THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2015-01617

BETWEEN

VINLOLLY PANAN

Claimant

AND

VIVIEN LENNY PANAN

Defendant

Before the Honourable Mr. Justice Robin N. Mohammed

Appearances:

Mr. Anthony V. Manwah for the Claimant

Mr. Ravi Rajcoomar instructed by Ms Alisa Khan for the Defendant

---

JUDGMENT

I. Background:

[1] This action was brought by Claim Form and Statement of Case filed on the 15th May, 2015 seeking an equitable interest in a parcel of land situate at No. 11 La Paille Village, Tacarigua (the "Lands") along with the apartments constructed thereon (together

referred to as "the Property"). Shortly thereafter, on the 17th July, 2015, the Claimant applied for a mandatory injunction requiring the Defendant to consent to an electricity connection to the Property. Without the electricity connection, the apartments could not be rented out. Therefore, as a ground for the injunction, it was deposed in the affidavit that the rental income was, not only the Claimant's only source of revenue, but more importantly, necessary for the mortgage payments due for the Property.

[2] The hearing of the application for the injunction was held on the 5th August, 2015 and permission was granted for the Claimant to serve a supplemental affidavit and for the Defendant to serve an affidavit in reply. In this supplemental affidavit, the Claimant adduced evidence that he had been assisting his brother, the Defendant, in purchasing the Lands from the Agricultural Development Bank and annexed copies of receipts and cheques in support.

[3] The Defendant filed its Defence and Counterclaim on the 17th September, 2015 denying the Claimant's entitlement to the equitable interest in the Property claimed while counterclaiming for a declaration of ownership as well as an order for the Claimant to vacate the premises.

[4] On the 16th October, 2015, the Defendant filed his affidavit in response to the application for injunctive relief. On the 19th October, the Injunction was relisted to the 5th November, 2015 for further hearing and then further re listed to the 12th November, 2015. Further adjournments were requested and the matter was finally fixed for the 21st December, 2015 for decision.

[5] In the interim, the Claimant filed an Amended Statement of Case on the 11th November, 2015. In it, the Claimant included a claim for damages for loss of rental income from 1st January, 2015 at the rate of $5,000.00 per month.

He pleaded that by Deed of 1999, the Lands on which the house was built was conveyed to his brother, the Defendant. Thereafter, in 2002, the parties entered into discussions and that the Defendant orally represented to him that he, the Claimant, could build a house on the Lands and that, upon doing so, the Defendant would convey the Property to him.

In reliance on this representation, the Claimant expended the sum of $357,000.00 to build the said house. Further, by virtue of a Power of Attorney dated the 22nd November, 2011 granted from the Defendant to the Claimant, the Claimant exercised his power to mortgage the Property to the Intercommercial Bank as security for a loan, initially in the sum of $570,000.00 and increased to $960,000.00 in May, 2013. The Claimant averred that he is still paying this latter loan.

Between the months September to December, 2014, the Claimant used approximately $900,000.00 of the monies borrowed to convert the house into 4 apartments and a further $250,000.00 to fully furnish them. Further, while construction was occurring, it is alleged that the Defendant stayed at the Property and never raised any objections.

On the 23rd December, 2014, after the apartments were completed, the Chief Electrical Inspector granted approval for the said electricity connection but the Defendant, as paper title owner, has not acted upon such approval nor has he given his consent for the electricity connection to be effected. As a result, the Claimant claims that he has suffered damages for the loss of rental income stated.

Accordingly, the Claimant claimed the following reliefs: (i) a deceleration that he has an interest in the Property; (ii) an Order that the Defendant convey the Property to him in satisfaction of the Claimant's alleged equitable interest; and (iii) damages for loss of rental income.

[6] At the hearing of the 21st December, 2015, the Court delivered a written decision dismissing the Claimant's application for injunctive relief on the basis that the greater risk of injustice lay with the Defendant should the injunction be granted[1].

[7] In response, the Defendant filed an Amended Defence and Counterclaim on the 12th January, 2016. In it he confirmed that, by Deed of Gift dated the 4th August, 1998, he became the sole owner of the Lands, which at all times were approved for residential use only.

He pleaded that the Claimant had established a business in the U.S. but was arrested for attempting to obtain an American passport with a fraudulent birth certificate. Due to a

[1] Para 27 of the Decision dated the 21st December, 2015

subsequent bitter divorce, the Claimant liquidated this business and obtained the sum of $200,000.00 cash, and then left the U.S. for Trinidad. Sometime in 2001, the Claimant was detained while trying to re-enter the U.S. due to a warrant for leaving the U.S. with a federal case pending. During this time, the Claimant's mother became ill and eventually died in November, 2001. Shortly thereafter, the Claimant was deported to Trinidad in December, 2001.

Against this background the Defendant wrote a letter to the Claimant in February, 2002.

The Defendant denied that he ever orally represented that the Claimant could build on the Lands and that thereafter, the Defendant would convey the Lands to the Claimant. Instead, as the Claimant was aware, it was at all times the intention of the Defendant that the Lands would be used as a family home and that the siblings would contribute to the building of a house thereon. Further, whoever contributed either by purchase price or by repayment of the loan, would be given an interest in the Property commensurate with his/her contribution. Such intention was, in the Defendant's opinion, communicated by the said letter which contained no oral representations. It is the Defendant's case that no formal agreement was ever reached between the parties pursuant to this letter and moreover, no agreement was made for the construction of commercial apartments.

In support of his case that no representations were made, the Defendant stated that the use of the word 'maybe' in the letter reflected that the statements were not binding and in any event, any suggestions in the letter was in the context that the other family members would be included and therefore, the use and/or ownership of the Property would not be exclusive to the Claimant.

It is alleged by the Defendant that in response, the Claimant, upon receiving the letter, refused the suggestions therein and informed the Defendant that he would be, instead, purchasing lands in Kelly Village.

Sometime in early 2004, the Claimant told the Defendant that he could no longer live at his home in Kelly Village due to concerns for his safety and as a result, asked the Defendant if he could build on the Lands.

In light of this request, and in consideration for the familial bond between the two, the parties entered into an oral agreement in 2004, whereby the Claimant was permitted to build a single dwelling house for residential purposes only on the Lands. The Defendant agreed to repay to the Claimant the costs of construction up to no more than $300,000.00[2] after 10 years with no interest and in consideration, the Claimant will be exempt from paying rent. Upon building the house in late 2014, the Claimant moved into same.

In breach of this oral agreement, and without permission or consent from the Defendant, the Claimant proceeded to convert the house into 4 commercial apartments. During this conversion process, which occurred in November, 2014, the Defendant stayed on the Property and, through his attorney, wrote to the Claimant by letter dated the 25th November, 2014 revoking his Power of Attorney of the 22nd November, 2011 and demanding that the Claimant cease all construction. The Claimant, however, was allowed to reside on the Property in the interim. Further, the Defendant offered to reimburse the Claimant for monies expended on the house but not for monies expended on the conversion.

In any event, it is the Defendant's case that the said Power of Attorney was limited and only facilitated the obtaining of a loan for the purposes of expanding the Claimant's car rental business and not for buildings or construction on the Lands. Further, the Defendant put the Claimant to proof of the alleged mortgages whereby the Lands were used as collateral and averred that same came into existence after the house was completed. In any event, the mortgage of $570,000.00 taken in December, 2011 was for the car rental business,[3] which, contrary to the Claimant's case, was an additional source of income for the Claimant[4].

After the apartments were completed, the Defendant admitted that he refused consent to an electricity connection but denies that this resulted in any loss for the Claimant.

[2] See para 32 of the Amended Defence
[3] Para 27 of the Amended Defence
[4] Para 33 ibid

Sometime in May, 2013, the Defendant, after being informed by his wife that the Claimant intended to sell the Property due to several threats to his life, informed the Claimant, by telephone, that he could not do so. The Defendant also offered to pay the Claimant the sum of $300,000.00, which was the agreed cost of the house. However, the Claimant refused, demanding current market value and the Defendant agreed[5]. The Claimant also informed the Defendant that he would be transferring his car rental business in the name of Ravi Rampersad to avoid further threats.

As a result, the Defendant denied that the Claimant had any equity in the Property based on any representation from the Defendant save for the costs of construction for the house. In any event, the fact that the Claimant has lived on the Property rent-free must also be considered.

[8] Further, the Defendant counterclaimed for a declaration that he, alone, is entitled to the Lands; an order for the Claimant to vacate same; and finally, an order that the Defendant is only required to pay the sum of $300,000.00 to the Claimant for the dwelling house.

[9] At the CMC of the 13th January, 2016, the Court granted permission to the Claimant to file a Reply and gave directions for the disclosure and inspection process, the filing of witness statements and evidential objections, proceeded to set a date for the pre-trial review and for a tentative trial date on the 18th May, 2016.

[10] In pursuance of this order, the Claimant filed its Reply on the 25th January, 2016. In it, the Claimant agreed that the Defendant was the sole owner of the Lands by virtue of Deed dated 4th August, 1998. He also admitted to his arrest in the U.S. but averred that same occurred in February 1999. Further admissions were made to the facts that led to his deportation to Trinidad in December 2001.

He, however, denied that the letter of February 2002 written by the Defendant was out of any sympathy for his (the Claimant's) unfortunate circumstances but rather, was based on the discussions between the parties. These discussions were originally about building a family home. However, due to the fact that no other family member wanted

[5] Para 43 ibid

to contribute to the house, the parties later agreed that the Claimant should build the house alone and thereafter, the Defendant would transfer the Lands to him. It was in reliance on this representation that the Claimant proceeded to build the house.

The Claimant denied ever refusing the Defendant's offer contained in the letter of 2002 and avers that the property in Kelly Village had already been purchased at that time. Rather, it followed that the Claimant acted on the written representations of the letter by constructing his house which was completed by the end of 2003 and not 2004 as the Defendant alleges.

In or around July 2014, the Defendant was informed and made no objections to the fact that the Claimant was closing down his car rental business due to a robbery and as a result, he would be converting the Property into apartments. From this point thereafter, the Claimant's sole source of income would become the rental income from the apartments, which were not commercial but remained a residential use of the Property.

It was denied that the Defendant provided any assistance in the construction of the house on the Lands. Further, having had a Power of Attorney granted to him, the Claimant did not need permission for the building or conversion. The Claimant also maintained that the said Power of Attorney was not limited as pleaded by the Defendant.

It was denied that the parties ever agreed that the Defendant would reimburse the Claimant for the construction of the house in the amount of $300,000.00 or any amount.

It was admitted that in or around 2012 after the parties' father passed away, the Claimant wished to move to a safer location due to threats that he received in relation to the car rental business but denied that he ever intended to sell the Property. However, the Claimant maintains that by virtue of the Power of Attorney, he always had the power to sell the Lands. In any event, the Claimant sold the car rental business at this time and denies that he transferred it to one Ravi Rampersad.

[11] The Claimant filed witness statements of himself, his sister— **Lisa Neemar** and his brother, **Vivanlittle Panan**. The Defendant filed his own witness statement in support.

Evidential objections were filed by the Defendant on the 15th April, 2016.

[12] The matter came up for a pre-trial review on the 21st April, 2016 whereupon the Court gave orders for the filing of trial bundles and confirmed the trial date for the 19th May, 2016. The trial was completed on the said 19th May and directions were given for the filing of closing written submissions.

[13] Thereafter, closing submissions on behalf of the Claimant were filed on the 29th July, 2016 and on behalf of the Defendant on the 2nd August, 2016. Further Arguments were filed by the Defendant on the 25th August, 2016 and submissions in response, by the Claimant on the 3rd September, 2016.

II. Submissions:

[14] While the parties' submissions did assist the Court in its decision, the Court reminds the attorneys of the necessity of providing properly cited authorities with clear and concise arguments in support. There is a tendency to regard submissions with less diligence than other pre-trial documents such as pleadings and witness statements. However, attorneys must guard against such complacency. Being documents for the Court, submissions must be drafted with the same care and attention to detail befitting the professionalism of the bar. In this light, it was worrying to see the prevalence of spelling and grammatical errors along with improperly cited cases and statutory provisions particularly in the arguments of the Defendant, which at times made certain points unclear and on occasion, almost indecipherable. Similarly, it was curious to see the Claimant's submissions in response comprising a mere sentence. These were not at all acceptable.

[15] Mr Manwah for the Claimant submitted that, when one considers the letter of February, 2002, along with the attendant discussions between the parties, it is clear that it was more probable than not that the Defendant represented to the Claimant that he should build the house and thereafter, the Lands would be transferred to him. Further, the fact that the Claimant relied on this representation and spent his own money in the sum of $375,000.00 to do so, the doctrine of proprietary estoppel is made out.

[16] In support, Mr Manwah highlighted the apparent contradiction between the Defendant's pre-action letter and his letter of the 17th February, 2015, the latter of which introduced the agreement whereby the Defendant would repay the Claimant for the costs of construction over 10 years. The terms of this agreement were again modified under cross-examination when it was stated that the repayment of the $300,000.00 was to occur over a 10 year period in yearly payments of US$5,000.00, a fact that was never pleaded.

[17] Further, it is the Claimant's case, as stated on the Deed, that the land was gifted to the Defendant by their Mother and the Claimant due to the close relationship among them at the time of the deed. When considered along with the fact that the Defendant had migrated to the US, it increases the probability that the Defendant agreed to convey the Lands to the Claimant.

[18] Finally, contrary to the Defendant's submissions, the Power of Attorney granted to the Claimant did give him the power to mortgage and sell the Lands and despite this expressed power, the Claimant stated at trial that he did not wish to use this power to transfer the Lands to himself because he wanted the Defendant to do so. Mr Manwah submitted that this illustrated the Claimant's honest nature.

[19] On the issue of the alleged lack of Town and Country Planning permission, it was submitted that the Defendant has adduced no evidence to suggest that the Lands are no longer for residential use.

[20] Lastly, Mr Manwah submitted that the Defendant's evidence in chief— that persons agreed to rent the apartments at $5,000.00 a month providing that he had electricity, remained unchallenged before the Court.

[21] In response, Mr Rajcoomar for the Defendant, submitted that the Claimant failed to provide sufficient evidence to prove the elements of the doctrine of proprietary estoppel to establish his equitable interest in the Property.

[22] In support, he relied on several authorities, both local and of the UK, which confirm that the Claimant must achieve a fair degree of certainty in a claim for estoppel by way of bank records, receipts, details of the conversation surrounding the promise and so on.

The Claimant's failure to plead and or adduce these facts were, in his opinion, fatal to his claim.

[23] Mr Rajcoomar also relied on authorities to submit that, because the Property was encumbered by a mortgage, the Claimant was required to add the bank, i.e. Intercommercial Bank, as an interested party and his failure to do so was also fatal to his claim.

[24] Further, pursuant to statute, the Claimant needed consent from Town and Country Planning Division for change of use from residential to commercial prior to the conversion of the house into the 4 apartments. Having failed to do so, the conversion was illegal.

[25] Finally, counsel highlighted the inconsistencies in the Claimant's case, which, he viewed, were adverse to his credibility as a witness, such as:

1. The fact that the Lands were to be used for a family home and therefore, it was unlikely that the Defendant would ever agree to convey same to him exclusively;

2. That the Claimant stated that his father was part of his dealings but no evidence or mention of his father was made;

3. That the Claimant pleaded that the Defendant never assisted him in constructing the house, yet, at the same time admitted that he never paid rent for staying in the Property and further, that he used the Property as collateral for a loan, the proceeds of which assisted the Claimant in his car rental business and otherwise;

4. That the Claimant stated in his witness statement that he notified the Defendant of the conversion to apartments in July, 2014 but stated at trial that the Defendant first observed the apartments in 2015;

5. That the Claimant stated at trial that he sold the property in Kelly Village but never said so in his witness statement.

[26] In Further Arguments, counsel for the Defendant focused on the Power of Attorney granted to the Claimant. Counsel submitted that, in breach of his fiduciary duties, the Claimant used the Power of Attorney for his own benefit by virtue of the mortgage

obtained from Intercommercial Bank. This mortgage was used for his car rental business as well as for clearing off a line of credit of $200,000.00. Having so improperly used his power, the Defendant submitted that the money received should be set off against any equity that the Claimant may have in the Property.

III. Issues arising for determination

[27] Having considered the pleadings, evidence and submissions, the Court views that the following are the live issues for determination:

1. **Was the Claimant's failure to include Intercommercial Bank as an interested party fatal to his claim?**
2. **Did the Claimant need Town and Country Planning permission for change of use to convert the house into the apartments?**
3. **Has the Claimant made out the elements of proprietary estoppel entitling him to an equitable interest by way of conveyance of the Property to him? This issue would inherently necessitate rationalisation of the following sub-issues:**
    i. Were the parties bound by the letter of February 2002 and the surrounding discussions or by the alleged oral agreement in 2004?
    ii. Did the Defendant ever promise the Claimant that he would convey the Property to him?
    iii. If so, did the Claimant rely on that promise to his detriment?
4. **Is the Claimant entitled to damages for loss of rental income as claimed?**
5. **Whether the Defendant is entitled to his counterclaim?**

IV. Law & Analysis:

Issue 1: Was the Claimant's failure to include Intercommercial Bank as an interested party fatal to his claim?

[28] **Part 19 of the Civil Proceedings Rules 1998 ("the CPR")** deals with the addition and substitution of parties. **Part 19.3** prevents the Claimant's claim from failing merely because he failed to add the bank as a party to the proceedings.

It states that the ***"…general rule is that a claim should not fail because—***

1. *"A person was added as a party to the proceedings who should not have been added; or*
2. ***A person who should have been made a party was not made a party to them"***

It therefore follows that the Court does not agree with the Defendant's submission that *"...should the court determine that Intercommercial Bank Limited as the mortgagee should have been a party the claim would have to be dismissed with costs.*[6]*"*

[29] Further, the CPR places the discretion entirely in the Court's hands to decide whether a party, who has not been added, should be added. **Part 19.2 (3)** states:

1. ***The Court may add a new party to proceedings if—***
    i. ***It is desirable to add the new party so that the court can resolve all matters in dispute in the proceedings; or***
    ii. ***There is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the court can resolve that issue.***

[30] It is this Court's considered opinion that there is nothing before it to suggest that the addition of the Intercommercial Bank is necessary to resolve any of the issues in dispute in this matter.

The primary issue is whether the Lands on which the apartments sit should be conveyed to the Claimant. The Bank's connection to this matter is strictly by way of a mortgage over the apartments thereon, the security for which is the Lands on which the apartments sit. It follows that should the Court find in favour of the Defendant on this issue and the status quo is maintained, the mortgage will not be affected as the Claimant

[6] Page 6 of the Defendant's closing submissions

will still be obliged to make his payments. Further, should the Claimant default on his payments, there is nothing preventing the bank from claiming the Lands from the Defendant as collateral. In the alternative, should the Court find that the Lands be conveyed to the Claimant, the only difference for the bank is that it will have to claim the Lands from the Claimant in default of his mortgage payments. On either version therefore, it is evident that the bank's interest in the matter will not be affected by this judgment. Further, there is no information or evidence that the Bank or its personnel can bring to bear on the matter that would assist in any of the issues. Accordingly, adding the bank to these proceedings will not assist in the resolution of any of the issues in this matter

[31] Further, the case of **Derrick v Najjar and the A.G**[7] relied on by the Defendant is distinguishable and not at all relevant. For one, this case did not address the issue of adding a new party to proceedings. Rather, the facts are that, by writ of summons of 1974, the plaintiff purported to institute proceedings against both defendants but only served the writ on the second defendant. Further, the statement of claim was only served on the second defendant. The result being that, in so far as the action may have affected interests of the first defendant, the action would be a nullity as far as the first defendant is concerned.

It is plainly obvious that these facts do not apply here.

[32] The Court therefore finds that (i) it was not necessary to add Intercommercial Bank to these proceedings as the bank is not connected to any issues in this matter nor is the addition necessary to resolve the proceedings and (ii) the failure to add Intercommercial Bank would not have been fatal to the Claimant's claim.

Issue 2: Whether the Claimant needed approval for the conversion of the house into apartments for rent?

[33] **Section 8 of the Town and Country Planning Act Chap. 35:01** stipulates that permission is needed for the 'development' of any land. 'Development' is defined to

[7] 1976 28 WIR 340

include the carrying out of external alterations to the dwelling house that would amount to a change of use of the land. **Subsection (2) (a)** however, provides an exception:

> *"8 (1) Subject to the provisions of this section and to the following provisions of this Act* ***permission shall be required under this Part for any development of land*** *that is carried out after the commencement of this Act."*
>
> *"(2) In this Act, except where the context otherwise requires, the expression* ***"development" means*** *the carrying out of building, engineering, mining or other operations in, on, over or under any land,* ***the making of any material change in the use of any buildings or other land****, or the subdivision of any land, except that the following operations or uses of land shall not be deemed for the purposes of this Act to involve development of the land, that is to say—*
>
> *i.* ***the carrying out of works for the maintenance, improvement or other alteration of any building, if the works affect only the interior of the building or do not materially affect the external appearance of the building.****"*

[34] It therefore follows that the Claimant would only need permission if he is making a material change in the use of the Property. However, he will be exempt if the conversion of the house into apartments only affected the interior of the Property or did not materially affect its external appearance.

[35] Another relevant exemption was seen at **section 8 (2) (f)** which stated:

> *"in the case of buildings or other land that are used for a purpose of any class specified in an Order made by the Minister under this section,* ***the use thereof for any other purpose of the same class.****"*

By this exemption, the Claimant was permitted to use the dwelling house for another purpose if he desired, provided that it remained in the same class.

[36] Therefore, the Defendant, who by raising this issue and therefore, who bore the burden of proving same, had to show that the conversion of the house into apartments required material alterations to the external appearance of the house and/or amounted to a change

of class. However, the Defendant has provided no evidence by way of expert testimony, photographic evidence or by comparison of the dwelling house with the apartments to show that the conversion did not fall into any of these exemptions.

[37] In fact, what counsel for the Defendant should have done was refer to the relevant subsidiary legislation entitled the **Town and Country Planning (Use Classes) Order** which is expressly stated as being *made under section 8 (2) (f*). **Clause 3** of this Order confirms the exemption stated in **section 8 (2) (f)** as follows:

> *"Where a building or other land is used for a purpose of any class specified in the Schedule, the use of such building or other land for any purpose of the same class shall not be deemed for the purposes of the Act to involve development of the land."*

The list of Classes in the **Schedule** are as follows:

1. *CLASS I — Use as a shop.*
2. *CLASS II — Use as an office or bank.*
3. *CLASS III — Use as a warehouse, except for the storage of noxious or dangerous goods.*
4. *CLASS IV — Use as a place of public worship or religious instruction or for the social and recreational activities of a religious group.*
5. *CLASS V — Use as a crèche, day nursery or use as a consulting room or surgery not within the curtilage of the residence of the consultant or medical practitioner.*
6. *CLASS VI — Use as an art gallery, museum, public library, public reading-room or exhibition hall.*
7. *CLASS VII — Use as a meeting hall or concert hall.*
8. *CLASS VIII — Use as a theatre or cinema.*
9. *CLASS IX — Use as a gymnasium, centre for indoor games or community centre.*

From this list there does not appear to be any Class under or within which the dwelling house would fall.

[38] The Court is also guided by **Clause 4 of the Town and Country Planning (General Development) Order**, which grants automatic permission for any development of any class of use specified in the Schedule. It states:

> ***4 (1).*** *Subject to this Order,* ***development of any class specified in the Schedule shall be permitted and may be undertaken without the permission of the Minister upon land to which this Order applies****; but the permission granted by this Order in respect of any such class of development shall be subject to any condition or limitation imposed in the Schedule in relation to that class.*
>
> ***4 (2).*** *Nothing in this clause or in the Schedule shall operate so as to permit any development contrary to a condition imposed in any permission granted or deemed to be granted under Part III of the Act otherwise than by this Order.*

[39] The Schedule referred to in this provision is seen toward the end of this Order and is entitled **Schedule, Part 1 of the Town and Country Planning (General Development) Order** entitled "**Permitted Development",** which is made pursuant to *Clause 4 of the Order* cited above. This **Schedule** sets out the developments to the Claimant's house which were permitted without needing approval.

The first **Class** mentioned is **'Development within the Curtilage of a Dwelling House'** and allows for:

> *"The improvement or other alteration of a dwelling house* ***so long as the cubic content of the original dwelling house (as ascertained by external measurement) is not increased:*** *and* ***so long as the area defined by the external walls of the original building remains the same in both content and location****, except in the case of the addition of a W.C., a bathroom or a kitchen."*

[40] Next to this **Class** is a column entitled **Conditions,** which sets out the conditions to which the permitted development of the Claimant's dwelling house is subjected. It states as follows:

> *"No part of such building shall project beyond the forward most part of the front of the original dwelling house."*

The second permitted development to the dwelling house is as follows:

> *"The erection, construction, or placing, and the maintenance, improvement or other alteration, within the curtilage of a dwelling house, of any building or enclosure (other than a dwelling, garage or stable)* ***required for a purpose incidental to the enjoyment of the dwelling house as such, including the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwelling house.****"*

This permitted development is subject to the following conditions:

> *"The height shall not exceed, in the case of a building with a ridged roof, 12 feet, or in any other case, 10 feet."*

Similar to the above analysis, no evidence has been provided to this Court to show that the conversion of the house into the apartments fell outside of these permitted developments.

[41] To the contrary, the Defence counsel relied on a **Regulation 12 (3)**, presumably to be found somewhere within this same Act to submit that **'business premises'** is defined as one which involves the provision of services to members of the public. No connection however, was made between this definition and the Claimant's house or apartments. Counsel then proceeded to refer to a **Second Schedule** that effectively stated, in his interpretation, that permission was needed if the Claimant's conversion of the house is made for the purposes of letting dwelling houses into separate tenements[8].

[8] Page 7 of the Defendant's closing submissions

[42] In reviewing the Act as a whole, inclusive of its subsidiary legislation and regulations, it is this Court's opinion that counsel has misunderstood the provisions therein. The definition of **'business premises'** on which counsel relies seems to come from **Clause 3 (3)** of **Class V: Flag Advertisements of the Town and Country Planning (Control of Advertisements) Regulations**, **section 3** of which states that *"these Regulations shall apply to the display on any land of all advertisements…"*

It followed that this entire set of regulations relied on by the Defendant was not applicable to the instant case.

Further, the **Second Schedule** referred to is stated as being made *under section 5(7),* which refers to Developments Plans that are conducted by the Minister and are to be submitted by the said Minister to Parliament indicating *the manner in which the Minister proposes for the land in Trinidad and Tobago to be used*[9].

Section 5 (7) states that this Development Plan may make provision for any of the matters mentioned in the said Second Schedule. Under **Part II of the Second Schedule,** it was stated that provisions can be made in this Development Plan for: *"(d) the purposes for and the manner in which buildings may be used or occupied including in the case of dwelling houses, the letting thereof in separate tenements.*[10]*"*

It is therefore apparent that neither section 5 (7) nor the Development Plan is relevant to the instant facts.

[43] Aside from improperly citing and applying the statute, the submitted authorities on the issue were also inapplicable. The case of **Chalmers v Pardoe**[11] is distinguishable on its face. Based on counsel's summary of the facts, in ***Chalmers*** supra, the defendant had promised the claimant that he, the claimant, could build on the land *provided that he got consent from the local authority*. It followed that without the necessary consent, the claimant could not rely on the promise and further, the construction would not have been lawful.

[9] See Section 5 (2) of the Act
[10] See page 44 of the Town and Country Planning Act Chap 35:01
[11] 1963 3 All ER 552

[44] In the case at bar, however, the representation made to the Claimant was not conditional on any approval from the Town and Country Planning Division. Rather, the alleged promise to transfer the Lands was only conditional upon completing the house. Therefore, the issue of Town and Country approval had no bearing on the proprietary estoppel claim.

Issue 3: Whether the elements of proprietary estoppel have been made out?

[45] The elements of the doctrine of proprietary estoppel have long been established in the common law. More recently, in the UK House of Lords case of **Yoeman's Row Management Ltd and Anor v Cobbe**[12] it was stated as follows:

> *"The ingredients for a proprietary estoppel should include, in principle, a proprietary claim made by a claimant and an answer to that claim based on some fact, or some point of mixed fact and law, that the person against whom the claim was made could be estopped from asserting.* ***It was established that if A under an expectation created or encouraged by B that A should have a certain interest in land, thereafter, on the faith of such expectation and with the knowledge of B and without objection by him, acted to his detriment in connection with such land, a court of equity would compel B to give effect to such expectation.*** *"*

[46] As to what constitutes a valid assurance/representation/encouragement, it was held in the UK House of Lords decision of **Thorner v Major**[13] that the provision of a bonus notice on two life assurance policies, along with the words *"that's for my death duties"* from a farm owner to his assistant, amounted to an encouragement by the said farm owner that the assistant, who had assisted him on his farm for years without remuneration, would be the successor to the farm upon the farm owner's death.

[47] At this stage, the Court is focused primarily on whether the Claimant has proven on a balance of probabilities that a promise/assurance/encouragement was given to him that the Defendant would convey the Lands to him. In coming to this finding, the following

[12] 2008 UKHL 55
[13] 2009 3 UKHL 18; 2009 3 All ER 945

principles are taken from **Thorner** *supra* as to the composition of a proper representation/encouragement/promise[14]:

1. That the relevant assurance/promise had to be clear and what amounted to sufficient clarity was dependent on context;

2. The assurance/promise had to be unambiguous and had to appear to have been taken seriously;

3. That the assurance/promise had to be one which the promisor might reasonably expect to be relied on by the promisee;

4. That promises made in a family or social context created no intention to create an immediately binding contract as such promises are often subject to unspoken and ill-defined qualifications.

5. That proprietary estoppel looked backwards from the moment when the promise fell due to be performed and asked whether, in the circumstances which had actually happened, it would be unconscionable for the promise not to be kept.

[48] The Claimant's case on this issue is that the Defendant represented to him, by way of the letter of February, 2002, along with the surrounding discussions that upon building the house, the Defendant would convey the Lands to him.

In response, the Defendant denied that he ever agreed to convey the Lands to the Claimant. Instead, the Lands were always for the family and therefore, it was only agreed that the Claimant would build the house and live in it rent-free and that he would repay the Claimant the costs of construction.

[49] On his pleaded case, the Claimant stated that, in or about 2002, the Defendant discussed the construction of a dwelling house and that by letter dated February, 2002 along with subsequent communication between them, the Defendant represented to the Claimant that he, the Claimant, could build a house on the Lands and that the Defendant

[14] 2009 3 All ER at page 946 (b) – (e)

would convey the Lands to him.[15] He admitted that the initial discussions were for the construction of a family home as confirmed in the letter but pleaded that on a subsequent discussion of the letter, the Defendant told him that no other family member wanted to contribute and therefore, he, the Claimant, alone, should build the home and that he, the Defendant, would transfer the Lands to him.[16] In his Reply, the Claimant stated that he did indeed act on the letter of the 4th February, 2002 and that the house was constructed by the end of 2003 and not 2004 as alleged by the Defendant.

[50] In his witness statement, the Claimant maintained his case but further elaborated on the issue as follows:

1. that one of the things that the parties had agreed on is that they would ask all the siblings to contribute and the Property would be transferred commensurate to the contribution;

2. that after the letter, the parties discussed building the house with their two remaining siblings, Lisa and Little, who both indicated their lack of interest and that they would not be contributing. It was at this point that the Defendant told him to build the house alone and that he would transfer the Property to him;

[53] At trial, the Claimant conceded that the part of the letter which spoke of transferring the Property into the Claimant's name was a suggestion and not a decision[17]. He further admitted that the part of the letter that stated that the Defendant did not care if the Deed was in the Claimant's sole name was part of a discussion towards an agreement as to how to go forward.[18] However, when later asked about whether the letter of February, 2002 amounted to an agreement as to how the Lands would be dealt with, the Claimant stated that *"there was an agreement*."[19]

[15] para 2 of the Statement of Case
[16] Paras 5 (a) – (c) of the Reply
[17] NOE Page 9, line 15.
[18] NOE Page 10, line 9.
[19] NOE Page 21, line 20

[54] In response, the Defendant denied that he ever made any representation or promise to the Claimant that he would convey or give the Lands to the Claimant.[20] In his witness statement he maintained his case that no such promise was made and that all their discussions revolved around the Property being a family home for all four siblings. Further, he stated that the Claimant did not act upon the suggestions in the letter of February, 2002 and that is why he did not put the suggestions to the other siblings.[21] Instead, it was by virtue of an oral agreement made in 2004 that the Defendant allowed the Claimant his request to build a single dwelling house to live in until the Defendant was ready for the Lands at which time, the Defendant would pay the Claimant the construction costs of the house after a period of 10 years at no interest. It was also agreed that the dwelling house would not exceed $300,000.00. He further gave evidence that the result of the agreement was that the Claimant would have a place to live and that he, the Defendant, would have a house on the Lands.[22]

[55] At trial, the Defendant stated:

(i) That he alone owned the Lands but the house is the Claimant's.[23]

(ii) That the agreement was that the Claimant would build the house and that the Defendant would repay him whatever the costs[24];

(iii) That the agreement was that, because he did not have the money to repay the Claimant at the time, then after 10 years the Defendant would start paying the Claimant US $5,000.00 per year for the next 10 years and that the Claimant could stay in the Property rent-free[25];

(iv) That the details at (iii) were not in his witness statement;[26]

[20] para 12 (d) of the Amended Defence
[21] para 16 & 17 of the Defendant's witness statement
[22] Paras 33 & 34 of the Defendant's witness statement
[23] NOE Page 38, line22 & 28
[24] Line 31
[25] Page 40, lines 1 - 7
[26] Line 30

(v) That the house is the Defendant's own and not the Claimant's and that he, the Claimant, merely took the loan and put his money to build it but it is the Defendant's house;[27]

(vi) That the Defendant told the Claimant that the house would be the Defendant's house but never stated so in his witness statement[28];

[56] Based on the above, while the Claimant's case was consistent that the Defendant promised him that the Lands would be conveyed to him upon completion of the house, he adduced no supporting documents to his pleadings.

[57] In the alternative, the Defendant's case contained several inconsistencies. For one, in his evidence-in-chief, he never stated that the reason for agreeing to repay the Claimant the construction costs of the house after 10 years was because he did not have the money at the time. Secondly, at trial, he at first stated that the Lands were his and that the house was the Claimant's and then contradicted himself by stating that the house was in fact his.

Subsidiary issues (i), (ii) and (iii) follow:

(i) Were the parties bound by the letter of February 2002 and the surrounding discussions or the oral agreement of 2004?

[58] Inconsistencies aside, a good starting point to determine which party's version was more credible would be to make a finding on whether the Claimant completed the house in 2003 as he stated, or in 2004 as the Defendant alleged. If found in the Claimant's favour, it would mean that it is inherently improbable that he could have acted upon any oral agreement made in 2004 to build the house.

[59] In support, the Claimant adduced evidence of two corroborating witnesses— **Lisa Neemar**, their sister and **Vivanlittle Panan**, his brother. Both supporting witnesses gave evidence that the Claimant alone built the house, **which began in 2002 and *was completed in 2003***.

[27] NOE Page 41, lines 21- 23
[28] NOE Page 42, lines 5 - 11

[60] In opposition, the Defendant gave nothing but his own word that the house was not completed until late 2004.

[61] Considering the corroborating evidence, the Court finds it more probable that the dwelling house was constructed by the Claimant between 2002 and completed in 2003 and therefore, the Claimant never relied nor acted on the alleged oral agreement in 2004.

[62] It follows that the Court accepts the Claimant's evidence that he acted on the representations made in the letter of February, 2002 and the surrounding discussions. However, the Claimant's evidence at trial surrounding the content of the letter was inconsistent at times. For one, he initially conceded that the Defendant's statements in the letter were mere suggestions and did not amount to any decision only to later contradict himself by stating that the letter of 2002 amounted to an agreement.

(ii) Did the Defendant ever promise the Claimant that he would convey the Lands to him? (The Assurance/Promise):

[63] Notwithstanding, it is for this Court to decide the effect of the letter dated the 4th February, 2002. For ease of reference the following is a direct quotation of the relevant parts of the letter from the 2nd, 3rd and 4th pages:

> *"About the House I think it's a great idea! I must explain one thing when our or b-4 our mother die she wanted the land to remain in the family that way she give it to me and Mera…she explain that she know I would not let it go in Daddy's hands. What she really wanted is what you want for our family to own something in La Paille. So I've decided me, you and if possible Little and Lisa could put up and build something… I will put everybody name on the Deed or everybody children when that time reaches. Who put money to build the house.*
>
> *For now maybe we could build something with the cash we have or I could transfer it to <u>your name</u> (not Daddy) and maybe you could get a good loan from the bank and build something good and done. Who ever help pay back the loan name goes on the Deed. Me personally don't care if it's all in your name for now and later on we decide about the children.*

I just think it's a great idea and Mera have no problem giving it over to you, so let me know what you want to do…

…You went through a lot and I think that starting up that rental business is just good… (sic)

Luv always

Lenny"

[64] On a perusal of this excerpt, the Court finds that the following are the material statements made therein:

(i) That when or before their mother died, she wanted the lands to remain in the family and that is why she gave it to the Defendant and his wife, Mera;

(ii) That what their mother also wanted is for the Claimant and the family to own something in La Paille;

(iii) As a result, the Defendant decided that himself, the Claimant, Little and Lisa could put up and build something and that the Defendant would put everyone's name on the Deed;

(iv) That the Defendant would put the names of either every person who put money to build the house, or every person who assists with re paying the loan, on the Deed;

(v) That for now the house could be built with the cash on hand or instead that the Defendant could transfer the Lands to the Claimant's name and maybe the Claimant could get a good loan from the bank and build something;

(vi) That the Defendant did not care if it was all in the Claimant's name for the time being and that it would be decided later about the children;

(vii) That the Defendant thinks *"it is a great idea to build a building on the Lands and that Mera has no problem giving it over to the Claimant";*

[65] From a reading of the letter, it is clear that the initial intention was to build a family home. However, there were also clear statements by which the Defendant conceded that he was willing to transfer the Lands to the Claimant's name and that both he and his wife Mera were open to putting the Lands in the Claimant's name alone at least for the time being.

[66] In further support, the evidence-in-chief of Lisa Neemar was that she had expressed her disapproval of the Defendant's attempt to throw the Claimant out of the house because *the Defendant had always indicated that he wanted to transfer the Lands to the Claimant*.[29]

[67] At trial, while Mr Rajcoomar was able to elicit from Lisa that she was never party to the discussions between her brothers,[30] she also gave evidence that she did see the letters exchanged between them albeit not until the time when the case was being processed[31]. Most importantly, it was never put to Lisa that her evidence was untrue and therefore, in this Court's opinion, it remained unchallenged.

[68] The Court finds that the Claimant's case is further supported by the Power of Attorney given to him by the Defendant on the 22nd November, 2011. **Clause 3** of the document gave the Claimant the power to…

> *"manage my business affairs, investments, securities and personal property for the time being in such manner as the Attorney shall think fit and to make any payments in connection with my business affairs, investments, securities and personal property."*

[69] Further and more importantly, **Clause 8** gave even broader powers to the Claimant to…

[29] Para 5 & 6 of Lisa's witness statement
[30] NOE Page 24, line 46
[31] NOE Page 25, line 13

*"…maintain, repair, improve, manage, insure, rent, lease, **sell, convey**, subject to liens, mortgage, subject to deeds of trust and hypothecate and in any way or manner deal with all or any part of any personal **or real property** whatsoever, tangible or intangible, or any interest therein that I now own or may hereafter acquire for me, in my behalf and in my name and under such terms and conditions and under such covenants, as said Attorney in fact shall deem proper."*

[70] As stated, this document was executed in 2011 and purported to give to the Claimant the power to *"manage… (the Defendant's) personal and/or real property… in such manner as he sees fit".* It seems unlikely that the Defendant, on one hand, would want to limit the Claimant's use of the Lands to the extent that he would never own the house built nor the Lands, while on the other, grant him unbridled power to do as he wishes with the Property. Such a power was granted when the Defendant was out of the country which indicated a great deal of trust placed on the Claimant in or around 2011. Further, it coincides with the Claimant's evidence that he always reminded the Defendant about conveying the Lands and that the Defendant would tell him not to worry and that he would fulfil his promise[32]. It would seem that this Power of Attorney was granted to the Claimant effectively allowing him to convey the Lands himself. When also considered along with the corroborative witnesses, it adds to the probability that the Defendant intended to convey the Lands to the Claimant.

[71] Given this analysis, the Court finds that the Claimant has proven on a balance of probabilities, that the Defendant promised him by virtue of the letter dated the 4th February, 2002 along with the attendant discussions that, upon completion of the dwelling house, he would convey the Lands to him.

[72] Such a finding would mean that the **Defendant's counterclaim**, which asks for a declaration of ownership of the Lands; the Claimant's vacation of the Lands; and an order that the Defendant owes no more than $300,000.00 to the Claimant based on the oral agreement of 2004, ought to be dismissed.

[32] Para 6 of the Claimant's witness statement

(iii) Detrimental reliance:

[73] It is undisputed between the parties that the Claimant constructed the dwelling house on the Lands with his own money.[33] Therefore, having found that the promise was made, the Claimant's construction of the dwelling house with his own monies amounted to detrimental reliance.

[74] **Accordingly, it is the Court's findings that elements of proprietary estoppel have been proven.**

Issue 4: Is the Claimant entitled to loss of rental income:

[75] The Claimant's case is that he converted the dwelling house into apartments during the period of September to December 2014 and that each apartment could be rented for **$5,000.00** per month and that said rental would be his only source of income. Further on the 23rd December, 2014, the apartments were inspected by Chief Electrical Inspector who approved the Property for an electricity connection. However, the Defendant, having failed to convey the Lands to the Claimant, which meant the Lands remained in his name, has refused to consent to the electricity connection resulting in the Claimant's loss of rental income from the 1st January, 2015 onwards.[34]

[76] In response, the Defendant admitted that he refused consent to the electricity connection but denied that the Claimant suffered any loss therefrom.[35]

Both parties maintained their case as encapsulated in their respective witness statements.

[77] Having found that the claim for proprietary estoppel has been made out, it means that, upon completing the dwelling house, the Claimant was entitled to have the Lands conveyed to him. It follows that the Claimant was thereafter fully entitled to do as he wished with the Lands. Therefore, had the promise been fulfilled, the Claimant would

[33] Para 3 of the Amended Statement of Case and para 22 & 23 of the Amended Defence
[34] Para 6 – 10 of the Amended Statement of Case
[35] Paras 33 – 38 of the Amended Defence

have owned the Property outright and therefore, would not have needed the Defendant's consent for the electricity connection.

[78] Accordingly, the Defendant's refusal of the electricity connection was only possible because of his unconscionable and illegal reneging of his promise. Under such circumstances, the Court finds that the Defendant is liable for the loss of rental income, if any, occasioned by the Claimant.

[79] While such analysis may seem beneficial to the Claimant, the more important issue of whether he has, on a balance of probabilities, proven his entitlement to loss of rental income in the sum of $5,000.00 per month, is a more difficult task for the Claimant.

Unfortunately for him, his only evidence came in his witness statement, where he stated that *"he offered these apartments for rent and several persons had agreed to rent them at $5,000.00 a month, once I got electricity supplied."*[36]

[80] At trial, the Claimant was forced to admit that he has attached no evidence to prove that he could have gotten $5,000.00 in rent per month of these apartments.[37]

[81] In this light, without more, the Court is not convinced that the Claimant has proven the quantum of damages for loss of rent. As submitted by counsel for the Claimant, Lord Denning has pronounced that a balance of probabilities means that the Court must view that the Claimant's version is more probable than not. However, if the probabilities are equal, the burden has not been discharged.[38]

[82] As it stands, having failed to (i) call any potential customers as witnesses to testify that they were willing to pay $5,000.00 per month rental; or (ii) adduce the evidence of an expert Valuer to assess the rental value of the apartments, the Claimant's burden has not been discharged.

[83] Accordingly, the Court does not find that the Defendant is liable to damages in the sum of $5,000.00 per month from the 1st January, 2015 onwards for failing to consent to the electricity connection.

---

[36] Para 7 of the Claimant's witness statement
[37] NOE Page 19, line 26
[38] Claimant's submissions at para 4. See case of Miller v Minister of Pensions 1947 2 All ER, 372 at G

Issue 5: Whether the Defendant is entitled to his counterclaim:

[84] Based on the findings of the Court and expressed more particularly in paragraph 72 *ante*, the Defendant's counterclaim ought to be dismissed.

V. Disposition:

[80] Given the reasoning, analyses and findings above, the order of the Court is as follows:

ORDER:

1. **The Defendant shall convey the said Property to the Claimant in satisfaction of his equitable interest therein established by the doctrine of proprietary estoppel within 60 days of this Order.**
2. **In default, the Registrar of the Supreme Court be and is hereby empowered to convey the said Property on behalf of the Defendant to the Claimant.**
3. **The Defendant's Counterclaim be and is hereby dismissed.**
4. **That the Defendant shall pay to the Claimant his costs of the Claim and Counterclaim to be quantified on the Prescribed Scale of Costs under CPR Part 67, in default of agreement.**
5. **There shall be a stay of execution of this order for 42 days from the date of this order.**

Dated this 28th day of September, 2017

_____

Robin N. Mohammed
Judge