and deter him and others from repeating it ...".

89. Jones JA in the local Court of Appeal decision of **Darrell Wade v the Attorney General of Trinidad and Tobago**¹⁸ and **Jason Superville v The Attorney general of Trinidad and Tobago**¹⁹ provided the following guidance in awarding exemplary damages and the approach the Court should take. At paragraph 18 to 21 it was stated:

18. In this regard while the purpose of an award of exemplary damages is different that that of an award of compensatory damages the method of arriving at an award of exemplary damages ought not to be much different than the method used to arrive at an award for compensatory damages. The figure arrived at should be one which in the mind of the assessor satisfies the criteria for exemplary damages, aligns with awards in comparable cases and meets the justice of the case.

19. Unlike compensatory damages:

"The object of exemplary damages ... is to punish and includes notions of condemnation of denunciation and deterrence (se

¹⁷ P.C.A No. 71 of 2007

¹⁸ Civ Appeal 172 of 2012

¹⁹ Civ Appeal 173 of 2012

Rookes v Barnard [1964] 1 All ER 367 at 407, [1964] AC 1129 at 1221). Exemplary damages are awarded where it is necessary to show that the law cannot be broken with impunity, to teach a wrongdoers that tort does not pay and to vindicate the strength of the law (see Rookes v Barnard [1964] 1 All ER 367 at 411, [1964] AC 1129 at 1227). An award of exemplary damages is therefore directed at the conduct of the wrongdoer. It is conduct that has been described in a variety of ways such as harsh, vindictive, reprehensible, malicious, wanton, willful, arrogant, cynical, oppressive, as being in contempt of the plaintiff's rights, contumelious, as offending the ordinary standards of morality or decent conduct in the community and outrageous." **Per Mondonca JA Torres v PLIPDECO.**

20. Although essentially a case on the applicability of exemplary damages in breach of contract cases the decision in Torres sought to provide general guidance on the manner in which a court should exercise its discretion in making an award for exemplary damages.
21. Torres determined that an award of exemplary damages has to be proportional to the defendant's conduct. Proportionality had to be examined in several dimensions, namely: (i) the blameworthiness of the defendant's conduct, (ii) the degree of the vulnerability of the plaintiff, (iii) the harm or potential harm directed specifically at the plaintiff, (iv) the need for deterrence, (v) after taking into account penalties both civil and criminal which had been or were likely to be inflicted on the defendant for the same conduct, and (vi) to the advantage wrongfully gained by the defendant from the misconduct."

90. I have decided that this is not an appropriate case to award aggravated or exemplary damages since the Defendant, who is a police officer, was not acting as a servant and/or agent of the State but in his personal capacity; the Defendant fell into error due to his misunderstanding of the law as a lay person; there was no evidence that his action was deliberate; once it was brought to his attention in these proceedings he returned the items which he thought he had removed; he hired persons whom he thought would have done a proper job in cataloguing the items which were taken; the harm to the Claimant which was done was mitigated since most of the items were returned and there was no advantage gained by the Defendant by his actions.

IS THE DEFENDANT ENTITLED TO DAMAGES?

91. The Claimant having succeeded in her reliefs it follows that the Defendant's claimant for damages has failed.

ORDER

92. Judgment for the Claimant namely:

- (a) It is declared that the Claimant has a beneficial interest in the annex on the property situated at LP 4 Bacaday Road, Garden Village, Arouca.
- (b) The Defendant is restrained by himself, his servants and/or agents or otherwise whosoever from entering, remaining on the annex on of the property occupied by the Claimant at LP 4 Bacaday Road, Garden Village, Arouca or otherwise disturbing the occupation of the Claimant.
- (c) The Defendant to pay the Claimant damages for trespass to goods in the sum of \$5,714.00.
- (d) No award is made for aggravated and exemplary damages.

93. The Defendant's counterclaim is dismissed.
94. The Defendant to pay the costs of the claim in the sum of \$14,000.00 and the counterclaim in the sum of \$14,000.00.
95. Liberty to apply.

.....
Margaret Y Mohammed
Judge