

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-03521

BETWEEN

CHERYLL ANN WILSON DRAKES
(also called Cheryll Ann Wilson Drakes
also called Cheryl Ann Drakes)

RHEA JONES
(formerly Rhea Drakes)

JERELL DRAKES

Claimants

AND

JUNIOR REGINALD DRAKES

Defendant

Before the Honourable Madame Justice Margaret Y Mohammed

Dated the 5th October 2018

APPEARANCES:

Ms. Sashi Indarsingh Attorney at law for the Claimant

Ms. Cheryll Pierre Attorney at law for the Defendant

JUDGMENT

1. The Claimants are the owners of All and Singular that certain parcel or lot of land situate at Diamond Vale in the Ward of Diego Martin in the island of Trinidad comprising four thousand three hundred and sixty five superficial feet(4,365) s.f.) be the same or less shown as Lot No. 544 on the Plan annexed to the Deed of lease registered as No. 12447 of 1964 and thereon coloured pink bounded on the North by Lot No. 514 on the South by a Road reserve 40 feet wide on the east by Lot Numbered 543 and on the West by Lot

No. 545 with building situate thereon which said parcel of land is known as No. 19 Emerald Drive, Diamond Vale, Diego Martin (“the Diego Martin property”).

2. The Defendant is the father of the Second and Third Claimants and the former husband of the First Claimant. The Claimants have brought this action against the Defendant seeking possession of the Diego Martin property as well as mesne profits for loss of use of the Diego Martin property.
3. The Claimants alleged that they became owners of the Diego Martin property by virtue of a Deed of Assent dated and registered on 24th March, 2016 (“the Deed of Assent”) pursuant to a Grant of Probate of the last Will and Testament (“the said Will”) of the First Claimant’s mother, Alma Ruby Wilson, deceased (“the Deceased”), who bequeathed the Diego Martin property to the Claimants. They contend that the Defendant was a licensee who was in occupation of the Diego Martin property from 1991 to 2009 with the permission of the Deceased. They asserted that the Deceased revoked this permission by her letter of 9th December, 2009, requesting him to vacate the Diego Martin property by 31st January, 2010. The attorney at law for the legal personal representative of the Deceased’s estate also wrote to the Defendant on the 26th January 2015 asking him to vacate the Diego Martin property within 30 days from the date of the said letter and by letter dated the 7th July 2016 the attorney at law for the Claimants wrote to the Defendant asking him to vacate the Diego Martin property within 14 days from the date of the said letter.
4. By Defence and Counterclaim, the Defendant responded that the Claimants could not be the registered fee simple absolute owners of the Diego Martin property since the First Claimant was only given a life tenancy of the Diego Martin property whilst both the Second and Third Claimants were made the remaindermen thereof.
5. The Defendant denied that the Deceased could have written the letter of dated the 9th December, 2009 and challenged the truth of the contents of the purported letter, since in the year 2009-2010, the Deceased was already in an advanced stage of dementia and therefore she was not and could not have been mentally competent to make any

statement and/or order and/or give any instructions to anyone concerning the Diego Martin property at that time.

6. The Defendant also claimed that he acquired an equitable interest in the Diego Martin property since the Deceased promised him an interest if he looked after the repairs and renovation to the Diego Martin property and that he also spent his own person funds in it. As such the Defendant claimed that he is entitled to be compensated to the value for his equitable interest which he has stated is 1/3 interest and /or share in the Diego Martin property.
7. In the Claimants' Reply and Defence to the Counterclaim, the Claimants claimed that the Diego Martin property was not dilapidated and uninhabitable since the First Claimant's cousin, Esla Charles was in occupation of the Diego Martin property until the year 1984. The Claimants also alleged that at no time the Defendant assumed full responsibility to oversee renovations and repairs, nor did the Deceased, in the presence of the First Claimant, express any desire to give the Defendant a share in the Diego Martin property.
8. The Claimants also claimed that the arrangements between the First Claimant, the Defendant and the Deceased to live in the Diego Martin property after selling their Trincity home in 1990, were loose and the Deceased made no demands on the First Claimant or the Defendant, and the Deceased sent money routinely for the maintenance and upkeep of the Diego Martin property. The Claimants further claimed that the Diego Martin property remained the same in 1991. They also alleged that the Deceased travelled to the USA in August, 1999 and remained there until her passing in the year 2012. They asserted that the letter dated the 9th December 2009 was issued on behalf of Esla Charles who was granted Letters of Guardianship in the USA for the said Deceased.
9. Based on the pleadings the issues which arose for determination were:
 - (a) Did the Deceased, the Claimants predecessor in title give assurances and/or make promises to the Defendant that she would give him a share in the Diego Martin property.

- (b) Did the Defendant in reliance upon the assurances and/or promises of the Deceased expend his own monies in carrying out the renovations, additions and improvements to the Diego Martin property.
 - (c) Assuming the Defendant is a licensee and in occupation with the permission of the Claimants and/or their predecessor in title was that permission revoked and if so, when.
10. The determination of the aforesaid issues centred on the determination of several disputes of facts. In determining questions of fact the Court is guided by the learning in the Privy Council decision in **Horace Reid v Dowling Charles and Percival Bain**¹ which laid down guidelines to be followed by the trial judge in assessing the credibility of evidence where there is actual conflict. The Board said that the trial judge must check the impression that the evidence of the witnesses makes upon him against-
- (a) Contemporary documents, where they exist;
 - (b) the pleaded case; and
 - (c) the inherent probability or improbability of the rival contentions.
11. In the Court of Appeal judgment of the **Attorney General of Trinidad and Tobago v Anino Garcia**² the Court stated that in determining the credibility of witnesses, the Court is entitled to draw negative inferences where there is a conflict of facts on the pleadings; where there are discrepancies between the pleaded case and the witness statements and any admissions made by a witness during cross-examination.
- Did the Deceased, the Claimants predecessor in title, give assurances and/or make promises to the Defendant that she would give him a share in the Diego Martin property.**
12. The Defendant's defence and counterclaim was grounded in the doctrine of proprietary and promissory estoppel. Therefore the onus was on him to prove his assertion and this must be examined in the context of the law on promissory and proprietary estoppel.

¹ App No. 36 of 1987

² Civ appeal 86 of 2011

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

“Where by his words or conduct one party to a transaction freely makes to the other a clear and unequivocal promise or assurance which is intended to affect legal relations between them (whether contractual or otherwise) or was reasonably understood by the other party to have that effect, and, before it is withdrawn, the other party acts upon it, altering his or her position so that it would be inequitable to permit the first party to withdraw the promise, the party making the promise or assurance will not be permitted to act inconsistently with it”.³

14. To succeed on the basis of the doctrine of promissory estoppel the onus was on the Defendant to establish that: (a) There was a clear and unambiguous promise made by the Deceased to the him ; (b) The Defendant relied on that promise to his detriment and (c) It is unconscionable to permit the Claimants to act in a manner inconsistent with the promise of the Deceased, their predecessor in title.

15. A distinction on the nature of the promise between the law of promissory estoppel and proprietary estoppel was considered in the Court of Appeal decision of **Ester Mills v Lloyd Roberts** ⁴ where it was stated that:

“19. Whereas in promissory estoppel there must be a clear and unequivocal promise or assurance intended to effect legal relations or reasonably capable of being understood to have that effect, in the law of proprietary estoppel there is no absolute requirement for any findings of a promise or of any intentionality.

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

(i) An equity arises where:

(a) the owner of land (O) induces, encourages or allows the claimant (C) to believe that he has or will enjoy some right or benefit over O's property;

³ 31st ed. 2005 Para 10-08

⁴ Civil Appeal No. T 243 of 2012 at para 19 and 22

- (b) in reliance upon this belief, C acts to his detriment to the knowledge of O; and
 - (c) O then seeks to take unconscionable advantage of C by denying him the right or benefit which he expected to receive.
- (ii) This equity gives C the right to go to court to seek relief, C's claim is an equitable one and subject to the normal principles governing equitable remedies.
 - (iii) The court has a wide discretion to the manner in which it will satisfy the equity in order to avoid an unconscionable result, having regard to all the circumstances of the case and in particular to both the expectations and conduct of the parties.

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

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

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

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

16. It was argued on behalf of the Defendant that the Deceased, the predecessor in title of the Claimants, made clear and unequivocal promises and assurances by her words and conduct that if he oversaw the renovation to the Diego Martin property he would acquire a share and/or interest in it and it was based on those assurances he took control of the said works.
17. Counsel for the Claimant submitted that the Defendant failed to establish that the Deceased made any promise to the Defendant that he would have a beneficial interest in the Diego Martin property. Any work the Defendant did in overseeing the repairs and renovations was since he was a family member and the Deceased’s son-in-law. The Deceased and later the Claimants only permitted the Defendant to stay temporarily on the Diego Martin property which was indicative of a generous family arrangement rather than an assurance that the Defendant would acquire an interest in it.
18. Did the Deceased cause the Defendant to believe that he has or will enjoy some right or benefit over the Diego Martin property? The evidence with respect to any allegation of such promise was from the Defendant and the Claimant, both of whom were cross examined at the trial.
19. The Defendant testified that he and the Claimant got married in May 1981. At first they lived in San Juan and in 1985 they purchased a house in Trincity (“the Trincity property”). In or about 1984, the Deceased, who residing in Orlando, Florida, told the First Claimant and him of her desire to return home to live in Trinidad in the Diego Martin property which required repairs, improvements and renovations. Pursuant to the

request of the Deceased, the Defendant made arrangements to obtain an approved Plan from Town and Country Planning Division for the proposed repairs, extension and renovation works on the Diego Martin property which he eventually received in or about November, 1985.

20. The Deceased next visited Trinidad in February 1986 and she stayed at the Trincity property. According to the Defendant on that visit the Deceased promised him, in the presence of the First Claimant, that if he assumed responsibility and take charge of the requisite repairs and improvement works to the Diego Martin property in return she would give him a share and/or interest in it. Thereafter in or about April, 1986, in reliance on the promises and assurances made by the Deceased and with the encouragement and approval of the First Claimant, the Defendant embarked and assumed full responsibility of the said repairs/renovations and improvement works to the Diego Martin property, expending considerable time and labour; improving, managing and providing the technical expertise needed to get the job done.
21. According to the Defendant, initially, the Deceased sent the requisite monies to cover expenditures incurred in the said construction/improvement works, However, in the latter part of 1986, funds ran out, making it impossible to carry out further works at that time. Again the Deceased approached him and with the encouragement/ acquiescence of the First Claimant, she repeated her promises and gave additional reassurances that should he inject the required funds from his own monies to carry out the remaining works which, as planned, included converting the original one-storey dwelling house to a two-storey structure; in return he would reside with his family in the renovated structure, and he would get a share/interest in the Diego Martin property. “making it a true family home”.
22. The Defendant testified that he relied on those promises and assurances by the Deceased, and he then contracted a building contractor. Mr. James Vincent to complete all the remaining repairs/addition and improvement works to the Diego Martin property. The said contractor thereafter prepared a bill of Quantity and Material listing dated 6th September, 1986 based on the approved plan from Town and Country Planning Division,

in order to appraise him of the estimated cost for the immediate works to be carried out on the Diego Martin property.

23. The Defendant then took over all finances thereby incurring and utilizing monies received from a bank loan from First Citizens Bank and from additional private money-lending facilities/agencies and made payments to the said contractor of \$15,000.00 on the 8th September 1986 and \$24,000.00 on the 29th September 1986 to cover such costs, for which he received the appropriate receipts. In addition, he also paid for additional costs incurred in the purchase of other materials from various hardwares. In or about the latter part of 1987, whilst construction and renovation works continued on the existing structure, the Deceased eventually moved into the Diego Martin property which became partially habitable. However, after a while the Deceased returned to Orlando, thereby causing the Diego Martin property to become vacant once more.
24. Consequently, in the following 3-4 years, the Defendant was forced to continue repair/renovation works on the Diego Martin property while co-ordinating new living arrangements with his children which involved alternating between the Trincity property and the Diego Martin property to facilitate the children who were then attending Primary School in Diego Martin.
25. The Defendant stated that as construction costs/debts increased because of the said works, the Deceased further proposed and the Defendant agreed that it would be more expedient to sell the Trincity property and permanently move into the Diego Martin. In this way, the remaining monies from the sale, after clearing the outstanding balance on the Mortgage in the Trincity property could be used to effectively pay the rest of the construction/improvement costs. The Deceased further repeated her reassurances to him not to worry as she would definitely convey, as promised, a share/interest in the Diego Martin property, as renovated and extended.
26. According to the Defendant, in reliance on these promises and with the encouragement and approval of the First Claimant, the Trincity property was sold in 1990 at the price of \$225,000.00. With the proceeds of sale, the Defendant was able to finance further costs

incurred for the works on the Diego Martin property as estimated in the Bill of Quantity and material listing from the said contractor dated 15th January, 1991 which were based on the approved plans. He was also able to help pay for some of the tuition fees and upkeep of the First Claimant who went to pursue her studies at the University of Central Florida, and also assist with the maintenance of the children who thereafter went to stay in the USA.

27. Further, in order to meet the additional construction/improvement costs, the Defendant had to access additional funds from Republic Bank and from private enterprises which he had embarked on for some time which involved the business of purchasing and selling cars; all of which collectively further financed the remaining construction and labour costs needed to complete the project which included \$23,000.00 on the 18th January 1991 and \$20,750.00 on the 29th January, 1991. The said sums were paid to the said contractor and for which he received signed receipts. Whilst conducting these further construction works on the Diego Martin property, the Defendant made periodic visits to Orlando, Florida to visit his family until 1992, when he returned with the children on their request to Trinidad whilst continuing to manage the remaining works on the Diego Martin property.
28. According to the Defendant, when the First Claimant completed her studies in Florida in 1994, she returned to Trinidad and embarked on various free-lancing jobs in the financial arena. However, in 1997, the Deceased was forced to move back to Trinidad so that they could take care of her, as she was found to be suffering with dementia making her incapable of functioning or living alone in the US.
29. The Defendant stated that in or about September, 1999, the First Claimant took up a job in Barbados whilst he continued to take care of the Deceased and the children in the Diego Martin property. However due to the decline in the Deceased's medical condition she was eventually referred to the Port of Spain General Hospital where she was admitted on the 30th October 1999 for further treatment. The Deceased was later taken by the First Claimant's cousin, Esla Charles to Atlanta, USA in the latter part of 2000, where she passed away in 6th March, 2012.

30. According to the Defendant, in 2001, the Second Claimant joined the First Claimant in Barbados and in 2004 she proceeded to New York University, whilst the Third Claimant proceeded to the USA to Art School in the USA and briefly returned to Trinidad until 2008 when he went to Atlanta. In 2002, the First Claimant returned to Trinidad on vacation and stayed at the Diego Martin property with the Defendant before returning to the USA. At no time was the First Claimant ever prevented by the Defendant from gaining access to the Diego Martin property. In 2005, marital problems arose and shortly thereafter the First Claimant informed him that she had moved on with her life, but she still did not want a divorce. After this, there was not much communication between themselves, although when she did communicate, she was adamant that he should continue to live in and take care of the Diego Martin property.
31. The Defendant stated that the letter dated 9th December, 2009 requesting him to vacate the Diego Martin property could not have been based on the instructions of the Deceased since she was suffering with dementia at the time and that the Guardianship Order obtained in the USA at that time, could not have applied to the local jurisdiction without the issuance of the requisite Court Order for Guardianship obtained in Trinidad.
32. The Defendant also testified that his attorney at law responded to the letter of 26th January, 2015 from the Attorneys at law of Rupert Thomas, the legal personal representative of the Estate of the Deceased where his claim for an equitable interest in the Diego Martin property was outlined.
33. In cross examination, the Defendant admitted that when he got married he was working in the Debt Collection Department at Johnson and Johnsons Co. Ltd. and in 1985, he was employed partly in collections and partly in Sales. He described his income and that of the First Claimant as a middle class income family. He stated that in the early part of their marriage, the First Claimant was employed as a financial analyst at National Commercial Bank and in 1984, the Deceased was working at a Telephone Company in New York and her husband was a retiree. At that time, the house on the Diego Martin property was a concrete house but it had become dilapidated after Esla Charles left as it was uncared for and needed work to be done to it. He said that when discussing the

renovations to be made to the Diego Martin property, the Deceased indicated that she needed help to do the repairs as both she and her husband were living in the USA but she had planned to return to live in Trinidad. He admitted that initially the First Claimant saw about the monies required for the construction works on the Diego Martin property.

34. The Defendant also admitted that the First Claimant took two loans jointly with him to purchase and do renovations to the Trincity property. In 1987, the First Claimant's father passed away and not long after, the Deceased returned to the USA and purchased a townhouse in Florida but he was not sure if the townhouse had been sold when the Deceased had returned to Trinidad in 1997.
35. He stated that in 1986, although funds from the Deceased had run out, he was able to continue construction and renovation works as he was comfortably receiving a salary of \$6,000-\$7,000 a month, he was able to get an advance in his salary, he was buying and selling cars and was also able to receive additional monies from money lending agencies. He said it came as a surprise that the Deceased had made the said Will in 1994, and he only heard about it probably after 2010. He said he never knew that the Deceased wanted to leave the Diego Martin property for the Second and Third Claimants alone as the Deceased always stated that she wanted them to all live as a family.
36. The First Claimant's evidence was that the Claimants became the owners of the Diego Martin property in 2016. She testified that in 1985, she and the Defendant purchased the Trincity property through loans obtained from National Commercial Bank Limited and carried out renovations on it. In 1989, on receiving permission from the Deceased, both parties moved into the Diego Martin property with living arrangements alternating between the Diego Martin property and the Trincity property. As both loans were a financial burden, the Claimant and the Defendant decided to sell the Trincity property and, with the permission of the Deceased, moved into the Diego Martin property with the children in early 1991, on a full time basis on condition that they pay all bills and maintain it.

37. The Claimant categorically denied that the Deceased, the Defendant and the Claimant had any meeting regarding her intention for the Diego Martin property and that the Deceased never told the Defendant in her presence of any intention to give him a share in the Diego Martin property. She said the Deceased made the said Will in 1994. The Defendant was never asked to take full responsibility of all the renovations on the Diego Martin property. He only helped to oversee construction works and they hired a project manager and paid him from the Deceased's account as required.
38. According to the First Claimant, the only renovations that were done were during the years 1985 to 1987 which were completed in 1987 whilst her parents were living in New York, USA. Her father, who was a retiree from the Port of Spain City Corporation had his gratuity lumpsum and monthly pension being paid into an account in her parents' name in Trinidad and the monies were used, together with money sent to that account, to fund the renovations to the Diego Martin property. This included converting the house on the Diego Martin property from a one-storey to a two-storey structure. She testified that the house was not dilapidated or uninhabitable in the year 1984 as Esla Charles was then living in the house and shortly thereafter moved out of the Diego Martin property after learning of her parents' desire to renovate same and return to Trinidad to live.
39. According to the First Claimant, in 1987, her parents returned to Trinidad and not long after her father's death in 1987, the Deceased returned to the USA after which, the Claimants and the Defendant moved into the Diego Martin property. The Deceased returned to live in the Diego Martin property in 1997 when she was diagnosed with dementia and was unable to look after herself. They all lived with the Deceased in the Diego Martin property until September, 1999 when the First Claimant made arrangements for the Deceased to live with Esla Charles in Atlanta, USA since she was about to go to Barbados to accept a job offer. The Deceased then lived with Esla in Atlanta from September, 1999 until her passing on the 6th March, 2012.
40. According to the Claimant, the Defendant has been occupying the Diego Martin property "rent-free" since the year 1991 with the permission of the Deceased, which permission was revoked since December, 2009. In 2008, she called the Defendant and told him she

wanted a divorce and that the Divorce was granted in March, 2009. In or around 9th December, 2009, Esla Charles who was appointed the Legal Guardian of the Deceased in the USA since 27th February, 2002. Esla Charles wrote to the Defendant through her attorneys, requesting that the Defendant vacate the Diego Martin property. Following the death of the Deceased, the executor of the Deceased's Estate, Rupert Thomas. and the Claimants, both requested that the Defendant vacate the Diego Martin property, but he refused on the basis that he had a share and/or interest in it which the Deceased had assured him that he would get.

41. In cross examination, the First Claimant indicated that when she and Defendant went to permanently live in the Diego Martin property the question of it being "rent-free" was discussed with the condition that they would pay the bills and maintain it while living there. Although the First Claimant stated that both she and the Defendant took out loans to purchase the Trincity property, she could not recall if both of their names were on the mortgage of National Commercial Bank Ltd. She could not also recall whether the Deceased requested that the Defendant obtain a Plan with Town and Country Approval when the Deceased first spoke to them in 1984 about carrying out the repairs and improvement works to the Diego Martin property. The First Claimant explained that whilst her parents were in the USA, they sent money from their bank account in Trinidad to her account in Trinidad.
42. There was one contemporaneous document which was adduced into evidence to assist in understanding the Deceased's actions and conduct in relation to the Diego Martin property. In the said Will, the Deceased expressly stated:

"I give bequeath and devise my leasehold property known as No. 19 Emerald Drive, Diamond Vale Diego Martin in the island of Trinidad to my only child and daughter Cheryl Ann Wilson Drakes that is for and during the term of her natural life and from and after her death unto her two children that is my grandchildren Jerell Drakes and Rhea Drakes now aged 10 years and 9 years respectively."

43. The said Will was executed by the Deceased in 1994 when, according to the evidence, the Claimants and Defendant were living in the Diego Martin property since the Trinity property was sold in 1990.
44. Based on the Defendant's evidence the Deceased gave him the assurance that he would get an interest in the Diego Martin property on three occasions. Firstly before the renovations started in February 1986 when he was promised an interest if he supervised the renovations and repairs to the Diego Martin property. Secondly after the renovations started in 1986 when funds ran out, he said he was promised an interest if he injected his own funds in the repairs and renovations. Thirdly on another occasion after late 1986 while the repairs and renovations were going on, he said that he was promised an interest in the Diego Martin property if he sold the Trinity property and used the proceeds from the sale for the renovations in the Diego Martin property
45. In my opinion the Defendant's position of this alleged promise was not inherently plausible for the following reasons. There was no evidence of the nature of the share in the Diego Martin property which was promised to the Defendant. In my opinion if there were three promises and on each occasion the nature of what was expected in return for the promise increased, it is reasonable to assume that the Defendant would have wanted to know what was the share that he was getting in return for all his labour and financial input in the Diego Martin property. However, there was no such evidence. In my opinion the reason there was no evidence from the Defendant was because there was no such assurance or promise of which the Defendant was fully aware. If there was such a promise, when the Defendant became aware of the said Will in 2010 he would have made attempts to initiate any action to secure his alleged equitable interest. In my opinion the Defendant knew that any works which he was asked by the Deceased, his mother-in law to do was simply a request from her to her son-in-law since she was living out of the country at the time. It was a family arrangement and nothing more.
46. In any event, the Defendant's evidence was that the Deceased wanted the Diego Martin property to be a family home. In my opinion, the said Will reflected the Deceased's position. It was not in dispute that the First Claimant was the Deceased's only child and

that the Second and Third Claimants were her only two grandchildren and that in the Will she left the Diego Martin property to them. In my opinion it is highly plausible that when the Deceased spoke about the Diego Martin property being the family home she meant that she intended that it was for her only daughter and her grandchildren. She did not mean that it was a promise that the Defendant was to get a share in the Diego Martin property. If this was so she would have left him an interest in the 1994 Will since at that time they were all living on the Diego Martin property

47. I have therefore concluded that there was no such assurances given by the Deceased to the Defendant.

Did the Defendant in reliance upon the assurances and/or promises of the Deceased expend his own monies in carrying out the renovations, additions and improvements to the Diego Martin property?

48. Even if there were promises made by the Deceased to the Defendant for a share in the Diego Martin property, for the Defendant to succeed with his claim for an equitable interest, he still has to prove that he contributed labour and he expended his own funds to his detriment on the Diego Martin property to his detriment.
49. It was contended that the Defendant expended his own personal funds and contributed labour on the Diego Martin property based on the assurances made by the Deceased to him and that the renovations went on during 1985 to 1987 and in 1991.
50. The First Claimant contended that the renovations on the Diego Martin property went on during the years 1985 to 1987. The First Claimant has disputed that the Defendant expended any of his funds on the Diego Martin. She contended that the Deceased provided the funds for the repairs; a contractor was hired to do the works and the Defendant and her role was to supervise and pay the contractor.
51. Neither of the parties had any contemporaneous documents to support their evidence as to their financial means.

52. In support of the Claimant's position that the repairs and renovations only took place in 1985 to 1987 the the Claimants sought to rely on the evidence of Esla Charles who stated that she is the First Claimant are cousin and a retired teacher. According to Ms. Charles, from 1979 to 1981, she lived in the Diego Martin property which she vacated in 1981. In cross examination she confirmed that she vacated the Diego Martin property 1981 so that renovations could be made on the house to facilitate the return of the Deceased.
53. Ms Charles evidence was contradicted by the First Claimant's evidence who stated that Ms. Charles lived in the Diego Martin property until 1984. In my opinion this inconsistency was not material since it was common ground between the Defendant and the First Claimant's evidence that the repairs and renovations were done from 1986.
54. The Defendant sought to rely on the evidence of Mr. Michael Samms to support his position that repairs were also done in 1991. According to Mr. Samms he is a Chartered Quantity Surveyor of Michael Samms and Associates with extensive technical experience over 49 years in Quantity Surveying and Building Construction. His expert Report was prepared pursuant to instructions and information given to him by he Defendant to provide an Analysis and Estimate of the Value of the addition, renovation and improvement works carried out and paid for by the Defendant in order to upgrade the Original Single-Storey house to the now two-storey dwellings on the Diego Martin property. In order to assess the said work done and financed by the Defendant, Mr. Samms was provided with copies of the certified architectural drawings approved by the Town and Country Planning Division, Port-of-Spain, which provided inter alia, details of the original construction and the proposed extension of the ground and first floor dwellings on the Diego Martin property. He was also presented with Bills of Quantities, Material Listings dated 6th September, 1986 and 15th January, 1991, based on the approved plans and given to the Defendant by his contractor, Mr. James Vincent, together with copies of receipts for the further purchase of construction materials from various hardwares.
55. According to Mr. Samms, he also made a site visit to the Diego Martin property with his technician, Ms. De Verteuil on the 8th January, 2018 as additional means of assessing the

works done and paid for by the Defendant and took measurements and compared them with the approved drawings. At that time, he identified that the carport and rear end extension of the ground floor had been plastered, the wall of the then bedroom had been demolished, the kitchen cupboards redone and that the first floor was built on top of the existing original building including walls to bathroom, plastering walls, doors and windows. In addition, the exact details of the upgrades done and financed by the Defendant were verified by the Defendant. Upon examination of the Diego Martin property and having made reference to the said certified Approved Plans, the bills of quantities and material listings by the said contractor, Mr. James Vincent, a subsequent Estimate of the Costs of Alterations and Upgrade Works made to the Ground and first floor of the house, Mr. Samms concluded that the total estimated cost of the repairs and renovations at the current market price was \$163,978.00.

56. Apart from his verifying that the date of his inspection of the Diego Martin property, which he had not previously seen, was the 8th January, 2018, there was no further cross-examination of Mr. Samms.
57. In my opinion, Mr. Samms evidence added nothing materially to the Defendant's case. Mr. Samms' evidence confirmed that the renovations were conducted and the potential value and this was not in dispute between the parties. There was no evidence from Mr. Samms with respect to who paid for the renovations which was material to the Defendant's case.
58. The Defendant's evidence was that he contributed labour and technical expertise in supervising the repairs and renovation on the Diego Martin property and he spent his own money such as he took a loan from Republic Bank; he used the money he got from selling cars; he borrowed the sum of \$5,000.00 from a private money lender; he spent the sums of \$15,000.00 on the 8th September 1986; \$24,000.00 on the 29th Septemebr 1986; \$23,000.00 on the 18th January 1991 and \$20,750.00 on the 31st January 1991 to pay the contractor. He also said that he used the money he got from the sale of the Trinicity

property after paying off the mortgage to finance the repairs and renovations to the Diego Martin property.

59. In my opinion, the Defendant was not a witness of truth when he said he made financial contributions to the Diego Martin property and he exaggerated both his financial and his non financial input such as labour and technical expertise in the Diego Martin property.
60. With respect to the Defendant's labour and technical expertise, the Defendant himself admitted that a contractor was hired to do the project and his role was that of making payments to the contractor and monitoring the progress of the works. There was no evidence that the Defendant was involved otherwise in terms of labour.
61. With respect to the Defendant's alleged financial contributions, the Defendant's case was that during the renovations the Deceased money ran out and he funded the renovations from a loan from First Citizens Bank and the balance of the proceeds of sale from the Trincity property. The Defendant in cross examination admitted that between 1981 to 1990, he was employed at Johnsons and Johnsons and said he was earning a salary between \$6,000.00 to \$7,000.00 per month whilst the First Claimant was a financial analyst at National Commercial Bank Limited. He accepted that they fell in the category of a middle income family and that by 1986 to 1987 he and the First Claimant were overseeing and conducting extensive renovations on both the Trincity property and the Diego Martin property. He also accepted that the Deceased was earning income while she was living in the USA since she was working and that when the Deceased returned to Orlando, Florida in the year 1990 she had the means to purchase a Condominium in Orlando Florida. He also admitted that the spouse of the Deceased was collecting pension from the Port of Spain City Corporation.
62. Initially the Defendant pleaded in his Defence that he took a loan in the sum of \$46,000.00 from First Citizens Bank Limited but in cross examination he accepted that First Citizens Bank Limited did not exist until the year 1993 and that he really meant National Commercial Bank Limited where the First Claimant worked. He also admitted that he never took a loan at National Commercial Bank without the First Claimant since

as an employee she benefitted from staff rates on loans which he could not benefit from alone. He eventually admitted that he did not take any loan for \$46,000.00 from National Commercial Bank to renovate the Diego Martin property but said that he funded the renovations by taking a loan in the sum of \$5,000.00 from a money lender (whose name he did not give) and from private work buying and selling used cars. However, it was never part of his case that he had additional income to fund the renovations.

63. In any event it was common ground between the Defendant and the First Claimant that they took two loans jointly with the National Commercial Bank Limited, one to purchase Trincity property and a second to conduct the renovations which renovations were conducted in the years 1986 to 1987. It was also agreed that in the year 1985, the Deceased told the First Claimant and the Defendant of her intention to return to Trinidad to live permanently and of her intention to carry out extensive repairs and renovations on the Diego Martin property which repairs included adding an extension to the existing property which included converting the house from a one storey to a two storey dwelling, extending and updating the kitchen, adding a dining room and repainting the inside and outside of the house.
64. Therefore there was no truth in the Defendant's assertion that he alone took loans and he used his own funds to finance the works on the Diego Martin property. Based on his own evidence he did not have money to finance the works and the Deceased had the financial means to do so.
65. With respect to the Defendant's contention that when the Trincity property was sold in the year 1990 for the sum of \$225,000.00 and there were extra monies which were used for the renovations of the Diego Martin property. This too was not credible since the First Claimant's evidence was that the Trincity property was sold because she had accepted a retrenchment package in the year 1990 and they would soon be losing the benefit of staff mortgage rate. In my opinion since the First Claimant was the person who had the benefit of the staff mortgage rate its was more plausible that she would have been intimately aware of the reason for the sale of the Trincity property.

66. There was also a notable absence of evidence from the Defendant of what was the net proceeds of the sale of the Trincity property after both loans were paid off and what sum of money he allegedly had to carry out the 1991 renovations. In my opinion this vacuum in the evidence is critical since the First Claimant maintained that there were little monies left over after both loans were satisfied and this was used to support them in terms of everyday needs as well as assist with maintaining the children when she went to school in Florida in the years 1992 to 1994. The Defendant admitted that he sent money to the First Claimant to assist her and the children whilst they lived in Florida in the years 1992 to 1994. In my opinion the lack of details in the Defendant's evidence on the net sum he received after the sale of the Trincity property and his admission that he sent money to First Claimant to assist her and the children between 1992 to 1994 supported the contention of the Claimants that the Defendant did not have any financial means to contribute to repairs and renovations on the Diego Martin property.
67. Further, I have attached little weight to the plans, bills and receipts which the Defendant, sought to rely on as proof if his financial contribution to the Diego Martin property since the Plan bears the names of both the Defendant and the First Claimant and it is reasonable to expect that the hardwares would have placed a name on the bills and receipts provided by the parties irrespective of the source of the funds. In any event, the funds were coming from the Deceased who was abroad at the time, it was unlikely that her name would appear on the Bills.
68. With respect to the Defendant's contention that he did additional improvements in the year 1991. The documents that the Defendant adduced into evidence to support these repairs are spread sheets signed by a James Vincent. According to the Defendant he was the contractor hired to carry out the renovations on the Diego Martin property in 1991. However, Mr. Vincent was not called as a witness to corroborate the Defendant's evidence and in the absence of any corroborating evidence, the Defendant's evidence was self serving. Further there were no invoices attached to the 1991 to support the information in it. In the absence of Mr. Vincent I have attached no weight to the 1991 spreadsheet.

69. Therefore, even if the Deceased had given the Defendant any assurance that he would get a share in the Diego Martin property, on a balance of probabilities, the Defendant did not spend any money on the Diego Martin to his detriment. At best he oversaw the works for the repairs and renovation during the period 1986 to 1987 which he did as the only son in law of the Deceased.

Assuming the Defendant is a licensee and in occupation with the permission of the Claimants and/or their predecessor in title was that permission revoked and if so when?

70. The Defendant has no equitable interest in the Diego Martin property and by the Deed of Assent the Claimants became the owners of the Diego Martin property in 2016. The First Claimant's evidence was that the Defendant's permission to remain on the Diego Martin property was revoked on three occasions. Firstly by the Deceased, who through her appointed guardian Esla Charles sent a letter to him on the 9th December 2009 requesting him to vacate the Diego Martin property by 31st January, 2010. Secondly, the legal personal representative of the Deceased's estate also wrote to the Defendant on the 26th January 2015 asking him to vacate the Diego Martin property and by letter dated the 7th July 2016 the Claimants wrote to the Defendant asking him to vacate the Diego Martin property.

71. In the Defence, the Defendant challenged the validity of the letter dated 9th December 2009 on the basis that the Deceased was suffering with dementia at the time and therefore she could not give instructions to revoke any licence. In his evidence the Defendant changed his case where he alleged that document appointing Ms. Charles as the guardian of the Deceased was not recognized in this jurisdiction since no steps were taken to have it recognized here. He challenged the other two letters on the basis that he had an equitable interest in the Diego Martin property.

72. The evidence of Esla Charles was that the dementia of the Deceased worsened in or about the end of 2001 and she could no longer sign her name nor understand how to access care for herself. Ms. Charles obtained a Guardianship Order in the USA, appointing her Legal

Guardian of the Deceased in February, 2002 and took care of the Deceased until her death on 6th March, 2012. Ms. Charles stated that she contacted the First Claimant in 2009 and they agreed that they needed to sell the Diego Martin in order to financially maintain the Deceased. Ms. Charles said that she visited Trinidad in 2009 and on her instructions, her attorney at law issued a letter dated 9th December 2009 requesting the Defendant to vacate the Diego Martin property in order to meet the financial needs of the Deceased.

73. In my opinion, in 2009 Ms. Charles as the legally appointed guardian was authorized to give instructions to revoke the Defendant's licence. Although the Defendant challenged the validity of the Guardianship Order, Counsel for the Defendant did not provide any authority to the Court to indicate the basis that it did not have any force and validity in this jurisdiction. In this regard, I accept that the Defendant's licence was revoked by the letter dated 9th December 2009. Therefore the Defendant's licence to stay on the Diego Martin property ended on the 31st January 2010. The Claimants are therefore entitled to recover mesne profits from him for his wrongful occupation of the Diego Martin property from the 31st January 2010 until he vacates. As requested by Counsel for the Claimants the said mesne profits are to be assessed by a Master.

Conclusion

74. The Claimants are the owners of the Diego Martin property by virtue of the Deed of Assent. The Defendant failed to demonstrate that the Deceased made any promise or assurance that he would acquire an interest in the Diego Martin property if he expended labour and money in the repairs and renovations in the Diego Martin property. There was no evidence of the nature of the share in the Diego Martin property which was promised to the Defendant. The reason there was no evidence from the Defendant of the nature of the share he was promised was because the Defendant knew that any works which he was asked by the Deceased, his mother-in-law to do was simply a request from her to her son-in-law since she was living out of the country at the time. It was a family arrangement and nothing more. In any event, the Defendant's evidence was that the Deceased wanted the Diego Martin property to be a family home and the said Will reflected the Deceased's

position. It was not in dispute that the First Claimant was the Deceased's only child and that the Second and Third Claimants were her only two grandchildren and that in the said Will she left the Diego Martin property to them. In my opinion it is highly plausible that when the Deceased spoke about the Diego Martin property being the family home she meant that she intended that it was for her only daughter and her grandchildren. She did not mean that it was a promise that the Defendant was to get a share in the Diego Martin property since if this was so she would have left him an interest in the said Will.

75. I have also concluded that the Defendant exaggerated his financial and non-financial contributions to the Diego Martin property. In my opinion his labour and technical expertise was minimal and he on his own made no financial contribution since the repairs and renovations in 1986 to 1987 were funded by the Deceased and there was no evidence to demonstrate that there were repairs and renovations in 1991. As such I have concluded that the Defendant did not acquire any equitable interest in the Diego Martin property.
76. The Defendant's licence to stay on the Diego Martin property was revoked by the letter dated 9th December 2009. His licence to stay on the Diego Martin property expired on the 31st January 2010. The Claimants are therefore entitled to recover mesne profits from him for his wrongful occupation of the Diego Martin property from the 31st January 2010 until he vacates. As requested by Counsel for the Claimants the said mesne profits are to be assessed by a Master.

Order

77. Judgment for the Claimants namely possession of the Diego Martin property to the Claimants.
78. The Counterclaim is dismissed.

79. The Defendant to pay the Claimants mesnes profits for the loss of use of the Diego Martin property from the 31st January 2010 until he vacates. The said mesne profits to be assessed by a Master at a date time and place to be fixed by the Court Office.
80. The Defendant to pay the Claimants costs of the claim and the counterclaim to be assessed by a Registrar in default of agreement.

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Margaret Y Mohammed
Judge