

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV 2017-01999**

**BETWEEN**

**NEELA GOOLCHARAN**

**Claimant**

**AND**

**GUNNESS RAGOO**

**(Representative Defendant appointed to represent the interest of THE ESTATE  
OF TYRONE RAGOO (DECEASED) By Order of Madame Justice M. Mohammed  
dated the 6 October, 2017)**

**Defendant**

**Before the Honourable Madame Justice Margaret Y Mohammed**

**Dated the June 07, 2019**

**APPEARANCES:**

Ms Jessica Maicoo Attorney at law for the Claimant.

Ms Merle Jennifer Dennis Attorney at Law for the Defendant.

**JUDGMENT**

1. Financial contributions made by persons to property have and will continue to engage the Court's attention once there are no proper documentary arrangements put in place before, during and after the said contributions. Far too often, the Court in its equitable jurisdiction is asked

to intervene to resolve such disputes. In this action the Court's equitable jurisdiction is invoked by the Claimant ("Neela") against the estate of her step father Tyrone Ragoo ("Taran") with respect to the ownership of a parcel of land located at LP 229 Lot 70 Caroni South Bank Road, St. Helena Village, Piarco comprising approximately 5560 square feet with a dwelling house situate thereon ("the property").

### **THE CLAIM**

2. According to Neela, her mother Calawatti Goolcharan ("Calawatti"), who died in November, 2015 was in a relationship with Taran who died intestate in May 2014. The Defendant ("Gunness") is the son of Taran who was the owner of the property.
3. Neela resided with Calawatti and Taran from 1993 to 1997 during which time she was the sole permanent and regularly employed breadwinner until she migrated. Calawatti worked one to two weeks a month as a seamstress and she and Taran also earned an income from making and selling snacks.
4. Neela contends that the income of Calawatti and Taran was insufficient to maintain the household and she was primarily responsible for the payment of the utility bills and other household expenditure. Upon her return to Trinidad in 2002, she again assisted with the payment of the household expenses as and when required or requested by Calawatti and Taran although she was not living at the property.
5. Sometime in 2002 or 2003 Taran approached Neela and indicated that he was in default of his mortgage payments for the property. Taran asked Neela to pay off the remaining sum due on the mortgage and that he

intended to leave the property to Neela upon his death. Neela was not in a position to pay off the mortgage debt but she agreed to assist in paying the monthly mortgage instalments to the National Housing Authority (“NHA”). Taran told Neela that the property would be transferred into her name when the mortgage was satisfied and released. Neela made payments to the mortgage at the Point Lisas office of the then NHA either directly or by giving Taran the cash to pay the mortgage.

6. In 2003 Taran suffered a debilitating stroke which rendered him bedridden. For several years Taran was unable to drive and he remained unemployed and the income of Calawatti was insufficient to manage the household. Neela continued to be the sole contributor to their expenses. During this period Taran began to refer to Neela as his daughter and began making references to giving her the property on account of her assistance. He recovered substantially by late 2004 but he was unable to work and continued to have mobility and sight problems.
7. In 2006 Calawatti suffered a stroke and aneurism. Calawatti was first taken to a home but Neela decided to remove her and have her live in Neela’s home and became her primary caregiver from July 2006 to May 2013. Neela made substantial contributions to the personal and household expenses of Taran and she was solely responsible for the care and finances of Calawatti.
8. By 2010 Calawatti had recovered and she began to visit and stay on the property by Taran. Neela continued to make substantial contributions to the living expenses of both Calawatti and Taran including utility bills, motor insurance and repairs, medical expenses and supplies, food and groceries and any other expenses they requested her to pay.

9. In early 2011 Taran told Neela that the NHA had written to him indicating that he was in default of the mortgage payments and it required him to make payment of the sum owing failing which the NHA would seek vacant possession of the property. Calawatti and Taran requested Neela to pay off in full the sum due and owing under the mortgage, to pay all bills, household, and any other expenses including medical expenses in exchange for which Taran would transfer the property to Neela. Neela agreed to do so on the condition that Calawatti and Taran continue to live in the property until their deaths.
10. Neela gave to Taran a cheque drawn on her husband's account, Mr Mark Seepersad ("Mark"), at RBC Bank in the amount of \$35,000.00 to pay off the NHA mortgage. Shortly after the payment of the NHA mortgage Taran visited Neela's husband, a practising attorney at law, and in the presence of Calawatti, he indicated that he wanted to transfer the property to Neela. Taran delivered the title Deed and Deed of Release of mortgage to Neela's husband, Mark However, the transfer was never done as Mark informed Taran that he would have another attorney do the transfer so as to avoid any conflict of interest, and because the original memorandum of release had not yet been provided by the mortgagee.
11. In 2012 Meera Ramdeo ("Meera") another daughter of Calawatti approached her and Taran with a proposal to sell the property and use the proceeds to purchase another property to be vested in the name of Meera and the remaining proceeds used to provide for the financial needs of Calawatti and Taran. In the same year, Sandor Gary Goolcharan ("Sandor"), son of Calawatti approached her and Taran and asked for his son to live in the property. In both instances, Taran refused indicating that he had already made provisions to give the property to Neela.

12. Following the death of Taran, Gunness asked Neela for permission to hold the wake, funeral and prayer services for Taran at the property. Gunness informed Neela that he understood that the property was promised to her and it was her property. Gunness also asked Neela for Taran's car for the purpose of selling it so as to provide for funeral expenses and access to Taran's Bank account card.
13. Calawatti was taken in by Sandor and Meera after Taran's death and she was prevented from speaking to Neela by phone.
14. In early November, 2015 Neela had a meeting with Gunness and Ruby and she informed them that no formal documents had been prepared in accordance with the agreement she had with Taran. She informed them that she intended to make a claim for the property based on her contributions to the living expenses and mortgage payments and invited Gunness to apply to represent the estate of Taran. After the said meeting Gunness commenced occupation of the property installing third parties to reside therein and conducting construction works primarily to the interior of the property.
15. By letter dated 7 October, 2016 the attorney at law for Neela wrote to Gunness calling upon him to cease any and all works on the property and informing him of the instant claim. No response was provided.
16. Neela contends that based on the matters aforesaid Gunness is estopped from denying Neela's right and interest in the property since it is unconscionable and inequitable; the estate of Taran remains liable and holds the property in equity for Neela; and Taran's estate has been

unjustly enriched at the expense of Neela who acted in good faith upon the said representations.

17. Accordingly, Neela seeks the following order from the Court:
  - (i) A Declaration that Neela is beneficially entitled to the property and that the heirs and/or assigns of Taran do hold the property as constructive trustee for Neela.
  - (ii) An order that Taran his heirs or assigns do transfer the property to Neela free from all encumbrances within 28 days of the order herein.
  - (iii) Alternatively, that Neela is entitled to an equitable lien or damages in lieu thereof together with interest at the discretion of the Court.
  - (iv) Costs.

#### **THE DEFENCE**

18. Guinness has disputed the allegations of the promise made by Taran to Neela that he would give her the property since she was assisting him in paying the mortgage instalments; that Neela paid off the mortgage; Neela paid all the expenses for Taran and Calawatti after 2011 and that Taran and Neela shared a close relationship. Taran was a permanent government worker employed by the Central Marketing Agency as a truck driver until his retirement in late 1980s where he was paid terminal benefits. Up until the time of Taran's death he was in receipt of National Insurance payments in the sum of \$3,000.00 monthly and government pension in the sum of \$1,000.00 monthly. Taran frequently visited the NHA office at Point Lisas. Guinness purchased all Taran's clothes, maintained Taran's cars and assisted him in paying his bills. Taran never recovered substantially from the stroke he suffered in 2003. His speech

was severely affected by the stroke, and due to his age, he lost most of his teeth, which made it difficult for him to speak. Taran did not share a close relationship with any of Calawatti's children including Neela. Calawatti was not married to Taran as he had never made applications for the dissolution of his first or second marriages. No application for a co-habitational order was made by Calawatti. A search of Taran's estate showed that Calawatti had applied for Letters of Administration, which caused Guinness to instruct his attorney at law to file caveat preventing the granting of same.

### THE ISSUES

19. The issues to be determined are:
  - (a) Whether Taran promised to give the property to Neela.
  - (b) If yes, whether Neela relied on this promise to her detriment.
  - (c) If yes, whether Neela is entitled to the relief sought in equity due to delay.

### THE LAW ON PROPRIETARY ESTOPPEL

20. It was not in dispute that Neela has grounded her claim in equity and in particular on the doctrine of proprietary estoppel. There was common ground by the parties on the law relating to proprietary estoppel. The elements of proprietary estoppel were repeated by Mendonca JA in **Nester Patricia Ralph and Esau Ralph v. Malyn Bernard**<sup>1</sup> at paragraph 38 where he referred to the dicta in **Thorner v Major and Ors**<sup>2</sup> where Lord Walker pointed out that "while there is no universal definition of proprietary estoppel, which is both comprehensive and uncontroversial, that most scholars agree that the principle of proprietary estoppel is based on "three elements, although they express them in slightly

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<sup>1</sup> Civil Appeal No. 131 of 2011

<sup>2</sup> [2009] UKHL 18

different terms; a representation or assurance made to the claimant; reliance on it by the claimant and detriment to the claimant in consequence of his (reasonable) reliance..." For a claimant therefore to properly plead his case in proprietary estoppel, he must set out those three elements; a representation or assurance, reliance on that representation or assurance, and detriment as a consequence.

21. In **Mills v Roberts**<sup>3</sup> Jamadar JA explained that the elements of proprietary estoppel must be examined holistically in the round and are not "watertight compartments". The Court will examine the alleged inducement, encouragement and detriment to determine if they are both real and substantial and the Court "must act to avoid objectively unconscionable outcomes". Jamadar JA stated at paragraphs 19 and 22 that:

"19. In respect of the law of proprietary estoppel we are more troubled about the correctness of the application of the law. Whereas in promissory estoppel there must be a clear and unequivocal promise or assurance intended to effect legal relations or reasonably capable of being understood to have that effect in the law of proprietary estoppel there is no absolute requirement for any findings of a promise or of any intentionality....

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

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<sup>3</sup> CA T243 of 2012

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.”

22. Rajkumar J (as he then was) noted in **Fulchan v Fulchan**<sup>4</sup> that not each and every contribution made to a property would give rise to an equitable interest. Rajkumar J (as he then was) at pages 7 to 8 stated what constitutes “substantial detriment” as:

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

See **Snell’s Principles of Equity 31<sup>st</sup> 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

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<sup>4</sup> CV 2010-03575

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.”

23. In order for Neela to succeed in her claim she must satisfy the court on a balance of probabilities that Taran as the title owner of the property promised/assured/represented/encouraged her in 2002 that he will give her the property if she paid the mortgage instalments and that in 2011

this said promise/assurance/representation/encouragement was varied by agreement between Taran and Neela whereby the property would now be transferred to Neela upon the satisfaction of the mortgage by way of the lump sum payment (as opposed to paying instalments as had been agreed in 2002) and as long as she continued to meet the personal and household expenses of Taran and Calawatti. Neela relied and/or acted upon the said promise with its reasonable expectation and belief and she acted to her detriment by expending monies or deploying her resources in reliance on Taran's promise.

24. Based on the pleadings there were different versions of the events concerning Neela's close relationship with Taran; Taran's promise to transfer the property in 2002 and 2011 to Neela; Neela's payment of the mortgage instalments and later her payment of the lump sum to pay off the mortgage. The determination of the differences is fact driven. According to the learning in **Horace Reid v Dowling Charles and Percival Bain**<sup>5</sup> when determining questions of fact the Court must weigh the versions of the events, on a balance of probabilities, in light of the evidence and in doing so the Court is obliged to check the impression of the evidence of the witnesses on it against: (1) contemporaneous documents; (2) the pleaded case; and (3) the inherent probability or improbability of the rival contentions.

#### **Neela's evidence**

25. Neela relied on the evidence of 3 witnesses to support her case. She gave evidence and she called her husband Mark and Mr Rondell Baxter ("Mr Baxter").

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<sup>5</sup> Privy Council Appeal No. 36 of 1987.

26. Neela testified that Taran promised to give her the property in 2002 and again in 2011 if she paid off the mortgage and took care of Taran and Calawatti for years. According to Neela in 1992 when she was 19 years old, she started to live with Taran and Calawatti at the property. She moved out of the property in 1993 and returned in the latter part of that said year where she lived until May 1997. Neela stated that during this period she paid all the bills since Taran and Calawatti who earned their income from selling nuts and sewing spent it on drinking and liming.
27. Neela testified that during her early years while she lived at the property, she noticed that Taran's visitors were only friends but not family members. She testified that one of the reasons Taran said he was not close to his children or the rest of his family was because Gunness had started a relationship with his then wife, Sheila's daughter, and that he (Taran) was against it. Neela clarified at paragraph 13 of her Witness Statement where she stated that Gunness wife "Ruby" was the step-daughter of Taran and not his daughter which she had pleaded at the Amended Statement of Case filed on the 22 December, 2017. In cross-examination, Neela stated that Taran told her about the 5 children he had with Roseanne, including Gunness and that he had only recently started to communicate with them since Calawatti had met Gunness and she was trying to mend differences.
28. According to Neela in 1997, she emigrated to London where she got married in 1998. While she was living abroad, she did not assist Taran and Calawatti financially. In 2002, Neela returned to Trinidad from London and between March and September 2002 she lived at the property. Upon her return, she observed that Taran and Calawatti had continued

drinking. She said that she assisted with the purchase of groceries and the payment of bills while she lived with Taran and Calawatti.

29. Neela testified that in September 2002 she moved out of the property to live with her husband at his parent's house until 2006 and thereafter she moved to another house in Freeport. Neela stated that even after she moved out from living with Taran and Calawatti she still continued to assist them by paying bills and purchasing groceries. She continued to visit them at least twice a month and sometimes she also gave them cash. In cross-examination Neela stated that from 2002 to 2006 she visited the property very often but from 2006 to 2009 she was not there since Calawatti was living by her so she was not able to state who visited Taran at that time.
30. Neela stated that sometime after she had moved out from the property, Taran brought a letter and asked her to give it to her husband to look at. She read the said letter which was from the NHA informing Taran that the mortgage for the property was in default and that he was owing about \$70,000.00. She said that before she read the said letter, she was unaware that Taran had a mortgage for the property with the NHA and that it was in arrears.
31. Neela testified that Taran and Calawatti asked her to pay off the mortgage for them because they did not have the money; she was the only person assisting them financially and they were afraid of losing the property. According to Neela, Taran promised her in front of Calawatti that if she paid off the mortgage, he would give her the property. In cross-examination Neela confirmed that she agreed to assist Taran to pay the mortgage since she was accustomed to paying bills for them; she did

not want Taran and by extension Calawatti to lose the property and that Taran had promised to give her the property. Neela also stated in cross-examination that even if Taran had not promised to give her the property she would have agreed to help him pay the mortgage or contribute to the mortgage payments if she had the cash. However, she was not prepared to enter into a permanent commitment for something that was not going to benefit her.

32. Neela stated that at that time she did not have a source of income and a place of her own as she was living by her in-laws. She approached her husband, Mark for assistance. However, Mark was unable to assist. Taran spoke with NHA officials and he was able to obtain a payment plan to pay off the mortgage by monthly instalments. According to Neela, she then commenced paying approximately \$400.00 monthly under a new payment plan for the mortgage but she did not see any documents as she did not ask for any and she just took it as Taran told her.
33. Neela testified that it was not part of the arrangement in 2002 that she would pay any bills and expenses for Taran and Calawatti. She said that she did this on her own which she continued. In cross-examination, Neela testified that the payments that were made based on the promise of Taran to give her the house were the mortgage payments of approximately \$400.00 per month.
34. According to Neela, when she assumed full responsibility for the mortgage payments Taran started referring to her as his daughter. There was nothing in writing to confirm Taran's promise to give her the property because that was not how she dealt with Taran and Calawatti. Neela said that she and Taran visited the NHA Office at Pt. Lisas to make

the mortgage payments until it was closed and then she started paying the mortgage instalments at Republic Bank in Couva. She continued paying other bills of Taran and Calawatti. However, Taran insisted on keeping all bills and receipts so she gave him the receipts she received when she paid the mortgage and therefore the bills she had were kept by mistake.

35. Neela testified that in 2003, Taran suffered a stroke and he became bedridden. Taran stopped drinking and he recovered within a few months. However, Taran's speech was slurred a bit, he walked with a shuffle but he was able to take care of himself. Neela testified that she did not see or hear from Taran about his children helping him after the stroke.
36. According to Neela, Calawatti got ill in May 2006 and she assumed full responsibility for her care and treatment between 2006 to 2014. From 2006 to 2011 she took on greater responsibility for Taran and his expenses. In 2008, Calawatti started visiting the property more and more and sometimes she spent a couple of weeks there. In this said year, Neela was diagnosed with a medical condition.
37. Neela testified that in 2011, while she was still making mortgage payments, one morning Taran came to see Calawatti on a Friday in April and he gave Neela a letter from the HDC (formerly the NHA). Taran said that the HDC wrote indicating that he had to leave the property by a time if they did not pay off the mortgage. According to Neela, when she read the HDC letter, she realized that if Taran did not pay, he would lose the property. However, she could not understand why the mortgage payments were still in arrears since she was paying them. Taran

explained that the payments which she was making were for interest only.

38. Taran asked Neela to pay off the mortgage. She discussed with Taran an option of selling the property to purchase another house closer to her so that it would be easier for her to assist him and care for Calawatti. She also asked Taran if he wanted to change his first promise to her made in 2002. Neela said that Taran indicated “no” because he wanted to live in the property and he did not want to sell it for several reasons.
39. According to Neela, Taran told her that he wanted her to pay off the mortgage and continue as before paying the bills and expenses for him and Calawatti which she was doing already. Neela stated that in this new arrangement, she was not going to be paying any more instalments, but a lump sum and that the arrangement with the property being given to her by Taran after the mortgage was paid off was not changed. Neela stated she agreed and she then spoke to her husband. Neela stated that she decided to pay off the mortgage so that Calawatti and Taran had a roof over their heads and that after it was paid off, she and her husband would organize to transfer the property from Taran to her. In cross-examination Neela explained the difference between the first arrangement in 2002 and the second arrangement in 2011 was that in the 2002 arrangement when she paid off the mortgage the property could have been transferred to her when the mortgage was paid off, whereas in the 2011 arrangement there was no waiting period.
40. Neela stated that her husband Mark wrote out two cheques dated 29 April 2011 and Taran collected it on the weekend. She recalled that 1 cheque was for \$35,000.00 but she did not recall the sum of the other

cheque. She stated that Mark cancelled one cheque and wrote another cheque since Taran wanted some cash for his car insurance. She stated that the second cheque was made out to Taran and it was in the sum of \$35,000.00. She stated that Mark told Taran to deposit the cheque for \$35,000.00 into his account and then pay HDC. In cross-examination Neela stated that after she gave Taran the cheque to pay off the mortgage he returned and showed her the receipt where he paid the HDC. She stated that after Taran paid off the mortgage, he visited her and asked her to arrange for her husband, Mark, an attorney at law, to have the property transferred from him to her. Later in that year, Taran brought some documents for Mark to transfer the property to her. Neela stated that while Taran continued to live in the property she assisted him financially in fixing the ceiling and the roof. According to Neela, the property was never transferred during the lifetime of Taran and Calawatti. Taran died in May 2014 and Calawatti died in October 2015. In cross-examination Neela explained that the property was supposed to be transferred in 2011 but since she was very ill and out of the country a lot, she left it up to her husband.

41. According to Neela she did not attend the funeral service of Taran, neither did she pay for his funeral expenses since she had her first appointment for cancer treatment in St. James so she had to keep it.<sup>6</sup> Neela said the reason given for not attending the funeral service of Calawatti was safety concerns since she arranged to stop the funeral. She said that Taran was buried by Gunness with funds from a bank account of Taran. In cross-examination Neela stated that Gunness made the arrangements for Taran's funeral. She gave Gunness the bank card

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<sup>6</sup> Paragraph 78.

and PIN for Taran's account. She denied that Gunness used the bank card and that he had the PIN because he was accustomed taking care of Taran.

42. Neela stated that Gunness recognized her as the owner of the property after the death of Taran because he asked her for permission to use it on more than one occasion. However, Gunness' demeanour changed after a meeting on the 17 October 2015<sup>7</sup> where her husband, Mark, an attorney at law, explained legal "things" to everyone present namely Gunness and his wife Ruby. Mark indicated that Neela was going to claim for the property on the basis of an agreement between herself and Taran since 2002 and 2011 when she paid off the HDC mortgage.
43. At this meeting, Neela stated that after Taran and Calawatti were married she had paid for Wills to be done by Taran and Calawatti and that she expected someone to produce the said Wills<sup>8</sup> but none were produced. In cross-examination, Neela explained that she paid for the Wills as a safety net for them so that the property would go to Calawatti if Taran died first and it would remain with Taran if Calawatti died first. She confirmed that although she referred to Taran's Will at the said meeting with Gunness she had never seen it.
44. I found Neela to be a credible witness whose evidence was reliable. Her evidence was consistent with her pleaded case. It was unshaken in cross-examination. She was consistent that she shared a close relationship with Taran and Calawatti from the time she lived with them in the 1990s until their respective deaths. She provided unchallenged evidence of the details of the said relationship. Neela also provided details of the first promise by Taran in 2002 and the second in 2011. Her evidence of the

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<sup>7</sup> Paragraph 86

<sup>8</sup> Paragraph 102

payments for the mortgage instalments after 2002 and the lump sum payment in 2011 was unshaken.

45. Mark testified that in 2002 Neela told him that Taran was not paying the mortgage to NHA and he and Calawatti asked her to pay it. She said that Taran told her he would give her the property if she paid off the mortgage. Mark indicated to Neela that they could not afford it but she could take over paying the mortgage instalments if she wanted but he did not trust their word. Neela informed him that Taran and Calawatti picked her up and they went to the NHA office in Pt. Lisas where the mortgage instalments were paid.
46. Mark stated that Neela visited Taran and Calawatti often, before 2006. In cross-examination Mark testified that he did not frequently visit Taran and Calawatti before 2006 but he only did so on special occasions or sometimes randomly. He accepted that he was not in a position to indicate if other family members of Taran visited him during that time.
47. According to Mark, Taran had a slur in his speech after he suffered a stroke but he was able to understand. After Calawatti suffered a stroke, Neela brought her to stay with them and Taran visited Calawatti everyday. On some occasions, Neela asked Mr Baxter to visit the property from time to time while she was living with them.
48. Mark testified that Taran and Neela had developed a relationship whereby she relied upon him to assist when necessary and he in turn relied on her to make sure that he had everything. According to Mark, Taran called Neela his daughter. In cross-examination Mark confirmed that he heard Taran refer to Neela as his daughter on more than one

occasion. According to Mark, in April 2011 Neela informed him that the mortgage for the property was not paid off. Neela told him that Taran indicated that he would transfer the property directly to her once she paid the mortgage lump sum and she continued to pay all the expenses for Calawatti and himself so that they could continue to live in the property.

49. Mark testified that he and Neela met Taran on a weekend when he wrote the cheque in the sum of \$35,000.00 for the mortgage to be paid off from his account and he gave it to Taran. In cross-examination Mark stated that he provided the cheque as a family member and the payments to the mortgage were done pursuant to a family arrangement between a husband, wife and father in law. He also facilitated the payments to the mortgage and the lump sum to pay off the mortgage because Neela told him that Taran would transfer the property to her.
50. Taran also told him when he paid off the mortgage and that he wanted “to fix the papers” one time and asked him to do the transfer. He eventually received the Deed of Release but he did not do the deed to transfer the property to Neela.
51. Mark explained in cross-examination that between the time he was asked to do the transfer of the property from Taran to Neela and Taran’s death he never properly referred it to another attorney, and as a result it had never been transferred. He said that the transfer was low on his priority list because it was a family matter which he was not getting paid for.

52. Mark stated that on the 17 October 2015 Guinness and Ruby visited his home. They all sat in the gallery and Neela told them that she was going to make a claim for the property.
53. In my opinion, Mark was a witness of truth when he openly admitted that the reason the property was not transferred to Neela after the mortgage was paid off was due to his delay in having the matter referred to another attorney at law to prepare the said document. His evidence corroborated that of Neela that she had a close relationship with Taran and Calawatti; and the lump sum payment to pay off the mortgage which he facilitated in 2011.
54. Mr Baxter testified that he visited Neela's home and he saw her caring for Calawatti. Neela asked him to take Calawatti to the property. Between 2008-2010 he passed and visited Taran when he had time and sometimes Taran gave him an envelope to give to Neela. She would then sometimes give him back the envelope to give to Taran when he returned. According to Mr Baxter, some of the papers look like utility bills. In cross-examination Mr Baxter stated that he had known the family for 18 years and that he was well acquainted with Taran. He confirmed that he visited the property whenever Neela called him to drop off Calawatti and otherwise drop by. He accepted that he could not say who was at the property often since his visits were few. He did not know Taran to be an alcoholic during the time he knew him. He knew Taran from about 2003 to 2013 but he did not know him to be an alcoholic.
55. According to Mr Baxter, Taran always referred to Neela as his daughter and a few times he said that Neela was the only one that did anything for him. He never said anything in particular, just that everything was for

Neela. He also said that Neela “pay off the mortgage” and that the property is hers or will be hers. In cross-examination he maintained that Taran told him he had an ex-wife who was dead and that he wanted to give the property to Neela.

56. Mr Baxter’s evidence corroborated that of Neela’s with respect to her close relationship with Taran and Calawatti. However, due to his limited visits to Taran at the property he was not well placed to speak about Taran’s relationship with his own family.
57. Neela summoned a representative from RBC Royal Bank (“the Bank”) to provide information from the Bank’s records about a particular account number of Mark. Ms Viena Kistow appeared on the Bank’s behalf and she presented a letter dated 28 January 2019 about an account number 100080110157925 (“the Account”) in the name of Mark. According to the said letter there was no record of any encashed cheque numbered as 153 on 2 May 2011. The letter also stated that according to its records for the period 25 April 2011 to 24 June 2011 a cheque in the sum of \$35,000.00 was debited from the Account on the 2 May 2011.
58. Ms Kistow was questioned by the respective Counsel for both parties. She explained to Counsel for Neela that this was the only statement giving particulars of the cheque which was negotiated on 2 May 2011 in the sum of \$35,000.00. She was unable to state in whose name the cheque was made out since she explained that the Bank’s policy is once 7 years had passed the information in the cheque was not available. As such the Bank is unable to indicate whether the cheque was cashed or deposited. There is only 1 record for cheque 153 on that day.

59. In response to questions by Counsel for Guinness, Ms Kistow explained that they are unable to retrieve a copy of the cheque to see details of it such as date and payee. She stated that encased means that the item was negotiated on that particular day but they were unable to indicate whether it was deposited or cashed. She was unable to state whether monies were paid out to the payee.
60. Ms Kistow's evidence confirmed that the sum of \$35,000.00 was debited from the Account on 2 May 2011.

**Guinness evidence**

61. Guinness testified that he was 53 years old in 2018 and he was the son of Taran and Rosana Ragoo ("Rosana"). He stated that Taran had 3 other children with Rosana. In cross-examination Guinness stated that when the relationship with Taran and his mother Rosana ended he was around 3 or 4 years old. He stated that after Taran and Rosana separated he stayed with Rosana, Taran and his grandmother.
62. According to Guinness, Taran also had a relationship with one Hazrath Rahamut and he has a brother from that relationship. He testified that Taran and Rosana had separated for several years and that Taran had remarried a person named Jean Maharaj ("Jean") and then Calawatti.
63. Guinness stated that he did not know Jean and but he knew Calawatti when she and Taran were ill. In cross-examination, Guinness recalled that Calawatti started to live with Taran between the 1990s and 2000s and that he knew that Neela lived on the property between 1993-1997 and that he saw Neela on the property when he visited Taran.

64. According to Gunness, he was aware that Calawatti had children but he was not aware that Taran had a good relationship with them. Gunness accepted in cross-examination that since Calawatti was Taran's wife, Neela was Taran's stepdaughter.
65. Gunness testified that he was aware that Taran owned the property but he was unaware if Taran had transferred it to anyone by Deed or Will. He stated that he took care of Taran when the latter was ill and Neela took care of Calawatti. In cross-examination Gunness stated that he began taking care of Taran in 1990 when Taran's first wife or common law wife passed away. At that time, Taran lived at the property and he was not ill but he only became ill in 2003.
66. He stated that he shared a close relationship with Taran and he kept in touch with him regularly. He testified that he did not visit him every day but he visited him regularly. In cross-examination Gunness stated that he visited Taran at least once a week. He accepted that the relationship between Sheila and Taran ended in 1999 when she died. He said that Ruby who is his wife was one of Sheila's daughters. He got married in 1990 and started his relationship with Ruby around 1989. He said Taran was happy with the relationship and he did not believe he was estranged from Taran because of his relationship with Ruby. He denied that at Sheila's wake he and Ruby cleared out the house and that is the reason Taran stopped having a good relationship with him. He maintained that he always had a good relationship with Taran until the day he died.
67. Gunness also stated in his witness statement that he purchased clothes, maintained his vehicle and took Taran to pay bills and he assisted him. In cross-examination, Gunness stated that he did not know if Taran ever

bought clothes for himself but he maintained that he bought all of Taran's clothes. He agreed he gave no details of the vehicles Taran owned other than indicating that he maintained Taran's cars. He also accepted that he did not give any particulars of the bills he assisted Taran in paying.

68. According to Gunness, Taran spent weekends at his home where his wife assisted him in caring for him. He knew that Taran received free health care from CDAP. He said he found Taran when he passed away and he also buried Taran. Gunness stated in cross-examination that Taran was diabetic and he had a stroke. He agreed he did not indicate in his witness statement what he or his wife did for Taran when he said he took care of him. However, he stated that when Calawatti was sick he took care of Taran because he was left alone in the property for 5 years. He agreed that Taran was bedridden in 2003 and that Taran drove in 2004 and worked for short periods after 2004. He denied Taran did not need anyone to care for him after 2004; that any care Taran needed was done by Calawatti.

69. Gunness admitted in cross-examination that he did not know that Taran had problems with the payment of the mortgage for the property. He was also not aware of the refinancing of the mortgage since Taran never mentioned it. He stated that the mortgage payments were \$254.00 per month. He accepted that he could not agree or disagree with whether Taran asked Neela to make the mortgage payments since he simply did not know. He stated that he also did not know that Taran received a letter in 2011 from the HDC about defaulting on the mortgage payments and that it threatened to repossess the property. He admitted that he did not know that Taran asked Neela to pay off the mortgage and he

accepted that he did not have any basis to deny that Neela paid off the mortgage. Yet he still maintained that he knew Taran's business and what Taran intended to do with the property which was to give it to Taran's children. He stated that Neela's assertion that the first promise made in 2002 was not true because "they had nothing to do with Taran for 5 years." He also said Neela's assertion of the second promise in 2011 for Neela to pay off the mortgage for the property was not true.

70. According to Guinness, after Taran passed away he ensured that the property did not fall into a state of disrepair by doing some renovations. However, in cross-examination Guinness admitted that the photographs of the renovations to the property which he said he did were not before the Court. He denied he started paying the bills for the property, taking possession and filing the caveat when he found out that Neela's husband, Mark had not prepared the Deed to transfer the property from Taran to her. He said that he was not aware that Taran had a conversation with Mark about the transfer of the property and he was not aware that Taran gave Mark a copy of the deed for the property.
71. He stated that after Taran died Neela approached him and asked him to transfer the property to her. She also told him that she was in possession of a Will made by Taran. He asked her several times to see Taran's Will. After Taran died, while he was in the process of making the application for applying for Taran's estate, he was informed that Calawatti was in the process of applying for Taran's estate and he filed a caveat.
72. Guinness testified in cross-examination that he believed Neela when she said she had a Will for the property but he found it to be very surprising. He saw Neela and Mark shortly after Calawatti's death sometime before

17 October 2015. At this meeting, he was first told that the property was not transferred to Neela and the promise made by Taran with respect to the payment of the mortgage was brought up. He was shown the caveat filed by his attorney at law which was dated 19 October 2015. He said that he instructed his attorney at law to file the caveat because of the meeting. He said that he paid the WASA bill after that meeting but that he had retained the services of an attorney at law before that meeting. He was shown the T&TEC Connection Transfer dated 22 October 2015. He disagreed this was done after he found out that the property was to be transferred to Neela and said it was done after he found out that there was no Will by Taran.

73. In my opinion Gunness' evidence that he shared a close relationship with Taran was not plausible since if he did he would have been aware of the mortgage of the property; that Taran had asked Neela in 2002 and in 2011 to make the mortgage payments and that in both 2002 and in 2011 Taran promised Neela that he would transfer the property to her after the mortgage was paid off by her. The credibility of his evidence in chief that he was unaware that Taran shared a close relationship with Neela was undermined in cross-examination since he admitted that he knew that Neela lived with Taran and Calawatti between 1993 to 1997. Gunness was also not a witness of truth when he sought to represent to the Court that he maintained the property after Taran died since he failed to substantiate this evidence with any details or contemporaneous documents. Overall I found Gunness' evidence to be general and lacking in any specific details when compared to that of Neela. In my opinion, it is more probable that he was unable to provide such details because he did not share any close relationship with Taran; he did not know anything

about Taran's promises in 2002 and 2011 to Neela with respect to the property.

**The promise**

74. I have therefore concluded that Taran promised Neela in 2002 that if she paid the mortgage instalments for the property he would transfer it to her after the mortgage was liquidated and that in 2011 Taran varied this promise by indicating that he would transfer it to her once she paid a lump sum to liquidate the mortgage and if she continued taking care of the financial needs of Taran and Calawatti for the rest of their respective lives for the following reasons.
75. First, there was cogent evidence that Taran and Neela shared a close relationship from 1992 when she lived with Taran and Calawatti since she always assisted them financially and even when she was not living on the property, she continued to assist them financially. It was more probable that Taran confided in Neela that there was a mortgage on the property and that when he became aware of the default in the mortgage payments in 2002 and in 2011, he approached Neela who was already assisting him financially to assist him in paying off the mortgage.
76. Second, it was not plausible that Gunness took care of Taran from 1990 until Taran's death in 2014 since Gunness acknowledged in cross-examination that Taran lived with Calawatti from 1990; Taran only became ill in 2003 when he was cared for by Calawatti and that Taran only needed care after Calawatti died in 2014.
77. Third, there was no evidence from Gunness that he was aware that there was a mortgage on the property and/or that it was in arrears. In my

opinion, it was more probable that if he shared a close relationship with Taran, the latter would have confided in him that the mortgage of the property was in arrears in 2002 and in 2011. His evidence in cross-examination that the mortgage instalment was \$254 per month was without any basis.

78. Fourth, Neela provided unchallenged details of the promise made by Taran in 2002 as varied in 2011. There was no evidence from Guinness that Taran did not make such promises.
79. Fifth, even if Guinness' evidence that he took care of Taran's financial needs after Taran became ill with the stroke in 2003 was accurate, this did not necessarily negate the effect of Taran's promise to Neela in 2002 and 2011. In any event, Guinness' evidence on his contributions in taking care of Taran was general and lacking in details which made it not credible.
80. Sixth, Neela's evidence in cross-examination that she paid for a Will to be done by Taran whereby he left the property for Calawatti was not necessarily inconsistent with the arrangement Taran and Neela had since they had agreed that the purpose of Neela paying the mortgage instalments in 2002 and the lump sum in 2011 was to ensure that Taran and Calawatti had a place to stay while they were alive which was consistent with Neela taking care of them after the 2011 promise.

**Detrimental Reliance**

81. I have also concluded that on a balance of probabilities Neela was able to prove that she made the payments for the mortgage instalments from 2002 and she paid off the mortgage in 2011 and she took care of Taran's

and Calawatti's financial needs after 2011 since she was under the belief that Taran would fulfil his promise and transfer the property to her for the following reasons.

82. First, Neela's evidence that she paid approximately \$400.00 per month from 2002 either directly or by giving Taran the money to make such payments was not contradicted and it was corroborated by Mark.
83. Secondly, Neela's evidence that Mark wrote a cheque in the sum of \$35,000.00 which he gave to Taran to pay off the mortgage was corroborated by Mark and more importantly it was supported by the Bank statement from the Account. Although the representative from the Bank was not in a position to indicate to whom the cheque was issued, it is more probable that it was for the payment of the mortgage given the evidence of Neela and Mark.
84. Third, Neela's evidence that she continued to pay the bills for Taran and Calawatti and to care for them after 2011 was unshaken in cross-examination. Even if Guinness had purchased clothes for Taran in my opinion this was not material since he was not able to challenge Neela's evidence that she continued to care for Taran and Calawatti after 2011.

**IF YES, WHETHER NEELA IS ENTITLED TO THE RELIEF SOUGHT IN EQUITY DUE TO HER DELAY?**

85. It was submitted on behalf of Guinness that the Court ought not to grant relief sought by Neela since she slept on her rights by waiting more than 4 years to enforce them and the reason given for the delay was stated at paragraph 103 of Neela's witness statement as follows: "The reason why there was a delay to transfer the house was not my fault and at all times

Taran acted as though I was the owner of the house and he and Mummy was entitled to live there for as long as they lived and I was to pay their expenses” was not acceptable because of the educational status of Neela and her husband as an attorney-at-law.

86. Counsel for Neela argued that the failure by Guinness to plead laches or delay precludes Guinness from advancing such a case as this stage of the proceedings. Further, even if it was pleaded Neela provided evidence to account for the delay, which was reasonable.

87. It was not in dispute that the doctrine of laches is a defence which can be raised by a party where a claimant has invoked the Court’s equitable jurisdiction in seeking relief. The following dictum in the Privy Council case of **Lindsay Petroleum Co. v. Hurd**<sup>9</sup> describes the doctrine as:

“Now the doctrine of laches in courts of equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded on mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried on principles substantially equitable.”

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<sup>9</sup> LR 5 PC 221, 239-40

88. Where a party chooses to raise delay as an equitable defence there is a duty on that party to specifically plead this defence<sup>10</sup>. Guinness did not plead the delay as a defence for Neela not obtaining the relief which she sought. For this reason, Guinness' submission on this issue must fail.
89. However, even if Guinness had pleaded delay by Neela in enforcing her rights, there was no evidence put forward by Guinness to support such a defence and Neela's explanation for bringing the action 2 years after Calawatti's death was reasonable. According to Neela's evidence she brought the action after Taran's and Calawatti's death and after she told Guinness at the meeting in October 2015 that she was going to make a claim for the property. She was only aware that Guinness was going to deny her claim for the property in 2018 when the Appearance and the Defence were filed.

#### **ORDER**

90. It is declared that the Claimant is entitled to that certain piece or parcel of property known as LP229 Lot 70 Caroni South Bank Road, St. Helena Village, Piarco in the ward of Tacarigua comprised of approximately 5560 square feet together with the dwelling house situate thereon and that the heirs and/or assigns of Tyrone Rago do hold the Piarco House as constructive trustee for the Claimant.
91. It is ordered that the Defendant, his heirs or assigns do transfer the property described aforesaid to the Claimant free from all encumbrances within 28 days of this order.

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<sup>10</sup> Sutcliffe v James [1879] 27 WR 750; 40 LT 875 cited in page 319 of the White Book under paragraph 18/8/13.

92. The Defendant i.e. Tyrone Ragoo's Estate do pay the Claimant the costs of the action in the sum of \$14,000.00.

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**Margaret Y Mohammed**

**Judge**