

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No.: CV2018-01514

BETWEEN

ANTHONY DALYRIMPLE

CARL DALYRIMPLE

MARILYN DALYRIMPLE

DAVID DALYRIMPLE

Claimants

AND

MUCLEEN FIDDLER

Defendant

Before the Honourable Madame Justice Margaret Y Mohammed

Date of Delivery 10 June 2020

Appearances

Mr. Robert Boodoosingh Attorney-at-law for the Claimants.

Ms Perusha Lord Attorney at-law for the Defendant.

JUDGMENT

INTRODUCTION

1. Family disputes over the ownership of property are usually painful. The details of that pain are laid bare when the Court has to resolve the issue of ownership of family property. The parties in this matter are siblings. Their dispute is over the ownership of a property situated at 138 Bonne Adventure Road Gasparillo (“the disputed property”). The disputed property was owned by their mother Stella Veronica Rollock (“Stella”). At present, the Second Defendant (“Carl”) lives in the family house (“the family house”) which is situated

on the disputed property. Before Stella died she gave it to the Defendant by Deed of Gift¹ (“the Deed of Gift”). The main question to be decided is who did Stella want to own the disputed property after she passed away?

THE CLAIMANTS CASE

2. The Claimants case was that Stella wanted Carl to own the disputed property. They contended that Carl has been living on the disputed property for more than 42 years. The Defendant built a structure at the back of the family house (“the back house”) on the disputed property and at one time Carl lived in it but he moved back to the family house. They also contended that Stella, prior to her death, promised to Carl that he could live in the family house for as long as he wanted and based on this promise, he undertook repairs and renovations to the downstairs portion of the family house.
3. However, by letter dated the 19 July 2017, the Defendant wrote to Carl asserting that his occupation of the disputed property was illegal. The Claimants caused their attorney at law to respond to the said letter from the Defendant, by letter dated the 3 April 2018. To date the Defendant has not responded to Claimants’ letter.
4. The Claimants further contended that the Defendant instituted proceedings at the San Fernando Magistrates’ Court against Carl seeking to evict him from the disputed property on the basis that he was tenant. The Defendant asserted that she became the owner of the disputed property in March 2014 by the Deed of Gift.
5. The Claimants asserted that the Deed of Gift is not authentic for the following reasons:
 - (i) It was not in the character of Stella to leave out the remainder of her children as she ensured that she provided for all her children.
 - (ii) It was not a voluntary act of Stella and she would have to be coerced to perform such an act.

¹ Registered as DE 201500340429

- (iii) The Defendant was emotionally and physically abusive towards Stella.
 - (iv) The Defendant exercised undue influence over Stella.
 - (v) The signature on the Deed of Gift was not that of Stella.
 - (vi) This was the second attempt by the Defendant to get Stella to give her the disputed property.
 - (vii) It was always the intention of Stella that Carl would have living rights of the disputed property.
6. The Claimants caused their attorney at law to write Ms Deborah Jean-Baptiste- Samuel ("Mrs Samuel"), Attorney at law, who prepared the Deed of Gift, concerning the circumstances surrounding its preparation but she did not respond to their letter.
7. Based on the aforesaid facts the Claimants seek the following orders:
- (a) A declaration that Carl has acquired an equitable interest in the disputed property.
 - (b) A declaration that the Defendant is estopped based on equitable principles from evicting Carl from the disputed property.
 - (c) An order setting aside the Deed of Gift.
 - (d) Costs.
 - (e) Such further and/or other relief as the Honourable Court deems fit in the circumstances of the case.

THE DEFENDANT'S POSITION

8. The Defendant's position was that Stella gave her the disputed property by the Deed of Gift. Her defence addressed the Claimants contention that (i) Carl has lived on the disputed property for 42 years; (ii) Stella promised him the disputed property; (iii) Carl did works on the disputed property based on this alleged promise by Stella: and (iv) and the validity of the Deed of Gift.

9. The Defendant strongly denied that Carl lived on the disputed property for 42 years. She contended that the house where Carl lived as a child, together with the other children of Stella, no longer exists since it was a wooden house (“the wooden house”) standing on pillars situated at the back of the disputed property. All that remains of the wooden house are the concrete pillars.
10. According to the Defendant, Stella left her children to live in the wooden house and moved into the family house at the front of the disputed property to live with Roy Baptiste (“Mr Baptiste”), Stella’s second husband (common law). The family house was owned by Mr Baptiste, who together with Stella, rebuilt it and lived there. Stella did not take any of her children to live in the family house.
11. The Defendant contended that all the siblings grew up in the wooden house and they moved out leaving Carl. The Defendant built the back house around 1985 and lived there with her husband and three children. Carl moved into the back house without the Defendant’s permission, after the Defendant moved out as the wooden house was uninhabitable. Carl resided in the back house for ten years without the Defendant’s permission.
12. The Defendant asserted that at one time, Carl left the disputed property and he lived at Riverside Road Battoo Boulevard, Marabella with one Gail Weeks with whom he fathered a child in September 2003 named Tyrese. However due to Carl’s physical violence and abuse towards Ms Weeks during and after her pregnancy, Carl had to leave and this was when he moved into the back house. Carl continued to visit Ms Weekes and in or about 2005 Ms Weekes started to live with him in the back house. In or about 2007, Ms Weeks eventually left Carl. After that, Carl brought Monica Marshall to live with him in the back house.

13. The Defendant disputed the Claimants assertion that Stella promised Carl that he could live in the family house during his lifetime. She asserted that Stella never wanted Carl in the family house. According to the Defendant, Stella had once considered allowing Carl to live in the downstairs of the family house, if he could build up a room, but she changed her mind due to Carl's behaviour and she made it clear she did not want him around the family house.
14. The Defendant asserted that Carl was never living in the family house but that he broke in and moved in when Stella left to live with her. She contended that Carl moved into the family house when the wooden house collapsed. The Defendant returned to check on the family house, and to gather clothes for Stella after the latter went to live with her. On one occasion the Defendant met Carl in the family house and he had changed the locks. Stella wanted to return to live in the family house when she heard that Carl had moved into it.
15. The Defendant also disputed Carl's assertion that based on Stella's promise he conducted repairs to the family house. She asserted that Carl destroyed the front door of the family house, which was a glass sliding door and instead he placed a slab of plywood across which shut persons out of the family house. Carl had changed the locks to the back door which he used to enter the family house. She also contended that the family house is deteriorating quickly as Carl was refusing to conduct any repairs to it.
16. The Defendant denied that she exerted any influence over Stella in the execution the Deed of Gift. She also denied that she was physically and emotionally abusive to Stella. The Defendant stated that after the death of Stella, she informed her siblings, the First Claimant ("Anthony"), Carl and Donna ie Madonna, of the Deed of Gift and Carl began to curse and threaten her with violence.
17. The Defendant asserted that as Stella grew older she could not care for herself. Stella went to live with the Defendant who cared for her. The Defendant requested assistance from

her siblings to care for Stella but she did not receive any. She contended that Stella was a strong and determined person who nobody including her children could influence. She stated that the Deed of Gift was done at the request of Stella and the attorney at law was Stella's choice. The Defendant also contended that the Deed of Gift was executed by Stella.

18. The Defendant admitted that she caused the letter dated 19 July 2017 to be written to Carl and she filed a summons at the San Fernando Magistrate's Court on the advice of her attorney at law against Carl. She also admitted that she received a letter dated 3 April 2018.

19. The Defendant counterclaimed for :

- (a) Damages for the deterioration of the disputed property and the family house.
- (b) Damages for nuisance.
- (c) The removal of Carl from the disputed property.
- (d) Costs.

REPLY AND DEFENCE TO COUNTERCLAIM

20. The Claimants denied that the Defendant is entitled to the reliefs she has sought in her counterclaim. The Claimants asserted that the Defendant isolated Stella by taking her to live at her home. They denied that Carl broke into the family house as it was decided by the siblings including the Defendant that Carl would move into the family house. At that time, the family house was abandoned and overgrown with bush and it was Carl and the Fourth Claimant ("David") who did repairs to the family house. The Claimants denied that Carl broke the front door of the family house. Instead the Claimants asserted that the said door broke when it slid off its tracks.

21. The Claimants averred that it was always the intention of Stella that her two youngest children, Carl and Donna ie Madonna, would inherit the disputed property which they communicated to the Defendant.

THE ISSUES

22. The Defendant is the paper title owner of the disputed property. In order for the Claimants to succeed in obtaining the reliefs they have sought either one or both of the following two issues are to be determined in their favour:
- (a) Did Carl establish that he has an equitable interest in the disputed property?
 - (b) Is the Deed of Gift invalid?
23. If the Claimants fail in their claim, in order for the Defendant to obtain the orders for damages, she must prove that the Claimants caused the deterioration of the family house on the disputed property and that they are liable to pay her damages for nuisance.

THE WITNESSES

24. At the trial, the Claimants gave evidence in support of their case. The Defendant gave evidence in support of her case and she also called as witnesses, Mrs Samuel, Ms Madonna Dalrymple-Joseph (“Madonna”), Ms Cecelia Garcia (“Cecilia”) and Ms Yvette Rollocks-James (“Yvette”).

DID CARL ESTABLISH THAT HE HAS AN EQUITABLE INTEREST IN THE DISPUTED PROPERTY

25. The Claimants have grounded one aspect of their claim in proprietary estoppel. The elements of proprietary estoppel were repeated by Mendonca JA **Nester Patricia Ralph and Esau Ralph v Malyn Bernard**² at paragraph 38 where he referred to the dicta of Lord Walker in **Thorner v Major and Ors**³. Lord Walker stated that “while there is no universal definition of proprietary estoppel, which is both comprehensive and uncontroversial, that most scholars agree that the principle of proprietary estoppel is based on “three elements, although they express them in slightly different terms; a representation or assurance made to the claimant; reliance on it by the claimant and detriment to the claimant in consequence of his (reasonable) reliance...” For a claimant therefore to properly plead his

² Civil Appeal No. 131 of 2011

³ [2009] UKHL 18

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.

26. In **Mills v Roberts**⁴ Jamadar JA (as he must then was) 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 (as he then was) stated at paragraphs 19 and 21 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...

21. 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.”

27. Kokaram J (as he then was) in **Kurt Farfan and Ors v Anthony White**⁵ at paragraph 26 stated the Court should proceed with caution when examining the questions of promise, reliance and detriment. In expounding this approach Kokaram J (as he then was) referred

⁴ CA T243 of 2012

⁵ CV 2016-03644

to Sir Henry Brooke in the Privy Council decision of **Knowles v Knowles**⁶ at paragraph 27 who stated:

“In *Jennings v Rice* [2002] EWC Civ 159 [2003] 1 FCR 501...Robert Walker LJ said at para 58 that the essence of the doctrine of proprietary estoppel is to do what is necessary to avoid an unconscionable result. In the opinion of their Lordships it would be unconscionable in this case to deprive George of his property when he had done nothing at all to encourage any belief that his brother and sister-in-law could treat the property as belonging to them. While recourse to the doctrine of estoppel provides a welcome means of effecting justice when the facts demand it, it is equally important that the courts do not penalise those who through acts of kindness simply allow other members of their family to inhabit their property rent free. In *E & L Berg Homes Ltd v Grey* (1979) 253 EG 473, [1980] 1 EGLR 103 Ormrod LJ said at p 108: ‘I think it important that this court should not do or say anything which creates the impression that people are liable to be penalised for not enforcing their strict legal rights. It is a very unfortunate state of affairs when people feel obliged to take steps which they do not wish to take, in order to preserve their legal rights, and prevent the other party acquiring rights against them. So the court in using its equitable jurisdiction must, in my judgment, approach these cases with extreme care.’ ”
(Emphasis added)

28. In considering a claim founded on proprietary estoppel, the Court must examine the inducement, encouragement and detriment to determine if they are both real and substantial and the Court must act to avoid objectively unconscionable outcomes⁷.
29. Both parties offered different versions of the alleged promise and the alleged financial contribution made by Carl to the family house after the alleged promise.

⁶ [2008] UKPC 30

⁷ *Jamadar JA in Esther Mills v Lloyd Roberts Civ Appeal No T 243 of 2012*

30. In order for the Court to satisfy itself which version of the events is more probable in light of the evidence, it is obliged to check the impression of the evidence of the witnesses on it against the: (1) contemporaneous documents; (2) the pleaded case: and (3) the inherent probability or improbability of the rival contentions, (**Horace Reid v Dowling Charles and Percival Bain**⁸ cited by Rajnauth–Lee J (as she then was) in **Mc Claren v Daniel Dickey**⁹). The Court must also examine the credibility of the witnesses based on the guidance of the Court of Appeal judgment in **The Attorney General of Trinidad and Tobago v Anino Garcia**¹⁰ where it stated 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.

The alleged promise/ inducement/ encouragement

31. The Claimants pleaded in their Statement of Case that Stella promised Carl that he could live in the disputed property during his lifetime. They put forward a different position in their Reply and Defence to Counterclaim as they pleaded that it was the intention of Stella that the disputed property would be inherited by her two youngest children namely Carl and Donna, ie Madonna. Therefore on the Claimants own pleaded facts, there was no clear intention or promise that Stella promised Carl that he alone would own the disputed property during his lifetime.
32. Even, if the Claimants case was that Stella promised Carl that he could live in the family house of the disputed property during his lifetime, there was also no credible evidence from the witnesses for the Claimants of this alleged promise. The Claimants stated in their respective witness statement that Carl lives in the family house on the disputed land. They also stated that Stella promised Carl that he could live in the family house as long as he wanted and based on this promise he began to repair and renovate the downstairs portion of the family house. None of the Claimants stated when, where and the circumstances surrounding the nature of this alleged promise to Carl.

⁸ Privy Council Appeal No. 36 of 1897

⁹ CV 2006-01661

¹⁰ Civ. App. No. 86 of 2011 at paragraph 31

33. The Claimants evidence in cross examination further undermined their assertion of this alleged promise by Stella. Carl testified in cross examination that he could not recall the year Stella gave him permission to move into the family house. Yet he stated that Stella gave him permission to build the downstairs of the family house to live in. Notably, in cross examination, Carl did not indicate that Stella promised him but instead stated that she gave him permission to construct the downstairs portion to live in. In my opinion, this alleged promise was important to Carl since it affected where he would live during his lifetime. However, he was unable to provide any details of this alleged promise.
34. The First Claimant (“Anthony”) stated in cross examination that he did not know when Stella gave Carl the permission to move into the family house and he did not know when Carl moved in as he did not live in the area.
35. David stated in cross examination that he did not know where Carl lived while he was building the downstairs of the family house.
36. The Third Claimant’s (“Marilyn”) evidence in cross examination was that Carl stopped living in the back house in or about 2008/2009. She stated that sometime around 2010 or 2011 she was present at a meeting with Stella and the siblings. At the meeting there was a collective decision that Carl would move into the family house. Carl lived upstairs as Stella was not living there. Notably Marilyn’s evidence was not that Stella made a clear and unequivocal promise to Carl, but that it was a collective decision by the siblings and Stella. In my opinion, Marilyn’s evidence cannot amount to any clear promise by Stella for Carl to live in the family house during his lifetime.
37. This meeting which Marilyn spoke about in her evidence in cross examination is important in the context of this alleged promise by Stella to Carl. However, Carl stated in his witness statement that he was never present at any meeting held between his brothers and sisters and the Defendant save and except the meeting where the Defendant said she wanted to

open a sewing shop downstairs of the family house and they told her that Carl was going to build downstairs and then she wanted upstairs. Stella did not agree and the Defendant stated that she would bring Stella back to live in the family house. Carl stated that there was never any meeting in which the Defendant told them that Stella had given her ownership of the disputed property.

38. Both Anthony and David stated in their respective witness statements that they were never present at any meeting held between the siblings and Stella.
39. Therefore, from the Claimants own evidence, the only Claimants who were present at this alleged meeting where the promise was made were Carl and Marilyn. Even if I accept Carl and Marilyn's version of this meeting, their evidence at its highest did not support their case of this clear promise by Stella that Carl could live in the family home during his lifetime.
40. The Defendant stated in her witness statement, that prior to 2012, Carl did not live in the family house as Stella lived there alone and that he moved in around 2013 without Stella's permission or consent. She stated that while Stella was living with her in 2013 she visited the family house to collect clothes for Stella and she discovered Carl living there. She informed Stella who indicated that she did not want Carl living in the family house.
41. The Defendant's version of the family meeting as described in her witness statement was that in 2013 there was a family meeting to remove Carl from the family house. The person who were present were Carl, Marilyn, David, Alfred Rollock, Madonna, Stella and Monica Marshall. Stella was speaking to Marilyn and stated in the Defendant's presence "Carl want to take my house". Marilyn replied "Just hush your mouth, nobody eh want to take anything from you." Marilyn continued that Carl could live in the family house and pay all the bills. Stella became upset and displeased and she indicated that she wanted the Defendant to take care of the family house even, if she had to rent it out, to obtain money to assist in her care. The Defendant stated that the Claimants who were present totally

disregarded what Stella had indicated as they were discussing obtaining State grants to renovate the family house. She also stated that Alfred said to Carl "If they put you out, come by me I have a three bedroom house." Stella became very frustrated and requested that the Defendant take back her house.

42. In cross examination, the Defendant stated that she was present at a meeting in 2013 with her siblings but she was unaware of any meeting at which it was decided in the presence of Stella that the disputed property would go to Carl and Madonna. She also testified in cross examination that she had a conversation with Marilyn, where they were talking about the disputed property and Marilyn told her, "Well, seeing that all of us done have we own and thing already, we have our house and everything, what should be done, we could give Carl in the front and give Donna in the back." The Defendant asked Marilyn, "On who say so?"
43. Madonna stated in her witness statement that Carl moved into the family house without Stella's consent after she began living with the Defendant. In cross examination, she denied that she was present at any meeting with her siblings and Sella where the later made any promise concerning the family house to Carl.
44. In my opinion, the Claimants failed to present any cogent, credible evidence that Stella promised Carl any interest in the family house. There were no details of when, where and the circumstances of this alleged promise. In my opinion since Carl stood to benefit from the promise, he ought to have recalled such details but this was lacking.
45. Even the evidence of the nature of the alleged promise was not consistent with the Claimants case. Their case was Carl was promised to live in the family house during his lifetime. However, all the Claimants stated in cross examination that it was permission which Stella gave to Carl to occupy the family house. In my opinion this is separate and distinct from a promise to occupy the family house during his life time. Even if Stella gave

Carl this permission, at its highest it was an act of kindness from Stella to Carl for which she ought not to be penalised.

46. Further the meeting which Marilyn and the Defendant stated that some of the siblings had a discussion in front of Stella. There was no evidence about any promise by Stella. In my opinion such this discussion could not and did not amount to any promise by Stella.

The nature of the detriment

47. The question of what constitutes “substantial detriment” was examined by the court in **Fulchan v Fulchan**¹¹ where Rajkumar J (as he then was) said the following at pages 7 to 8:

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

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

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

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

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

¹¹ CV 2010-03575

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.”

48. The evidence of the Anthony, Carl and David in their respective witness statements was that based on this alleged promise Carl began to repair and renovate the downstairs portion of the family house. Anthony and David stated that they assisted Carl in doing these works. However, there was no evidence from any of the said witnesses of when the works were done; the nature and extent of the works which were conducted; and the extent of the funds which Carl expended. Therefore, on the Claimants own evidence they failed to demonstrate that Carl suffered any detriment after the alleged promise.

49. The Defendant stated that Carl did absolutely no works on the family house. She testified that Carl broke down the front door of the upstairs of the family house which he did not

repair but instead he placed a ply board across it which prevented anyone from accessing the upstairs.

50. Although Carl has disputed the Defendant's version of the breaking down of the front door of the family house, in my opinion the Claimants failed to prove that Carl did any works to the family house which was to his detriment. If Carl had done any substantial works it was more probable that he would have recalled the details of the nature of the works he did, when he did them and approximately how much he spent. In any event, Carl has been living in the family house since 2013 rent free.
51. Therefore, the Claimants failed to prove that Carl acquired an equitable interest in the disputed property.

IS THE DEED OF GIFT INVALID?

52. The Claimants contended that the Deed of Gift is invalid as : (a) the Defendant exercised undue influence over Stella; (b) Stella was coerced into executing it; (c) the Defendant was physically and emotionally abusive to Stella; (d) the signature was not Stella's; and (e) it was out of character for Stella to exclude all her children.
53. The Defendant denied all the assertions made by the Claimants.

Undue influence over Stella

54. **Snell's Equity**¹² describes the law of undue influence as:

“Undue influence is one of the grounds of relief developed by the courts of equity as a court of conscience. The objective is to ensure that the influence of one person over another is not abused.” The doctrine of undue influence enables C to obtain relief where he or she has been induced by the influence of D to enter into

¹² 31st Ed

or participate in a transaction in circumstances where the court considers that the influences were exerted improperly or unfairly.in cases of this kind equity intervenes to prevent or reverse unconscionable conduct. The kind of conduct which will attract the court's intervention may involve threats or other overt acts of coercion. But the court may also intervene where D has exercised no overt pressure on C because he or she has such a power of influence that this is unnecessary. Although the circumstances which are capable of giving rise to a claim for undue influence are potentially very wide cases where the doctrine operates are conventionally divided into two classes. The first class consists of cases of actual undue influence. The second class consists of cases of presumed undue influence. The legal burden of proving undue influence remains on C throughout but if C established the existence of a relationship of influence and the nature of the transaction is so suspicious that it calls for an explanation, this satisfies the evidential burden of proving undue influence and the burden moves to D to provide a satisfactory explanation for the transaction. In the absence of a satisfactory explanation the inference of undue influence can be drawn and the legal burden of proof will be satisfied even if there is no direct evidence of undue influence. The court imposes the burden of providing a satisfactory explanation on D as a matter of public policy. Further, where the relationship between the parties falls into one of a number of recognised categories of parent and child, guardian and ward, trustee and beneficiary, solicitor and client or medical or spiritual adviser and patient or follower a relationship of influence is presumed. This is an irrebuttable legal presumption (as opposed to an evidential one) although in order to establish undue influence it remains necessary in all cases for C to establish that the transaction called for an explanation on the basis that it was "immoderate or irrational" or cannot "be reasonably accounted for on the grounds of friendship, relationship, charity, or other motives on which ordinary men act".¹³

¹³ Paragraph 8-09

55. Presumed undue influence was described as:

“But in many cases across the spectrum C cannot point to any overt acts or statements from which the court can make direct findings of undue influence and the relationship between the parties is not one of domination or complete ascendancy. Even if C is, therefore, unable to prove undue influence directly, undue influence may be presumed upon proof of (1) a relationship of influence and (2) a transaction which excites suspicion or calls for explanation. “Proof that the complainant placed trust and confidence in the other party in relation to the management of the complainant’s financial affairs, coupled with a transaction which calls for explanation, will normally be sufficient, failing satisfactory evidence to the contrary, to discharge the burden of proof.” The onus then shifts to D to provide a satisfactory explanation and to satisfy the court that C was free from D’s influence altogether or that any reliance placed by C upon D was not abused. If D is unable to provide a satisfactory explanation then the court may draw the inference that C was induced to enter into the transaction and the legal burden of proof is discharged”¹⁴. (Emphasis mine)

56. At paragraph 8-15 in **Snell’s Equity** the overlap between actual and presumed undue influence was described as:

“It is also important to emphasize that the fact in issue which is the subject of the presumption is not the existence of a relationship of influence but that this relationship has been wrongfully abused. In *Barclays Bank Plc v O’Brien* it appeared to be suggested that proof of a relationship of influence was sufficient to give rise to the presumption of undue influence and that any exercise of influence by one party over another (and, in particular, husband over wife) would be wrongful. This suggestion has now been rejected. Further, there is bound to be

¹⁴ Paragraph 8-14

a substantial overlap between actual and presumed undue influence particularly in cases of actual undue influence which involve no overt pressure. Where the court finds on the evidence, therefore, that there has been no express or actual influence it is not open to the court to infer undue influence from the nature of the relationship between the parties. The claim must be dismissed.”

57. **Snell** sets out the types of relationships as a matter of law where there is an irrebuttable presumption of trust and confidence such as a parent and child, guardian and ward, religious adviser and disciple, doctor and patient, attorney at law and client, trustee and cestui que trust and fiancé and fiancée. In such relationships the presumption may apply even after the relationship has ceased¹⁵. The presumption does not arise unless the nature of the transaction is sufficiently unusual or suspicious to require D to provide an explanation: “so something more is needed before the law reverses the burden of proof, something which calls for an explanation. When that something more is present, the greater the disadvantage to the vulnerable person, the more cogent must be the explanation before the presumption will be regarded as rebutted.”¹⁶
58. In this jurisdiction, Hamel- Smith JA in **Jagoo v Jagoo**¹⁷ explained the challenges in the doctrine of undue influence as:

“The doctrine of undue influence is difficult enough to define with precision; generally, each case will depend on its own particular circumstances. According to *Kerr on Fraud and Mistake* (7th Edn) p 223, the principle on which the courts act is not confined to cases where fiduciary relations can be shown to exist. It extends to various relations where dominion may be exercised by one man over another, and applies to every case where influence is acquired and abused, or where confidence is reposed and betrayed. In cases where a fiduciary relation does not

¹⁵ Para 8-20 to 8-27

¹⁶ Para 8-28

¹⁷ 61 WIR 388 at page 396

subsist, the court will not, as it does where one subsists, presume confidence put and influence exerted; the confidence and influence must in such cases be proved extrinsically.”

59. However, there is a second category where the Court can presume undue influence which has been left undefined by the courts. In this category, the Court has found undue influence even if there is no relationship as in the first category but the party making the allegation is able (a) to prove the existence of a relationship where the donor generally reposed trust and confidence in the beneficiary of the transaction *and* (b) there is something in the nature of the transaction which is not readily explicable by the two parties and which arouses suspicion.
60. In the instant matter the relationship between Stella and the Defendant was mother and daughter therefore it was not a type of relationship where an irrebuttable presumption of undue influence has arisen. Based on the facts of the instant case, the Claimants have asserted acts of actual undue influence namely that Stella was coerced into executing the Deed of Gift as she was isolated by the Defendant and the Defendant emotionally and physically abused Stella.
61. The Claimants have also asserted acts which fall into the category of presumed undue influence namely, the signature on the Deed of Gift was not Stella’s and the contents of the Deed of Gift was out of character for Stella who ensure that all her children were provided for.

Allegations of coercion in executing the Deed of Gift, isolation and physical and emotional abuse

62. Anthony stated in his witness statement that the Defendant took away Stella’s independence when she took Stella to live with her. He stated that in doing so the

Defendant deliberately isolated them from Stella According to Anthony, the Defendant could have taken Stella during the day to care for her and return her to the family house in the evenings. He stated that this could have been easily done as the Defendant did not live far away from Stella and she had a car.

63. Anthony also stated in his witness statement that Stella told him a few months before she died, that the Defendant took her to a lawyer to sign a Deed in favour of her but she refused to sign it. He said that Stella also told him that at the office of the lawyer, the Defendant was put out of the office and the lawyer asked her if she ready to sign the Deed and she said “no”.
64. In cross examination, Anthony testified that he offered to take in Stella to live with him at one time but his home was not quite prepared as he was a male and it was a little difficult for him to take care of his aging mother.
65. Anthony also testified in cross examination, that he contributed to Stella’s care as after she told him that she was diabetic. He stated that every Saturday he purchased green vegetables from the Chaguanas market for Stella. He testified that he shared a close relationship with Stella as he visited her at the family home to chat and he took her to church.
66. Anthony stated that he would have contributed to Stella’s care while she lived with the Defendant if he had the opportunity to do so. He stated that he was not able to have access to Stella while she lived with the Defendant as every time he visited both gates to the Defendant’s home were locked. He denied that the Defendant alone took care of Stella in her latter years. Anthony did not give any evidence of any physical or emotional abuse of Stella by the Defendant.

67. Carl stated in his witness statement that in the period before Stella died, the Defendant deliberately isolated them from her. He said that he visited the Defendant's home to speak with Stella but he was unable to meet with her as the Defendant had her locked up in her house behind burglar proofing so Stella may not have heard him calling her. He too stated that when the Defendant took Stella to live with her, she could have only taken Stella during the day and return her to the family home in the evenings as the Defendant had a car and did not live far away from Stella. Carl testified in cross examination that he has been contributing to Stella's care for a long time. Carl also did not give any evidence of any physical or emotional abuse of Stella by the Defendant.
68. Marilyn stated in her witness statement that in the period before Stella died, the Defendant deliberately isolated them from her. Marilyn stated that after Stella had spent about 3 weeks at the Defendant's home, she called for Stella but the Defendant said that Stella indicated that she did not want to return to the family home. She purchased a mobile telephone for Stella and the Defendant indicated that she wanted to know all that was going on between her and Stella.
69. According to Marilyn, when the Defendant took Stella to live with her, she could have only taken her during the day and return her to the family home in the evenings as the Defendant had a car and did not live far away from Stella. Marilyn also stated in her witness statement that Stella told her that the Defendant took her to a lawyer to sign a Deed in favour of the Defendant but she refused to sign it. She said that Stella also told her that at the office of the lawyer, the Defendant was put out of the office and the lawyer spoke with her alone which caused the Defendant to be displeased. Marilyn also did not give any evidence of any physical or emotional abuse of Stella by the Defendant.
70. David stated in his witness statement that in the period before Stella died, the Defendant isolated them from her. He stated that the Defendant took away Stella's independence by taking her to live with her when she could have taken her during the day and bring her back

to the family house in the evenings as the Defendant has a car and she did not live far from Stella.

71. David also stated in his witness statement that Stella told him that a few months before she died, that the Defendant took her to a lawyer to sign a Deed in favour of the Defendant but she refused. She also told him that at the office of the lawyer, the Defendant was put out of the office and the lawyer asked her if she ready to sign the Deed and she said no.
72. In cross examination David testified that Stella was a smart person. He stated that he saw Stella approximately two weeks before her death. He stated that he visited Stella from time to time when she lived with the Defendant and if the Defendant was at home he also saw her. He stated that most of the times he visited the gates were locked which prevented him from accessing to Stella. He clarified that when he stated in his witness statement that the Defendant isolated Stella, he meant that when he visited the gates were locked. He stated in those instances he tried to call out to the Defendant but he did not get any response and he admitted that he did not telephone the Defendant when he was outside her home in order for him to get access to Stella. He stated that these experiences caused him to stop visiting Stella at the Defendant's home. However when he learnt from his eldest daughter that Stella was ill, he visited her which was two weeks before she passed away. David also testified that he attended Stella's funeral but he did not financially contribute to it. Like the other Claimants, David also did not give any evidence of any physical or emotional abuse of Stella by the Defendant
73. The Defendant stated in her witness statement that between 2013-2014 before Stella died Anthony and Marilyn did not visit Stella and David visited her two weeks prior to her death. She stated that none of the Claimants was involved in the care of Stella in her later years. According to the Defendant, Stella insisted on doing a Deed of Gift to give the disputed property to her. Stella chose an attorney at law and was she very determined that she visit the said attorney at law to sort out a Deed. She stated that the Deed of Gift was prepared

by an attorney at law of Stella's choice. She said that Stella indicated to her on several occasions that she was aware of and grateful for all the financial and other sacrifices which the Defendant endured to ensure that she was well taken care of.

74. The Defendant testified in cross examination that she did not physically abuse Stella and she did not threaten her to sign the Deed of Gift. Apart from when the Deed of Gift was signed on 25 March 2014, she did not previously try to get Stella to execute a Deed for the disputed property. According to the Defendant, when Stella visited Mrs Samuel's office, the latter took her into another room and she sat outside and waited. After a while Stella came outside and told her that they could leave. She was unaware of the discussion which took place between Stella and Mrs Samuel. The Defendant testified that she paid for the preparation of the Deed of Gift even though Mrs Samuel was Stella's attorney at law
75. Yvette stated in her witness statement that Stella began living permanently with the Defendant when she became ill as she needed close care and Stella was comfortable at the Defendant's house.
76. In cross examination, Yvette admitted that she could not state if any of Stella's other children visited her while she was staying with the Defendant. She testified that she visited Stella approximately once per month while Stella lived with the Defendant. She stated that the Defendant's home is well gated and fenced, and she called before she planned to visit Stella. She testified that it was difficult to get from outside to inside of the Defendant's home and that if Stella's children had to visit, they had to call before.
77. Cecilia testified in cross examination that Stella always said that she would give the disputed property to the Defendant. She denied that the Defendant physically abused Stella as the latter never told her this.

78. Madonna stated in her witness statement that prior to 2012 Stella lived either at the Defendant's house or at the family house. However, as Stella was getting older, she needed assistance on a daily basis. In 2012, Stella began living permanently with the Defendant. She stated that while Stella lived with the Defendant she visited her from time to time. The Defendant was the only sibling who was taking care of Stella and she attended to all her needs.
79. Madonna also stated in her witness statement that the Defendant attended to all of Stella's needs which all of her other siblings could not do and she was always permitted them to visit Stella. The Defendant even took Stella to visit Marilyn as Stella had indicated that Marilyn did not visit her. According to Madonna's witness statement, Stella was always a determined person who "had all her senses" and did not allow anyone to control her.
80. In cross examination, Madonna testified that the Defendant did not isolate Stella when the latter was living with her and that she visited Stella at the Defendant's home on a regular basis.
81. Mrs Samuel stated in her witness statement that she is an attorney at law and Stella was her client who had made an appointment and attended her office which was located at 35 Lewis Street San Fernando at that time. She stated that she has since moved her office, and Stella's file was closed. However, she recalled the details of her interaction with Stella at her Lewis Street office.
82. According to Mrs Samuel, Stella was very clear on the reasons she visited her. Stella commented positively on the décor and got straight to the point. Stella's instructions were in the form of a lament that her son Carl was occupying the family house and she wanted to alter that situation.

83. Mrs Samuel stated that Stella asked about a Deed which would protect the disputed property from Carl, whom she complained was unkind and disrespectful to her, and she could no longer tolerate his behaviour. She complained that Carl was bringing the family house to ruin. Stella directed her to prepare a Deed to give the disputed property to her daughter, the Defendant. Mrs Samuel stated that she asked Stella if the Defendant was her only child, and she indicated that she had other children, but they would not protect the family house from Carl which was her main concern. Stella also stated that as the Defendant was taking care of her, she deserved the family house as she could maintain it and she would be willing to spend her money to keep it in a good condition to ensure that it would not be lost.
84. Stella indicated to her that she believed that Carl was only concerned about getting the family house, putting her out, and selling the family house because money was his main focus. Stella also indicated to her that Carl begged her for money and if she refused he cursed and carried on with violence. Stella told her that her other children could not protect her from Carl and that at a family meeting Marilyn told her to shut up and that only the Defendant stood up for her, and considered what she wanted. Stella also stated that her children never lived with her in the family house and she never wanted any child to put her out of it or control her life. Stella also instructed her to prepare a letter to inform Carl to leave the disputed property as she did not want him downstairs either. Stella gave her Carl's entire name which was Carl Simon Joseph Dalrymple.
85. Mrs Samuel stated in her witness statement that she explained to Stella that she could prepare a Deed which would include a life interest reserved to her in order to protect her interest in the disputed property in the event she wanted to return to live there. Stella informed her that this provision was not necessary since she was safe with the Defendant. Mrs Samuel stated that she requested and examined Stella's identification card, and informed her that the Deed of Gift would be prepared as she instructed. Stella then left her office.

86. According to Mrs Samuel, Stella returned a few days later after the first visit. Stella asked about the letter she was supposed to send to Carl asking him to leave the family house. Mrs Samuel indicated that she had not yet written the letter. Stella indicated to her that she wanted the letter prepared urgently. Mrs Samuel stated that she again asked Stella if she wanted to give the disputed property to the Defendant. Stella replied in the affirmative and asked for a pen to sign the Deed of Gift right away. Mrs Samuel told Stella to read the document first, and she also read over the document as she customarily did, and explained the details, to make sure that Stella understood. Stella then signed the Deed of Gift. Mrs Samuel stated that although she told Stella to take her time, she was writing fast and that the only other person who was present when Stella executed the Deed of Gift was the law clerk who signed as a witness.
87. According to Mrs Samuel witness statement, she never saw Stella after the Deed of Gift was signed. She was informed by the Defendant that Stella passed away on the 13 November 2014 and the Defendant brought a funeral programme. She dealt with the Defendant concerning the payment of her fees for the Deed of Gift which was held in escrow until the fees were paid.
88. Mrs Samuel stated that she received a letter from Mr Robert Boodoosingh, attorney at law requesting information on the circumstances under which the Deed of Gift was executed, and her response was sent via letter dated 18 May, 2018.
89. In cross examination, Mrs Samuel testified that she did not ask Stella her age on the first visit but when she visited the second time she asked her about her age. She took a copy of Stella's identification card on the first visit. She said that Stella told her on the first visit that she was diabetic and the Defendant was taking care of her with her diet. She did not deem it necessary to ask for medical certificates as she was of the opinion that Stella was competent as she came without assistance.

90. Mrs Samuel also testified in cross examination that she advised Stella that she could get a second opinion after she advised her on the Deed of Gift. She stated that she did not find it as odd that Stella was transferring the disputed property to one child after hearing Stella's reasons for doing so. She said that Stella told her that she lived with the Defendant who was taking care of her and that her son Carl had moved into the family house without her consent and she wanted him out as he was destroying it and that this was the reason for the letter. Mrs Samuel stated that she drafted the letter but it was never sent as Stella did not pay for it.
91. According to Mrs Samuel, Stella told her that she was living by the Defendant who took care of her by buying her food and taking her to the doctor. Stella was fully aware of the consequences of the Deed of Gift as she wanted the Defendant to be the owner. She stated that on the two occasions Stella visited her office she came with the Defendant and that both visits were two weeks apart. Mrs Samuel stated that when she saw Stella on the second occasion, they spoke about costs and Stella indicated that she would send the money. She stated that her fees were eventually paid for by the Defendant who visited her office. She was not present when the said fees were paid but her law clerk said that the Defendant visited and she could not recall whose name was on the receipt. Mrs Samuel was clear that her client was Stella and not the Defendant. She stated that her instruction was to convey the disputed property inclusive of the family house to the Defendant. She accepted that there is no mention of any house in the Schedule in the Deed of Gift and she explained that she used the same schedule in the previous deed.
92. In my opinion the Claimants failed to adduce any evidence that the Defendant was physically and emotionally abusive towards Stella. Indeed a different picture emerged which was that when Stella could not look after herself, the Defendant took Stella into her home and cared for her day and night.

93. I also formed the view that the allegation that the Defendant isolated Stella from the Claimants was unfounded. Although the Claimants asserted that the Defendant could have cared for Stella during the day and return her to the family home at nights, there was no evidence from the Claimants that there was anyone at the family home who would have been able to care for Stella at nights. In my opinion, the Defendant caring for Stella at her home during the day and night did not amount to isolation. Instead this amounted to the Defendant ensuring that Stella was looked after properly all the time from 2013. Indeed, there was no evidence that any of the Claimants were willing to care for Stella during the day and night when she needed such constant care.
94. Further, I am not of the opinion that the Defendant keeping her home secured while Stella lived with her amounted to her taking steps to stop the Claimants from visiting Stella. The Claimants had the option to telephone the Defendant to make appropriate arrangements prior to their visit. If the Claimants wanted to visit Stella they could have done so. Yvette's evidence was she made those arrangements and she was able to visit Stella. In my opinion, if the Defendant had left Stella at her house without securing it she would have acted irresponsibly.
95. Lastly, I have attached significant weight to the evidence of Mrs Samuel who I found to be a credible witness. The unshaken evidence from Mrs Samuel was that the Defendant was not in the same room when she took Stella's instructions to prepare the Deed of Gift; when she advised her on her legal options; and when Stella executed the Deed of Gift. Mrs Samuel's unshaken evidence was that Stella knew what she wanted to do with the disputed property and her reasons for having the Deed of Gift prepared. In my opinion, there was nothing suspicious in these circumstances about the Defendant paying the legal fees for the preparation of the Deed of Gift as this did not necessarily translate into any act of coercion by the Defendant. In my opinion, Stella's reasons for giving the Defendant the disputed property were rational because she wanted to remove Carl and she was of the

view that the Defendant would look after it in a manner that none of her other children could do so.

The signature on the Deed of Gift was not Stella's

96. The evidence of Mrs Samuel was that Stella executed the Deed of Gift in her presence. There was no evidence from the witnesses for the Claimants that the signature on the Deed of Gift was not Stella's. In particular, the Claimants failed to adduce any independent expert evidence to discharge their burden of proving that the signature on the Deed of Gift was not Stella's.

The Deed of Gift was not consistent with Stella's character

97. The Claimants all stated in their respective witness statements that Stella always provided for all her children and that it was a departure from this characteristic of Stella to only give the disputed property to one of her children and leaving out the others. They also stated that when Stella moved in to live with Mr Baptiste in the family house, she left all her children living in the wooden house.
98. In cross examination, Anthony testified that Stella taught him and his siblings to be financially independent and that the reason he believed that the Deed of Gift was out of character with Stella was because when she moved from Barataria to Gasparillo she took all her children with her and some. He accepted that when Stella moved in with Mr Baptiste in the family house she left all her children living in the wooden house.
99. Carl stated in cross examination that Stella gave him a single key for the back door of the family house when he visited her while she was staying with the Defendant so that he could move into the family house. Marilyn testified in cross examination that Stella used to call the family home a "house of refuge for her children".
100. The Defendant stated in her witness statement that Stella was a determined, independent, strong willed self-motivated woman who provided for all her children whilst they were

children, when they grew to adulthood she expected them to care for themselves as she had set a good example.

101. According to the Defendant, when Stella moved into the family house with Mr Baptiste she left all her children living in the wooden house. The Defendant related that during November 2012, Stella indicated to her that she was afraid of Carl as he would only come by to ask her for money. In and around 2012, Stella asked the Defendant to lock the drive-through gate whenever she was leaving, as Carl would walk into the family house, demanding money from her and this always startled her. On the last occasion Carl came by for money Stella told him that the Defendant was handling all her money and as such, Carl should ask the Defendant. Carl never visited Stella nor asked for anything after that episode.
102. The Defendant stated that around 2013 whilst Stella was living at her house, Carl moved into the family house without Stella's permission, consent or approval. She and Stella went to collect some items of clothing from the family house and saw Carl living there with Monica Marshall. The locks to the family house were broken and had been changed. Stella indicated to Carl that she did not want him living there. When the Defendant told Carl that Stella was moving back into the family house, he declared that he wanted to see how Stella could return to the family house if there was no front door. Carl proceeded to destroy the front door which was a glass sliding door and placed a slab of plywood where the entrance was, so that Stella could not move in. Carl's entry into the family house was through the back door where he had changed the locks and he did not give a key to Stella or the Defendant. According to the Defendant, Stella did not want Carl in the family house because he destroyed everything.
103. Yvette testified in cross examination that Stella provided for each of her children to a point and that Stella told her that she left out her other children from the Deed of Gift since only the Defendant cared for her.

104. Cecilia testified that she was Stella's friend for a long time. She stated in cross examination that Stella confided in her that Carl was abusive to her and that she gave the disputed land to the Defendant because the latter was always with her.
105. Madonna stated in her witness statement that Carl moved into the family home without Stella's consent and that he refused to move out despite her numerous requests for him to do so.
106. Based on the evidence I have no doubt that Stella cared for all her children but she also cared for the family house. If her character was as the Claimants asserted, that she would not have excluded all her children from the disputed property, then when she moved in with Mr Baptiste in the family house she would have brought all her children, who were young at the time, with her. In my opinion, Stella's character was to look after the family house as she lived there with Mr Baptiste for many years and together with him, they rebuilt it. The family house was very important to Stella and this was the reason she gave it to the Defendant as she was confident that just as the Defendant cared for her in her latter years, so too she would take care of the family house as this was important to Stella.

DAMAGES FOR DETERIORATION OF THE DISPUTED PROPERTY FAMILY HOUSE AND NUISANCE

107. The Claimants have not succeeded on the two issues which were required for them to succeed with their claim. It therefore follows that the Defendant, as the owner of the disputed property is entitled to an order for Carl to be removed from it.
108. However, it is also necessary to address the two other reliefs which the Defendant has sought in her counterclaim namely, damages for the deterioration of the disputed property and the family house and damages for nuisance.

109. I have decided that due to the paucity of evidence I am unable to make any award of damages for the deterioration of the disputed property and the family house. The Defendant failed to adduce evidence of the state of the disputed property and the family house prior to Carl's occupation and its current state. At best, there was the evidence of the damaged front door, but there was no evidence of the costs to replace or repair it. In the absence of such evidence it would be purely speculative on my part to make such an award.

110. I now turn to the claim for damages for nuisance. **Halsburys Laws of England**¹⁸ describes a private nuisance as acts or omissions generally connected with the user or occupation of land which cause damage to another person in connection with that other's user of land or interference with the enjoyment of land or some right over connected with the right. It is thus a violation of a person's private rights as opposed to a violation of rights which he enjoys in common with all members of the public. The ground of the responsibility is ordinarily the possession and control of land from which the nuisance proceeds. Some varieties of nuisance closely resemble acts classed under the head of trespass. The distinction between the two is that in trespass the immediate act which constitutes the wrong causes an injury to the sufferer's person or damage to his property or amounts to dispossession, whereas in nuisance the act itself often does not directly affect the person or property of another but has consequences which become or are prejudicial to his person or property.

111. **Halsburys** continued at paragraph 312 that

"Damage, actual, prospective or presumed, is one of the essentials of nuisance. Its existence must be proved except in those cases in which it is presumed by the law to exist. The damage need not consist of pecuniary loss, but it must be material or substantial, that is, it must not be merely sentimental, speculative or trifling, or damage that is merely

¹⁸ 4th ed Vol 34 para 301

temporary, fleeting or evanescent. However nothing can be deemed fleeting or evanescent if its results in substantial damage and therefore regard is to be had not merely to the duration of the thing complained of but to the effect of the act or omission upon the plaintiff.”

112. With respect to the presumption of damage, where an absolute legal right of the plaintiff is infringed, the law presumes damage even though no actual loss can be proved.

113. The normal measure of damages for a nuisance is the diminution in the value of the land. Beyond physical damage to the land, however a nuisance may cause annoyance, inconvenience, discomfort or even illness to the claimant occupier.

114. The Defendant failed to adduce evidence of the loss which she suffered as a result of Carl’s occupation and use of the disputed property. As such no award is made to the Defendant with respect to her claim for damages for nuisance.

ORDER

115. The Claimants action is dismissed.

116. Judgment for the Defendant on the counterclaim namely the Second Claimant is to be removed from the property situated at 138 Bonne Adventure Road, Gasparillo.

117. No award is made for damages for nuisance and the deterioration of the property situated at 138 Bonne Adventure Road, Gasparillo and house situated on it.

118. The Claimants to pay the Defendant the costs of the claim and the counterclaim in the sum of \$14,000.00 each with a total of \$28,000.00.

Margaret Y Mohammed

Judge