

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-04166

BETWEEN

TORY LOBAI

Claimant

AND

ROSALIND PALTOO

STEVE LOBAI

Defendants

Before the Honourable Madame Justice Margaret Y Mohammed

Dated the March 22 2019

APPEARANCES:

Mr. Don Lezama Attorney at law for the Claimant.

Mr. Brent Winter Attorney at law for the Defendants.

JUDGMENT

1. Agnes Lobai (“the Deceased”) was the mother of the Claimant and the First Defendant. At the time of the Deceased’s death in 1990 she was the

owner of a parcel of land comprising one acre and twenty one perches situated at No. 119 Achamville, Guaico Tamana Road, Guaico¹ (“the property”). By the Deceased’s Will dated the 6 October 1988 (“the Will”) the Deceased appointed the Claimant the executrix of her estate and she left her entire estate, including the property to the Claimant.

2. The Claimant has brought the instant action in her personal capacity against the Defendants seeking a declaration that she is the owner of the property; an order that the Defendants, their servants and/or agents do forthwith deliver up to the Claimant possession of the property; and costs.

THE CLAIMANT’S CASE

3. The Claimant’s case is that after the probate of the Will (“the Grant of Probate”)² she became the paper title owner of the property by Memorandum of Assent dated the 17 March 1997 which was endorsed on the Certificate of Title registered in Volume 1756 Folio 243 (“the CT”). The Claimant’s predecessor in tile, her father Charles Lobai who owned the property with the Deceased in 1982 had applied for permission from the Ministry of Finance and Planning to subdivide the property into two residential lots but he was advised that the property could not have been subdivided since it was agricultural land and that only one single family house was permitted on it.
4. The Claimant contended that on or about 1997 (some 7 years after the death of the Deceased), the First Defendant entered into possession of a portion of the property (“the disputed parcel”), constructed a dwelling

¹ Described in Certificate of Title Volume 1756 Folio 243

² Registered as No 210 in the Protocol of Wills for 1997

house (“the disputed house”) thereon, and began to occupy it with her family, without the licence or consent of the Claimant.

5. Following the acquisition of the Grant of Probate the Claimant caused several letters to be written to the First Defendant asserting her title to the disputed parcel and encouraged the First Defendant to take necessary steps to acquire legal title to it, otherwise the Claimant would re-take possession thereof.
6. The Claimant’s letters to the First Defendant went without response until 4 January 2010, when the Attorney-at-Law for the First Defendant replied by letter asserting that the Deceased had given permission to the First Defendant to occupy the disputed parcel and to construct the disputed house. She had therefore acquired an equitable interest therein and as the successor in title of the Deceased she was estopped from seeking possession of the disputed parcel.
7. The Claimant dismissed the First Defendant’s claim to have received permission from the Deceased to occupy the disputed parcel and build the disputed house. The Claimant also caused letters to be written to various institutions seeking the demolition of the First Defendant’s disputed house and for the disconnection of the electricity.
8. Notwithstanding the Claimant’s efforts, the Second Defendant, subsequently entered into possession of the disputed parcel and began to occupy the disputed house. The Claimant caused her Attorney-at-Law to write the Second Defendant to warn of his illegal occupation and to discontinue his trespass. The Second Defendant replied to this letter

denying any illegal occupation and asserting his right to the disputed parcel.

9. After all attempts to have the Defendants removed from the disputed parcel had failed, the Claimant instituted the instant action.

THE DEFENCE AND COUNTERCLAIM

10. There are three limbs to the Defendants Defence. The first limb is that the Claimant has no locus standi to bring and maintain the instant action in her personal capacity since she is not the owner of the property. The Defendants alleged that the Claimant never obtained the Grant of Probate. On the contrary, the Defendants advanced that Letters of Administration with Will annexed was instead granted to one Partap Sitahal, of Brazil Village, Arima, as the lawful attorney for the use and benefit of the Claimant until she shall come in and apply for and obtain the Probate of the Will. The Defendants also disputed the existence of any Memorandum of Assent transferring legal title of the property to the Claimant as asserted by her.
11. The Defendants reasoned that the conjoint effect of the Claimant not being the holder of a full Grant of Probate in the Deceased's estate nor having the property assented to her by any memorandum/deed, meant that legal title to the property remained vested in the estate of the Deceased and any claim in respect thereof ought to have been brought in a representative capacity by the holder of the limited Grant.
12. The second limb of the Defence is the Defendants maintained that even if the Claimant had the locus standi to bring the instant action, any title which the Claimant alleged she has to the disputed parcel has been

extinguished. They averred that the First Defendant began to occupy the disputed parcel in or around 1990, at which time she built the disputed house. The First Defendant and her family cleared the disputed parcel and planted a variety of fruit trees and short-term crops on it. Over the years, the Defendants even arranged to have the disputed parcel surveyed in order to obtain Town and Country Planning approval for sub-division. The Defence annexed as “RP 3” a copy of a survey plan of Hugo Soomarsingh dated 25 February 2016 which identified the boundaries of the disputed parcel. They also fenced the southern and western boundaries of the disputed parcel.

13. By Counterclaim, the Defendants claimed that they had acquired adverse possession of the disputed parcel having been in continuous, uninterrupted and exclusive possession thereof in excess of sixteen (16) years commencing from the year 1990.
14. The third limb of the Defence is that even if the Claimant has established locus standi and the defence of adverse possession has failed, the Defendants have an equitable interest in the disputed parcel on the basis of proprietary/promissory estoppel, contending that the disputed parcel was promised to the First Defendant by the Deceased, who encouraged her and her family to build the disputed house and do other activities to their detriment³.
15. The Defendants counterclaimed seeking orders that:
 - (a) They are entitled to possession of the disputed parcel which they described as comprising **FOUR HUNDRED AND SIXTY-FOUR POINT FIVE (464.5) SQ. METRES** and shown in the plan prepared

³ See Reply to Defence to Counterclaim

by Hugo Soomarsingh dated the 29 February, 2016 and bounded on the North by lands owned by the Claimant on the South by Lot 25C on the East by a Road Reserve and on the West by land owned by the Claimant, being a portion of a larger parcel of land more particularly described in Volume 1756 Folio 243;

- (b) A declaration that the Claimant's right, title and interest in the disputed parcel was extinguished by virtue of sections 3 and 22 of the **Real Property Limitation Act**⁴ ("the RPLA");
- (c) An order vesting the disputed parcel in the names of the Defendants; and;
- (d) An injunction preventing the Claimant, her servants and/or agents, from entering and/or interfering with the Defendants use, occupation and enjoyment of the disputed parcel.

DEFENCE TO COUNTERCLAIM

- 16. In the Defence to Counterclaim, the Claimant asserted that in 1993 when she left Trinidad for the United States of America, the First Defendant was not in occupation of the disputed parcel and neither was there any building thereon save and except the Deceased's house. Thus, the First Defendant was not in occupation of the disputed parcel since 1990.

THE ISSUES

- 17. There are three issues which would determine the outcome of this matter:
 - (a) Does the Claimant have the locus standi to bring this claim in her personal capacity?
 - (b) Has the Claimant's title to the disputed parcel been extinguished by the Defendants continuous undisturbed possession of it?

⁴ Chapter 56:03

(c) Did the Defendants establish an equitable interest in the disputed parcel by virtue of proprietary and/or promissory estoppel?

DOES THE CLAIMANT HAVE THE *LOCUS STANDI* TO BRING THIS CLAIM IN HER PERSONAL CAPACITY?

18. It was submitted on behalf of the Defendants that although the Claimant has brought the instant action in her personal capacity, she does not hold legal title to the property in her personal capacity and as such she is not competent to maintain this action against the Defendants for two reasons namely: firstly, the property was never vested in her by memorandum/deed of assent since there is no endorsement on the copy of the CT of a memorandum of assent dated the 17 March, 1997.
19. Secondly, the endorsement in the CT does not vest the property in her personal capacity since the endorsement on the CT of the Claimant is as personal representative of the Deceased pursuant to section 108(3) of the RPA.
20. Counsel for the Claimant argued that the Claimant was endorsed as the registered proprietor in the CT by the Registrar General and that is prima facie proof that she is the owner of the property in her personal capacity.
21. The onus was on the Claimant to prove that she had the locus standi to bring and maintain the instant action in her personal capacity.
22. The interpretation section of the **Real Property Act**⁵ (“the RPA”) is section 2. Section 2 of the RPA defines “proprietor” as “any person seized or possessed of any freehold or other estate or interest in land, whose name

⁵ Chapter 56:02

appears or is entered as the proprietor thereof in the Register Book, in possession or in futurity or expectancy". "Registered" is defined in section 2 to mean registered under the RPA and "registration" has a corresponding meaning.

23. Sections 37 and 38 of the RPA deal with the effect of the Certificate of Title and the Registration of grants, certificates of title and other documents.

24. Section 37 provides:

"Every certificate of title duly authenticated under the hand and the seal of the Registrar General shall be received both at law and in equity, as evidence of the particulars therein set forth, and their being entered in the Register Book, and shall, except as hereinafter excepted, be conclusive evidence that the person named in such certificate of title, or in any entry thereon, is seized of or possessed of or entitled to such land for the estate or interest therein specified, and that the property comprised in such certificate of title has been duly brought under the provisions of this Act; and no certificate of title shall be impeached or defeasible on the ground of want of notice or of insufficient notice of application to bring the land described under the provisions of this Act, or on account of any error, omission, or informality in such application or in the proceedings pursuant thereto by the Judge or Registrar General."

25. Section 38 states:

"Every grant and certificate of title shall be deemed and taken to be registered under the provisions and for the purpose of this Act so soon as the same shall have been marked by the Registrar

General with the page and volume as embodied in the Register Book, and every memorandum of transfer or other instrument purporting to transfer or in any way to affect land under the provisions of this Act shall be deemed to be so registered so soon as a memorial thereof as hereinafter described shall have been entered in the Register Book upon the leaf constituted by the grant of certificate of title of such land, and the person named in any grant, certificate of title, or other instrument so registered as the proprietor of or having any estate or interest shall be deemed to be the registered proprietor thereof.”

26. Section 108 of the RPA provides:

“108. (1) Where land is vested in a proprietor for any term or estate beyond his life without a right in any other person to take by survivorship or in remainder or reversion, it shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives as if it were a chattel real vesting in them, and such personal representatives shall alone be recognised by the Registrar General as having any right in respect of the land, and any registered disposition by them shall have the same effect as if they were the proprietors of the land.

(2) This section shall apply to any land over which a person executes by Will a general power of appointment as if it were land vested in him.

(3) Personal representatives may be registered as proprietors of such land as aforesaid on payment of the prescribed fee and on

furnishing the Registrar General with a request in writing setting forth the registered number of the probate of the Will or the Letters of Administration of the estate of such deceased proprietor together with such further evidence as the Registrar General may require.”

27. Section 112 of the RPA states:

“112. At any time after the death of the proprietor of any land under this Act, his personal representatives may assent to any devise contained in his Will, or may transfer the land to any person entitled thereto as next of kin, devisee, or otherwise, and may make the assent or transfer either subject to a charge for the payment of any money which the personal representatives are liable to pay, or without any such charge; and on such assent or transfer, subject to a charge for all moneys, if any, which the personal representatives are liable to pay, all liabilities of the personal representatives in respect of the land shall cease, except as to any acts done or contracts entered into by them before such assent or transfer.”

28. Section 115 of the RPA provides:

“115. The production of an assent by the personal representatives in Form P of the First Schedule, duly executed and attested in manner prescribed by this Act, shall authorise the Registrar General to register the person named in the assent as proprietor of the land. Such assent shall be retained by the Registrar General and registered: Provided that if such personal representatives are not registered as proprietors of the land intended to be disposed of, the Registrar General may refuse to

register such persons as so entitled under the Will of the deceased proprietor, until Probate or Letters of Administration to his estate or an office copy thereof, and any other evidence which he may require, have been supplied.”

29. It was not in dispute that the Claimant had brought the instant action in her personal capacity as the owner of the property and not as the legal personal representative of the estate of the Deceased. She has grounded her position on the endorsement of a memorandum of assent dated the 17 March, 1997 on the CT.
30. According to the witness statement of the Claimant, the Will was probated in 1997 and her name was endorsed on the CT which she attached and marked as “TL1” on the 17 March 1997. In cross-examination the Claimant admitted that Partap Sitahal is still alive and that she never revoked the power of attorney which she gave him to apply for the Limited Grant for the Deceased’s Estate on her behalf.
31. The endorsement which the Claimant relied on stated that the Claimant “is now registered as proprietor of the estate herein described by virtue of the Probate of the Will of Agnes Lobai, deceased granted by the High Court of Justice and registered as No. 210 Protocol of Wills for the year 1997. Volume 3902 Folio 11”. This was signed for and on behalf of the Registrar General and dated the 17 March, 1997.
32. There is a presumption that if the Registrar General endorsed the Claimant as the registered proprietor on the CT of the property he/she was satisfied that the Claimant has provided the information which is required to meet the requirements to be endorsed as the owner. In my opinion, the endorsement on the Certificate of Title is clear that the

Claimant is the registered proprietor or the owner of the property. The Registrar General did not endorse on the CT that the Claimant was the legal personal representative of the Estate of the Deceased which she is entitled to do under section 108(2) upon certain conditions being met.

33. For these reasons I have therefore concluded that the Claimant has the locus standi to maintain the instant action in her personal capacity.

HAS THE CLAIMANT’S TITLE TO THE DISPUTED PARCEL BEEN EXTINGUISHED BY THE DEFENDANTS CONTINUOUS UNDISTURBED POSSESSION OF IT?

34. It was submitted on behalf of the Defendants that cumulatively they have been in continuous undisturbed possession of the disputed parcel since 1990 to present and that the Claimant’s title to it has been extinguished.
35. Counsel for the Claimant argued that from 2000 to 2016 the Claimant through a series of correspondence to the First Defendant has been attempting to have the Defendants vacate the disputed parcel and that this demonstrated the Claimant’s intention to assert her ownership and have the Defendants removed from the disputed parcel.
36. Sections 3 and 22 of the RPLA creates a right of possession in favour of an adverse possessor who has been in continuous undisturbed possession of property for 16 years and prevents his ouster from the land by the paper title owner.
37. Section 3 of the RPLA provides that “No person shall make an entry of distress, or bring an action to recover any lands or rent, but within 16 years after the time at which the right to make such entry or distress, or to bring such an action, shall have first accrued to some person ...”.

Accordingly, any action for recovery of any land that may have accrued by an entry on land by an unauthorized third party after 16 years of interrupted possession is barred by section 3 of the RPLA.

38. Section 22 of the RPLA provides for the extinguishment of the title of the owner of the land where 16 years have lapsed from the date of the accrual of the right to bring an action if no action for recovery was brought. It provides that:

“At the determination of the period limited by this Act to any person for making an entry or distress, or bringing any action or suit, the right and title of such person to the land or rent for the recovery whereof such entry, distress, action or suit respectively might have been made or brought within such period shall be extinguished”.

39. Slade J. in **Powell v. McFarlane**⁶ is instructive in providing guidance on what constitutes “possession”. The Court stated that:

“(1) In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prima facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner.

(2) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess (“animus possidendi”). (Emphasis added).

⁶ [1977] 38 P & CR 452

40. “Factual possession” was described by Slade J. in **Powell v. McFarlane** as:
- “Factual possession signifies an appropriate degree of physical control. It must be single and conclusive possession, though there can be a single possession exercised by or on behalf of persons jointly. Thus, an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which the land of that nature is commonly used or enjoyed. In the case of open land, absolute physical control is normally impracticable, if only because it is generally impossible to secure every part of a boundary so as to prevent intrusion. “What is a sufficient degree of sole possession and user must be measured according to an objective standard, related no doubt to the nature and situation of the land involved but not subject to variation according to the resources or status of the claimants”: **West Bank Estates Ltd. v. Arthur [1967] AC 665, 678, 679; [1966] 3 WLR 750, per Lord Wilberforce**. It is clearly settled that acts of possession done on parts of land to which a possessory title is sought may be evidence of possession of the whole. Whether or not acts of possession done on parts of an area establish title to the whole area must however, be a matter of degree. It is impossible to generalise with any precision as to what acts will or will not suffice to evidence factual possession... Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner

might have been expected to deal with it and that no one else has done so.”

41. The “intention to possess” was described by Slade J as:

“The animus possidendi, which is also necessary to constitute possession, was defined by Lindley MR in *Littledale v Liverpool College* [1900] 1 Ch. 19, as “the intention of excluding the owner as well as other people.” This concept is to some extent an artificial one because in the ordinary case the squatter on property such as agricultural land will realise that, at least until he acquires a statutory title by long possession and thus can invoke the processes of the law to exclude the owner with the paper title, he will not for practical purposes be in a position to exclude him. **What is really meant, in my judgment, is that the animus possidendi involves the intention, in one’s own name and on one’s own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow.**” (Emphasis added)

42. Based on the aforesaid learning, if a party intends to assert a claim based on adverse possession the onus is on that party to satisfy the Court that he/she not only had factual possession of the disputed property for more than 16 years but that he/she also had the requisite intention to possess same to the exclusion of others.

43. Assuming that the Claimant was the paper title owner of the disputed parcel, such title is absolute and indefeasible pursuant to section 37 of

the RPA. In **Lincoln Dillon v Mary Almandoz and anor** ⁷ Bereaux J (as he then was) stated that the conclusiveness of the Certificate of Title was:

“It is a fundamental principle of the system of registered conveyancing that the title of every proprietor registered thereunder is absolute and indefeasible and cannot be impeached or affected by the existence of an estate or interest which, but for the registration, might have had priority. The Register is conclusive. All interests are set out on its face. Nothing else is determinative⁸.”

44. However, Section 45 of the RPA sets out two exceptions where the indefeasibility of a registered proprietor’s paper title can be challenged namely in cases of fraud or adverse possession. It states:

“45. Notwithstanding the existence in any other person of any estate or interest..., the proprietor...shall, **except in the case of fraud** hold the same subject to such mortgages, encumbrances, estates or interest...but absolutely free from all other encumbrances, liens, estates or interests whatsoever except the estate or interest of a proprietor claiming the same land under a prior grant or certificate of title... **and any rights subsisting under any adverse possession of such lands...**” (Emphasis added).

45. The law provides a party with a basis in adverse possession to challenge the title of the paper owner of lands. How is a party to establish such a claim? The learning in **Zanim Ralphy Meah John v Courtney Allsop and Ors**⁹ by Kokaram J is instructive where he stated:

⁷ HCA 75/2000

⁸ HCA No. 75/2000 page 1 para 1

⁹ CV 2010-04559 at paragraph 34

“Claims of ‘adverse possession’ must be carefully drafted and the pleader must make it clear that this is the case which is being set up in the defence of a claim for possession.

...

It [adverse possession] is therefore a very serious and significant claim where that type of occupation [adverse possession] will trump a legal right.

The claim must therefore be carefully scrutinized to determine the character of the land, the nature of the acts done upon it and the intention of the occupier.

The onus of establishing the defence of adverse possession is on the Defendant who put it forward. The facts relied upon to establish adverse possession must be cogent and clearly stated in the defence.” (Emphasis added).

46. In the Privy Council decision of **Ocean Estates Ltd v Pinder**¹⁰ Lord Diplock stated that:

“The slightest acts by the person having title to the land or by his predecessors in title, indicating his intention to take possession, are sufficient to enable him to bring an action for trespass against a defendant entering upon the land without any title, unless there can be shown a subsequent intention on the part of the person having the title to abandon the constructive possession so acquired.”

47. In considering the period of continuous undisturbed possession the Court of Appeal in this jurisdiction in **Kenneth Lashley v Marchong & Honore**¹¹

¹⁰ [1969] 2 AC 19 at 25

approved the Court of Appeal decision from Jamaica in **International Hotels (Jamaica) Limited v Proprietors Strata Plan**¹² where it concluded that in the absence of any relevant factors, the aggregation of a continuous period of seamless possession of disputed land should be for the benefit of the party asserting the possession.

48. Based on the pleadings there are several disputes of facts which are to be determined in assessing if the Defendants have been in continuous undisturbed possession of the disputed parcel since 1990. According to the learning in **Horace Reid v Dowling Charles and Percival Bain**¹³ cited by Rajnauth-Lee J (as she then was) in **Winston Mc Laren v Daniel Dickey and Ors**¹⁴ in determining the version of the events more likely in light of the evidence, the Court is obliged to check the impression of the evidence of the witnesses on it against the: (1) contemporaneous documents; (2) the pleaded case; and (3) the inherent probability or improbability of the rival contentions. The Court of Appeal in **The Attorney General of Trinidad and Tobago v Anino Garcia**¹⁵, took the position that in determining the credibility of the evidence of a witness any deviation by a party from his pleaded case immediately calls his credibility into question.
49. The Claimant testified that in the Will the Deceased left her entire estate to her including the property and the disputed parcel. The Deceased died in 1990 and in 1997 the Will was probated and her name was endorsed on the CT on 17 March, 1997 making her the sole owner of the disputed parcel and that no one challenged the validity of the Will. Prior to the

¹¹ Civ Appeal No 266 of 2012

¹² No 461 [2013] JMCA Civ 45

¹³ Privy Council Appeal No. 36 of 1987

¹⁴ CV 2006-01661

¹⁵ Civ. App. No. 86 of 2011 at paragraph 31

death of the Claimant's father, one of the predecessor's in title of the property, he applied to the Ministry of Finance and Planning for permission to subdivide the property into two residential lots but permission was refused since the land was agricultural and only one single family house was permitted to be constructed on it.

50. According to the Claimant, she lived in the Deceased's house until 1988 when she migrated to Canada, and this was the only house on it at that time. When she returned to Trinidad in December, 1992, she stayed at her in-laws' house at Guaico, Cumuto. In May, 1993 she migrated to the United States. During her visit to the property between 1992 and 1993 she saw a wooden shed ("the disputed house"). Her sister, Leela Lobai told her that the Deceased gave permission to her sister, the First Defendant to build the disputed house which she described as "a temporary structure" on one corner of the disputed parcel.

51. According to the Claimant, in 1997 she learnt that the disputed house was still on the disputed parcel. She wrote the First Defendant a letter on 31 August, 2001¹⁶ ("the 2001 letter") advising her that the disputed house was built in breach of the Ministry of Finance and Planning directives and that she could not obtain a Certificate of Title for any lot from the property since she was the sole owner. She also indicated that she was willing to give her the disputed parcel only if it could be done legally and then she could get title for it.

52. Having not heard from the First Defendant she wrote again on 14 June, 2004¹⁷ ("the 2004 letter") advising her that she was now giving her six months to acquire good title for the disputed parcel, after which if she

¹⁶ Exhibit TL 4 to the Claimant's witness statement

¹⁷ Exhibit TL 5 to the Claimant's witness statement

was taking back possession. She again wrote on 25 October 2006¹⁸ (“the October 2006 letter”) and on the 19 May 2009¹⁹ (“the May 2009 letter”) reminding the First Defendant that the disputed house was in breach of planning directives and it should be demolished. On 26 November, 2009²⁰ (“the November 2009 letter”) an attorney at law acting on behalf of the Claimant wrote to the First Defendant calling upon her to remove the disputed house.

53. The Claimant testified that she received a letter dated 4 January, 2010²¹ (“the first January 2010 letter”) from the First Defendant’s attorney at law asserting that the First Defendant was the owner of the disputed house built on the disputed parcel and that the Deceased had given her permission to occupy it and build the disputed house. As a consequence, the First Defendant and her family had acquired an equitable interest in the disputed parcel.
54. A letter dated 26 January, 2010²² (“the second January 2010 letter”) was written to the Director of Town and Country Planning Division on behalf of the Claimant informing him that the disputed house was an illegal structure on the property.
55. According to the Claimant, in 2012, she became aware that an electricity pole had been planted on the disputed parcel without her consent. A letter dated 7 November, 2012 was written on her behalf to the Manager of T&TEC advising that the pole was planted without permission and she requested it to be removed.

¹⁸ Exhibit TL 6 to the Claimant’s witness statement

¹⁹ Exhibit TL 7 to the Claimant’s witness statement

²⁰ Exhibit TL 8 to the Claimant’s witness statement

²¹ Exhibit TL 9 to the Claimant’s witness statement

²² Exhibit TL 10 to the Claimant’s witness statement

56. The Claimant testified that despite the aforesaid letters to the First Defendant, the Second Defendant continued to occupy the disputed house without her permission. An attorney at law acting on the Claimant's behalf wrote to the second defendant on the 2 September 2015²³ ("the 2015 letter") informing him that he was in occupation of the disputed parcel without her permission, he was trespassing and he should immediately leave. On 20 and 21 March, 2016 pre-action protocol letters²⁴ were sent to the First and Second Defendants respectively advising them of the Claimant's intention to take legal action if they did not vacate the disputed parcel by 21 April, 2016. Neither responded and are both still in occupation.
57. The Claimant's case and her evidence in chief were undermined by several admissions which she made in cross-examination. At paragraph 5 of the Statement of Case the Claimant asserted that the First Defendant in 1997 without her permission took possession of the disputed parcel and at paragraph 4 of the Defence to Counterclaim she asserted that when she left Trinidad in 1993 the First Defendant was not occupying the disputed parcel.
58. However, in cross-examination the Claimant admitted that paragraph 4 of the Defence to Counterclaim was "obviously incorrect" since she agreed that she was not disputing that the first Defendant was living on the disputed parcel since 1990 and that she was unable to say who was living on it from 1993 since she was living abroad. This admission by the Claimant undermined her case that the Defendants were not in occupation of the disputed parcel in 1990 and was consistent with the Defendants' case.

²³ Exhibit TL 13 to the Claimant's witness statement

²⁴ Exhibits TL 14 and TL 15 to the Claimant's witness statement

59. The Claimant also agreed in cross-examination that when her attorney at law responded to the Defence and Counterclaim she did not allege that the disputed parcel was unoccupied from 1999-2009. However, the several letters which the Claimant annexed to her witness statement were written during the period 1999-2009 namely the 2001 letter, the 2004 letter, the October 2006 letter, the May 2009 letter and the November 2009 letter. All were contemporaneous documents written on behalf of the Claimant where she was corresponding with the First Defendant with respect to sorting out the Defendants' occupation of the disputed parcel. All these letters demonstrated that the Claimant was well aware that the First Defendant and her family were still in occupation of the disputed parcel during the period 1999-2009.
60. In cross-examination the Claimant was referred to four of the letters she had written to the First Defendant during the period 1999-2009. She was referred to the 2001 letter and accepted that in the 2001 letter she referred to the disputed parcel as the First Defendant's "lot".
61. The Claimant was referred to the 2004 letter. She accepted that in the 2004 letter she told the First Defendant to visit Mr Deonanan, the surveyor and identify "her lot on the masterplan." The Claimant stated that she was being very fair to First Defendant and that she did not dispute her entitlement to the disputed parcel as she was aware of the Deceased's promise to the First Defendant.
62. The Claimant also testified in cross-examination that the Defendants misinterpreted the 2001 letter and the 2004 letter since she was taunting them because she was aware that the property could not be subdivided and therefore the Defendants could not get title for the disputed parcel.

She also said that she had no intentions of giving any part of the property to them and she did not give permission for water connection and application to Town and Country Planning Division.

63. The Claimant also accepted that in the October 2006 letter she requested the Second Defendant to move from the Deceased's house to the disputed house on the disputed parcel since she wanted to effect repairs to the Deceased's house.
64. The Claimant agreed that in the November 2009 letter she did not refer to the Deceased giving the First Defendant temporary occupation of the disputed parcel.
65. The Claimant accepted in cross-examination that from the aforesaid letters she sent to the First Defendant she knew that during the period 1999 to 2009 the First Defendant and her family were in occupation of the disputed parcel.
66. The evidence of the Claimant's witnesses, her sister Leela Lobai ("Leela") and her brother Partap Lobai ("Partap") did not assist the Claimant's case. The evidence in chief of both Leela and Partap were identical. They both testified that prior to the death of the Claimant's father, one of the predecessor's in title of the property, he applied to the Ministry of Finance and Planning for permission to subdivide the property into two residential lots but permission was refused since the land was agricultural and only one single family house was permitted to be constructed on it.

67. According to Leela and Partap at the time of the Deceased's death the First Defendant was living on the disputed parcel with her husband Aldwyn Lee. At the time of Aldwyn Lee's death in 1999 he was still married to the First Defendant but he was living alone in the disputed house. After the First Defendant and Alwyn Lee separated, the First Defendant never returned to the disputed house. After Aldwyn Lee died the disputed house remained unoccupied until 2009 when the Second Defendant went to live in it. In 2016 the Second Defendant fenced the disputed parcel, he began doing repairs and renovation to the disputed house. Partap maintained the property including the disputed parcel. Leela testified that she visited the property regularly.
68. In cross-examination Leela admitted that she was aware that the First Defendant and her husband Aldwyn Lee were living on the disputed parcel since 1992. She accepted that in her witness statement she did not know the date the First Defendant left her husband Aldwyn Lee to live at another address but in her supplemental witness statement she stated that the First Defendant had separated from Aldwyn Lee before he died in 1999.
69. Leela maintained that the First Defendant lived with her family in the disputed house on the disputed parcel between 1990 to 1999 and that between 1999 to 2009 the disputed house was unoccupied. She denied that during the period 1999 to 2006 the First Defendant's son Derek Lee occupied the disputed house. She also denied that in 2006 the Second Defendant occupied the disputed house and that he continued to live in it until the date of the trial.

70. However, Leela's evidence on her knowledge of the occupation of the dispute parcel was discredited since she admitted that from 1990 to 2009 she only visited the property once or twice a month. Therefore, it was highly probable that even if she visited the property she may not have seen if the disputed house was occupied. Leela's evidence on Partap maintaining the property was also not credible since she admitted in cross-examination that she did not see Partap maintain the disputed parcel but he told her that on one occasion he had cleaned it.

71. Partap's evidence was also discredited since he admitted in cross-examination that he only cleared the disputed parcel once or twice but he cleared the area of the property around the family house on several occasions. In my opinion, Partap's evidence in cross-examination demonstrated that he did not treat the dispute parcel as if it was the Claimant's since he only cleared it twice as compared to the rest of the property which he maintained more regularly.

72. Partap also testified in cross-examination that he could not recall the date the First Defendant lived on the disputed parcel but he was certain she was not living there when Aldwyn Lee died. He maintained that nobody lived in the disputed house on the disputed parcel after 1999. He stated that the structure which is currently on the disputed parcel was rebuilt by the Second Defendant. Both Leela and Partap's evidence on the disputed parcel not being occupied by the First Defendant and her family during the period 1999 to 2009 was contradicted by the Claimant's letters issued to the Defendants during the said period which demonstrated that Leela and Partap were also not being truthful with the Court on this issue.

73. The First Defendant testified that in February 1990 she and her husband, Aldwyn Lee with the permission of the Deceased built the disputed house on the disputed parcel. In 1991, 2010 and 2011 she paid land and building taxes for the disputed parcel and they applied and obtained a connection for the supply of water from WASA. She stated that she moved out in 1999 when her husband died and permitted her son Derek to continue to live in the disputed house.
74. In 2001 she received the 2001 letter from the Claimant informing her that the disputed parcel was agricultural land and it could not be divided into lots. The 2001 letter suggested that the First Defendant take steps to legally sub-divide the disputed parcel within six months. She did not respond as she felt the disputed parcel and the disputed house belonged to her.
75. In 2004 she received the 2004 letter from the Claimant where the Claimant advised that she visit a surveyor named Mr Deonanan and identify "her lot "and she was given six months to do so. Again, in 2006 the Claimant wrote to her by the 2006 letter repeating that the property could not be subdivided.
76. The First Defendant testified that after she gave permission to the Second Defendant to live at the disputed house, he began to effect repairs to it. She was aware that the Second Defendant retained the services of certain surveyors and in March, 2007 he had applied to the Town and Country Planning Division for outline planning permission to use the disputed parcel for residential use and that permission was granted with conditions by letter dated 25 February, 2008 from the office of the Minister of Planning, Housing and the Environment. The First Defendant

testified that the said approval became null and void after the Second Defendant failed to submit a full application within the time limit.

77. According to the First Defendant, the Claimant again wrote to her in the May 2009 letter which she ignored. During 2011 she and the Second Defendant pooled their resources to replace the roof on the disputed house and also to reconstruct a fence.
78. In cross-examination, the First Defendant admitted that the Claimant did not give her permission to obtain any connections from WASA or T&TEC. She said the Claimant requested that the Second Defendant live in the Deceased's house during the time he lived there and he was living there when her husband Aldwyn Lee died. At the time of her husband's death, she was living in the disputed house but she was on vacation in the USA. She returned to Trinidad and stayed in the Deceased's house.
79. In my opinion, the First Defendant's evidence that she was in occupation of the disputed parcel from 1990 until 1999 was unshaken in cross-examination. Her evidence that after 1999 when she moved out, her family continued to occupy the disputed parcel was also unchallenged in cross-examination.
80. The First Defendant's evidence that she and her husband lived on the disputed land from 1990 was corroborated by the evidence of her son, the Second Defendant. He testified that he was born in 1969. In January, 1990 the First Defendant and Aldwyn Lee began to build the disputed house and the Deceased was living in the Deceased's house by herself. After the disputed house was built the First Defendant, Aldwyn Lee and his son Derek Lee lived in the disputed house and they continued to do so

following the death of the Deceased. They planted fruit trees and maintained the disputed parcel and the coconut, mango and soursop trees are still on it.

81. According to the Second Defendant, in March, 1993 he moved into the Deceased's house with his wife and the First Defendant was still living in the disputed house. After Aldwyn Lee died in 1999 the First Defendant and Derek continued to live there. In 2006, he was informed by the First Defendant that the Claimant wrote requesting that he leave the Deceased's house as she wanted to renovate it and he should live with the First Defendant in the disputed house. At that time only his brother Derek was living in the disputed house. He moved into the disputed house and he began to fix it up.
82. The Second Defendant also testified that he applied for planning permission from Town and Country in 2007 and he received outline permission on 25 February, 2008. However, it became null and void after he failed to submit a full application. In 2011, he and the First Defendant pooled their resources to replace the roof on the disputed house and reconstruct a fence. In 2012, he obtained an Inspection Certificate of Approval for the supply of electricity to the disputed house.
83. He said that he subsequently retained a surveyor named Joseph Isaac to prepare another application to Town and Country for sub-division of the disputed parcel comprising 930 square metres for residential use. The second application was granted outline permission with conditions by letter dated 17 January, 2017 from the office of the Minister of Planning, Housing and the Environment. At present he lives alone in the disputed house.

84. In cross-examination, the Second Defendant testified that in 1999 he was living at the Deceased's house and at the ending of 2006 he went to occupy the disputed house. He confirmed he had a copy of the deed for the disputed parcel but it was not in his name and no one gave him authorisation to apply for planning permission. He also confirmed he applied for an Electrical Inspection Certificate of Approval. At the time of the application he did not have a deed in his name for the disputed land and he was aware at the time that the Claimant had a Certificate of Title.
85. The Second Defendant's evidence that he was living in the disputed parcel in 2006 was consistent with the October 2006 letter. Therefore, it supported the Defendants case that the parcel was occupied at that time. His evidence also supported the Defendants case that even after the First Defendant left in 1999, her son Derek Lee continued to live on the disputed parcel until the Second Defendant moved in.
86. Another son of the First Defendant, Derek Lee, gave evidence to support the Defendants case. His evidence in chief was that in 1990, the First Defendant built the disputed house and the Deceased was fully aware that the First Defendant had built the disputed house and encouraged her to do so. After the disputed house was built, he, the First and Second Defendants, his other brother and father moved in around January, 1990. After the Deceased died, they continued to live in the disputed house. Sometime later the Second Defendant moved out of the Deceased's house and moved into the disputed house.
87. After Aldwyn Lee died, the First Defendant gave him permission to live in the disputed house until 2006, when he moved out. Before he moved out the Second Defendant moved back into the disputed house after the

Claimant told him she wanted to effect repairs to the Deceased's house. At present the Second Defendant lives in the disputed house.

88. In cross-examination, Derek Lee maintained that in 1999 at the time of his father, Aldwyn Lee's death, he was living in the disputed house. He said that he saw his father the night before his death. He denied not living at the disputed house at the time of his father's death. He left the disputed house in 2006.
89. Derek Lee's evidence corroborated the Defendants evidence that the First Defendant and her family occupied the disputed parcel from 1990 to present.
90. It was upon the death of the Deceased in 1990 the Claimant as executor of the Will had the right to make an entry or bring some action to recover the disputed parcel in accordance with section 4 of the RPLA. She had 16 years from 1990 which was by 2006. Eleven years after in 2001, by the 2001 letter she did not take any step for re-entry since she was informing the First Defendant to take steps to get the disputed parcel on her name. Fourteen years after by the 2004 letter the Claimant who was aware of the Defendants occupation of the disputed parcel did not take any step to re-enter since she was directing the First Defendant to visit Mr Deonanan, a land surveyor to identify the First Defendant's "lot" on the master plan. Sixteen years after 1990, by the 2006 letter the Claimant requested the Second Defendant to move into the disputed parcel so that she could effect repairs to the Deceased's house. This was contrary to any intention by the Claimant to assert any right she had for the disputed parcel.

91. The first step which the Claimant took to assert her right to the disputed parcel was at best the May 2009 letter where she told the First Defendant to leave the disputed parcel. This was 19 years after her right to re-enter accrued.

92. The weight of the evidence was that after the Deceased died in 1990, the First Defendant and her family were in continuous occupation of the disputed parcel after the Deceased's death in 1990 until present. Although the First Defendant moved out in 1999 and visited from time to time, other members of her family continued to live in the disputed parcel so they are entitled to include the period of joint occupation by the family in the period of continuous possession. The First Defendant and her family during the period 1990 to present continuously treated the disputed parcel as her own without any interruption. They cleaned and maintained the disputed parcel, planted trees and short crops.

93. Therefore, the Defendants occupation of the disputed parcel was adverse to the paper title owner who was the legal personal representative of the Deceased's estate, and nothing was done to re-enter or bring an action for possession. By 2006 the paper title owner's right was extinguished.

DID THE DEFENDANTS ESTABLISH AN EQUITABLE INTEREST IN THE DISPUTED PARCEL BY VIRTUE OF PROPRIETARY AND/OR PROMISSORY ESTOPPEL?

94. It was submitted on behalf of the Defendants that if they failed to establish possession by virtue of adverse possession, they had acquired an equitable interest in the disputed parcel since the Deceased promised the First Defendant an interest in the disputed parcel when she permitted

her to occupy it in 1990 and the First Defendant expended funds in the construction, repairs and renovation of the disputed house.

95. Counsel for the Claimant argued that the Defendants have not established an equitable interest in the disputed parcel since the Deceased's invitation to the First Defendant to occupy the disputed parcel was temporary which was borne out by the fact that the Deceased did not give permission to acquire an independent water or electricity supply nor did she convey the disputed parcel to her by way of a Deed. As such the First Defendant only acquired a licence to occupy the disputed parcel and such licence expired in 1990 on the death of the Defendant's mother. It was also argued that the Claimant never promised the First Defendant the disputed parcel nor did she induce, encourage or allow the Defendants to believe that they had or will enjoy some right or benefit over the disputed parcel. All her actions indicated that she wanted them off the disputed parcel.

96. The law on proprietary estoppel was examined by the Court of Appeal in the case of **Mills v Roberts**²⁵. At paragraphs 25 and 26 the Court of Appeal set out the test in order to determine whether a claim in proprietary estoppel has been established in the following terms:

“25. The Privy Council in **Theresa Henry and Anor. v Calixtus Henry** has carefully explained that in cases of proprietary estoppel, when it comes to determining **how** the equity is to be satisfied, the following are relevant guidelines:

(i) **The court should adopt a cautious approach.**

²⁵ Civil Appeal No. T 243 of 2012

- (ii) The court must consider all of the circumstances in order to discover the minimum equity to do justice to the claimant.
- (iii) The court however enjoys a wide discretion in satisfying an equity arising from proprietary estoppel.
- (iv) **Critical to the discovery of the minimum equity to do justice, is the carrying out of a weighing process; weighing any disadvantages suffered by the claimant by reason of reliance on the defendant's inducements or encouragements against any countervailing advantages enjoyed by the claimant as a consequence of that reliance.**
- (v) In determining the balance in the relationship between reliance and detriment: just as the inquiry as to reliance falls to be made in the context of the nature and quality of the particular assurances, inducements and encouragements which are said to form the basis of the estoppel, so also the inquiry as to detriment falls to be made in the context of the nature and quality of the particular conduct or course of conduct adopted by the claimant in reliance on the assurances, inducements and encouragements.
- (vi) Though in the abstract reliance and detriment may be regarded as different concepts, in applying the principles of proprietary estoppel they are often intertwined.

26. Sir Jonathan Parker in **Theresa Henry's case** also drew extensively from Lord Walker's discussion of proprietary

estoppel in **Gillett v Holt**, **Jennings v Rice** and **Cobbe v Yeoman's Row Management Ltd**, adopting approvingly the following observations:

- (i) Reliance and detriment are often intertwined. However, the fundamental principle that equity is concerned to prevent unconscionable conduct, permeates all of the elements of the doctrine.
- (ii) **Detriment is not a narrow or technical concept; it need not consist of the expenditure of money or other quantifiable detriment, so long as it is substantial.**
- (iii) Whether the detriment is sufficiently substantial is to be tested by whether it would be unjust or inequitable to allow the assurance to be disregarded; in this regard, the essential test is unconscionability.
- (iv) The aim of the court in satisfying an equity arising from a proprietary estoppel is to decide in what way the equity can be satisfied in the context of a broad inquiry as to unconscionability." (Emphasis added)

97. In order for the Defendants to succeed in their counterclaim they must establish some type of promise and/or encouragement, reliance on that promise and/or encouragement, and detriment. In the case of detriment, that detriment, while it need not be only in monetary terms, it must be substantial.

THE PROMISE

98. The Defendants contend that prior to her death, the Deceased made a clear and unequivocal promise that the First Defendant could come and

build a house on the disputed parcel and live there with her family. Under the expectation created and encouraged by the Deceased that the First Defendant would have an interest in the disputed parcel the First Defendant acted to her detriment in building the disputed house and occupying the disputed parcel. The Court should compel the estate of the Deceased to give effect to such expectation.

99. Counsel for the Claimant submitted that neither she nor the Deceased made any promise to the First Defendant that she would acquire any interest in the disputed parcel.
100. The Claimant stated at paragraph 10 of her witness statement that when she saw the disputed house on the disputed parcel during her visit to Trinidad between 1992 and 1993 her sister, Leela told her that the Deceased had given permission to the First Defendant to build a temporary structure on one corner of the property and that it was not meant to be permanent. Leela also indicated to her that to ensure it was not permanent the Deceased did not permit the First Defendant to get her own electricity and water connections. The Claimant also testified at paragraph 12 of her witness statement that the Deceased never told her about this arrangement but she told her that she would get the disputed property since she was the last child and the other children, including the First Defendant had gotten other land.
101. However, later in the same witness statement at paragraph 26, the Claimant stated that after initiating the instant action, Leela informed her that in 1988 the First Defendant asked the Deceased for permission to build a temporary structure on the disputed parcel. The Deceased gave permission on the condition that the structure was to be temporary,

made of wood and she did not give any permission for her to get her own electricity and water connections. As such, the electricity for the disputed house was received from the Deceased's house and water was obtained through a garden tap on the property.

102. One of the contemporaneous documents which the Claimant relied on to support her case was the 2004 letter which she wrote to the First Defendant. In the said letter the Claimant referred to a letter written by the First Defendant to her dated the 26 May 2004. She indicated two matters to the First Defendant namely: she directed the First Defendant to visit a land surveyor Mr Deonanan to identify "her lot on the master plan" which he has shaded off, copy it and send it to her; and she told the First Defendant that "I told you then and I'm telling you now-see about your lot of land and take it."
103. In my opinion, the 2004 letter clearly demonstrated that the Claimant was aware in June 2004 of the permission given by the Deceased to the First Defendant to occupy the disputed parcel. It also showed that the Claimant understood that the Deceased intended that the First Defendant and her family had an interest in the disputed parcel.
104. In cross-examination the Claimant accepted that the Deceased gave permission to the First Defendant to occupy the disputed parcel. She then admitted that she knew since 1992 from Leela that her mother had given the First Defendant permission to occupy the disputed parcel. She agreed that she did not plead that the occupation was supposed to be temporary and that that temporary occupation arose with the witness statements. She also accepted that the Deceased never told her anything about giving

permission to the First Defendant so she was unable to dispute that such permission was indeed given.

105. The Claimant was referred in cross-examination to the Defendants letter to her dated 2 December, 2015²⁶ wherein the Defendants attorney at law stated that in 1989 the Deceased gave the First Defendant the disputed parcel. The Claimant was shown the response sent by her attorney at law dated 21 March, 2016²⁷ wherein it was stated that the Claimant was not aware that the Deceased gave permission to the First Defendant to occupy the disputed parcel. The Claimant accepted that the letter dated the 21 March 2016 which was sent on her behalf did not indicate that the First Defendant's occupation of the disputed parcel was temporary.
106. In my opinion, the Claimant's evidence could not dispute the fact that the Deceased had made a promise of the disputed parcel to the First Defendant and /or that the nature of the promise was that it was to be temporary.
107. Instead, the Claimant relied on the testimony of her sister and brother, Leela and Partap to support her case. Leela and Partap's evidence in chief was that before the Deceased died, she allowed the First Defendant to build a temporary house on the disputed parcel. The Deceased did not give the First Defendant permission to get an independent electricity or water supply. The First Defendant received electricity from the Deceased's house and water from a garden tap. The evidence of Leela and Partap was that the permission or promise was temporary and not permanent.

²⁶ Exhibit TL 13 to the Claimant's witness statement

²⁷ Exhibit TL 14 to the Claimant's witness statement

108. In my opinion, the Claimant and her witnesses were not being truthful with the Court on the promise and the nature of it. With respect to the Claimant the aspects of her evidence on the permission by the Deceased lacked credibility since based on the contradictions in her own witness statement, it was clear that the Claimant was aware of the permission given by the Deceased to the First Defendant to occupy the disputed parcel since the period 1992-1993 when Leela told her so and not as she alleged after the institution of the instant action. As such the information in the letter dated 21 March 2016 which was written on the Claimant's behalf also contained an untruth since she was aware from Leela about the permission since 1992-1993.
109. Further, it is highly probably that in 1992-1993 when Leela told the Claimant about the Deceased's permission to the First Defendant to occupy the disputed parcel, the issue of it being temporary was never discussed since if it was, the Claimant would have included this in the letter dated 21 March 2016 which was written on her behalf to the First Defendant.
110. In any event the First Defendant raised the issue of her equitable interest in the disputed parcel in her letter dated 4 January 2010²⁸ and notably in the Claimant's response by letter dated 26 January 2010²⁹, the Claimant failed to address the First Defendant's equitable interest. In my opinion this silence demonstrated that the Claimant was aware of the basis of the First Defendant and her family's occupation of the disputed land.
111. The First Defendant's evidence was that in 1989 the Deceased informed her and her husband that they could build a house on the disputed

²⁸ Exhibit TL 9 to the Claimant's witness statement

²⁹ Exhibit TL 10 to the Claimant's witness statement

parcel. As a result of this promise, in February, 1990 she and her husband built the disputed house on the disputed parcel to the north-east of the Deceased's house. The Deceased was present when they built and moved into the disputed house with their sons. In cross-examination the First Defendant stated that the deceased never told her that the occupation of the disputed parcel was temporary.

112. The evidence of both of the First Defendant's sons, Derek and the Second Defendant was that the Deceased permitted the First Defendant and Aldwyn Lee to build the disputed house on the disputed parcel. This evidence was not challenged in cross-examination.
113. The Claimant and her witnesses, Leela and Partap sought to persuade the Court that the permission by the Deceased was temporary since the Deceased would have been aware since 1982 that permission was refused for the property to be subdivided into two residential lots since it was for agricultural use and only one single family home was permitted.
114. I have attached little weight to that evidence since it was highly probable that this had little bearing on the Deceased's decision to permit the Defendants to occupy the disputed parcel. It was more probable that the Deceased permitted the Defendants to obtain electricity and water from the Deceased's house since she knew that the restriction would have made it difficult for them to obtain the said connections in the absence of the appropriate permissions.
115. In my opinion, the weight of the evidence was that the First Defendant and her husband Aldwyn Lee were given permission by the Deceased to construct the disputed house on the disputed parcel. The said permission

was not temporary or for any specific period and the Claimant was aware of the said permission since 1992-1993 and up to January 2010 she did not address the issue.

RELIANCE ON THE PROMISE AND SUBSTANTIAL DETRIMENT

116. It was submitted on behalf of the Defendants that they invested substantial sums on the disputed parcel in the construction, repairs, renovation and maintenance of the disputed house and as such they have suffered a substantial detriment based on the sums invested therein.
117. The question of what constitutes “substantial detriment” was examined by the court in **Fulchan v Fulchan**³⁰ where Rajkumar J (as he then was) said the following at pages 7 to 8:

“4. He must have incurred expenditure or otherwise acted to her detriment.

See **Snell’s Principles of Equity 31st Ed. Ibid.**

The law as set out in Snell’s Equity (ibid) is clear. It will recognize such an interest in circumstances where a party asserting such interest was led to act to his detriment, and it would be inequitable not to recognize such an interest.

15. It appears that the misconception has developed that any purported contribution – no matter how tenuous, trivial or remote, can give rise to an equitable interest. In recent times this court has had to consider, for example,

- a. payment of land and building taxes,
- b. painting,

³⁰ CV 2010-03575

- c. purchase of chattels – for example furniture and air-conditioning units,
- d. cleaning of the yard and surroundings,

and the assertions that these either singly or in combination with other matters gave rise to an equitable interest which had to be recognized by the holder of legal title. Such payments may be ancillary to other contributions but would rarely suffice on their own to create an equitable interest in real property.

16. Further such an interest can be given effect in many ways, and the benefit that such party has already enjoyed from the subject property can be taken into account, in assessing alleged detriment, to determine whether it is necessary to recognize and declare any further interest.

17. Routine maintenance activities on property that is occupied by such a claimant, such as cleaning or painting, would not usually fall into the category of detrimental actions that require compensation by the award and recognition of an equitable interest in property. This is activity to be expected of anyone who occupies and has the benefit of occupying property.

18. Payment of water and electricity bills would similarly not be examples of such detrimental reliance. This is again activity expected of anyone who enjoys the benefit of those services.

19. Payment of land and building taxes is equivocal as these can be paid by anyone, and are accepted from anyone who tenders payment.

20. Purchasing of furnishings and chattels for the better enjoyment of premises cannot in most if not all cases, give rise to any benefit in land or real property. Apart from not being an

expenditure that can constitute detrimental reliance, these are removable and severable, by definition from the subject property.”

118. The First Defendant testified that the disputed house which she and her husband built on the disputed parcel was 30 feet by 25 feet. It was made of wood and it comprised of two bedrooms, a kitchen, a dining room and a toilet and bath. According to the First Defendant, after construction of the disputed house, she and her husband were assessed land and building taxes from January 1991. She annexed copies of Certificates of Assessments which she paid dated 19 April 2010 and 14 February 2011. She said that during the time she and her husband lived in the disputed house they cleaned and maintained the surroundings and they planted various fruit trees and short crops. In 2011 the Defendants pooled their resources to replace the roof and to construct a fence consisting of steel and concrete posts and fencing wire on the southern and western boundaries. The First Defendant’s evidence was not challenged in cross-examination.
119. The Second Defendant’s evidence corroborated the First Defendant’s evidence that they both replaced the roof on the disputed house and they constructed a fence in 2011. The Second Defendant also testified that they planted fruit trees and constructed a stone wall and made a driveway for a car to be parked. This evidence also was not challenged in cross-examination.
120. There was no evidence from the Claimant and her witnesses that the Claimant expended any funds on the disputed parcel. The extent of the Defendants evidence was that the disputed house on the disputed parcel

at the time of the trial was not the original structure since it was rebuilt by the Second Defendant³¹ and that in 2016 the Second Defendant fenced the disputed parcel and began repairs and renovations after the First Defendant had received a letter from the Claimant requesting that they vacate the disputed parcel³².

121. I accept that the Defendants evidence was lacking in details of the sums of money which were expended on the construction of the disputed house, the repairs and maintenance of the disputed house, the replacement of the roof, and the construction of the fence. However, the fact that such works were done by the Defendants were not challenged by the Claimant and one of the witnesses for the Claimant, Partap Lobai acknowledged that the house on the disputed parcel was not the original structure since it was rebuilt by the Second Defendant. Therefore, even in the absence of the details of the sums spent by the Defendants on the disputed parcel, the weight of the evidence supports a finding that the Defendants spent a substantial sum on the disputed parcel during their occupation and as such it is a substantial detriment to them.
122. I have therefore concluded that even if the Defendants' claim in adverse possession had failed, they have acquired an equitable interest in the disputed parcel since it was based on the Deceased's permission that the First Defendant and her husband, Aldwyn Lee constructed the disputed house for their family on the disputed parcel. The permission was not temporary. The Defendants expended their own funds in the construction, repairs and renovations of the disputed house and in the fencing of part of the disputed parcel.

³¹ See cross-examination of Partap Lobai

³² See paragraph 17 of witness statement of Leela Lobai

CONCLUSION

123. I am satisfied that the Claimant has proven that she has properly brought the instant action in her personal capacity since the Registrar's endorsement on the Certificate of Title with the Claimant as the registered proprietor is prima facie proof that the Claimant is the owner of the property.
124. The contradictory nature of the Claimant's own evidence as well as that of her witnesses as it relates to the occupation of the disputed house on the disputed parcel between 1999-2009 is compelling proof that the Defendants occupied the disputed house during the said period. The Claimant's action of writing several letters during the period 1999-2009 contradicted her evidence that the disputed house was unoccupied. Her witnesses did not assist her case in this regard as neither were present on the property often to know whether the disputed house was occupied. On the other hand, the evidence of the Defendants was that the disputed house was occupied during the said period by their family and they maintained and did improvement works on the disputed house over time. The First Defendant's evidence that her family continued to reside in the disputed house after she left in 1999 was unchallenged in cross-examination. The Claimant had an opportunity to take steps to prevent occupation of the disputed land until 2006 (the 16-year limitation) but did not do so until 2009. Her failure to do so as well as the Defendants actions in occupying the property means that the Defendants' claim in adverse possession succeed.
125. I am also satisfied that even if the Defence of adverse possession had failed, on the weight of the evidence the Deceased permitted the Claimant and her husband, Aldwyn Lee to construct the disputed house

on the disputed parcel and said permission was not of a temporary nature. By the Claimant's own contradictory evidence, she was also aware of the said permission in 1992-1993. The Defendants expended substantial sums to their detriment in reliance on the promise of the Deceased. The Defendants have therefore acquired an equitable interest in the disputed parcel.

ORDER

126. The Claimant's action is dismissed.

127. Judgment for the Defendants on the counterclaim namely:

- (a) It is declared that the First and Second Defendants have been in continuous and undisturbed possession of All that parcel of land situate at #119 Achamville, Guaico Tamana Road, Guaico comprising Four Hundred and Sixty-Four Point Five square metres (464.5 sq. m) and shown in the plan prepared by Hugo Somarsingh dated 29 February, 2016 and bounded on the North by lands owned by Tori Lobai on the South by Lot 25C on the East by a Road Reserve and on the West by Land owned by Tori Lobai being portion of a larger parcel of land more particularly described in Volume 1756 Folio 243.
- (b) It is declared that the right title and interest of the Claimant in the parcel of land described in (a) aforesaid has been extinguished by virtue of sections 3 and 22 of the Real Property Limitation Act.
- (c) The parcel of land described in (a) aforesaid is vested in the names of the First and Second Defendants by virtue of their continuous and undisturbed possession.

(d) The Claimant whether by herself, her servants and/or agents or howsoever otherwise is restrained from entering on the parcel of land described in (a) aforesaid or in any way interfering with the First and Second Defendant's use, occupation and enjoyment of it.

128. The Claimant to pay the Defendants costs of the claim in the sum of \$14,000.00 and costs of the counterclaim in the sum of \$14,000.00.

.....

Margaret Y Mohammed

Judge