

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2016-02038

BETWEEN

NIGEL PASCAL DASS

INDAR SOOKDEO

MARISSA SOOKDEO

Claimants

AND

PRAKASH SUKDEO also known as

PRAKASH SOOKDEO

MERLE JANKEE

Defendants

Before The Honourable Madam Justice Margaret Y Mohammed

Date of delivery: October 8, 2019

APPEARANCES:

Mr. Ramesh Deana Attorney at law for the Claimants.

Mr. David-Mark Kidney instructed by Mr. Vishan Girwar Attorneys at law for the Defendants.

JUDGMENT

1. The First and Second Claimants were the joint owners of a dwelling house (“the concrete house”) which stood on a parcel of land referred to as Lot No 8 situated in Chaguanas. The Second Claimant owned a wooden structure standing on iron beams (“the ancestral home”) which stood on Lot No 7 and Lot No 8 (collectively referred to as “the lands”). Both Lot No 7 and Lot No 8 were lands, which were rented by Sookdeo Beejwah (“the Deceased”) who was the father of the Second Claimant and grandfather of the Third Claimant. There was also a wooden structure (“wooden house”) occupied by one Kishore Sookdeo on the lands.

THE CLAIMANT’S CASE

2. In March 2009, the Claimants decided to sell the concrete house to the Defendants. According to the Claimants, on the recommendation of the Defendants, the parties retained the services of Attorney at law Mr Victor Hosein (“Mr Hosein”) to prepare the Agreement for Sale. The Claimants averred that they never had any interaction with Mr Hosein prior to the meeting and they trusted him and the Defendants. Mr Hosein advised the Claimants that the Defendants could not purchase Lot No. 8 on which the concrete house stood until the Grant of Letters of Administration for the Deceased’s Estate (“the Grant”) was obtained and at the time of the Agreement for Sale, there was no Grant.
3. On the 14 May 2009 (“the Agreement for Sale”), the parties agreed that the Defendants would purchase the concrete house for the consideration of \$60,000.00. The Agreement for Sale was prepared on the insistence of the Defendants despite being advised by Mr Hosein that the Grant had to be obtained prior to the Agreement for Sale. Pursuant to the Agreement for Sale, the Defendants paid to the Claimants a deposit of \$47,500.00 and

they had an outstanding balance of \$12,500.00 to be paid within the standard 3-month period. The sum of \$47,500.00 was paid in cash, with the sum of \$28,500.00 being paid to the First Claimant and the sum of \$19,000.00 was paid to the Second and Third Claimants.

4. The Claimants averred that the parties agreed to the sale without a valuation and to an unfair purchase price since the First Defendant informed them that he would provide the finances in the sum of \$150,000.00 for the application for the Grant and that it would be discounted from the purchase price.
5. The Claimants also pleaded that it was mutually agreed that the First Claimant would continue to reside in the concrete house until the balance of the \$12,500.00 was paid in full and the Grant was obtained.
6. Therefore based on the Claimants pleading the terms of the Agreement for Sale was that only the concrete house was being sold to the Defendants at a price of \$60,000.00. The sum of \$47,500.00 was paid when the Agreement for Sale was executed. The balance of \$12,500.00 was due 3 months after 14 May 2009. While the balance was outstanding the First Claimant was permitted to reside in the concrete house and until the Grant of Administration was obtained.
7. In August 2009, the Claimants begun making requests to the Defendants to pay the outstanding balance due and owing to them arising from the Agreement for Sale but they were informed that due to financial challenges, the outstanding balance was not yet paid and that it would be paid by November 2009.

8. Throughout 2010, the First Claimant made several requests from the Defendants for the outstanding balance due and the Defendants continued to reassure them that the balance would be paid soon.

9. Sometime in 2011, the First Claimant attempted to return the initial deposit of \$47,500.00 to the First Defendant and he indicated that the Agreement for Sale was terminated. However, the Claimants were given further assurances by the First Defendant that he would pay the balance within a few months. The Claimants continued to make requests for the outstanding money in 2012, however the Defendants never met their financial commitments to pay the balance of the monies or provide the finances to begin the application for the Grant.

10. In January 2013, while the Second Claimant was in the process of executing repairs to the floor of the ancestral home in January 2013, the First Defendant demanded that she desist from doing so since the First Defendant had "rights to the land". Two days later, during the course of the renovations, the First Defendant, accompanied by a police officer produced a document indicating that it was a Deed in favour of the Defendants for the sale of the ancestral home. The First Defendant claimed that he was the owner of the ancestral home having paid \$10,000.00 for it and he indicated to the Second Claimant that he wanted to demolish it. The Second Claimant maintained that he never signed any Deed for the sale of the ancestral home. He maintained that the only agreement made with the Defendants was for the sale of the concrete house, which the Defendants were still indebted to them for. He maintained that the ancestral home did not form part of the Agreement for Sale and he was never shown a copy of a Deed.

11. On the following day, the First Defendant again returned with a police officer at the ancestral home with a document purporting to be a Deed for the sale of the ancestral home. On the 22 January 2013, whilst the Second Claimant was at the concrete house, the First Defendant entered, demanding that he leave immediately. The Second Claimant left immediately and contacted the First Claimant. The First Claimant was threatened when he arrived at the concrete house and he left immediately. The Claimants reported the threats to the police.

12. After the First Claimant vacated the concrete house, it remained vacant but occupied by unknown persons. The Second Claimant continued to reside at the ancestral home. However, the Defendants removed the only standpipe on Lot No 8, which prevented the Claimants from having access to water. On the 31 January 2013, the Defendants blocked the access road, which was the Claimants only means of access to and from the ancestral home. As a result, the Claimants were unable to enter or exit the road for about 3 days. On the 2 February 2013, the First Defendant with the use of a backhoe caused the ancestral home to be slightly shifted off its iron beams. The First Defendant continued to make death threats to the Second Claimant who reported this to the Chaguanas Police Station.

13. After conducting some investigations at the offices of the Registrar General on the 4 February 2013, the Claimants discovered that there was a registered document, purporting to be Deed of Conveyance dated the 13 May 2009 and registered as No. DE200901070069 (“the 2009 Deed”) in which the Defendants were alleged to be the purchasers of the concrete house and the assignees to the tenancy rights for Lot No 8. On reviewing the 2009 Deed, the Claimants observed several differences from the document which they had signed at the office of Mr Hosein namely: (a)

the word "Deed" was inserted on page 1; (b) the date was amended; (c) the sum of \$60,000.00 for the purchase price of the concrete house was not stated; and (d) other noticeable changes.

14. On the 5 February 2013, the First and Second Claimants attempted to return to the ancestral home to retrieve their signed copy of the Agreement for Sale but they were prevented from doing so since the First Defendant had placed a chain link across the access road, which prevented them from having access to the ancestral home.
15. On the 6 February 2013, the Defendants demolished the ancestral home. The Second Claimant was unable to retrieve the only signed copy of the Agreement for Sale in their possession, which was signed in the office of Mr Hosein. The Claimants averred that all of the personal items belonging to the Second Claimant including the bed, stove, clothing and all documents were destroyed. The Claimants were not afforded any assistance from the Chaguanas Police Station when they attempted to make a report and they also made a report to the Fraud Squad with respect to the 2009 Deed.
16. On the 17 February 2013, the First Defendant filled the lands upon which the ancestral home stood and built a shed. Sometime in 2014, the Second and Third Claimants constructed a wooden structure, which they currently occupy.
17. The Claimants conducted additional searches at the Chaguanas Borough Corporation, which revealed that the assessed owner of Lot No 7 was in the names of the Deceased and the Second Claimant.

18. Based on the aforesaid facts the Claimants have sought the following orders from the Court:
- (a) Damages for trespass including aggravated damages to Lot No 8 on the plan attached to Deed No. 198424453020 (“the 1984 Deed”) and to the concrete house thereon;
 - (b) An Injunction restraining the Defendants from entering upon, remaining upon, transferring, leasing, selling and/or exchanging or in any way interfering or dealing with the concrete house;
 - (c) An Order setting aside and rescinding the 2009 Deed;
 - (d) An Order to expunge the 2009 Deed;
 - (e) A Declaration that the alterations vary the rights, liabilities or legal position of the parties as ascertained by the 2009 Deed in its original state, or otherwise vary the legal effect of the 2009 Deed as originally intended, and/or may otherwise prejudice the Claimants who may be bound by the 2009 Deed as originally executed;
 - (f) A Declaration that the Second Claimant was at all material times entitled to occupy the ancestral home;
 - (g) Damages for trespass to a parcel of land known as Lot No 7 and showing on the plan attached to 1984 Deed ;
 - (h) Possession of the concrete house;
 - (i) Damages for breach of the Agreement for Sale;
 - (j) A Declaration that the actions of the Defendants whether by themselves, servants or agents on 6 February 2013 in forcibly evicting the Second Claimant from the ancestral home and demolishing it to be unlawful;

- (k) A Declaration that at all material times the agreement entered into with the Defendants for the sale of the concrete house neither the Claimants nor any of them were tenants of the lands on which the concrete house stands and that the Second Claimant as one of the persons interested on intestacy in the estate of the Deceased did not have and still does not have any proprietary interest in any particular asset of the Estate while the estate of the Deceased remains un-administered and as such was also not entitled in law to enter into any contract for the sale thereof;
- (l) A declaration that by virtue of section 17 (1) of **the Conveyancing and Law of Property Act** ¹ the 2009 Deed is effectual to pass all the estate, right, title, interest, claim and demand which the Claimants respectively had, in, to, or on the property conveyed, or expressed or intended so to be, or which they respectively have power to convey in, to or on the same;
- (m) Damages including special damages and aggravated damages for trespass and for loss and/or destruction on 6 February 2013 of the ancestral home;
- (n) An injunction restraining the Defendants from interfering with the access road or the Claimants use of the said road;
- (o) An injunction restraining the Defendants from interfering with the Claimants occupation, use or enjoyment of the ancestral home;
and
- (p) An injunction restraining the Defendants from molesting, harassing, threatening, intimidating, annoying, abusing,

¹ Chapter 56:01

committing any battery, cursing, assaulting and or interfering with the Claimant, servants or guests in anyway whilst on the lands.

THE DEFENCE AND COUNTERCLAIM

19. The Defendants' case was that they have been the legal owners of the concrete house and the ancestral home since 14 May 2009. The Defendants' Defence can be divided into the following categories.

20. The Defendants averred that:
 - (a) The Claimants agreed to sell and the Defendants agreed to purchase the concrete house for the sum of \$90,000.00;
 - (b) The Defendants also agreed to purchase the ancestral home from the Second Claimant for the sum of \$10,000.00;
 - (c) The Claimants and Defendants agreed that the ancestral home would be demolished at a time convenient to the Defendants;
 - (d) The parties agreed that the Claimants would be permitted to occupy the concrete house until such time as they were able to secure alternative accommodation or when the Defendants were ready to renovate it;
 - (e) They also agreed that the Claimants would apply for Grant;
 - (f) Upon receipt of the Grant, the Defendants would be given first option to purchase the lands upon which the concrete house is situated; and
 - (g) Upon the purchase of the lands upon which the concrete house is situated it would be transferred to the Defendants.

21. The Defendants denied that there was any offer or agreement whereby the Defendants would provide the finances for the Application for the Grant. They averred that it was the First and Second Claimants who had

secured the services of Mr Hosein and the First and Second Claimants initiated the sale and determined the non- negotiable purchase price. They were informed by the First and Second Claimants that there was a previous intended purchaser for the concrete house who had paid a deposit but that they had subsequently returned it and they had preferred to enter into the Agreement for Sale with the Defendants.

22. The Defendants averred that on the 13 May 2009 the First and Second Claimants visited the office of Mr Hosein. After inspecting the Certificate of Assessment for the concrete house, Mr Hosein informed the First and Second Claimants that the Third Claimant must be a party to the Agreement for Sale since she was stated as an owner of the concrete house on the Certificate of Assessment.
23. On the 14 May 2009, the Claimants and the Defendants returned to Mr Hosein's office where they executed a Bill of Sale for the sale and purchase of the concrete house for the sum of \$90,000.00. The sum of \$90,000.00 was paid in cash to the First Claimant on the said day. Another document was also executed between the Second Claimant and the Defendants for the sale and purchase of the ancestral home for the sum of \$10,000.00 and this sum was paid in cash to the Second Claimant on the said day.
24. The Defendants averred that they paid Mr Hosein the legal costs for drafting and execution of the Bill of Sale for the concrete house. They denied that the Claimants gave them any money to pay legal fees since the Claimants stated that they were financially unable to bear such costs. They also denied that there was any outstanding balance owed to the Claimants.

25. On the allegation of the location of the concrete house, the Defendants averred that they were informed that it was situated on Lot No 7 however having reviewed Exhibit C to the Amended Statement of Case they admitted that it is located on Lot No 8. They also admitted that Lot No 7 and Lot No 8 formed part of the estate of the Deceased.

26. The Defendants admitted that at the time they purchased the concrete house and the ancestral home there were three structures on the lands namely the concrete house, the ancestral home and the wooden house, which was occupied by one Kishore Sookdeo.

27. With respect to the allegations of the 2009 Deed, the Defendants averred that:
 - a. On the 14 May 2016 the Claimants and the Defendants, at the office of Mr Hosein executed the Bill of Sale which was prepared by Mr Hosein based on the instructions of the Claimants;
 - b. The Defendants agreed to purchase the concrete house from the Claimants for the cash consideration of \$90,000.00;
 - c. The Defendants further agreed to purchase the ancestral home from the Second Claimant for the cash consideration of \$10,000.00;
 - d. The concrete house is the building identified in the Certificate of Assessment Number CBC-A-12, exhibited as "A" in the Statement of Case;
 - e. The concrete house was at that time described as being located on Lot No 7 shown on the plan attached to the 1984 Deed;
 - f. The payments were made on said date in accordance with the agreed purchase price as evidenced by the receipts, which were attached;

- g. The Claimants and Defendants, in the presence of Mr Hosein and Ms Sheriffa Hosein all affixed their signature to the Bill of Sale;
 - h. The Defendants, upon receiving the registered copy of the Bill of Sale recognised that there were changes which were not made in their presence or on their instructions but the Defendants thought nothing of it as the substantive matters contained therein were correct;
 - i. Upon receiving the Pre-action protocol letter from the Attorney at law for the Claimants, the Attorney at Law for the Defendants wrote to Ms Sheriffa Hosein, the witness to the 2009 Deed, regarding any changes that were made to the 2009 Deed since Mr Hosein had died. Ms Hosein responded on the 19 May 2016 and a copy of the response was attached to the Amended Defence.
28. The Defendant also averred that there was no duty on them to explain the nature of the transaction to the Claimants as the latter had initiated it.
29. The Defendants denied the Claimants allegations of trespass. They stated that after the ancestral home was sold to the Defendants they marked it for demolition. Prior to the demolition, they indicated to the First and Second Claimants that they were giving them the opportunity to remove any salvageable building material from the ancestral home. With the consent of the Defendants, the First and Second Claimants proceeded to strip the ancestral home over a period of time, concluding in 2012. The First and Second Claimants thereafter constructed a new structure with the salvaged material. They denied that the First Defendant approached the Second Claimant in January 2013 and told him to desist from making repairs to the ancestral home or that a Deed was shown to the Second Claimant.

30. The Defendants admitted that they completely demolished the ancestral home in 2013 after permitting the First and Second Claimants to remove any salvageable material from it. They admitted that in late 2012 to early 2013 they began filling the lands immediately surrounding the concrete house with the use of a backhoe. The backhoe did not obstruct the access road to Lot No 7 and at no time, they obstructed access to Lot No 7.
31. The Defendants admitted that on the 22 January 2013 the First Defendant asked the First and Second Claimants to leave the concrete house in a lawful and respectful manner. The Defendants contended that in or about mid to late 2012, they visited the concrete house and they were appalled with its dilapidated and unhygienic state. They made several oral requests to the First and Second Claimants to clean the concrete house and surrounding areas and on the 22 January 2013 after failing to adhere to the requests, they asked the First Claimant to vacate it.
32. The Defendants also denied the allegations of threats and abuse towards the Claimants. They admitted that they were visited by a police officer accompanied by the First and Second Claimants and that they showed the said officer their documents showing that they had purchased the concrete house and that the First and Second Claimants were asked to leave due to the unhygienic and dilapidated state of it. They also admitted that there was a private complaint brought by the First and Second Claimants against them for the use of violent language with intent to provoke but that it was settled at mediation.
33. The Defendants filed a counterclaim seeking the following orders:
 - (a) A declaration that they are the legal owners of the concrete house;

- (b) A declaration that they hold an equitable interest over Lot No 8 based on the Agreement for Sale entered into between the parties;
- (c) An order that the 2009 Deed be rectified to accurately reflect the location of the concrete house;
- (d) Damages for breach of contract; and
- (e) Costs.

THE ISSUES

42. In order to determine the reliefs to be granted in the instant action the following issues are to be determined:
- i. What did the parties agree to?
 - ii. Did any party fail to uphold his obligations?
 - iii. Is the 2009 Deed valid and enforceable?
 - iv. Did the Defendants commit a trespass and if so, are they liable in damages?
 - v. Are the Claimants estopped from claiming any benefit or right to the concrete house and the ancestral home?
34. The parties gave two different versions. The determination of the issues are fact driven. According to the learning in **Horace Reid v Dowling Charles and Percival Bain**² 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.

² Privy Council Appeal No. 36 of 1987.

WHAT DID THE PARTIES AGREE TO?

35. It was submitted on behalf of the Claimants that they agreed with the Defendants to sell the concrete house for the price of \$60,000.00; that they would continue to occupy it until the Grant was obtained; and the Defendants would pay the costs for the Application for the Grant.
36. Counsel for the Defendants argued that the Claimants did not enter into any Agreement for Sale of the concrete house and the ancestral house but they sold both when they executed a Bill of Sale in the office of Mr Hosein. It was also argued that the Defendants did not agree to fund the Application for the Grant and the Claimants failed to provide any proof that this was a term of any agreement.
37. According to the First Claimant, the concrete house was on Lot No 8, the ancestral home was partly on Lot No 7 and Lot No 8, and the wooden house which was at the back was occupied by Kishore Sookdeo. He stated that the lands formed part of the estate of the Deceased who died intestate on 8 March 1987.
38. The First Claimant testified that he was the co-owner along with the other Claimants of the concrete house until 2013. The concrete house consisted of 2 bedrooms, a living room and kitchen which measured 30 feet by 24 feet and that he and the other Claimants paid the building taxes to the Chaguanas Municipal Corporation.
39. According to the First Claimant, on 13 May 2009, he and the other Claimants accompanied by Pooran Sookdeo visited the office of Mr Hosein where they met the Defendants who had agreed to purchase only the concrete house from them. It was also agreed that the Defendants would provide the finances for the Application for the Grant and Mr Hosein would

do the legal work, which he said would cost \$150,000.00 as he estimated the lands where the concrete house was situated were valued at \$1,500,000.00. The First Claimant testified that the Second Claimant did not have the 1984 Deed to have the Agreement for Sale prepared.

40. The First Claimant also testified that the Defendants agreed to purchase the lands after the Grant was obtained and the Claimants could occupy the concrete house until the Defendants purchased the lands. According to the First Claimant, the sale price for the concrete house was \$60,000.00. He stated that on 14 May 2009, they returned to Mr Hosein's office and the Second Claimant had a copy of the 1984 Deed, which he gave to Mr Hosein. The Agreement for Sale was prepared for the concrete house and he and the Claimants signed it after reading it and then both Defendants signed. According to the First Claimant, he did not see the words "Deed "or "tenancy" on the Agreement for Sale and he did not sign any document or Deed on 13 May 2009.
41. According to the First Claimant, after signing the Agreement for Sale, the Defendants paid them \$47,500.00. Mr Hosein explained to them that within 3 months the balance of \$12,500.00 would be paid to them. He testified that he did not agree to sell the Defendants the concrete house for \$90,000.00 and he never signed the document exhibited as "A" in paragraph 2 of the Defence, which was the 2009 Deed.
42. According to the First Claimant in August 2009, he approached the First Defendant about the payment of the outstanding balance of \$12,000.00 and the First Defendant informed him that he had some financial challenges and he would pay the balance in November 2009. In November 2009, he spoke to both Defendants and he was told that the balance would

be paid in the new year. In 2010, the First Claimant met the Defendants on several occasions and reminded them of the outstanding balance and he was told on each occasion that the monies would be paid soon. In 2011 and 2012, he met with the First Defendant on several separate occasions and he always promised to pay the monies due.

43. In the early part of 2013, the First Claimant met with the First Defendant and informed him that the Agreement for Sale was broken by them and it was no longer valid. He also indicated that the Claimants would repay them the money and move on. The First Defendant responded that he would indicate when the Agreement is not valid and he walked away. According to the First Claimant, later on he was assisting the Second Claimant to fix the floor in the ancestral home when the First Defendant came up and demanded that all repairs stop, as he was the owner of the concrete house, the ancestral home and the lands.
44. The First Claimant testified that sometime after the First Defendant produced a document, which he claimed to be a Deed for the concrete house, the ancestral home, and the lands but he did not show it to him.
45. In cross-examination the First Claimant accepted that he signed a document to sell the concrete house to the Defendants. He was unable to recall the name of the document but he accepted that the parties did not sign an Agreement for Sale. He stated that there was no document showing the sale price of \$60,000.00 for the concrete house and that he did not receive a receipt for the sum of \$60,000.00. He also denied that he received the sum of \$100,000.00 or a receipt for the sum of \$100,000.00. He recalled the First Defendant had agreed to pay for something. However,

he denied that the Defendants did not agree to pay for the Application for the Grant.

46. The Second Claimant testified that he was the co-owner along with the other Claimants of the concrete house up until 2013. According to the Second Claimant, the lands formed part of the Estate of the Deceased. The Second Claimant testified that on 13 May 2009, he and the other Claimants accompanied by Pooran Sookdeo visited the office of Mr Hosein where they met the Defendants who had agreed to purchase the concrete house from them. It was also agreed that the Defendants would provide the finances for the Application for the Grant and Mr Hosein would do the legal work, which he said would cost \$150,000.00 as he had estimated the lands were valued at \$1,500,000.00. He said that he did not have the 1984 Deed with him.
47. According to the Second Claimant, the Claimants agreed that after the Grant was obtained the Defendants would purchase the lands. He said that Mr Hosein explained to them that they did not own the lands but that he, the Second Claimant, had a beneficial interest in it. He testified that the sale price for the concrete house was \$60,000.00. On 14 May 2009, they returned to Mr Hosein's office and he had a copy of the 1984 Deed, which he gave to Mr Hosein. The Agreement for Sale was prepared for the concrete house and he and the other Claimants signed it and then both Defendants signed. He stated that he did not see the words "Deed" or "tenancy" on the Agreement for Sale.
48. The Second Claimant testified that after signing, the Defendants paid them \$47,500.00 and Mr Hosein explained that within 3 months the balance of \$12,500.00 would be paid. He said that he was aware that on several

occasions the First Claimant asked the First Defendant to pay the outstanding balance but he always had an excuse not to pay.

49. The Second Claimant also testified that he and the Third Claimant lived in the ancestral home and that he never executed any document with the Defendants for the sale of the ancestral home and that he did not receive any money from the Defendants for the ancestral home.
50. In cross-examination the Second Claimant admitted that the Defendants did not agree to finance the Application for the Grant, which was contrary to his evidence in chief. He said that the Claimants agreed to sell the Defendants and that the Defendants agreed to purchase the lands after the Grant was obtained. He accepted that Document B of the Amended Defence was a receipt dated 14 May 2009 in the sum of \$10,000.00 for a wooden house and that he saw his name and the statement, “the wooden house to be demolished”. He agreed that his signature was on the receipt for \$10,000.00 and it was his receipt. He admitted that the First Defendant paid him the sum of \$10,000.00 for the ancestral home.
51. With respect to the 2009 Deed, the Second Claimant testified in cross-examination that he signed the 2009 Deed in Mr Hosein’s office on the 14 May 2009, and that the signature on it was his. However, he stated that the words “Deed” and “tenancy” were not in it. He accepted that they sold the concrete house to the First Defendant. However, he denied that the Claimants were paid \$100,000.00 for the concrete house.
52. However, in re-examination the Second Claimant testified that the signature on Document B attached to the Amended Defence was his but

he did not write in the information and that when he signed the receipt all the writing was not there and he was never given a copy of this receipt.

53. The Third Claimant testified that she was the co-owner along with the other Claimants of the concrete dwelling house until 2013. She testified that the lands comprised of about 2 lots and other than the concrete house, there was the ancestral home, which stood partly on Lot No 7 and Lot No 8 and the wooden house occupied by Kishore Sookdeo. She testified that the lands formed part of the estate of the Deceased.
54. According to the Third Claimant, on 13 May 2009, she and the other Claimants accompanied by her uncle Pooran Sookdeo visited the office of Mr Hosein, Attorney at Law where they met the Defendants who had agreed to purchase the concrete house from them. It was also agreed that the Defendants would provide the finances for the Application for the Grant and Mr Hosein would do the legal work, which he said would cost \$150,000.00 as he estimated the said lands were valued at \$1,500,000.00. According to the Third Claimant, after the Grant of Administration was obtained the Defendants would then purchase the lands. The Second Claimant did not have the 1984 Deed to have the Agreement for Sale prepared. The sale price for the concrete house was \$60,000.00.
55. According to the Third Claimant on the 14 May 2009, they returned to Mr Hosein's office and the Second Claimant had a copy of the 1984 Deed, which he gave to Mr Hosein. The Agreement for Sale was prepared for the concrete house and the Claimants signed after reading it and then both Defendants signed. The Third Claimant testified that she did not see the words "Deed" or "tenancy" in the Agreement for Sale and she did not sign any document or Deed on 13 May 2009.

56. The Third Claimant testified that after signing the Agreement for Sale, the Defendants paid the Claimants the sum of \$47,500.00. Mr Hosein explained that the balance of \$12,500.00 would be paid to them within 3 months.
57. In cross-examination the Third Claimant testified that she was unable to recall the nature of the document she signed at Mr Hosein's office. She stated that she may be able to recognise the document she signed as there were no changes when she signed. The Third Claimant was shown the 2009 Deed. She stated that the word 'tenancy' was changed. She agreed there was no initial to signify a change where the words "ONE HUNDRED THOUSAND DOLLARS" was. She accepted that the words "Bill of Sale" were changed to the word "Deed" and that the sum in the 2009 Deed was \$100,000.00. However, she did not agree that the sum of \$100,000.00 was for the concrete house but she agreed it was her signature in the 2009 Deed.
58. The First Defendant testified that in early May 2009 he and the Second Claimant had a conversation about the sale of the concrete house. They also discussed that the Application for the Grant will have to be prepared because the lands on which the concrete house stood was part of the Deceased's estate. The Claimants took the Defendants to Mr Hosein, attorney at law since he had previously done work for the Claimants. The First Defendant testified that he purchased the concrete house and the ancestral home upon the Claimants' assurance that he can purchase the lands upon the receipt of the Grant.
59. According to the First Defendant, on 13 May 2009 the Defendants and the First and Second Claimants visited Mr Hosein. They were advised that the

lands ought to be sold after receipt of the Grant and that a Bill of Sale would have to be prepared for the sale of the concrete house and the ancestral house. On 14 May 2009, the parties again visited Mr Hosein's office for the First Defendant to pay for the concrete house. The purchase price was \$90,000.00 but the total of \$100,000.00 was recorded on the 2009 Deed because the sum of \$10,000.00 was included as payment for the ancestral home. According to the First Defendant upon his payment for the concrete house on the 14 May 2009, the First Claimant signed the receipt for receiving \$90,000.00 and the Second Claimant signed the receipt for \$10,000.00 for the ancestral house. On the same date, he paid Mr Hosein the sum of \$4500.00 for the preparation of the Bills of Sale.

60. The First Defendant testified that on 14 May 2009, he became the owner of the concrete house and the ancestral house. According to the First Claimant, the only agreement he entered into was to purchase the concrete house and the ancestral home which he was to demolish at his own costs; to permit the Claimants to occupy the concrete house until he was ready to renovate it and move in; the Claimants would apply for the Grant and that he would be given the first option to purchase that portion of the lands which was Lot No 8.

61. In cross-examination the First Defendant stated that he lived two houses away from the Claimants. The First Claimant came to him and told him he wanted to sell the concrete house and asked him to buy it. He asked the First Claimant if he had documents for the concrete house, and he responded in the affirmative. He told him to return with his documents. Both the First and Second Claimants returned and showed him a document from the County Council with the Deceased's name together with the Second and Third Claimants' names.

62. The First Defendant testified that after speaking with the First and Second Claimants he knew that he was going to purchase the concrete house and the ancestral home. The price for the concrete house was \$90,000. He stated that prior to 13 May 2009, he did not know Mr Hosein and he did not give Mr Hosein any instructions to prepare any documents. He was unable to recall if any document such as a Bill of Sale was prepared for him to sign on the 13 May 2009 when he visited Mr Hosein's office. However, he said that he signed the Bill of Sale on either the 13 or the 14 May 2009. According to the First Defendant, at Mr Hosein's office, the Claimants gave Mr Hosein the details of the sale and Mr Hosein made notes and passed it unto another person to have the documents prepared.
63. The First Defendant was cross examined on the contents of the 2009 Deed. He was shown the 2009 Deed and he indicated that it was his Deed. He acknowledged that the 2009 Deed stated \$100,000.00 and not \$90,000.00 as the purchase price, and that the Schedule in the 2009 Deed only referred to the concrete house. He was asked if the 2009 Deed included the ancestral home but he refused to answer. Instead, he indicated that \$90,000.00 was for the concrete house and \$10,000.00 was for the ancestral home.
64. The First Defendant stated in cross-examination that he knew that the Deceased owned the lands. He did not know if the Estate of the Deceased was administered and that there was no discussion with respect to the Application for the Grant at Mr Hosein's office. He said the Second Claimant told him when they obtained the Grant they would sell him the lands.

65. The First Defendant also testified in cross-examination that he paid Mr Hosein for the preparation of one Bill of Sale. He denied he paid Mr Hosein for the preparation of more than one Bill of Sale. He denied that he had any written agreement with respect to the concrete house and the ancestral home.
66. The First Defendant was also cross examined on the circumstances surrounding payment of and the receipt for the \$10,000.00, which was issued to the Second Claimant for the purchase of the ancestral home. According to the First Defendant, he paid the Second Claimant the sum of \$10,000.00 for the ancestral home. He testified that the receipt for the \$10,000.00 was written up by his wife, the Second Defendant, around the 13 or 14 May 2009 outside of Mr Hosein's office and not in the presence of Mr Hosein. He stated that the sale of the ancestral home to him was based on a verbal agreement between the Second Claimant and him and that he thought that Mr Hosein knew about the verbal agreement concerning the ancestral home. Notably he did not state that he told Mr Hosein about the verbal agreement for the sale of the ancestral home.
67. Mr Kishore Sookdeo gave evidence on behalf of the Defendants. He testified that he is one of the brothers of the Second Claimant and a son of the Deceased. He stated that there was no Grant. He testified that there were three houses on the lands: namely the concrete house; the ancestral home; and the wooden house. He stated that in 2009 the Claimants told him that they wanted to sell the concrete house. They had offered to sell it to him in 2003 but he declined since he was living in the wooden house. In 2009, the Claimants told him that they had sold the concrete house to the First Defendant. His evidence was unshaken in cross-examination.

68. The Defendants also relied on the evidence of Ms Sheriffa Hosein. According to Ms Hosein, the parties visited Mr Hosein's office on 13 May 2009 to execute a Bill of Sale involving the concrete house. She testified that she prepared and witnessed the Bill of Sale dated 13 May 2009 and registered as the 2009 Deed. She was present when Mr Hosein prepared the Bill of Sale.
69. According to Ms Hosein, when the Bill of Sale was executed by the parties she took it for registration. She was advised that a document called a Bill of Sale must be registered as a Deed. She was also advised by the Registry that as the lands were not fee simple lands the tenancy which was being held over would have to be transferred to the Defendants and that this was the reason Mr Hosein changed the words "Bill of Sale" to "Deed" and he changed another word to "tenancy". She stated that in her experience, she knew that these changes did not affect the nature of the transaction.
70. Ms Hosein stated that sometime in May 2016, she received a letter from Mrs Keisha Kydd-Hannibal, Attorney at law dated 3 May 2016 requesting clarification on matters in relation to the 2009 Deed and she responded via letter dated 19 May 2016 that she made changes; that Mr Hosein initialled the changes and that the aforementioned changes were made pursuant to the instructions of the Legal Affairs Department.
71. In cross-examination, Ms Hosein stated that she worked at Mr Hosein's office for approximately 16 years from around 1993. She testified that prior to 13 May 2009, she did not know the First Defendant. On 13 May 2009, the Claimants alone came to the office of Mr Hosein. On the 14 May 2009, the First Defendant was present. She prepared the Bill of Sale based on instructions from Mr Hosein, on the 13 May 2009. As far as she recalled

this was the only document, which was prepared for the Claimants and Defendants. On 13 May 2009, she was unable to recall if all 3 Claimants were present. On 14 May 2009, she stated that all Claimants and the Defendants were present and that the parties signed the Bill of Sale on the 14 May 2009.

72. Ms Hosein was shown the 2009 Deed she prepared. She said that when she prepared the 2009 Deed there was no white-off on it and it was after she took it to Ministry of Legal Affairs, corrections were made. She testified that she believed the Claimants were given a copy of the 2009 Deed to read. She said that she was sure the Claimants read the 2009 Deed yet she did not see them read it and she did not see the Defendants read it.
73. Ms Hosein was referred to her affidavit dated 13 May 2009 attached to the 2009 Deed in which she swore that she saw the parties sign the 2009 Deed on the 13 May 2009. She explained that on the 13 May 2009 the 2009 Deed was probably prepared but on the 14 May 2009 it was signed. Ms Hosein also explained that she did not know whether the words "ONE HUNDRED THOUSAND DOLLARS" was inserted in the 2009 Deed on the instructions of the Claimants. She stated that she inserted the word 'tenancy' based on instructions from persons from the Ministry of Legal Affairs and that the Claimants had no knowledge that she changed the word "tenancy".
74. Ms Hosein also stated in cross-examination that she prepared the receipt for \$4500.00 as the money was passed to her but she did not prepare any other receipts; she did not see any other receipts prepared in this matter; and she did not know if any other receipts were prepared in this matter.

75. In re-examination, Ms Hosein admitted that she did not inform the Claimants about the changes she made to the 2009 Deed since it did not affect it.
76. One of the contemporaneous documents was the 2009 Deed, which was the subject of challenge by the Claimants. It was dated 13 May 2009 and signed by the Claimants and Defendants. The consideration was \$100,000.00 and the schedule contained a description of the concrete house. The initials of Mr Hosein are next to the words "Deed" and "tenancy".
77. The other contemporaneous documents were the receipts, which were annexed to the First Defendants witness statement, which the Claimants disputed. "P.S.1" was a receipt dated the 14 May 2009 signed by the First Claimant where he acknowledge receiving the sum of \$90,000.00 from the First Defendant for the concrete house. It also stated that it represents full and final payment for the concrete house and that the First Claimant has relinquished all ownership of the concrete house to the First Defendant. The First Claimant has vehemently denied the contents of "P.S.1".
78. The second receipt annexed in "P.S 1" was dated 14 May 2009 allegedly signed by the Second Claimant. This receipt stated that the sum of \$10,000.00 was received by the Second Claimant from the First Defendant for the ancestral home. There was also a note that the ancestral home is to be demolished.
79. The third receipt was annexed in "P.S.2". It was also dated the 14 May 2009 and it was written up by Ms Hosein for Mr Hosein. It stated that the sum of \$4,500.00 was received from the Defendants for full and final payment

for Bill of Sale. Ms Hosein confirmed that she prepared this receipt, which remained unchallenged.

80. There were several inconsistencies in the Claimants and Defendants evidence, which did not support their respective cases. In my opinion, the weight of the evidence supports the following findings.
81. First, there was no written Agreement for Sale to sell the concrete house. Instead, the concrete house was sold by the Claimants to the Defendants on the 14 May 2009. The consistent evidence of all the Claimants, the First Defendant and Ms Hosein was that on the 14 May 2009 at Mr Hosein's office, the Claimants and Defendants executed a document, which was prepared by Mr Hosein, wherein the concrete house was sold to the Defendants. The 2009 Deed and the first receipt in exhibit "P.S.1" are the contemporaneous documents, which supported this position.
82. Secondly, it is more probable that the Defendants paid the sum of \$100,000.00 for the concrete house and the ancestral home. There were three versions on the consideration for the concrete house. All the Claimants' unshaken evidence was that the agreed price for the concrete house was \$60,000.00 and upon execution of the document at Mr Hosein's office, they were paid \$47,500.00 with a balance of \$12,500.00.
83. The 2009 Deed stated that the consideration for the concrete house was \$100,000.00. All the Claimants admitted that the only alterations on the document, which they signed on the 14 May 2009 in Mr Hosein's office, were the words "Bill of Sale" which was changed to "Deed" and the word "tenancy" was inserted. They all admitted that there was no alteration to the words "ONE HUNDRED THOUSAND DOLLARS".

84. The First Defendant testified that he paid \$90,000.00 for the concrete house and \$10,000.00 to the Second Claimant for the ancestral home. The Second Claimant in cross-examination admitted he received \$10,000.00 for the ancestral home. The second receipt in "P.S. 1" supported the position that the \$10,000.00 was paid to the Second Claimant for the ancestral home. The First Defendant's evidence was inconsistent with the 2009 Deed since it did not state that the consideration for the concrete home was \$90,000.00 and it did not include the ancestral home in the schedule.
85. Based on the evidence of the Claimants, the First Defendant and Ms Hosein, the 2009 Deed was signed by the parties on the 14 May 2009. However, it was dated the 13 May 2009 and the affidavit of due execution sworn to by Ms Hosein also stated that it was executed on the 13 May 2009. It was executed as a Bill of Sale and not a Deed. Ms Hosein prepared the Bill of Sale and made alterations changing the words "Bill of Sale" to "THIS DEED" and she inserted the word "tenancy" in the recitals and in the operative part of the Deed. Mr Hosein initialled the alterations, which were made by Ms Hosein.
86. In my opinion, given the admission by the Second Claimant in cross-examination that he was paid \$10,000.00 for the ancestral home, and the consideration in the 2009 Deed was not altered, it was more probable that the sum of \$100,000.00 in total was paid to the Claimants for both the concrete house and the ancestral home, with \$90,000.00 for the concrete house and \$10,000.00 for the ancestral home.
87. Third, although there was no written document other than the receipt as proof of the sale of the ancestral home, the admission by the Second

Claimant supported the Defendants position that it was sold to them on the 14 May 2009.

88. Fourth, it was not agreed between the parties that the First Defendant would finance the Application for the Grant. Instead it was agreed that after the Grant was obtained the First Defendant would be given the first option to purchase the lands and that the Claimants could continue to occupy the concrete house until the Defendants were ready to renovate it. The Claimants case that the Defendants permitted them to continue to occupy the concrete house until the Grant was obtained and that the First Defendant agreed to finance the Application for the Grant was undermined when the Second Claimant, one of the sons of the Deceased admitted in cross-examination that there was no such condition and that they only agreed to give the Defendants the first option to purchase the lands.

DID ANY PARTY FAIL TO UPHOLD HIS OBLIGATION?

89. The First Claimant testified that in the early part of 2013 he met with the First Defendant and informed him that the Agreement for Sale was broken by them and no longer valid and the Claimants will repay them the money and move on. The First Defendant responded that he would say when the Agreement is not valid and walked away. Later on as the First Claimant was assisting the Second Claimant to fix the floor in the ancestral home, the First Defendant came up and demanded that all repairs stop, as he was the owner of the ancestral home and the lands.
90. According to the First Claimant, the First Defendant produced a document, which he claimed to be a Deed for the ancestral home and the lands, but he did no show it to him. On 22 January 2013, he spoke to the Second

Claimant and later went to the ancestral home. The First Defendant came to the ancestral home and pointed a black looking firearm at him and told him to leave the house and do not come back or else he would be killed. He fled and made a report to the Chaguanas Police Station.

91. He returned to the concrete house and waited for the police to visit him to leave with his belongings and shortly after the Second Claimant and the First Defendant came. He started to pack his stuff and there was a conversation between the Second Claimant and the First Defendant who began slapping and kicking the former. He ran and secured the door to the ancestral home with the Second Claimant inside and later made a report to the police. During the police intervention between himself and the First Defendant, the First Defendant kept showing the police a document that he read from as a Deed where he paid \$100,000.00 for the concrete house, however he was never shown the document.
92. Upon returning to his home a few days later to collect his belongings, he was surprised to find that all his belongings as well as that of the other Claimants were thrown in a heap at the side of the road and there were several strange men occupying the concrete house. He was afraid to enter. The standpipe close to the concrete house was removed and the Second Claimant who was staying in the ancestral home was inconvenienced, as he now had to transport water from a distance off.
93. According to the First Claimant, on 31 January 2013, the First Defendant parked a backhoe TCJ 602 blocking access along the access road to the concrete house and the ancestral home where he was staying with the Second Claimant. A couple days later, the First Defendant began parking several vehicles, a container and other vehicles along the access road. In

February 2013, the First Defendant did cause a backhoe to demolish and remove the ancestral home with all of the Second Claimant's belongings as well as some of his. The First Defendant later caused a chain link fence to be erected to block the access road. He reported this to the police but nothing was done.

94. The First Claimant's evidence on the aforesaid conduct by the First Defendant was not challenged in cross-examination. The evidence of the First Defendant's actions was corroborated by the evidence from the Second Claimant.

95. The First Defendant testified he had agreed to purchase the ancestral house for \$10,000.00 and to demolish it at his own costs and convenience and to permit the Claimants to occupy the concrete house until he was ready to renovate it and move in.

96. According to the First Defendant sometime in mid to late 2012, he visited Lot No 8 and he found that there was a stench of faeces emanating from the concrete house, as there was no plumbing in the concrete house. He also observed garbage was strewn throughout the concrete house. This caused him to get upset and to demand that the First and Second Claimants clean the concrete house and the surroundings. The First Defendant testified that in or around late 2012 to early 2013, the Defendants started to fill the land around the concrete house and that by that time the stench was unbearable. The First Defendant stated that the Defendants attempted to peacefully have the Claimants maintain the concrete house but on or around the 22 January 2013 after making several requests to no avail that the Claimants clean the concrete house, the First

Defendant asked the First and Second Claimants to leave the concrete house.

97. The First Defendant also testified that in or around 2013 he caused the ancestral home to be completely broken down. He said that he allowed the Claimants to remove any salvageable materials prior to the demolition which they did and which they used to construct a new a structure on Lot No 7.
98. Having concluded that there was no condition that the Claimants were to continue to occupy the concrete house after it was sold to the Defendants and that the Defendants were owners of the concrete house and the ancestral home, in my opinion, they were entitled to take steps to secure the concrete house and remove the ancestral home. Therefore, there was no breach by the Defendants. I have also concluded that there was no breach by the Claimants since they vacated the concrete house and the ancestral home after they were told to do so by the Defendants.

IS THE 2009 DEED VALID AND ENFORCEABLE?

99. Section 17 of the **Conveyancing and Law of Property Act**³ provides:
- (1) Every conveyance is effectual to pass all the estate, right, title, interest, claim and demand which the conveyancing parties respectively have, in, to, or on property conveyed, or expressed or intended so to be, or which they respectively have power to convey in, to, or on the same.
 - (2) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and has the effect subject to the terms of the conveyance and to the provisions therein contained.”

³ Chapter 56:01

100. The consistent evidence from the Claimants and the First Defendant was that the concrete house was situated on Lot No 8.
101. The First Defendant's unchallenged evidence was that Lot No 8 comprises 547.2 square metres and it was described in the plan attached to the 1984 Deed as being bounded on the North by Lot No 6 on the South by lands of B Cassie, on the East by Lot No 7 and on the West by the Road.
102. However, the Schedule in the 2009 Deed described the concrete house as being situated on Lot 7. It provides:
- “ALL THAT flat concrete dwelling house situate at Clarke Road Extension Lp No 5 Charlieville, Chaguanas, in the Borough of Chaguanas, in the Island of Trinidad containing two bedrooms, living room and kitchen measuring 30 feet by 24 feet and assessed in the names of the Vendors by the Chaguanas Borough Corporation as CBC-A- 12 and situate on FOUR HUNDRED AND NINETY SEVEN POINT FOUR SQUARE METRES (497.4s.m) (being portion of a larger parcel of land described in the Schedule to Deed No. 982 of 1977) and bounded on the North by Lot No. 6 on the South by lands of B. Cassie on the East by a Road Reserve measuring 7.62 metres and on the West by Lot. 8 and more particularly delineated and shown on the plan attached to Deed No DE 24453 of 1984 and known as Lot 7.”
103. Further, the 2009 Deed was not executed on the 13 May 2009 but on the 14 May 2009, which was the consistent evidence of all the witnesses involved in its execution. Both the Claimants and the First Defendant

testified that the document (i.e. the 2009 Deed) which they executed on the 14 May 2009 was to sell the concrete house to the Defendants. However, the 2009 Deed did not reflect this position, but it also bestowed on the Defendants tenancy rights, which Ms Hosein admitted the parties were unaware of.

104. In my opinion, there is no need to expunge the 2009 Deed since it is effective in conveying the rights in the concrete house to the Defendants, which was the undisputed evidence of the Claimants and the First Defendant. The more appropriate course is for a Deed of Rectification to be prepared and executed to rectify the date of execution, to delete the transfer of any tenancy rights to the Defendants and to accurately reflect the location of the concrete house as described in the 1984 Deed.

DID THE DEFENDANTS COMMIT TRESPASS AND IF SO, ARE THEY LIABLE IN DAMAGES?

105. The authors of **Clerk & Lindsell on Torts**⁴ at paragraph 19.01 described a trespass to land as an unjustifiable intrusion by one person upon land in the possession of another. Trespass is a direct entry on the land of another and is actionable per se and the slightest cross of the boundary is sufficient.
106. With respect to the claims for trespass to Lot No 8, it was not in dispute from the pleadings that the title to Lot No 8 was vested in the Deceased and that any agreement between the parties were without any party being a representative of the Deceased's estate.
107. It was not in dispute from the evidence that the Defendants had not acquired any interest in the lands. The Defendants admitted in their

⁴ 22nd Ed (2017)

Defence and Counterclaim that in late 2012 to early 2013 they began filling the lands immediately surrounding the concrete house with the use of a backhoe. They denied that the backhoe obstructed the access road to Lot No 7.

108. In my opinion, although the Defendants had purchased the concrete house and the ancestral home, they did not acquire any rights to the lands. As such, the steps taken to back fill was a trespass on the lands.
109. **Halsbury's Laws of England on Remedies for Trespass**⁵ states:
"In a claim of trespass, if the Claimant proves the trespass, he is entitled to recover nominal damages, even if he has not suffered any actual loss. If the trespass has caused the Claimant actual damage, he is entitled to receive such amount as will compensate him for his loss."
110. In determining, the quantum of the loss there was a paucity of evidence from the Claimants. In **Mano Sakal v Dinesh Kelvin**⁶ on 22 March 2016, Donaldson-Honeywell J awarded \$30,000.00 in nominal damages since the Claimant established loss but the value was not adequately quantified.
111. In **Ann Edwards v Neomi Hinds**⁷ on the 16 November 2018 the Claimants had established that they have suffered loss as a result of the water, which was emitted from the pipes, which were laid by the Defendant. They had established that the nature of the loss was slope instability. An award of nominal damages in the sum of \$30,000.00 was awarded. In **Rodney Jaglal**

⁵ Tort Vol 97 (2015) 591

⁶ CV 2015-00748

⁷ CV 2017-02552

and anor v Jean Hunte⁸ the Court awarded \$25,000.00 in December 2018 as nominal damages for trespass.

112. There was no evidence presented with respect to the value of the said land and the diminution in value as a result of the acts of trespass by the Defendant. In the circumstances, the Claimants are to be awarded nominal damages in the sum of \$ 25,000.00.

ARE THE CLAIMANTS ESTOPPED FROM CLAIMING ANY BENEFIT OR RIGHT TO THE CONCRETE HOUSE?

113. The elements of proprietary estoppel were repeated by Mendonca JA in **Nester Patricia Ralph and Esau Ralph v Malyn Bernard**⁹ at paragraph 38 where he referred to the dicta in **Thorne v Major and Ors**¹⁰ 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.

114. In **Mills v Roberts**¹¹ Jamadar JA explained that the elements of proprietary estoppel must be examined holistically in the round and are not

⁸ CV 2014-01776

⁹ Civil Appeal No. 131 of 2011

¹⁰ [2009] UKHL 18

¹¹ CA T243 of 2012

“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 paragraph 19 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 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.”

115. The First Claimant testified that the concrete house consisted of 2 bedrooms, a living room and kitchen, which measured 30 feet by 24 feet. According to the First Claimant sometime in early 2013, he collected his belongings from the concrete house and left due to the conduct by the First Defendant.
116. The Second Claimant testified that the concrete house consisted of 2 bedrooms, a living room and kitchen, which measured 30 feet by 24 feet. In cross-examination the Second Claimant admitted that he was aware of the construction works done by the Defendants on the concrete house after the Claimants left and that the Claimants did not bring any proceedings with respect to the concrete house until after the works were completed.
117. The Third Claimant described the concrete house as consisting of 2 bedrooms, a living room and kitchen, which measured 30 feet by 24 feet

in her evidence in chief. She too admitted in cross-examination that she did not file any claim to stop the Defendants from doing any works to the concrete house and she only filed the instant action after the works on the concrete house was completed.

118. The First Defendant testified that after the First and Second Claimants vacated the concrete house the Defendants began renovations. According to the First Defendant, the Defendants spent approximately, \$336,440.00 on renovations to the concrete house. He said that the renovations consisted of:

- i) Raising the ceilings and floors;
- ii) Recasting the floors and terrazzo;
- iii) Completing the under ceiling;
- iv) Constructing and plastering the walls;
- v) Completing electrical wiring;
- vi) Installing doors and windows;
- vii) Installing indoor plumbing;
- viii) Installing kitchen counters and cupboards; and
- ix) Painting and making general repairs to the house.

119. The First Defendant's evidence on the works he did to the concrete house was not challenged in cross-examination.

120. The Defendants having purchased the concrete house were entitled to conduct the renovations and works on it as they saw fit. In any event, the Claimants are estopped from claiming any benefit for the concrete house since the Claimants admitted that they sold the house in 2009 and they were aware after 2013 that the Defendants were renovating the concrete house and they provided no reason to account for their failure to take

steps to cease the construction works. It is therefore unconscionable for the Claimants to obtain a benefit for the concrete house at this stage.

ORDER

121. It is declared that the Defendants are the owners of the concrete house.
122. A Deed of Rectification is to be prepared for the 2009 Deed by the Defendants with the costs to be borne by the Defendants to reflect the correct date of execution i.e. 14 May 2009, to delete the tenancy rights and to reflect the accurate location of the concrete house. The Registrar of the Supreme Court is directed to execute the Deed of Rectification in default of the Claimants executing same within 28 days from delivery by the Attorney at Law for the Defendants.
123. The Defendants to pay the Claimants the sum of \$25,000.00 as nominal damages for trespass to the lands.
124. I will hear the parties on costs of the action.

Margaret Y Mohammed
Judge