REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

San Fernando

Claim No: CV2017-01900

BETWEEN

PRAKASH THACKOOR

CLAIMANT

AND

SARAH RAMDEEN

DEFENDANT

Before the Honourable Madame Justice Margaret Y. Mohammed

Date of Delivery: February 12 2019

APPEARANCES:

Mr. Abdel Ashraph instructed by Mr. Zeik Ashraph Attorneys at Law for the Claimant.

Mr. Alvin Pariagsingh instructed by Ms. Chelsea Stewart Attorneys at Law for the Defendant.

JUDGMENT

1. Mark Thackoor deceased, ("Mark") was the only son of the Claimant and the husband of the Defendant until his sudden passing in September 2016. After hearing, the evidence at the trial it was clear to me that if Mark had not passed away, this matter would not have engaged the Court's attention. Mark featured prominently in the instant action since both parties shared a loving relationship with him and much of what transpired in this case turned on events between the Claimant and Mark and between the Defendant and Mark.

2. The Claimant's case was that in 2012 he became the owner of certain lands situated in Reform[1] ("the disputed lands") and he built a house ("the disputed house") on the disputed lands. He gave Mark permission to reside in the disputed house until he could acquire his own. Mark and the Defendant lived in the disputed house after they were married in 2015. Mark died shortly thereafter and the Claimant ended his permission for the Defendant to occupy the disputed house but the Defendant refused to deliver possession of it to the Claimant.

3. The Claimant also claimed that he purchased a motor vehicle, TCP 8335, ("the disputed motor vehicle") from one Jason Roopnarine ("Jason") and he gave Mark permission to use it until Mark purchased his own motor vehicle. After Mark died, his permission to use the disputed motor vehicle

[1] Described in Deed of Lease Registered as Deed No 201202254694 dated 23 August 2012 as All and Singular that certain piece or parcel of land situate in the ward of Savanna Grande in the island Trinidad comprising four hundred and fifty three point four square metres (453.4 sq metres) and bounded on the North partly by Road Reserve 13.00 meters wide and Lot 494 and on the South partly by Lot 491 and 496 and on the East by a Road Reserve 13 metres wide and partly by Lot 496 and on the West by Lot 492 and partly by Lot 494 and which said parcel of land is shown as Lot 495 on the plan annexed and marked "A" to the Deed of Lease Number DE 2012053640D001 and known as the reform Residential Site.

ended. In September, 2016 he called upon the Defendant to deliver the disputed motor vehicle to the him but she has failed to do so.

4. In this action, the Claimant is seeking possession of the disputed lands, the disputed house and the disputed motor vehicle; damages for trespass to the disputed lands; a declaration that he is entitled to possession of the disputed motor vehicle; damages for detinue and conversion; and costs.

5. The Defendant's case was that the Claimant, having acquired the disputed lands from his former employers, Caroni (1975) Limited ("Caroni Limited"), as part of a separation package, promised the Defendant and Mark that he would transfer the disputed lands to them since Mark and the Defendant were going to get married and Mark was the Claimant's only son. Based on this promise Mark and the Defendant built the disputed house using their own money. Further, she claimed that the disputed motor vehicle was bought solely by Mark.

6. The Defendant has counterclaimed seeking orders that she is entitled to possession of the disputed lands; an order that she holds the disputed lands on trust; an order directing the Claimant to transfer the disputed lands to the Defendant; or alternatively that the Defendant's equity on the disputed lands and the disputed house be quantified and the said sum be paid to the Defendant in satisfaction of the interest and costs.

7. Based on each party's respective case, it was not in dispute that the Claimant is the paper title owner of the disputed lands; at the time of Mark's death, he and the Defendant were living in the disputed house; the Defendant has continued to live in the disputed house; the disputed motor vehicle was used by Mark up to the time of his death; and the registered owner of the disputed motor vehicle was Jason.

THE ISSUES

8. The issues to be determined are:

   (a) Whether the Defendant has established that she has acquired an equitable interest in the disputed lands?

   (b) If so, what is the extent of the said interest?

   (c) Has the Claimant proven that he has suffered any loss and if so what quantum?

   (d) Has the Claimant demonstrated that he is entitled to possession of the disputed motor vehicle?

WHETHER THE DEFENDANT HAS ESTABLISHED THAT SHE HAS ACQUIRED AN EQUITABLE INTEREST IN THE DISPUTED LANDS?

9. In the Defendant's counterclaim she stated that she is entitled to a legal or equitable interest in the disputed lands by virtue of the doctrine of promissory estoppel. Counsel for the Defendant in his closing submission submitted that the Defendant's equitable interest in the disputed lands was more appropriately grounded in the doctrine of proprietary estoppel since the effect of proprietary estoppel is often long lasting or permanent.

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

> "19. Whereas in promissory estoppel there must be a clear and unequivocal promise or assurance intended to effect legal relations or reasonably capable of being understood to have that effect, **in**

[2] Civil Appeal No. T 243 of 2012 at para 19 and 22

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;

(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)**

11. The Court of Appeal at paragraphs 25 and 26 in **Ester Mills** stated the test 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.**
>
> (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)

12. In order for the Defendant to succeed in her counterclaim, she 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 AND/OR ENCOURAGEMENT

13. The Defendant's case was that in 2013 she and Mark were induced to build the disputed house on the disputed lands by the Claimant's unequivocal assurance that he would transfer the disputed land to them for their sole benefit.

14. The Claimant's position was that he made no such promise to Mark and the Defendant since he only knew the Defendant in 2015 a few months before she married Mark. His case was that he built the disputed house before Mark married the Defendant and he only gave Mark permission to reside in it until he could afford to purchase his own land and build his own house.

15. The determination of whether there was any promise or encouragement is a question of fact to be determined by the Court. From the evidence there were different versions of the alleged promise. According to the learning in **Horace Reid v Dowling Charles and Percival Bain**[3] cited by Rajnauth-Lee J (as she then was) in **Winston Mc Laren v Daniel Dickey and Ors**[4] 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

[3] Privy Council Appeal No. 36 of 1987
[4] CV 2006-01661

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**[5], 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.

16. The Claimant testified that as a former employee of Caroni Limited he received a VSEP package of one residential lot of land and two acres of agricultural land. In 2013 he was offered one residential lot for $21,500.00 by Caroni Limited. He said that Mark had started to work and he offered to take a loan for the sum of $21,500.00 to build a positive credit rating. He allowed Mark to take the loan and he and Mark agreed that he would repay Mark.

17. Mark gave him a manager's cheque for $21,500.00 and he took the cheque to Caroni Limited. Caroni Limited gave him 2 receipts for $18,000.00 and $3500.00. About 3 months, after, the Claimant said that he was informed that Caroni Limited was refunding the money. He was refunded the $21,500.00 by cheque dated 25 January 2015. He also received a statement of Residential Lot Deposit Refund which showed that he was refunded $18,000.00 and $3500.00 although he received 1 cheque. He deposited the refund cheque into his account and then transferred it to Mark's Scotiabank account and he annexed a copy of the Scotiabank Transfer receipt to his witness statement[6].

18. According to the Claimant in 2012 when he became the owner of the disputed lands one of the conditions was that he could not part with

[5] Civ. App. No. 86 of 2011 at paragraph 31
[6] PT 3 of the Claimant's witness statement

possession of it for 5 years. However, in 2015 this restriction was removed. He stated that in 2014 he started to make arrangements to build the disputed house and by the time he first met the Defendant on 1 January in 2015 the construction of the disputed house was almost complete.

19. The Claimant testified that in June 2015 Mark and the Defendant told him that they wanted to get married and they had fixed a date in July 2015 for the wedding. He met the Defendant's family after Mark and the Defendant told him that they wanted to get married and they met about 4 times before the wedding. Before getting married Mark asked him if he and the Defendant could live in the disputed house until he had enough money to purchase his own land and build on it. He gave Mark permission to live in the disputed house until he bought his own land and built his house. The Claimant also testified that the Defendant and Mark got married on the 31 July 2015 and the reception was on the 8 August 2015 at the disputed house and that with his permission Mark and the Defendant moved into the disputed house.

20. The Claimant's evidence that he did not promise Mark and the Defendant that he would transfer the disputed lands to them was unshaken in cross-examination. The Claimant denied: knowing the Defendant since 2012; making any promise to them that he would transfer the disputed lands to the Defendant and Mark after the 5-year period; and that they could build their own home on the disputed lands.

21. The Claimant testified in cross-examination that he never had any agreement with Mark to repay him (Mark) the $21,500.00. This was inconsistent with the evidence in his witness statement where he said he and Mark had an agreement to repay Mark the said sum. It was brought to the Claimant's attention that the two receipts from Caroni Limited which

he exhibited to his witness statement for the refund of $21,500.00 had 2 separate dates, one was dated 21 May, 2012 in the sum of $18,000.00 and the other was dated 19 March, 2012 which stated that the sum of $3500.00 cash was received. The Claimant maintained that he received both receipts on the same day and that he received a manager's cheque for $21,500.00. The Claimant was also shown the Residential Lot Deposit Refund attached to his witness statement and he read out the date as 13 February, 2013.

22. The Claimant also testified in cross-examination that he offered the refund to Mark and Mark refused it but that he had repaid Mark before his death. He agreed that there was no document in his witness statement showing that the money was transferred to Mark.

23. In cross-examination, the Claimant was shown 108 receipts which he had attached to his pre-action letter to the Defendant. The Claimant acknowledged that 1 of the receipts dated 27 December 2014 from Ramlagan's General Hardware and Electrical Limited was made out in the name of S. Ramdeen, the Defendant. The Claimant also acknowledged that there were other bills in her name in December 2014 yet he still maintained that he did not know the Defendant before 1 January 2015.

24. The Defendant testified that she and Mark had intentions of purchasing land in Joyce Road, Chase Village, Chaguanas. The Claimant told them that he owned the disputed lands and that they should not purchase the other land as he would give them the disputed lands in light of their intended marriage since Mark was his only son and that he would transfer the disputed lands to them after the 5 years' restriction which was in his title document. He also promised them that they could commence building on the disputed lands as they would be the eventual owners.

25. The Defendant also testified that she and Mark had decided to fund the purchase of the disputed lands in 2013. Mark transferred $21,000.00 to the Claimant to cover the purchase. The Government's policy changed in 2013 and since there was no need to purchase the disputed lands the Claimant returned the sum of $21,000.00 by cheque dated 25 January 2015 to Mark.[7] She annexed a copy of the cheque to her witness statement.[8]

26. In cross-examination the Defendant stated that she met the Claimant in 2010 and she had numerous public outings with the Claimant and his family. She agreed she did not bring any witnesses to prove this. She disagreed that she met the Claimant for the first time on 1 January 2015. She disagreed that the Claimant started to build the disputed house in 2014. She admitted that it was an error in her witness statement that Mark started to talk about getting married in 2009 and she admitted that Mark always expressed the desire to save money so he could acquire his own house.

27. It was submitted on behalf of Claimant that the Court is entitled to make the adverse inference that there was no such promise due to the Defendant's failure to call any witness to corroborate this material fact. **Wisniewski v Central Manchester Health Authority**[9] established the test which the Court is to apply in drawing adverse inferences due to the failure by a party to call a witness. In **Wisniewski** the Court concluded the following:

> "From this line of authority I derive the following principles in the context of the present case:

[7] Paragraph 17 of the Defendant's witness statement
[8] SR 2 of the Defendant's witness statement
[9] [1998]Lloyd's Rep Med 223

(1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.

(2) If a court is willing to draw such inferences they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.

(3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.

(4) If the reason for the witness's absence or silence satisfies the court then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified.

28. I accept that the Defendant failed to bring any witness to corroborate her evidence that the Claimant made the promise to her and Mark in 2013 that he would transfer the disputed lands to them after the 5 years' restriction in his title document had passed and it was based on that promise she and Mark started to construct the disputed house. The Defendant admitted in

cross-examination that she was aware that part of the Claimant's case against her was that he did not promise to give the disputed lands to her and Mark. However, I am not prepared to make any adverse inference for the Defendant's failure to call any witness since her evidence was that the Claimant's promise was made to her and Mark. Therefore, she was the best person to give evidence on the said promise.

29. In any event, the Defendant did not need to bring a witness to corroborate her evidence since the Claimant's own receipt dated December 2014 supported the Defendant's case that she knew the Claimant before 1 January 2015. The entire basis of the Claimant asserting that he did not make any promise to Mark and the Defendant was on his assertion that he first met the Defendant on the 1 January 2015 by which time he was already constructing the disputed house. However, the Claimant's own documents proved that he was not a witness of truth since the receipts dated December 2014 which he annexed to his pre-action letter showed that in December 2014 the Defendant was purchasing materials for the construction of the disputed house. Therefore, it was more probable that the Claimant knew the Defendant before 1 January 2015 and that he knew that she was purchasing materials for the construction of the disputed house in December 2014 since the Claimant had promised her and Mark that he would transfer the disputed lands to them after the 5 years' restriction had passed.

30. Further, based on the evidence of both parties, Mark provided the $21,000.00 to the Claimant and the Claimant repaid Mark the said sum before Mark passed away. In my opinion, it was more probable that Mark provided the $21,000.00 to the Claimant to pay Caroni Limited since Mark

knew that the Claimant had promised to transfer to him the disputed lands and not because Mark wanted to improve his credit rating.

31. Lastly, the Claimant admitted that Mark was his only son and he shared a close relationship with him. Therefore, it is more probable that when Mark told him that he was planning to marry the Defendant, the Claimant promised Mark and the Defendant that he would transfer the disputed lands to them. In my opinion, the Defendant's evidence in cross-examination that Mark wanted to get his own house did not mean that the Claimant did not promise the disputed lands to Mark and the Defendant since Mark's intention and the Claimant's promise are two separate matters.

RELIANCE ON THE PROMISE AND SUBSTANTIAL DETRIMENT

32. It was submitted on behalf of the Claimant that he used his funds to construct the disputed house on the disputed lands. Therefore, neither the Defendant nor Mark spent any substantial money in the construction of the disputed house.

33. Counsel for the Defendant submitted that the Defendant and Mark built the disputed house on the disputed lands using their own funds without any financial assistance from the Claimant.

34. The question of what constitutes "substantial detriment" was examined by the court in **Fulchan v Fulchan**[10] 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.***

[10] CV 2010-03575

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,

    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 form the subject property."

35. According to the Claimant in April 2014 he hired a contractor to start construction of the disputed house. It cost him approximately $25,000.00 in labour for the foundation of the disputed house. He hired another contractor to put up the walls in June, 2014 at a cost of approximately $45,000.00. He also hired a roofing contractor, an electrician, a mason and someone to tile the floor. He did plumbing on the outside including installation of a plastic cesspit tank, and water lines to the disputed house.

36. The Claimant testified that Mark found workers for him but he negotiated the price. Mark oversaw the work on the disputed house when he could

not. Mark also purchased materials and paid workmen, and told him what materials were needed. He said he gave Mark the money to purchase material and Mark provided him with receipts. When the Defendant and Mark moved into the disputed house the work left to do was to install ceiling tiles, plaster the master bedroom and install plumbing fittings in one bathroom. He said that no work was done inside the disputed house by the Defendant and Mark apart from moving in several items of furniture and appliances. The Claimant applied for and received approval for WASA and T&TEC connections and the bills are still in his name but he told Mark to pay the WASA and T&TEC bills while he lived in the disputed house.

37. According to the Claimant after moving in, Mark and the Defendant wanted to fence the disputed lands and he assisted Mark in purchasing some of the materials and he delivered gravel and sand for him. All material and equipment was bought before Mark died including the automatic gate, which the Defendant put up after Mark died.

38. The Claimant testified in cross-examination that he was 18 years in 1978 and while working he had a bank account and he saved some of his money. He testified that before getting married at age 25, he had already built the house he currently resides in and between 1978 and 1995 he sold fish and worked as a taxi driver.

39. According to the Claimant, he received about $14,000.00 when Caroni Limited was closed down. Between 2002 when Caroni closed down and 2014 he bought a truck and he was self-employed. To purchase the truck in 2002 he took a loan for 5 years from a bank for $30,000.00 and he borrowed some money from a friend. He had approximately $25,000.00 in the bank which was held for security up to 2007 during which period he did not have access to the security amount. He said that he borrowed the

money because he did not have it in the bank. After paying off the loan in 2007 he had saved approximately $60,000.00 in the bank. The Claimant was asked why he did not commence the construction of the disputed house in 2012 since he had paid off his loans. He responded that he was waiting to save up about $300,000.00.

40. The Claimant agreed that apart from the copy of the bank book[11] which he attached to his witness statement there were no other records of his finances. He said he was saving his money at home to build the disputed house. He could not give an estimate of how much the disputed house cost to be built. He was shown as copy of his pre-action letter where he stated that he spent $109,100.00 to build the disputed house but he said that was not the total amount spent.

41. The Claimant was also shown the 108 receipts which he attached to his pre-action letter to the Defendant as proof that he purchased the materials to construct the disputed house. He accepted that only 2 of the receipts he was relying on to prove that he paid for the construction of the disputed house were in his name. He accepted that there were receipts in Mark's name. He said he never added up the sums in the said receipts but he accepted that the total was $289,482.90.

42. The Claimant also accepted that he did not have a receipt for the $25,000.00 labour for the foundation. He accepted that Mark drew out the plan for the contractor and he had no idea what the plan looked like but he knew how many bedrooms and other rooms were in the disputed house. He also accepted that based on Mark's Board of Inland Revenue document that Mark worked for approximately $382,000.00 in 2015.

[11] PT 4 of the Claimant's witness statement.

43. The Defendant testified that in 2014, she and Mark began construction of the disputed house which eventually comprised of 3 bedrooms, 2 bathrooms, open concept living and dining area, kitchen and laundry room, gallery and car port. She said that at the time of the construction both she and Mark were both employed so there was no need for the Claimant to purchase any materials or labour. She testified that she was employed as an engineering technician at POWERGEN at that time and her income was approximately $15,000.00 per month and Mark was a refinery operator at PETROTRIN since 2013 and his salary was approximately $21,000.00 per month. She attached copies of both the pay slips for her and Mark to her witness statement.[12]

44. According to the Defendant she drafted and designed the layout of the disputed house and she financially contributed to the construction and maintenance of it. She purchased household appliances and furniture and also made monthly payments of $5000.00 for 12 months to Mark since he was overseeing the purchase of material and labour. She said that together she and Mark purchased material for and supervised the construction for the foundation and blockwork; garage and driveway; columns and beams; roof and ceiling installations; installation of tiles; installation of kitchen counters; installation of toilet bowls, tanks, shower panels, tiles, vanity set and cupboards; installation of water tanks; installation of water pumps; installation of an automatic gate; three bedrooms; fencing of the disputed lands and plumbing of the disputed house.

45. The Defendant testified that Mark paid the Claimant for all the materials he purchased and transported for the construction of the disputed house.

[12] SR 4 of the Defendant's witness statement

She said that the receipts, which were attached to the Claimant's pre-action letter as "C" and dated 16 November 2016 were made out in Mark's name and were expenses incurred by Mark.

46. The Defendant also testified that the Claimant was present during the construction of the disputed house and he assisted and monitored the workmen as Mark worked a shift system. The Claimant also assisted in transporting some of the loads of gravel and sand purchased by Mark since the Claimant owned a truck. She stated that the foundation for the disputed house was cast using ready-mix cement.

47. According to the Defendant although all the utility bills were in the Claimant's name they were paid by Mark including the reconnection fee for water from WASA and the supply of electricity from T&TEC.

48. In cross-examination, the Defendant testified that it took approximately 1 year for the shell of the disputed house to be completed. She confirmed that her financial contribution to the disputed house was $5000.00 per month for approximately 1 year but that if she got back the $60,000.00 she expended she would not be compensated since she said she spent time, effort and labour in drafting the plan and supervising the construction of the disputed house.

49. The Defendant was asked if she is a draughtsman. She indicated that she had a Civil Engineering Diploma and she was currently pursuing her Bachelor's in Civil Engineering. She stated that she used an AutoCAD programme on her computer to draw up the plans for the disputed house and she accepted that she did not produce any proof to support this assertion. She stated that she had applied for Letters of Administration of

Mark's estate but in the instant action she was not representing his estate but she was acting in her personal capacity.

50. With respect to Mark's bank accounts, the Defendant stated that she was aware that Mark had a savings account with Scotiabank and a debit card for the account. She confirmed that she did not have Mark's bank records since they were at his parents' house where he lived before his marriage. According to the Defendant, during the year she was married to Mark, his records which were electronic were discarded.

51. The Defendant did not agree that most of the bills for the construction of the disputed house were paid with cash. Instead she said that they would have been paid with a debit or credit card. She accepted that she did not have any documents to show that the money for the construction of the disputed house was from Mark's bank account. However, she denied Mark got the money in cash from the Claimant to pay for the construction of the disputed house. The Defendant also denied that the Claimant gave Mark the responsibility for supervising the construction of the disputed house as Mark was at home.

52. In my opinion, the Claimant's evidence that Mark supervised the construction of the disputed house; Mark got workers for the construction and Mark got the plan for the disputed house proved that Mark expended considerable time in the construction of the disputed house. It is also more probable that since Mark and the Defendant were going to live in the disputed house after their marriage, that the Defendant upon instructions from Mark, drew up plans for the disputed house as asserted by the Defendant. In any event, there was no evidence from the Claimant to state otherwise since by his own admission he did not know who drew up the plan for the disputed house.

53. The majority of the receipts for the construction of the disputed house, which the Claimant relied on to prove he financed the construction of the disputed house, by the Claimant's own admission were in Mark's name which is prima facie proof that they were paid for by Mark. The question is whether Mark had the means to do so or whether he used money, he got from the Claimant to pay for the material and labour.

54. The financial or banking records adduced by both parties were deficient. The Claimant's evidence was that he has been working since 1978. However, he did not provide any bank statements for the period immediately before or during the construction of the disputed house to prove that he was able to finance the construction of it. His evidence that he was saving up and that he had the sum of $200,000.00 in cash saved at his home was not plausible and uncorroborated and as such I did not accept that he was a witness of truth on this evidence. In any event, the Claimant did not strike me as a man of significant means since in 2002 he had to take 2 loans to purchase the truck which he used as his source of income.

55. The Defendant also did not provide any bank records for Mark to prove that Mark financed the construction of the disputed house. The only documents of Mark's ability to finance the construction of the house were his Return of Emoluments Paid and PAYE Deducted for 2015 which the Claimant did not challenge, and Mark's salary statement from his employer PETROTRIN for September 2016 which the Claimant also did not challenge. Indeed the Claimant did not dispute in cross-examination that Mark earned at least $21,000.00 per month and for 2015 Mark earned $367,971.75 before deductions. In my opinion, these documents proved that Mark and the Defendant had the means to finance the construction

of the disputed house and they did not have to wait for the Claimant to give them any money to purchase materials and pay for labour.

56. In my opinion the failure by the Defendant to provide proof of the computer program which she used to draw up the plan for the disputed house was not material since the Claimant admitted in cross-examination that Mark had the plan for the disputed house drawn up for the contractor. Therefore, the Claimant was not in any position to challenge the Defendant's evidence that she drew up the plan for the disputed house.

57. In any event, the Claimant did not call any persons whom he said he hired to construct the disputed house as witnesses to support his case that he built the disputed house.

58. For these reasons, I am satisfied that Mark and the Defendant both spent time, effort and finances in the construction of the disputed house.

IF SO, WHAT IS THE EXTENT OF THE SAID INTEREST?

59. It was submitted on behalf of the Claimant that the Defendant's evidence in cross-examination was that she was acting in her personal capacity and not representing the estate of her husband Mark. In any event, the Defendant does not have a Grant in the estate of Mark, not even a limited Grant and the Defendant conducted the matter in her individual capacity. Counsel for the Claimant argued that the Defendant may be the sole beneficiary of the estate of Mark, however without a Grant; the Defendant is merely a beneficiary in waiting of an intestate. Therefore, the Defendant cannot maintain a counterclaim on behalf of the estate of Mark but merely on her own behalf.

60. Counsel for the Defendant argued that under the rules of intestacy of the **Administration of Estates Act**[13]the Defendant is the sole beneficiary of Mark's estate and not a beneficiary in waiting as submitted by the Claimant. It was also submitted that the Defendant was sued in her personal capacity and not as a beneficiary of Mark's estate and that the Claimant's contention that the Defendant's counterclaim cannot be sustained because she cannot represent the estate of Mark was ill conceived since the Claimant conceded the Defendant's capacity by responding with a Defence to the Counterclaim without raising this as an issue. Counsel also submitted that section 24 of the **Administration of Estates Act** permits the Defendant to be the representative of Mark's estate as the trust holder until distribution.

61. Section 24 of the **Administration of Estates Act** provides that:

> "24(1) Where an intestate dies leaving a surviving spouse but no issue, his estate shall be distributed to or held on trust for the surviving spouse absolutely."

62. I accept that the Defendant is acting in her own capacity and not as the legal personal representative of Mark's estate but as the spouse of Mark she is the person who is first entitled to apply for a Grant of Letters of Administration of his estate and more importantly, she is the sole beneficiary of Mark's estate. I have already concluded that both Mark and the Defendant had acquired an equitable interest in the disputed lands. For this reason, I am of the view that it would be unjust and inequitable not to make the order in the counterclaim which the Defendant seeks with respect to the disputed lands recognising this equitable interest both in her own right and as the sole beneficiary of Mark's estate.

[13] Chapter 9:01

IF NOT, HAS THE CLAIMANT PROVEN THAT HE HAS SUFFERED ANY LOSS AND IF SO WHAT QUANTUM?

63. Having found that the Claimant promised that he would transfer the disputed lands to the Defendant and Mark and based on this promised Mark and the Defendant spent money, time and labour on the construction of the disputed house on the disputed lands, I find that the Claimant has failed to prove that he suffered any loss.

HAS THE CLAIMANT DEMONSTRATED THAT HE IS ENTITLED TO POSSESSION OF THE DISPUTED MOTOR VEHICLE?

64. The Claimant's case was that he purchased the disputed motor vehicle from Jason for the sum of $120,000.00 and he gave Mark permission to use it until he could afford to purchase his own motor vehicle. The disputed motor vehicle is still in Jason's name. Upon Mark's death, his permission ended and in September 2016 he called upon the Defendant to deliver the disputed motor vehicle to him but she has refused to do so.

65. The Defendant denied any involvement or contribution from the Claimant with respect to the purchase of the disputed motor vehicle.

66. The evidence to prove the Claimant's assertion that he financed the purchase of the disputed motor vehicle were from the Claimant and Jason.

67. The Claimant stated in his witness statement that around September 2014 Mark told him that he wanted to purchase the disputed motor vehicle from his cousin Jason, who is his wife's nephew. Mark also told him that he did not have the money to purchase the disputed motor vehicle and he gave Mark the money to do so. He also told Mark that he could use the disputed

motor vehicle and that they never had any discussions about having the disputed motor vehicle transferred to the Claimant's name because of their close family relationship with Jason.

68. In cross-examination, the Claimant testified that he used cash which he had at home to give Mark to buy the disputed motor vehicle. He did not know if Mark paid Jason via cheque or cash for the disputed motor vehicle but Mark brought an original receipt for him, which he still had. He confirmed that it was only after Mark died he wanted the disputed motor vehicle returned to him since it was purchased with his money. He confirmed that he had told Mark to put Mark's name on the insurance for the disputed motor vehicle.

69. Jason testified that around the first week of September, 2014 Mark visited his home and saw the disputed motor vehicle. Mark returned a couple days later to check out the disputed motor vehicle and to test drive it and then Mark told him he wanted to buy it.

70. According to Jason on 17 September, 2014 Mark came to his house to purchase the disputed motor vehicle with a manager's cheque for $120,000.00. Mark told him to make the receipt in his and the Claimant's name. He made out the receipt and signed it. He attached a copy of the receipt to his witness statement[14].

71. Jason also testified that he had seen the receipt produced by the Defendant for the sale of the disputed motor vehicle in the sum of $100,000.00 with a signature resembling his but he denied that he had prepared that receipt and that the signature on it was his. Jason confirmed that the disputed motor vehicle is still registered in his name and he

[14] See J.R 1 attached to the witness statement of Jason Roopnarine

attached a copy of the certified copy for the disputed motor vehicle which showed that he is still the registered owner.

72. In cross-examination Jason confirmed that he stopped speaking to the Defendant after Mark died. He also stated that when Mark visited his home to purchase the disputed motor vehicle, he did not indicate for whom he was purchasing it, whether he was purchasing it for the Claimant, or where he got the money to purchase it.

73. Jason also testified that he could not recall who wrote the receipt for the purchase of the disputed motor vehicle. When Jason was shown the receipt for $120,000.00 he said that it was in his handwriting but that the receipt which was produced by the Defendant for $100,000.00 was not his handwriting. When asked what was behind the receipt for the $100,000.00, Jason confirmed that it was a copy of his National Identification Card. He disagreed that the receipt produced by the Defendant was written by Mark and signed by him. However, he admitted that the signature could be his. He agreed that the receipt produced by the Defendant was part of the bundle of documents used by Mark to get insurance for the disputed motor vehicle which he agreed was in Mark's name.

74. The Defendant testified that Mark purchased the disputed motor vehicle from Jason on 17 September 2014 for $100,000.00 and it was insured in Mark's name with Nagico Insurance Company in September, 2015. She attached a copy of a receipt and a copy of Jason's National Identification Card[15] to her witness statement. According to the Defendant, after Mark's death in September, 2016 the Claimant threatened to take the disputed

[15] SR 6 to the Defendant's witness statement

motor vehicle from her without her consent but the disputed motor vehicle remains in her possession and Jason has never attempted to take it from her.

75. The Defendant's evidence on the disputed motor vehicle was not challenged in cross-examination.

76. Based on the evidence of all the witnesses on the disputed motor vehicle, it was common ground that the disputed motor vehicle was sold by Jason to Mark and that it was not officially transferred from Jason's name.

77. In my opinion, both the Claimant and Defendant's evidence were self-serving. They both produced a receipt for the disputed motor vehicle to support each parties' case. The receipt produced by the Claimant stated that the sum of $120,000.00 was received from both Mark and the Claimant and the receipt produced by the Defendant stated that the sum of $100,000.00 was only received from Mark.

78. Jason's evidence in chief was clearly an attempt to assist the Claimant's case since he is related to him and he admitted in cross-examination that he has not been on speaking terms with the Defendant since Mark passed away.

79. While Jason may not have known if Mark or the Claimant financed the purchase of the disputed motor vehicle, he certainly would have known if he had received $120,000.00 or $100,000.00 for the disputed motor vehicle and he would have known if he had given Mark a copy of his National Identification Card in order to facilitate Mark having the disputed motor vehicle insured in Mark's name.

80. In my opinion, Jason was not a witness of truth when he said in his evidence in chief that the receipt produced by the Defendant did not contain his signature since he admitted in cross-examination that behind the receipt was a copy of his National Identification Card and that the receipt produced by the Defendant was part of the bundle of documents used by Mark to get insurance for the disputed motor vehicle which he agreed was in Mark's name. For this reason, I am of the view that the receipt produced by the Defendant was the receipt which Mark received from Jason when the latter sold it to Mark and since it was made out only in Mark's name it supported the Defendant's position that Mark was the beneficial owner of the disputed motor vehicle.

81. I have noted that the Defendant has not sought any relief in the counterclaim with respect to the disputed motor vehicle since she already has possession of it. However, having found that Mark was the beneficial owner of the disputed motor vehicle, it is only just for me to direct Jason to transfer the disputed motor vehicle to the legal personal representative of Mark's estate upon the production of the relevant Grant of Letters of Administration.

CONCLUSION

82. I have concluded that the Claimant knew the Defendant before the 1 January 2015 and that it was more probable that when Mark told him that he was planning to marry the Defendant, the Claimant promised Mark and the Defendant that he would transfer the disputed lands to them.

83. I am satisfied that the Defendant has successfully proven that based on the Claimant's promise that he would transfer the disputed lands to Mark and the Defendant, they constructed the disputed house on the disputed lands

using their own finances and spending considerable time and effort in its construction.

84. While I accept that the Defendant is acting in her personal capacity and not as the representative of the estate of Mark, having already concluded that the Defendant and Mark are entitled to the equitable interest in the disputed house, it would only be just and equitable to make the order in the counterclaim which the Defendant seeks with respect to the disputed lands recognising this equitable interest both in her own right and as the sole beneficiary of Mark's estate.

85. I am also satisfied that based on the evidence before the Court, that Mark was the beneficial owner of the disputed motor vehicle. Upon the Grant of Letters of Administration to the legal personal representative of Mark's estate, the disputed motor vehicle ought to be transferred to the said legal personal representative.

ORDER

87. The Claimant's action is dismissed.

88. Judgment for the Defendant on the counterclaim namely:

(a) The Defendant is entitled to possession of All and Singular that certain piece or parcel of land situate in the ward of Savanna Grande in the island Trinidad comprising four hundred and fifty three point four square metres (453.4 sq metres) and bounded on the North partly by Road Reserve 13.00 meters wide and Lot 494 and on the South partly by Lot 491 and 496 and on the East by a Road Reserve 13 metres wide and partly by Lot 496 and on the West by Lot 492 and partly by Lot 494 and which said parcel of land is shown as Lot 495 on the plan

annexed and marked “A” to the Deed of Lease Number DE 2012053640D001 and known as the reform Residential Site.

(b) The Claimant is to transfer the disputed lands to the Defendant.

89. It is also ordered that Jason Roopnarine is to transfer the disputed motor vehicle, TCP 8335, to the legal personal representative of Mark’s estate upon the production of the relevant Grant of Letters of Administration.

90. The Claimant to pay the Defendant’s costs of the claim and the counterclaim in the sum of $28,000.00.

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Margaret Y Mohammed

Judge