THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No CV2015-02913

BETWEEN

YVONNE MARCHAN

Claimant

AND

WARREN MARCHAN

Defendant

Before the Honourable Mr. Justice Robin N. Mohammed

Date of Delivery: Tuesday 14th June 2021

Appearances:

Mr. Don Lezama for the Claimant

Mr. Robert V. Charles instructed by Ms Margaret Clerk for the Defendant

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DECISION ON DEFENDANT'S NOTICE OF APPLICATION FOR SUMMARY JUDGMENT

I. **Background**:

[1] The Claimant, a widow of the deceased Wilfred Marchan, is the mother of the Defendant and resides out of the jurisdiction. She has brought this claim seeking a 50% equitable interest in property situate at Lot 61 Grant Street Extension Couva (the "Property") in which the Defendant currently resides.

[2] The land of the Property was purchased by the said Wilfred Marchan along with his great Aunt, Annie Redford in 1964 for the sum of either $2,700.00 as contended by the Defendant or $3,700.00 on the Claimant's version. Wilfred and Annie are registered as the joint tenants on the Deed. Thereafter, the said joint tenants borrowed $7,500.00 from the National Housing Authority (NHA) to build the house thereon.

[3] The Claimant and Wilfred informally separated in September 1974 when Wilfred left the Property and up to the time of his death in 2014 had not returned.

[4] At the time of Wilfred's departure, the Claimant was pregnant with the Defendant. Despite his departure, she averred that she continued to pay the monthly instalment on the loan from the NHA until it was fully repaid in 1993. She also attested to settling arrears of $4,101.02 on the mortgage payment on the 23rd June 1993 with the NHA. Further, the Claimant pleaded that she: (i) purchased household appliances; (ii) made contributions to the food and electricity bills; (iii) effected repairs on the Property; and (iv) fenced the Property to make it secure. In order to foot the bill of these expenses, the Claimant pleaded that she worked for six months in the U.S. and was home for the remaining six months in the year between the periods of 1988 to 1997.

[5] By Deed of Gift dated the 28th November, 2005, Wilfred Marchan, now deceased, gifted the Property to his son, the Defendant. It is the Claimant's case that she did not think it necessary to assert her purported interest in the Property at that time because she verily believed that her son, the Defendant, took the gift subject to her interest. The basis for this belief was the fact that the Defendant never did anything to exclude her from the Property[1]. The Claimant pleaded that she continued to pay the bills until 2007 and that, up until a disagreement between herself and the Defendant's wife sometime in 2014,

[1] Para 13 of the Statement of Case.

she visited and stayed in the Property freely. As a result of this disagreement, however, she alleged that the Defendant threatened to evict her from the Property.

[6] The Claimant then averred that she returned home from the U.S. in *January, 2015*.

This fact, when considered with her earlier averment that: (i) her current address is in Brooklyn, New York; and (ii) she last returned home for 6 months in 1997, creates a narrative that suggests both to the Defendant and to this Court that between 1997 and 2015, the Claimant remained out of this jurisdiction. This would contradict the earlier averment that *she visited and stayed at the Property freely up until 2014*.

[7] Nevertheless, upon her return, she claimed that the Defendant had changed all the locks on the Property and refused her entry to the extent that she needed a police escort to retrieve her belongings. She pleaded that she sought to reconcile this issue with the Defendant by letter dated the 9th February, 2015 but was not met with a favourable response. Accordingly, she issued, through her attorney-at-law, a pre-action protocol letter to the Defendant by post on the 23rd March, 2015. Shortly after receiving a reply, these proceedings were initiated.

[8] The Defendant's case was that the informal separation between the Claimant and Wilfred Marchan which occurred in 1974 when Wilfred departed the jurisdiction, was as a result of matrimonial difficulties that existed between them prior to his birth. After his departure, Wilfred Marchan would often send money, clothes and toys for the Defendant and his sister, Wanda Marchan. Money was also sent to assist the Claimant with the utility bills, taxes and other charges associated with the Property.

[9] While it was agreed that the Claimant travelled to the US in 1988, no mention was made of the arrangement of alternating between the two jurisdictions every 6 months. Rather, on the Defendant's version, the Claimant migrated to the US permanently at that time and as a result, he was forced to take care of himself at the age of 13. Further, he pleaded that the marriage between the Claimant and his father ended in divorce in 1989 and despite the attendant matrimonial proceedings, no claim for any portion of the Property was ever made by the Claimant.

[10] It is the Defendant's case that from 2006 onwards he and his fiancée, Devi Marchan, resided exclusively in the Property and were married in 2009. Devi gave birth to a daughter, Alyssa Marchan, who also resided in the Property. He further pleaded that he looked after the Property exclusively from 1996.

[11] As a result, the Defendant denied the Claimant's claim on the following grounds:

(i) That the Claimant is neither the owner nor entitled to any share in the Property whether in equity or law as she was only a visitor with the consent of the Defendant from 1988 onwards.

(ii) That pursuant to the Deed of Gift, the Defendant became the absolute owner of the Property.

(iii) That the Claimant has not provided any proof of the alleged contributions to the repayment of the loan, the charges, repairs and/or bills of the Property.

(iv) That the Defendant revoked his consent to the Claimant's ability to visit the Property after she issued threats of violence against him and his family evidenced by the police report of the 1st February, 2015.

[12] The parties met before the Court on the 5th January, 2016 for the 1st Case Management Conference (CMC) which culminated with the Court directing that an All-Parties Conference be convened on the 25th February, 2016 at 1:00 pm at the Chambers of the Defendant's attorneys for the purpose of exploring, through discussions, all possibilities of an amicable resolution. As a result, all directions were put on hold and the 1st CMC was preserved and adjourned to the 2nd March, 2016.

[13] On the 2nd March, 2016, upon the parties informing the Court that they were unable to arrive at a settlement, the Defendant was given permission to amend his Defence. This he did by including various particulars of improvements he and his wife rendered on the Property in the sum of $325,000.00 between 2005 and present.

[14] At the return date of the 1st CMC on 8th June, 2016, permission was given for the Defendant to file an Application for Summary Judgment (the "Application") against the

Claimant. Directions were also given for affidavits in response to the Application as well as deadlines for submissions.

[15] In pursuance of this order, the Defendant filed his Application on the 8th July, 2016. In his affidavit in support, the Defendant deposed that the Claimant's case, which is based on a proprietary estoppel claim, has no realistic prospect of success and therefore, judgment should be entered against the Claimant based on, *inter alia*, the following:

(i) that the Claimant has not alluded to any promise or assurance from the said Wilfred Marchan that she would be entitled to a share in the Property;

(ii) consequently, she cannot plead that she relied on any such promise or assurance to her detriment;

(iii) that Wilfred would send money and assisted the Claimant in the payment of utility bills, taxes etc.;

(iv) that the Claimant emigrated to the US in 1988 and currently lives there;

(v) that the Claimant never put the Defendant on notice of her alleged interest in the Property; and

(vi) that the Claimant has failed to provide any proof of her alleged contributions to the Property.

[16] The Claimant filed her affidavit in response on the 15th August, 2016. In it, she attempted to introduce facts that were not pleaded to support her claim for an equitable interest. In particular, she deposed that she held a belief in her interest in the Property based on *"utterances and actions"* from Wilfred that showed a *"shared common intention"* that he would start a family with her and that she would acquire an interest in the Property[2].

Further, contrary to her Statement of Case, she now deposed that she worked in the USA from 1988 to 2007[3], and that during that period she would return home for 6

[2] Paras 4 & 5 of the affidavit in response.
[3] See para 10 of the affidavit in response.

months every year. This contradicted her pleading that she would return every 6 months to Trinidad between 1988 and 1997.

She then claimed that her marriage was dissolved ex-parte and therefore, she was not afforded the opportunity to assert her equitable interest at that time. In conclusion, she believed that she was entitled to an equitable interest in the Property based on her financial contributions from the years 1965 to 2007.

[17] The Defendant's submissions were filed on the 19th September, 2016 as directed. To this date, no submissions in response were filed by the Claimant. Nonetheless, I shall give due consideration to the Claimant's response affidavit filed 15th August, 2016 as bearing the substance and tenor of her answer to the Defendant's application for summary judgment.

II. Submissions:

[18] Counsel for the Defendant relied on the case of **Copyright Music Organization of Trinidad and Tobago v Columbus Communications Trinidad Limited**[4] to set out the legal principles that relate to a summary judgment application under **Part 15 of the CPR**. He reminds the Court that the burden remains with the Claimant to prove her entitlement to an equitable interest in the Property. In support of his contention that she failed to do so, counsel submitted as follows:

a) That there is no pleading that Wilfred or the Defendant made any promises or assurances to the Claimant that she would be entitled to an equitable interest.

b) That pursuant to the case of **Raj Mahabir and Ors v Radhika Mangatoo**[5], there can be no reliance or detriment in the absence of a promise or assurance.

c) That in the absence of adequate pleadings, the Claimant cannot attempt to adduce evidence in support of a claim of proprietary estoppel.

[4] CV 2009-04722.
[5] HCA No. 1621 of 2002 per Rajkumar J

d) That no documentary evidence of the Claimant's alleged contributions to the purchase and/or the bills and charges of the Property have been adduced which contravenes **Part 8.6 of the CPR**.

e) That the Defendant's wife would also have an interest in what is now their matrimonial home and therefore the Court ought not to make any orders in favour of the Claimant in the absence of the Defendant's wife.

III. Law & Analysis:

[19] **Part 15.2 of the CPR** sets out the grounds for summary judgment as follows:

> ***a) The Court may give summary judgment on the whole or part of a claim or on a particular issue if it considers that—***
>
> > **i.** ***On an application by the defendant, the claimant has no realistic prospect of success on the claim, part of the claim or issue.***

[20] The meaning of a "realistic prospect of success" has been sufficiently traversed by the Courts in this jurisdiction. Our Court of Appeal in **Western United Credit Union Co-operative Society Ltd v Ammon**[6] set out the principles as follows:

> *(i) The Court must consider whether the defendant has a realistic as opposed to fanciful prospect of success: Swain v Hillman 2001 2 All ER 91;*
>
> *(ii) A realistic defence is one that carries some degree of conviction. This means a defence that is more than merely arguable: ED & F Man Liquid Products v Patel 2003 E.W.C.A. Civ 472 at 8;*
>
> *(iii) In reaching its conclusion the court must not conduct a mini trial: Swain v Hillman;*
>
> *(iv) This does not mean that the court must take at face value and without analysis everything that a defendant says is in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made,*

[6] **Civ App No 103 of 2006 [3] per judgment of Kangaloo JA**

particularly if contradicted by contemporaneous documents: ED & F Man supra at 10;

(v) However in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: Royal Brompton Hospital NHS Trust v Hammond No. 5 2001 E.W.C.A Civ 550;

(vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence to a trial judge and so affect the outcome of the case: Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd 2007 F.S.R. 63.

[21] The Claimant is seeking a 50% equitable interest in the Property based on her contributions to the repayment of the loan as well as to the bills and charges of the Property. In her affidavit, she deposed that her entitlement to an equitable interest in the property was borne out by her belief that she and Wilfred shared common intentions as demonstrated by Wilfred's *utterances and actions*[7]. No specifics were given about these alleged utterances and actions.

[22] Counsel for the Defendant's rebuttal was that the Claimant cannot attempt to adduce evidence in support of a proprietary estoppel claim in the absence of proper pleadings. While the Court is inclined to agree with the principle in this submission, it is not yet convinced that the Claimant is indeed basing her claim for an equitable interest solely or at all on the doctrine of proprietary or promissory estoppel.

[23] It is however unfortunate that the Claimant, after bringing her claim, failed to file submissions in response and, therefore, omitted to address this issue. If indeed, she

[7] Paras 4 & 5 of the Claimant's affidavit in response.

intends to base her claim on the doctrine of proprietary or promissory estoppel, her failure to particularize the promise/encouragement/assurance would violate **Part 8.6 of the CPR,** which prescribes the Claimant's duty to set out his case and requires that the Claimant include a short statement of ***all*** the facts on which he relies.

[24] This provision is similar to **Part 16.4(1) of the England and Wales Civil Procedure Rules**, which provides that *"Particulars of claim must include—(a) a concise statement of the facts on which the claimant relies"* and supported by the learning in **McPhilemy v Times Newspapers Ltd**[8].

[25] In **McPhilemy**, Lord Woolf MR affirmed that the requirement of full disclosure in the pleadings is still relevant despite the fact that witness statements are now exchanged:

> *"The need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged. In the majority of proceedings identification of the documents upon which a party relies, together with copies of that party's witness statements, will make the detail of the nature of the case the other side has to meet obvious. This reduces the need for particulars in order to avoid being taken by surprise.* ***This does not mean that pleadings are now superfluous. Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader****. This is true both under the old rules and the new rules."* [Emphasis mine]

[26] As stated by Sir John Dyson SCJ in the Privy Council decision of **Charmaine Bernard (Legal Representative of the Estate of Reagan Nicky Bernard) v Ramesh Seebalack**[9]:

> ***"…a detailed witness statement or a list of documents cannot be used as a substitute for a short statement of all the facts relied on by the claimant."***

[8] [1999] 3 All ER 775 at p 792J
[9] [2010] UKPC 15

Therefore, it is clear that the Claimant is strictly confined to her pleaded case with respect to her claim for an equitable interest in the Property and cannot rely on any evidence introduced in her affidavit in response that was not pleaded.

[27] In this light, the Court notes that at paragraph 3 of her Statement of Case, the Claimant pleaded that she and Wilfred ***"had intentions of starting a family together so they agreed to purchase the piece of land…"***

No other facts were given that spoke of any assurance or promise that she would be entitled to an interest in the Property.

The Court must therefore determine whether this pleading suffices to establish a realistic prospect of success for a claim for an equitable interest in the Property in the absence of ownership or title.

[28] **Megarry & Wade: The Law of Real Property**[10] sets out three essential elements of proprietary estoppel while warning that each limb must not be analysed in isolation. Rather, it advises that the case must be looked at as a whole with the primary aim of preventing unconscionable conduct:

> ***"A claimant who wishes to establish an equity arising by estoppel must satisfy the court on three matters, bearing in mind that the fundamental principle is to prevent unconscionable conduct:***
>
> ***a. Encouragement or acquiescence.***
>
> ***b. Detrimental reliance; and***
>
> ***c. Unconscionability."***

The Court is primarily concerned with the presence of the first element in the Claimant's pleadings, being the encouragement or acquiescence.

[29] The Claimant's pleadings do not indicate that any active encouragement was given by Wilfred. Rather, such encouragement would have to be discerned from the *"shared common intentions"* between them. Encouragement of this nature could fall under the

[10] Charles Harpum, Stuart Bridge & Martin Dixon. 8th Edn. at 16-007

rubric of *passive encouragement* in the common law. Therefore, to have a realistic prospect of success in a proprietary estoppel claim, the Court must find that the Claimant sufficiently pleaded facts that would indicate that Wilfred passively encouraged her in a belief that she would have an interest in the Property.

[30] The relevant principles that concern the encouragement/acquiescence limb are as follows:

a) *"Passive "The owner of the land, O, must have encouraged C by words or conduct to believe that he has or will in the future enjoy some right or benefit over O's property.* ***The mere fact that C acts to his detriment in the expectation of acquiring rights over O's land will not raise an equity in his favour unless O has encouraged that expectation."***[11]

b) *"Passive encouragement occurs when O, an owner of land, stands by and allows C to act to his detriment* ***knowing that he mistakenly believes that he has or will obtain an interest in or right over O's land****. In such a situation, the circumstance of looking on is in many cases as strong as using terms of encouragement."*

c) *"Mere inaction by O in the face of an infringement does not induce C to act"*.

d) *"****In cases of passive encouragement, it is unlikely that O's conduct will be regarded as unconscionable unless he was aware of:***

(i) ***His own property rights;***

(ii) ***Cs expenditure or other detrimental acts; and***

(iii) ***C's mistaken belief that he had or would acquire an interest in or over O's land."***

[31] Applying the principles in paragraph [30] (d) above, there is no dispute that Wilfred, as the owner of the Property, was aware of his property rights. In support of (d) (ii), the Claimant has pleaded as follows:

[11] Harpum, Bridge & Dixon para 16-007 ibid.

a) That she was contributing to the repayment of the loan after the house was completed in **1967** in the amount of $10.00 monthly[12]; and

b) That in **1972** she began working at Taurel's furniture and electrical appliance store in order to better assist the deceased with the household expenses.[13]

[32] Both these alleged acts of detriment occurred prior to September 1974 when the Claimant pleaded that the Defendant left the matrimonial home and never returned even up to his death in 2014. It would therefore provide some evidence that Wilfred, as the owner of the Property, could have been aware of these acts of detriment incurred by Yvonne prior to his departure.

[33] However, as submitted by the Defendant, no documentary evidence has been included in the pleadings to support these alleged acts of detriment and/or contributions. In the absence of evidentiary support in her pleaded case, the Claimant would not be able to adduce evidence of her detriment at trial, which means that she does not have a realistic prospect of success of proving passive encouragement from Wilfred.

In any event, the principle at (iii) seems to be dependent on (ii). In **Brinnand v Ewens**[14], Nourse LJ states that ***"you cannot encourage a belief of which you do not have any knowledge***[15]*."* Learning also suggests that the ***"extent of C's acts of detriment may be relevant in determining whether O must have known of C's mistake"***. Thus in **Bibby v Stirling**[16], ***"…the construction of a large greenhouse by C only was compatible with a belief that he might remain on the land indefinitely."***

[34] The Claimant therefore runs into several obstacles in proving passive encouragement. On the one hand, she lacks evidential support of her detrimental acts but also, on the other, her alleged contributions were relatively minor and, in this Court's opinion, neither relevant nor significant enough to make Wilfred believe that she genuinely had an expectation that she would gain an interest in the Property. Changing one's job,

[12] At para 8 of the Statement of Case
[13] At para 9 of the Statement of Case
[14] [1987] 19 H.L.R. 415
[15] Footnote 112 at para 16-009 ibid Harpum, Bridge & Dixon
[16] [1998] EWCA Civ 994 (citation J0612-22)

without more, is not sufficient proof that a detriment was incurred for the purpose of assisting Wilfred in the household expenses.

[35] In light of the above analyses, this Court finds that the Claimant has not sufficiently pleaded any encouragement on the part of Wilfred, whether passive or active, to entitle her to claim an equitable interest in the Property. Without an encouragement or assurance, a claim for proprietary estoppel must fail[17].

[36] In the alternative, and in considering the Claimant's case to its fullest potential, bearing in mind that no submissions were filed on her behalf, the Claimant may mount the argument that her equitable interest arose by way of a **common intention constructive trust**.

[37] **Underhill & Hayton: Law of Trusts & Trustees**[18] defines a **common intention constructive trust** as follows:

> ***"A constructive trust may be imposed on property, such as a house in M's name that is occupied by M and W as a shared family home, to give effect to M and W's express or inferred (but not imputed) common intention (whether at the time of the purchase or subsequently) that W should have a beneficial interest therein, so leading W to act to her detriment in reliance on that intention, so making it unconscionable to allow M to deny W any interest by pleading the lack of the necessary written formalities for a valid declaration of trust or contract."***[19]

[38] Similar to proprietary estoppel, therefore, three elements are therefore necessary to prove this constructive trust, namely (i) a common intention (ii) a detrimental reliance and (ii) unconscionability. The first element, a common intention between the parties, requires a ***"bilateral understanding between the parties that W should obtain a share of the property."***[20]

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[17] Harpum, Bridge & Dixon para 16-007 ibid & Brinnand v Ewens [1987] 19 H.L.R. 415, CA
[18] Division 3 Trusts Imposed by Law. Chapter 9, Constructive Trusts. Article 30.
[19] At 30.9 ibid.
[20] At 30.14 ibid.

As Lord Diplock stated in **Gissing v Gissing**[21]**:**

> *"The relevant intention of each party is the intention which was reasonably understood by the other party* ***to be manifested by that party's words or conduct*** *notwithstanding that he did not consciously formulate that intention in his own mind or even acted with some different intention which he did not communicate to the other party."*

[39] It has been stated that it is not enough for the parties to have shared an intention to share the use of the property: W must show that they commonly intended to share the ownership of the property.

Thus, in **Lloyd's Bank Plc v Rosset**[22], Lord Bridge considered that-

> *"The question [is whether the parties have] entered an agreement, made an arrangement, reached an understanding or formed a common intention that the beneficial interest in the property would be jointly owned. . . .* ***Spouses living in amity will not normally think it necessary to formulate or define their respective interests in property in any precise way****. The expectation of parties to every happy marriage is that they will share the practical benefits of occupying the matrimonial home whoever owns it. But this is something quite distinct from sharing the beneficial interest in the property asset which the matrimonial home represents."*

[40] It is therefore a material element of this decision to determine whether the Claimant has sufficiently pleaded the presence of a common intention between herself and Wilfred that she would have an equitable share in the Property. In this light, the following passages from **Underhill & Hayton** *ibid*[23] are material:

a. *"A distinction must be made between cases based on evidence capable of establishing an express agreement between the parties and cases where there is no such evidence,* ***but where there is evidence of conduct from which the court can infer the existence of an agreement****.*

[21] [1991] 1 AC 107 at 127–128.
[22] [1991] 1 AC 107 at 127–128.
[23] At 30.18.

b. *For a court to hold that the parties formed an express common intention,* ***evidence of discussions is required, 'however imperfectly remembered and however imprecise their terms may have been***. ***Excuses may suffice, so that if M gives W an excuse as to why legal title to the property should be vested in his name alone, this may be interpreted as evidence that they commonly intended the beneficial ownership to be shared, as otherwise there would have been no need for an excuse***.

c. *A claimant must provide in her statement of claim as much particularity as possible of discussions between the parties, with the result that 'the tenderest exchanges of a common law courtship may assume an unforeseen significance many years later when they are brought under equity's microscope and subjected to an analysis under which many thousands of pounds of value may be liable to turn on fine questions as to whether the relevant words were spoken in earnest or in dalliance and with or without representational intent.*

d. ***It does not suffice that each party happened separately to form the same intention, because an express common intention means one that is communicated between the parties: it is the external manifestation of intention by one party to the other that is crucial, regardless of uncommunicated private intentions***.

e. *If the parties both say that they had a common understanding, but their recollections differ as to what their oral agreement was, that may cause the court to conclude that there was no common understanding because the parties were at cross purposes, or it may cause the court to conclude that one of them is mistaken or lying."*

[41] Based on the principle in paragraph [40] (b) above, the Claimant's averment that Wilfred told her that the loan to build the house was in the names of himself and Annie only and not the Claimant because ***"…it was the only way it could have been done because the land upon which the house was built was in their joint names…***[24]", is

[24] Para 6 of the Statement of Case.

evidence of discussions between the parties about their shared intention and would amount to an excuse as to why the Property is not in the Claimant's name. It would therefore suffice as a pleading that she and Wilfred had a common intent that the beneficial ownership be shared, as otherwise there would have been no need for an excuse.

[42] Having sufficiently pleaded the common intention, the Claimant must also sufficiently plead the detrimental reliance. However, as submitted by the Defendant, no supporting documents were attached to evidence the alleged contributions made by the Claimant.

For instance, there are no attached documents to evidence the alleged $10.00 monthly contributions to the repayment of the loan, the purchase or contributions toward the purchase of any household appliances bought nor to the electricity bills.[25] Rather, the Claimant purports to attach a bundle of documents at **"Y.M.1"** that merely shows that the mortgage was paid off. However, the receipt # x627095, the letter from the NHA and the actual memorandum of discharge are all addressed to Wilfred Marchan and Annie Redford only.

Further, the receipts from the Land and Building Taxes annexed at **"Y.M.2"** are addressed in the names of Wilfred and Annie and the paid WASA and electricity bills attached at **"Y.M.3"** are in the name of Wilfred Marchan only.

[43] Rather, what is in the Claimant's name are several receipts for material purchased from various hardware stores annexed to paragraph 12 of her Statement of Case. The Claimant, however, has not clearly explained the purpose and relevance of these purchased materials to the Property. For instance, in paragraph 12, aside from paying the taxes on the Property as well as the electricity and telephone bills, she averred that she fenced the Property, effected repairs and paid all other expenses of the Property. Unlike the Defendant in his amended Defence, she however, failed to properly particularize the alleged repairs that she effected on the Property or the materials used in the alleged erection of the fence. The result being that this Court cannot discern any

[25] Paras 8 & 9 of the Statement of Case.

correlation or relevance between the materials purchased from the receipts and the alleged detrimental acts claimed in paragraph 12 of her Statement of Case.

[44] Through this lens, the vision becomes clear and this Court is of the considered opinion that, should this matter go to trial, the Claimant would have ***no*** realistic prospect of success in proving, on a balance of probabilities, that she acquired an interest in the Property premised on a common intention constructive trust or proprietary estoppel.

IV. Disposition:

[45] Having considered the parties' pleadings, the Defendant's Application and submissions and the Claimant's affidavit in response, the order of the Court is as follows:

1. **Summary Judgment be and is hereby awarded in favour of the Defendant against the Claimant on the grounds that the Claimant has no realistic prospect of success on the Claim pursuant to CPR Part 15.2 (b).**
2. **The Claimant shall pay to the Defendant costs of the Notice of Application filed 8th July, 2016 to be assessed in accordance with CPR Part 67.11, in default of agreement.**
3. **In the event there is no agreement on the quantum of costs, the Defendant to file and serve a Statement of Costs for assessment on or before 30th July, 2021.**
4. **Thereafter, the Claimant to file and serve Objections to items on the Statement of Costs, if any, on or before 3rd September, 2021.**
5. **The Court shall assess the quantum of costs without a hearing.**

Robin N. Mohammed
Judge