

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2014–03999

BETWEEN

**GRACE BAIN
SYD TONI BAIN**

Claimants

And

MARLON WINSTON CHARLES

Defendant

Before The Honourable Mr. Justice Robin N. Mohammed

Appearances:

Mr. Robert Boodoosingh for the Claimants

Ms. Kathleen Pilgrim-Thornhill instructed by Ms Chloe McMillan for the Defendant

JUDGMENT

I. INTRODUCTION:

[1] The First Claimant, Grace Bain and her mother, Muriel Charles were joint tenant owners of a house and the lands thereon situate on Centenary Street, California, Trinidad (the “Property”) by virtue of a Deed of Gift executed in 2009. Upon Muriel’s death in 2013, her interest in the Property was transferred to the said Grace Bain in accordance with the rules of survivorship.

As the sole owner of the Property, Grace proceeded to convey her interest to the Second Defendant, Syd Bain, by Deed of Gift executed in March, 2014. This Deed, while

executed, has not yet been registered due to “*the industrial relations/health safety problems existing at the Stamp Duty Section at the Board of Inland Revenue*”. Notwithstanding, a copy of this unregistered Deed of Gift was attached to the Claimants’ Statement of Case.

The material facts of this claim occurred sometime prior to Muriel’s death when she had given permission to the Defendant’s father, one Herbert Charles, to reside on the back portion of the Property. The terms of this promise are heavily disputed between the parties.

On the Claimants’ version, Muriel merely promised and/or encouraged Herbert to “*build a temporary structure at the back of*” the Property for his wife and 2 children to reside. In pursuance of this permission, Herbert constructed a wooden house which, the Claimants claim, evidences the transitory nature of the promise and/or licence given to him.

On the Defendant’s version, Herbert had been promised the back portion of the Property and that he could erect a permanent structure for him and his family.

The Bains pleaded that at some time prior to Herbert’s death, his wife and 2 children left the wooden house. However, Marlon Winston Charles (the Defendant), Herbert’s son, remained in occupation. Winston’s (the Defendant) permission to remain on the Property in the wooden house was purportedly extended by the said Grace Bain after Muriel passed away.

However, for reasons not stated in their pleading, Grace, by letter sent through her attorney on the 1st April, 2014, purported to terminate the Defendant’s alleged bare licence to the Property by requiring Winston to vacate by the 30th September, 2014.

As one would expect, this litigation arises out of, not only the Defendant’s refusal to vacate, but his decision to deposit building materials at the back of the Property where, allegedly, he built another structure located between his wooden house and the Claimants’ house, which was located to the front of the Property.

Further, letters were sent, including a Notice to Quit dated the 30th May, 2014, reminding Winston that he did not have the permission of neither the Claimants nor the relevant governmental authorities to continue his construction on the Property.

As a result, the Claimants sought vacant possession of the Property.

[2] On the Defendant's case, the Property was owned solely by Muriel Charles prior to the Deed of Gift in 2009, whereby Grace was included as a joint tenant. No admissions or denials were made, however, to the existence and status of the purported Deed of Gift of 2014, whereby Grace's share was conveyed to Syd, the Second Claimant.

As stated above, the material distinction between the parties' pleadings lies in the nature of the permission given to the Defendant's father, Herbert, to build and occupy the back of the Property. On Winston's version, his father, Herbert Charles, was Muriel's son and in 1978, Muriel gave Herbert permission to build a house at the back of the Property for his wife and children "*with the intention that it would become a permanent home*" for them. However, due to financial difficulties, Herbert was only able to construct a modest 2 bedroom wooden house where his family, inclusive of the Defendant, lived.

Thereafter, in 1996, Winston's parents separated and his father, Herbert, moved out of his wooden house and moved in with Muriel thereby leaving his wife, Winston and Winston's two sisters in possession of the wooden house. It was not until 2000, that Winston's mother and his two sisters moved out of the wooden house thereby leaving him in sole occupation of same.

On these facts, it was therefore denied that he only possessed a bare licence and thus, responded to the Claimants' Notice to Quit accordingly in a letter dated the 14th April, 2014.

In reliance on the promise of a permanent home, Winston admittedly deposited the building materials on the back of the Property and effected repairs to the wooden house, both of which were done without the permission of the Claimants or Muriel. He pleaded that he also planted fig trees and regularly paid to have the grass cut and the land cleaned.

In contrast to the Claimants' case, Winston maintained that there are only two houses on the Property as the third building is really a temporary structure, which he constructed solely for the purpose of renovating the original wooden house.

In support of his case that Muriel had promised him more than a bare licence, he pleaded that she had always encouraged him to "*fix the wooden house*" and that she wanted to see him "*build his own concrete house on the lands*". Evidence of such encouragement was given in Muriel's last Will wherein she left the back portion of the Property to the Defendant. This Will, however, has yet to be probated and there was no pleading that any such application had been made by Winston. In any event, it was his case that Grace herself always told him that the back portion was his and similarly encouraged him to effect the necessary repairs on the wooden house. Further, she had discussed her intention to include his name on the unregistered Deed of Gift of 2014.

On his version, it was not until sometime in 2013 that the material conflict arose between the parties when Grace asked him for permission to allow Syd to build a structure at the back of the Property close to his wooden house. It was when he denied such permission that Syd informed him, in October, 2013, that she had the authority to serve an eviction notice on him if he did not comply with her request. She had also informed him that Town and Country Planning did not approve of 2 houses on the Property and therefore, they would both have to live in one unit. Further demands were made that the Defendant sign an agreement preventing his wife from living on the Property after his death.

His refusal to all of these demands caused Syd to cut down his fig trees in retaliation.

In these circumstances, he Counterclaimed for a declaration that he has an equitable interest in the Property and therefore, entitled to remain in possession of same.

[3] The parties met before this Court on the 27th October, 2015, where the Claimants were ordered to file their Defence to the Counterclaim by the 27th November, 2015. Further, directions were given for disclosure and inspection and the deadline of the 23rd February, 2016 was set for the filing of all witness statements.

The Claimants' applied for relief from sanctions and an extension of time to file their Defence to the Counterclaim and proceeded to file same on the 29th December, 2015. Such relief was granted by Court Order dated the 13th January, 2016.

[4] In their Defence to the Counterclaim, the Claimants maintained that Herbert was only granted a bare licence as evidenced by the wooden structure he built, which has remained in this form since its construction. In fact, Herbert would occupy the Property only on occasion and actually lived at a different location in Oropouche at one time.

It was also denied that the Defendant did any cleaning of the land. Strangely enough, however, the Claimants pleaded that after Muriel's death, Grace, the First Claimant herein, encouraged the Defendant to "*build a proper house on the lands which he had inherited from the said deceased (Muriel) and his father*". This seemed to contradict their case not only because it suggested that Grace encouraged Winston to build a more permanent structure, but more so because it stated he had "*inherited*" the back of the Property from Muriel and Herbert. This was certainly not any error in drafting because it was reiterated in the subsequent paragraph.

Nevertheless, it was denied that Grace ever expressed any intention to include the Defendant on the unregistered Deed of Gift.

Moreover, it was also denied that the Claimants ever approached the Defendant for any permission to build at the back of the Property. Rather, their discord arose when Syd informed the Defendant that she intended to build on the back of the Property "*notwithstanding the consequences*". No further pleading was given as to what these consequences were and who gave them.

In response to the allegation that Syd cut down the Defendant's fig trees, it was pleaded that the Defendant only had one fig tree on his portion of lands that was rotting and therefore, its felling was done in the course of Syd's general maintenance of the land.

The Claimants therefore maintained their case that the Defendant's occupation of the back of the Property was temporary and at all times subject to their permission and as a result, the Counterclaim should be dismissed.

II. THE EVIDENCE:

[5] The Defendant filed his witness statements first on the 19th February, 2016. He adduced the evidence of himself and Elvira Maynard, who attested to being a good friend of both the Defendant and Grace and further, was one of the witnesses on Muriel's purported last Will.

The Court then granted permission for the Claimants to file their witness statements by the 30th June, 2016. However, the Claimants did not file their two witness statements until the 15th July, 2016.

[6] In his evidence-in-chief, Winston confirmed that Grace is his Aunt and that Syd was his cousin. He maintained that three structures existed on the Property, one being his grandmother Muriel's house, which is now occupied by Syd, the second being the wooden house built by his father in 1978 and the third being a makeshift structure which he moved into to allow him to renovate the wooden house. He also introduced the fact that he was born on the Property in 1980.

He maintained his case about Muriel's ownership of the Property but added that it started in 1954 and ended on her death in March, 2013. He also maintained that the wooden house was never meant to be temporary.

The separation between his parents occurred in 1996 and that was when Herbert, his father, moved out of the wooden house. He added that Muriel never attempted to put him or his sisters out even though his father no longer lived at the wooden house from that point. He stated that he was about 20 years old in 2000 when his mother and sister moved out of the wooden house. He however added that while living in the wooden house by himself, his grandmother Muriel would cook for him.

What was material was his evidence that he never saw the Second Claimant, Syd, living in the front house on the Property until about 3 weeks to a month before Muriel died in March, 2013. However, he did say that the First Claimant, Grace, came to stay with Muriel in either 2008 or 2009 but only for a few months.

He maintained his pleaded case with respect to Muriel's encouragement for him to build a concrete house and that she had told him that it was his home and that she did not want him to go anywhere. She also expressed her appreciation that Winston remained on the Property after his siblings and father left. As pleaded, in pursuance of her desires with respect to Winston and the Property, Muriel left a Will in October, 2009 leaving the back portion of the Property to Winston.

What was not pleaded was the fact that the man who made the Will was known as 'Stretch' and that he came by Muriel's house in the presence of Winston's aunt, Elvira, and one Miss Marjorie, whereupon Muriel executed the Will. It was only after Muriel's death that he was informed by Grace that Muriel had made a Deed of Gift to her.

His evidence was that both Muriel and Grace treated him as the owner of the back portion of the Property and Muriel expressed her desire in front of Grace that he continue to live there.

He confirmed that it was in October, 2013 that Syd threatened him about the eviction notice.

[7] His supporting witness, Elvira Maynard, stated that she knew Winston from birth and that she grew up with Grace. She however did not know Syd, the Second Claimant.

She stated that she lived abroad between 1967 and 1999 but returned to Trinidad almost every year and visited Muriel at her house on the Property. Her evidence was that Grace had moved out of the Property, at some unstated time and that Herbert remained with Muriel. At that time, there was only one house on the Property. She however corroborated Winston's evidence that the wooden house was built some time in 1978 to the back of the Property and that it was repaired from time to time. Further, she confirmed that Herbert, Winston and their family lived in the wooden house for a number of years.

She corroborated Winston's evidence that Muriel continuously expressed happiness at the fact that Winston remained on the Property after his father and siblings left. Further, in her many conversations with Muriel, both Winston and his father's name would come

up and she stated that Muriel never indicated that she only permitted Herbert to build a temporary structure or that she did not want him or Winston to live there.

In fact, Muriel told Elvira of her desire to have the Defendant remain on the Property when she asked Elvira to witness the Will. In this regard, she recalled when a man came to the house and read the Will out aloud in the presence of Muriel, Elvira and Marjorie Valdez nee Phillip and both signed the Will as witnesses.

She further corroborated the evidence that Winston and his father cleaned the land and planted several fig trees on the back portion and treated it as if it were theirs.

[8] Syd introduced in her evidence-in-chief the fact that she was the daughter of Grace. She maintained the pleaded case and confirmed that she and Winston could not get along on the issue of the ownership of the Property. She stated for the first time, however, that the Defendant demolished one of the three structures on the Property. It was also introduced that a valuation of the Property was undertaken, a copy of which was attached to her statement.

[9] Grace's evidence was identical to Syd's.

III. SUBMISSIONS:

[10] At the trial on the 10th November, 2016, it was brought to the Court's attention that Ms Elvira Maynard would not be present to give live evidence. Nevertheless, her witness statement was tendered into evidence by Court Order of even date, with the condition that the Court will decide the issue of weight considering that she has not been tested by cross-examination. A direction for the filing of written submissions by the 29th December, 2016 was also given.

Ms Thornhill, for the Defendant, submitted that the burden lies with the Claimant to prove that Herbert was only given permission to construct a temporary structure and therefore, that he acquired only a bare licence to stay on the Property. In attempting to satisfy that burden, she submitted that the Claimants have failed to give any convincing evidence from either of their witnesses on the issue.

Their main argument seemed to be that the wooden nature of the house meant that it was temporary especially considering that it remained in such a state since 1978. However, this argument was, in Mr Thornhill's mind, speculative. She submitted that the evidence arising from the Claimants' witnesses at trial showed that Muriel always encouraged Winston to build a concrete structure and never asked him to leave. In fact, she submitted that Grace averred at trial that Muriel always felt that Winston lacked ambition and that that was the reason why the house remained a wooden structure. Such evidence, in Ms Thornhill's estimation, contradicted their case that permission was only for a temporary house. Thus, had the Defendant built a concrete structure, she submitted that this matter would not have become litigious.

In any event, she submitted that 36 years of occupation cannot be considered temporary. Further, Syd contradicted her mother's evidence in trial when she stated that her mother, Grace, also encouraged Winston to build a house on the back portion of the land.

With respect to the argument that the Will was not probated and therefore, ineffective, Ms Thornhill submitted that probating the Will is immaterial to the issue in dispute because while Grace would have acquired a legal interest in the Property by virtue of the Deed of Gift in 2009 and the rule of survivorship, it does not affect the Defendant's entitlement to an equitable interest.

Counsel stated that the Claimants have not been able to address the issue of the Will, which clearly devises the back portion of the Property to the Defendant. Further, the question as to why Grace felt the need to seek permission from Winston to allow her daughter to build on the back of the Property remained unanswered. While Grace denied ever seeking such permission in the witness box, she was contradicted by her daughter who stated under oath that such permission was indeed sought.

Another pertinent question submitted was why would Syd engage the Defendant about building a house together if their case is that his presence on the Property was only to be temporary?

In light of these contradictions, it was submitted that the Claimants' actions were indicative of a more permanent occupation by the Defendant.

[11] Mr Boodoosingh's submissions in response were comparatively lacking and devoid of analysis. Most importantly, he did not address the material issue of the effect of the Will nor of the unregistered Deed of Gift. Further, no commentary was made on the evidence given at trial of any of the witnesses.

Rather, he focused his submissions solely on setting out, through several cases, the law of proprietary estoppel. It was only at the final page that he made two essential points to support his clients' case as follows: (i) that the existence of a wooden house on the lands confirms that the Defendant and his father's occupation of the land was temporary; and (ii) that the promise/encouragement was made to the Defendant's father, therefore, the Defendant would not know of its terms and further, that it was his father who relied on the promise and not the Defendant.

Counsel then made a submission that took this Court, and I am sure the Defendant as well, by surprise. He submitted that the Claimants are "*amenable to paying the said Defendant for the share and interest his father deceased and now him (sic) may have acquired in the said lands.*" Such a submission betrays counsel's insecurity about the strength of his case and is equivalent to a concession that the Defendant does, indeed, have an interest in the Property. Surely, his clients' willingness to settle should have been raised at a much earlier stage in these proceedings.

[12] It was in his submissions in reply, which were very brief, that Mr Boodoosingh addressed the Will. His only submission in this regard, however, was that a Will cannot sever a joint tenancy and cannot "*trump an inter vivos transfer*". He also sought to establish his own equitable maxim that "*equity will not do what could have been done during the lifetime of the grandmother of the said Defendant*" by stating that it was at all times available to Muriel to sever the joint tenancy and include the Defendant's name in a Deed.

IV. ISSUES:

[13] The sole issue to be decided in this matter is as follows:

Whether the Defendant has acquired an equitable interest in the Property?

[14] Resolution of this issue would require findings on the following sub-issues:

(i) **What was the nature of the promise/encouragement given to the Defendant?**

(ii) **Whether the Defendant relied on that promise to his detriment?**

(iii) **If not, then are the Claimants entitled to vacant possession of the Property?**

V. LAW & ANALYSIS:

The nature of the promise/encouragement given to the Defendant:

[15] It is clear from the pleaded case, and more so, from the parties' submissions, particularly that of the Claimants, that the Defendant's entitlement to an equitable interest, if any, is based on his ability to prove, on a balance of probabilities, the elements of proprietary estoppel. The law and principles on this doctrine have been well traversed in the common law and are not in dispute. They are that the Defendant must prove that (i) a promise was made; (ii) that he relied on the promise; and (iii) that he suffered a detriment based on his reliance on that promise¹.

[16] The Claimants' case on this issue is that Muriel Charles had given Herbert Charles permission to build a temporary structure at the back of the Property for him to live with his wife and three kids. Further, after Muriel died, Grace allowed Winston to remain in the house.² In the Defence to the Counterclaim, it was reiterated that Muriel had given Herbert permission to build a temporary structure and not a permanent one and that this was the reason why Herbert built a wooden house.³

It was clear from the pleadings that the dispute on this issue is not whether a promise was made at all to the Defendant but rather, whether that promise was for a bare licence or a more permanent equitable interest.

[17] The Claimants' case was maintained in the evidence-in-chief of both Grace and Syd, who both confirmed that Muriel gave permission to Herbert to build a temporary

¹ *Thorner v Major and others* (2009) 3 All ER 945; *Yeoman's Row Management Ltd and another v Cobbe* (2008) 4 All ER 713

² Para 3 of the Statement of Case

³ Para 4 of the Defence to the Counterclaim

structure at the back of the Property and that the said Muriel allowed Winston to continue to live in the wooden house and that such permission was extended by Grace after Muriel died.⁴

[18] At trial however, counsel for the Defendant did not question Grace specifically on the nature of the promise given by Muriel but rather, sought to elicit evidence that would suggest that neither she nor Muriel treated the Defendant as a temporary occupant.

When first asked by counsel, Ms Thornhill, Grace stated that from 1978 to present the wooden house was not always occupied⁵. She later changed her answer and said that there were indeed people occupying the house during that time, however, she had misunderstood the initial question.⁶

She admitted that Herbert was in financial difficulties but stated that the reason for such was because of his gambling habit.⁷ She also admitted that during the time in which Herbert occupied the wooden house, no attempts were ever made to have him or his children, including the Defendant, evicted.⁸ Despite this, she stated that living in a house for 38 years could still be considered temporary “*up to a point*”.⁹

At this point, before the Court was evidence that (i) the wooden house existed on the Property since 1978, or 38 years at the time of trial; (ii) that Herbert and his family occupied this house throughout those years; and finally (iii) that Herbert was indeed in some financial difficulty at the time of building the wooden house, which could explain his failure to erect a more permanent structure.

Grace then admitted that she did encourage the Defendant to build a house at the back of the Property because “*he had no ambition*”. She further stated that Herbert had left some land nearby and that Grace told Winston to “*go and build there because he had no ambition*”.¹⁰ She later stated that this nearby land was really “*two lots of land in*

⁴ Para 4 of Syd’s and para 5 of Grace’s witness statement

⁵ NOE page 7, line 4

⁶ NOE page 7, lines 29 - 34

⁷ Page 8, lines 10 - 13

⁸ Page 10, lines 1 - 18

⁹ Page 11, line 12

¹⁰ Page 11, lines 31 - 36

California” but when asked whether she ever adduced that evidence before the Court she eventually had to admit that she was not sure.¹¹ To the contrary, Grace admitted that Muriel had always encouraged the Defendant to build on the Property. Her evidence was as follows:

“Marlon living in the house but he have no ambition. That is why she (Muriel) give me the house and the land. She said so long she tell him to build and he ain’t building, so that’s why she came by the lawyer and she put it on my name.”¹²

Grace however, stated that she knew nothing about the Will and did not know that her mother, Muriel, had made a Will.¹³ However, she admitted that if Muriel intended for the Defendant to stay there temporarily, she would not have made the provisions which she made in the Will. She then stated that the said Will was made provided that the Defendant would have ambition to build the house.¹⁴

By this evidence, Grace seemed to suggest that the only reason why Muriel would have left the Defendant the back portion of the Property in the Will is because she expected him to build a proper house and the fact that he did not, meant that he was not complying with Muriel’s intentions. Despite such an admission, Grace denied that she ever recognized Winston as the owner of the back of the Property.

As such, she testified that the reason why she said the permission given to the Defendant was temporary was because she thought that the Defendant, being a big man would eventually get something of his own.¹⁵

[19] Grace’s evidence became even less convincing from this point. Ms Thornhill read to her a paragraph from her letter dated the 1st April, 2014, which was sent to the

¹¹ Page 12, lines 14 - 30

¹² Page 13, lines 15 - 19

¹³ Page 16, lines 33 - 34

¹⁴ Page 17, lines 7 - 26

¹⁵ Page 18 lines 37 - 41

Defendant by her attorney, who stated that the Claimants had granted the Defendant a bare licence to “*occupy a portion of the said house*”. Grace was then asked which house was referred to in this excerpt of the letter and she replied “*I don’t know who put that there*”.¹⁶

At this point it would be useful to set out the letter in full as it was quite brief:

“I act for and on behalf of Ms Grace Bain.

My client has instructed me that she is the owner of All and Singular the property (house and land) situate at No. 51 Centenary Street, California and that she had granted you a bare licence to occupy a portion of that house.

My client has instructed me that she has now terminated the said licence and that you have until the 30th September, 2014 to vacate the said house and deliver up possession of same to my client.”

From a reading of this letter, it is clear that the purported bare licence given to the Defendant was with respect to Grace’s house on the Property and therefore, not the wooden house or the back portion of the Property. This statement does have merit considering that the Claimants pleaded that Herbert “*...was living on and off with the said deceased*”¹⁷ (Muriel). Thus, from both the pleadings and this letter, the bare licence was with respect to any occupancy on the part of Hebert and/or Winston in Muriel’s house.

[20] Syd’s evidence offered further inconsistencies and contradictions.

Firstly, she admitted that she was born after the Defendant and therefore, knew nothing about when the wooden house was built or when Winston was born. As a result, she stated that she was not present when Muriel and Herbert discussed his permission to build at the back of the Property¹⁸. In fact, she stated that she never heard Muriel tell Herbert directly that his permission to occupy was temporary but stated that she knew

¹⁶ Page 18 lines 1 - 32

¹⁷ Para 5 of the Claimants’ Defence to the Counterclaim

¹⁸ Page 23, line 36

this to be the case “*from others who told me but face to face being there, no; that is word of mouth from other family members*”¹⁹. Syd gave evidence that she was not even there when Muriel would have had any discussions with the Defendant about his continuing to occupy the back of the Property.²⁰

Syd then proceeded to contradict Grace when she admitted that a house in which people have been living for 38 years would not be considered a temporary house.²¹ She did however, corroborate Grace’s evidence that she (Grace) had indeed encouraged Winston to rebuild the wooden house at the back of the Property²² as well as denying that Grace ever treated and/or recognised Winston to be the owner of the back of the Property.²³

She however admitted that she did have discussions with Winston about joining him to build one house together on the Property.²⁴ Further, she agreed that if Winston had agreed to this plan this matter would not have likely arrived before the Court.²⁵

This evidence therefore suggested that the reasons for this litigation was not the fact that the Defendant overstayed his alleged temporary permission but simply because he did not agree to Syd’s suggestion about them living together.

Despite this Syd still maintained that the Defendant had “way overstayed his time” on the Property²⁶.

[21] Overall, the Claimants’ case on this issue was not convincing. For one, Syd could not corroborate Grace’s evidence that Grace or Muriel had orally represented to the Defendant that he would only have a bare licence to occupy the back portion of the Property. Secondly, Grace, while she maintained that the Defendant had only a bare licence, she contradicted herself by stating that she had herself encouraged the Defendant to build on the Property. In fact, both Grace and Syd’s evidence suggested a more

¹⁹ Page 24, lines 1 - 3

²⁰ Page 24, line 42

²¹ Page 23, line 32

²² Page 25, line 19

²³ Page 25, lines 44 - 45

²⁴ Page 26, line 47

²⁵ Page 27, line 8

²⁶ Page 27, line 38

permanent rather than temporary occupancy of the wooden house by the Defendant: Grace admitted that the wooden house was occupied for 38 years and Syd agreed that such longstanding occupation did not suggest a temporary tenancy. Grace admitted that the only reason why she described Winston's occupation as temporary was because she expected him to build somewhere else and not because Muriel granted him a bare licence. Grace also admitted that Herbert had been in financial difficulty at the time of constructing the wooden house due to his gambling and therefore, supported the Defendant's case that the wooden structure was built due to these circumstances and not because of any bare licence.

[22] The Claimants' case falters even further when the contemporaneous documents adduced before this Court are considered.

On the one hand, we have the letter that the Claimants' attorney wrote to the Defendant on the 1st April, 2014 as cited above, to which Grace curiously seemed completely ignorant. This letter expressly stated that the bare licence was with respect to Muriel's house and had nothing to do with the Defendant's occupation of the back portion of the Property.

Secondly, there's Muriel's Will. It expressly states as follows:

"...I give devise and bequeath unto WINSTON HERBERT JR CHARLES the portion of land that he now occupies at the back of my premises, situate at Centenary Street, California, in the Ward of Couva, in the Island of Trinidad [hereinafter referred to as the "back portion"]..."

This Will was executed on the 16th October, 2009 by Muriel Charles and bears her signature. In any event, the execution of this Will is not challenged by the Claimants. Rather, counsel wished to rely on the fact that it was not probated to say that it was not enforceable.

However, the Court agrees with Ms Thornhill that the probating of the Will is irrelevant to the issue at hand. The fact that Muriel gifted the Property to herself and Grace as joint tenants simply meant that upon Muriel's death, the rule of survivorship kicked in to make

Grace the sole legal owner of the Property. The Defendant is not at all challenging Grace's legal title to the Property but rather, is claiming an equitable interest. As such, this Court is only concerned with whether the elements of proprietary estoppel are made out i.e. a promise and detrimental reliance.

The presence of the Will, though not probated, is evidence that Muriel did intend and therefore, increases the probability that she did promise the Defendant an equitable interest in the back of the Property. Further, the extent of that promise is clearly described in the Will.

When the effect of these documents are considered along with the various contradictions and inconsistencies of the Claimants' pleaded case and evidence, the Court finds that they have failed to inspire any confidence that their version is the more credible one.

[23] In the alternative, the Defendant's case on the issue has been far more consistent.

His pleaded case, that Muriel gave him permission to build a permanent home on the back of the Property was maintained in his witness statement. In fact, he responded to the claim that the wooden house purportedly evidenced the transitory nature of the permission by stating that it was only because of his father's financial difficulties, that the house remained wooden.²⁷ Such a fact was confirmed by Grace in her live evidence stated above.

[24] At trial, he admitted that he was not there when the agreement with respect to his father's permission to occupy the back of the Property was made.²⁸ However, he maintained that it was "*highly doubtful*" that the permission would have been temporary due to the fact that he and his father lived there for all these years yet no one ever attempted to evict him. The absence of any attempts to evict the Defendant or his father was also confirmed by both Grace and Syd in their evidence at trial.

²⁷ See para 4 of the Defence and paras 8 – 14 of the Defendant's witness statement.

²⁸ NOE Page 33, lines 1 - 5

When asked why he never probated the Will, he stated that he did not see the need to do so because as far as he was concerned everyone was aware that Muriel had given him the back portion of the Property.²⁹

Mr Boodoosingh however, was able to elicit from Winston that despite the alleged permanent occupation, he never took any steps to get a separate electrical connection for his wooden house. Rather, he relied on the connection from Muriel's house for his electricity. However, when asked whether this evidences a temporary occupation, Winston maintained his answer in the negative and stated that he was "*planning to fix all that when he built his concrete house*".³⁰

Winston categorically denied that he or his father were beneficial owners of any other lots of land nearby to the Property as stated by Grace in her evidence.³¹ Thereafter, Mr Boodoosingh sought to put his clients' case to Winston who, in this Court's opinion, remained unshaken in his answers and maintained his case that his grandmother, Muriel, gave him the back portion of the Property and always encouraged him to build a concrete house.³²

There were therefore no contradictions inherent in the Defendant's case. In fact, some of his evidence was supported by the Claimants, in particular, by Syd. Syd corroborated his evidence that Grace encouraged him to build on the back of the Property and further, that occupancy of a house for 38 years does not indicate a temporary occupation.

[25] In light of the above analyses, the Court finds that the Defendant has proven on a balance of probabilities that his father was promised an equitable interest in the back portion of the Property and such interest was extended to him by Grace Bain, the First Claimant herein.

²⁹ NOE Page 33, lines 30 - 41

³⁰ Page 35, lines 3 - 21

³¹ Page 35, lines 22 - 40

³² Page 39, lines 1 - 2

Whether the Defendant relied on that promise to his detriment?

[26] The Defendant has pleaded that, in reliance of Muriel's promise of an equitable interest in the Property, his father built a modest two-bedroom wooden house at the back.³³ He further stated that he and his father often repaired this wooden house and in pursuance of such repair, deposited building materials on the Property,³⁴ for which he, no doubt, would have expended monies.

He confirmed this pleading in his witness statement³⁵ save for the fact that he added that the wooden house eventually collapsed. Further, while the Court placed less weight on her evidence, Elvira confirmed by stating that she observed that the wooden house was repaired from time to time.³⁶

However, unfortunately for the Claimants, at trial, Mr Boodoosingh failed to ask any questions about Winston's alleged repairs to the house or to his depositing of building materials. In fact, it was an agreed fact between the parties that Winston deposited materials on the Property with the intention of building a more permanent structure.³⁷

Accordingly, due primarily to the fact that Winston's evidence about the repairs and purchased building materials remained unchallenged, notwithstanding his failure to produce any receipts in support, this Court finds that the Defendant has proven his detrimental reliance on the promise of an equitable interest in the back portion of the Property as described in Muriel's last Will.

[27] Given the above findings, this Court concludes that the elements of proprietary estoppel have been made out and therefore, the Claimants' case is hereby dismissed.

³³ Para 4 of the Defence

³⁴ Para 7 of the Defence

³⁵ See paras 5 & 9 of Winston's witness statement

³⁶ See para 12 of Elvira's witness statement

³⁷ See para 5 of Syd's witness statement and para 6 of Grace's witness statement

VI. DISPOSITION

[28] Having considered the pleadings and evidence along with the parties' written submissions, and in accordance with the analyses and findings as stated above, the Court makes the following order:

ORDER:

1. That the Claimants' claim filed on the 29th October, 2014 be and is hereby dismissed.
2. That the Defendant's counterclaim filed on the 8th April, 2015 be and is hereby granted in the following terms:
 - a) It is declared that the Defendant has acquired an equitable interest in the portion of the property he now occupies at the back of the premises situate at No. 51/L.P. 52 Centenary Street, California (known as the "back portion" of the said premises).
 - b) It is also declared that the Claimants are estopped from denying the Defendant's interest as declared in clause 2 (a) of this order and that the Defendant is entitled to remain in possession thereof.
3. That the Claimants shall pay to the Defendant his costs of the claim and counterclaim to be quantified on the prescribed scale of costs pursuant to Part 67.5 (1) of the CPR 1998, in default of agreement.
4. The said costs have been quantified in the total sum of \$28,000.00.

Dated this 21st day of March, 2018

Robin N. Mohammed
Judge