

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**No. CV2017-02143**

**BETWEEN**

**AMBIKA ISAAC**

**Claimant**

**AND**

**BARTHOLEMEW PHILLIP**

**Defendant**

**Before the Honourable Mr. Justice Robin N. Mohammed**

**Date of Delivery: Tuesday 20 October 2020**

**Appearances:**

Ms Asha Watkins-Montserin instructed by Ms Keisha Kydd-Hannibal for the Claimant

Mr Ivan Damian Daniel instructed by Ms Shannon Samaroo-Suraj for the Defendant

---

**JUDGMENT**

---

**I. Introduction**

[1] This matter involves a claim where both parties seek ownership and possession of a portion of land located at Lot No. 228 Kenny Street, Sangre Grande (hereinafter referred to as “the land”), the said land forming part of a larger parcel of land (“the property”). The property comprises two houses, one in which the Claimant lives and the other, in which the Defendant lives. Both parties are cousins by virtue of their mothers being sisters.

[2] The matter was initiated by Fixed Date Claim and Statement of Case filed on 9 June 2017. The Defendant filed his Defence and Counterclaim on 20 September 2017, following which a Reply was filed on 12 October 2017. At the first Case Management Conference on 23 November 2017, the following timetable was settled: disclosure and inspection on or before 19 January 2018; the Claimant's attorney at law to file an agreed list and bundle, as well as a list and bundle not agreed, of documents on or before 5 February 2018; and that all witness statements be filed and exchanged on or before 29 March 2018. All further directions were put on hold to allow the parties, after exchanging witness statements, to engage in settlement discussions, having by that time seen the strengths and weaknesses of each other's case.

[3] Following a Notice of Application by Consent dated the 28 March 2018, the time for filing and exchange of all witness statements was extended to 17 April 2018. The Claimant's attorney-at-law filed evidential objections on 19 April 2018, with time for the Defendant to file and serve responses extended to 29 May 2018. The trial was conducted on 21 June 2018, 5 July 2018 and 8 August 2018. Closing addresses were by way of written submissions filed into Court by both parties.

### **Claimant's Case**

[4] The Claimant in her pleadings set out the history of the disputed land. In 1946, the grandfather of the Claimant and Defendant, Edward Phillips, entered into a lease agreement with A.B Mootoo and Company for the property, subsequent to which he renovated a concrete structure, which existed on the property ("the dwelling house"). Both he and his wife, Lucy Phillip, resided in the dwelling house where they raised their three daughters, Eugenia Phillip (the Defendant's mother), Claudia Phillip and Bernice Isaac (the Claimant's mother).

[5] In 1980, Bernice Isaac, her husband and the Claimant constructed another concrete structure on the property. Edward Phillip died intestate in 1984, from which time Lucy Phillip took over the payment towards the lease. In 1985, Claudia Phillip left the dwelling house and in 1986, Eugenia Phillip left the dwelling house. The Claimant contends that at

this point, the Defendant continued to reside in the dwelling house as a licensee with the permission of Lucy Phillip.

[6] Lucy Phillip died intestate in 1998. Following her death, the Claimant and her mother continued the lease and made all payments on the lease for the property, including the payment of Land and Building Taxes, and utility payments. The Claimant again contends that the Defendant remained in occupation of the dwelling house as a licensee.

[7] In 2012, the Claimant spoke to the three daughters of the deceased regarding her interest in purchasing the freehold title to the property. The daughters expressed their inability and/or unwillingness to purchase the property and did not object to her purchasing the freehold title. The Claimant contends that she also communicated her intention to the Defendant and informed him that upon her purchase he could remain as a licensee until she was ready to develop the land, to which he raised no objection.

[8] The Claimant purchased the property from Mr Kenny Mootoo by deed dated 4 October 2012 for the consideration of four hundred thousand dollars (\$400,000.00).

[9] In January 2017, the Claimant had a valuation carried out of the property, which described the dwelling house as 'old and dilapidated', and of 'no material value.'

[10] In March 2017, the Claimant informed the Defendant that she required use of the land on which he resides and requested that he deliver vacant possession of the said portion of the land inclusive of the dwelling house. The Defendant failed to do so. The Defendant became belligerent and threatening.

[11] By letter dated 13 April 2017, the Defendant, through his attorney at law, informed the Claimant's mother that he is entitled to the dwelling house by means of adverse possession. By letter dated 26 April 2017, attorney at law for the Claimant responded setting out her claim and requested that the Defendant deliver vacant possession of the dwelling house. By letter dated 9 May 2017, the attorney at law for the Defendant

requested that the Claimant hold her hands until 23 May 2017. To date there has been no response from the Defendant.

[12] On 3 June 2017, subsequent to the requests by the Claimant for vacant possession, a Digicel vehicle was seen in the vicinity of the portion of land occupied by the Defendant, providing a connection to the dwelling house without the knowledge and/or consent and/or approval of the Claimant.

[13] The Claimant contends that the Defendant has, as of March 2017, remained on the land in the dwelling house without the acquiescence and/or consent and/or permission of the Claimant and is therefore trespassing on same.

[14] Accordingly, the Claimant seeks the following reliefs:

1. Possession of the piece or portion of the property as is occupied by the Defendant being part of a larger property situate at Lot #228 on Ramdass Street, Sangre Grande, in the Island of Trinidad comprising EIGHT THOUSAND TWO HUNDRED AND THIRTY SIX square feet more or less bounded on the North by Kenny Street and on the South by Lot 229 and in the East by Ramdass Street and on the West by Lot No. 227 and which said piece or parcel of land is shown as Lot No. 228 on the General Plan attached to Deed registered as 1432 of 1957.
2. Damages for trespass of the said portion of land.
3. Costs.
4. Such further or other reliefs as the Honourable Court deems fit in the circumstances of the case.

### **The Defence**

[15] The Defendant admits that the Claimant has legal title to the property but denies that she is entitled to the entire portion of land described in the Deed as title to part of the property was extinguished by the adverse possession of the Defendant.

[16] The Defendant contends that as far as he is aware, Edward Phillip did not enter into any written agreement with A.B. Mootoo and Company. He is unaware of any transfers done in relation to the ownership of the dwelling house or the tenancy rights of the property after the death of Edward Phillip.

[17] He was born in 1976 and has resided at the dwelling house since birth. Lucy Phillip, his mother and himself continued to occupy the dwelling house after the death of Edward Phillip. After the children of Lucy Phillip left the dwelling house, he alone resided with her. He assisted Lucy Phillip with her day-to-day affairs and denies that he occupied the dwelling house as a licensee. He contends that despite being permanently resident in the dwelling house he never had any conversations with Lucy Phillip about him being a licensee.

[18] Lucy Phillip together with the assistance of the Defendant did her best to maintain the dwelling house. After her death, he continued to maintain same as he was always of the belief that the house was now his with the death of his grandmother reinforced by the fact that no one made any claim to the dwelling house. He contends that all persons had to get his permission to enter.

[19] After the death of Lucy Phillip, the Defendant continued to occupy the dwelling house by himself and caused certain works to be carried out, namely the renovation of part of the roof, part of the flooring and causing the dwelling house to be wired and an electrical connection supplied. He contends that he did all these works at his expense for his benefit, with no complaints from the Claimant.

[20] The Defendant denies that he was informed of the purchase or of remaining a licensee until the Claimant was ready to develop the land, but admits that the Claimant did request vacant possession.

[21] The Defendant contends that he is entitled to possession of the dwelling house by virtue of adverse possession, or alternatively, estoppel.

[22] The Defendant contends that since the property remains his he does not need the consent and/or approval of the Claimant to do any works on the property.

[23] The Defendant denies that his action and/or inactions caused the Claimant to suffer any loss but avers that her actions, purchasing the legal title with actual knowledge of his interest, without proper legal advice, has been the cause of any loss she suffers.

[24] The Defendant counterclaims for:

1. A declaration that the Defendant is the owner of the portion of the disputed lands by adverse possession, same to be determined by survey.
2. Said portion to be transferred to him after the said survey by the Claimant failing which the Registrar be directed to execute the said transfer.
3. An injunction refraining the Claimant her servants and/or agents and all claiming under her from entering, interfering or doing anything with the Defendant's portion of the disputed land.

### **The Claimant's Reply**

[25] The Claimant maintained that at all times prior to the Claimant's purchase of the property, the Defendant was aware that the tenancy, although in the name of Edward Phillip, was in fact always recognised by the heirs/assigns of the deceased. The Claimant further avers that around 2009, when the Defendant was seeking government assistance to repair the roof of the dwelling house, he approached her mother for documents relative to the then existing tenancy agreement.

[26] The Claimant denies that the Defendant alone assisted Lucy Phillip. In fact, all her grandchildren assisted.

[27] The Claimant avers that at all material times the Defendant recognised the lease agreement originally entered into by Edward Phillip. In 2010, the Defendant visited the office of Mr Mootoo in his capacity as landlord in order to secure an electrical connection to the dwelling house. Mr Mootoo prepared the letter, holding himself out to be the owner

of the lands, of which the Defendant was always aware. Therefore, at all material times the Defendant recognised that there was in fact a person and/or persons with a superior title to the land.

[28] The Claimant denies that the Defendant is entitled to the dwelling house and land by virtue of adverse possession or that he has acquired an equitable interest in the dwelling house.

## **Evidence**

[29] The Claimant had three witness including Mr Mootoo, her mother and herself. The Defendant appeared by himself.

## **II. Issues**

[30] In light of the pleadings and evidence, it appears that the issues to be determined are as follows:

- 1. Has the Claimant's title to the portion of land occupied by the Defendant been extinguished by virtue of the Defendant's alleged adverse possession?**
- 2. Additionally or alternatively, has the Defendant acquired an equitable interest in the property?**
- 3. In the event that issues (i) and (ii) are decided against the Defendant, is the Claimant entitled to damages for trespass?**

## **III. Law and Analysis**

[31] In accordance with Horace Reid v Dowling Charles and Percival Bain<sup>1</sup> cited by Rajnauth–Lee J (as she then was) in Mc Claren v Daniel Dickey<sup>2</sup>, in order for the Court to satisfy itself which version of the events is more probable in light of the evidence, it is obliged to check the impression of the evidence of the witnesses on it against the: (1) contemporaneous documents; (2) the pleaded case; and (3) the inherent probability or improbability of the rival contentions. The Court must also examine the credibility of the

---

<sup>1</sup> Privy Council Appeal No. 36 of 1897

<sup>2</sup> CV 2006-01661

witnesses based on the guidance of the Court of Appeal judgment in **The Attorney General of Trinidad and Tobago v Anino Garcia**<sup>3</sup> where it stated that in determining the credibility of the evidence of a witness any deviation by a party from his pleaded case immediately calls his credibility into question.

[32] To succeed in a claim for adverse possession, the Defendant must establish that he had been in continuous possession of the land for at least 16 years from the date from which he first entered the land and/or had a right to bring the adverse possession action. This is provided for in **Section 3 of the Real Property Limitation Act, Chap 56:03** as follows:

*“No person shall make an entry or distress, or bring an action to recover any land or rent, but within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to some person through whom he claims, or if such right shall not have accrued to any person through whom he claims, then within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same.”*

[33] The case of **JA Pye (Oxford) Limited v Graham**<sup>4</sup> sets out the elements for a claim of adverse possession. A claim for adverse possession must comprise two essential elements: (i) a sufficient degree of physical custody and control (factual possession); and (ii) an intention to exercise such custody and control on one’s own behalf and for one’s own benefit (the intention to possess). It is understood that the paper title owner is deemed to be in possession of the lands vested in her and thus, the Defendant must show that he dispossessed her and was in exclusive possession of the land for at least the 16-year period.

---

<sup>3</sup> Civ. App. No. 86 of 2011 at paragraph 31

<sup>4</sup> 2003 1 AC 419



[34] The judgment of Slade J. in **Powell v McFarlane**<sup>5</sup> is instructive in providing guidance on what constitutes “possession”. The Court stated that-

*“(1) In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prima facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner. (2) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess (“animus possidendi”).”*

[35] “Factual Possession” was described by Slade J in **Powell** as follows:

*“Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed ... Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so.”* [Emphasis added]

[36] “Intention to possess” was described by Slade J in **Powell** as:

*“The animus possidendi, which is also necessary to constitute possession, was defined by Lindley MR in Littledale v Liverpool College [1900] 1 Ch. 19, as “the intention of excluding the owner as well as other people.” ... What is really meant, in my judgment, is that the animus possidendi involves the*

---

<sup>5</sup> [1977] 38 P & CR 452

*intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow."*

Based on the learning above, the onus is on the Defendant to satisfy the Court that he not only had factual possession of the land for at least 16 years but that he also had the requisite intention to possess same to the exclusion of all others including the paper title owner.

[37] The Defendant pleaded the following particulars of adverse possession:

- (i) After the death of Lucy Phillip in 1998 the Defendant remained in possession of the house and the land surrounding the house to the exclusion of all others for over sixteen years since in or about the year 1998.
- (ii) The Defendant did not allow anyone to enter the premises without his permission and even though he had a cousin for a short period, it was with his permission.
- (iii) The Defendant maintained the premises as owner and caused electricity to be supplied to the said premises and DirecTV to be connected to the premises.
- (iv) The Defendant changed parts of the wooden flooring and part of the roof in his continued maintenance of the said house.
- (v) The Defendant maintained the surrounding yard space as can be seen in the pictures attached to the valuation report annexed to the Claimant's Statement of Case. The then landowner never challenged his occupation and after the legal title was transferred in 2012 the now legal titleholder did not challenge the Defendant's occupation but for this action.

An assessment of the evidence must be conducted to determine whether the Defendant's claim for adverse possession can succeed.

## **Summary assessment of the evidence**

[38] The Defendant's evidence in his witness statement was that he continued to live with Lucy Phillip in the dwelling house after Edward Phillip died, and at no time did she tell him that she was giving him permission to live in the dwelling house as a licensee. According to him, Lucy Phillip assured him on several occasions that he could stay in the dwelling house as long as he lived. He alone was responsible for the maintenance of the dwelling house and the lands around it. Over the years, he applied for and obtained assistance grants from the government to carry out repairs on the dwelling house. While the applications were made by him, the departments sometimes asked for authorization from the landowner. In 2010, he was trying to get assistance from Self- Help to repair part of the roof, however he was told that the owners of the house had to give consent for this to be done. He went to his mother, Eugenia Phillip, who went to the then landowner, Mr Mootoo. Mr Mootoo said that his mother and her two sisters would have to give consent as the tenants of the land. He got the necessary consent from them. Later that year, he needed to have the dwelling house rewired. He was told by T&TEC that he needed the landowner to consent. He and his mother went to Mr Mootoo and he prepared a letter wherein he stated that Eugenia Phillip was the tenant of the land. It is because of this that he got the connection, which is in his name. The Claimant made several requests for him to vacate the dwelling house. The landowner never told him that the Claimant was purchasing the property but his mother indicated to him that the Claimant spoke to her about buying the land but his mother told her to buy the piece on which is the other house.

[39] In cross-examination, the Defendant admitted that prior to the filing of his Defence, he made no mention in his correspondence letters to the Claimant dated 13 April 2017 and 9 May 2017, of any promise Lucy Phillip made to him that he could live in the dwelling house for as long as he lived. When asked if as stated in his witness statement when he sought assistance from Self-Help, he required the consent of the homeowners, the Defendant testified that he was not told that. He admitted that that was different from what he stated in his witness statement. He testified that when he was told he needed consent from the landlord, he called his mother who told him she would handle it, but he

does not know to whom she went. He testified that he does not know who Mr Mootoo is. When asked when he went to T&TEC whether he was told that he needed consent from the landowner, his answer was “no”. When he was referred to his witness statement where he stated this, he testified that his witness statement was not true. The Defendant was referred to the letter written by Mr Mootoo to T&TEC, which he testified was the letter he took to T&TEC. He agreed that it stated that Eugenia Phillip is the tenant and her son is the occupier of a dwelling house on the land. He agreed that the letter stated that the company A.B. Mootoo and Company had no objection to the electricity supply being placed in his name, that is, that A.B. Mootoo and Company consented.

[40] The Defendant testified that prior to the change of name on the T&TEC bill, he did not pay the bills. The Defendant admitted in cross-examination that the reason no one ever objected to him doing works on the dwelling house was because they consented. He denied that he was living in the dwelling house with permission, but accepted that his mother agreed to him living in same. He did not have any discussions with Claudia Phillip about him living in the dwelling house and he was unaware of whether Bernice Isaac agreed to him living in the dwelling house. He admitted in cross-examination that he believes the landlord should have told him that the Claimant was buying the property since he was living in the dwelling house: the landlord was aware that he was living there and was in agreement with him living in the dwelling house, conducting works on it and going to T&TEC. He accepted that his mother and aunts agreed to him going to Self-Help, and that after Lucy Phillip died in 1998, he was living in the dwelling house with the consent of his mother.

[41] Mr Mootoo amended two dates in his witness statement. The first was the year his father leased the parcel of land to Edward Phillip, which he changed from 1966 to 1956. He also changed the year from 1985 to 2005, to correct himself as to the year in which he wrote to Eugenia Phillip and Claudia Phillip about the transfer of the land.

[42] Mr Mootoo’s evidence was that he began to oversee transaction related to the property around 1956. Mr Mootoo testified that after the death of Edward Phillip, Bernice Isaac

paid him rent. He recalled that in 2010 the children of Edward Phillip asked him if he could write in support of them going to the National Commission for Self-Help, which he did. Further, in 2010, the Defendant visited his office requesting an authorization letter to take to T&TEC in order to have the electrical connection to the property transferred to his name. In 2012, the Claimant and her mother approached him expressing interest in purchasing the land. He advised them that they should also purchase the dwelling house.

[43] Bernice Isaac's evidence was that after the death of Lucy Phillip, she and her sisters spoke and agreed to allow the Defendant to live in the dwelling house. She also continued to pay the rents after her mother's death, with the Claimant continuing to pay WASA bills for water connection to the land. Bernice recalled that in sometime in 2009 or 2010 her sister, Eugenia Phillip, the mother of the Defendant, approached she and Claudia Phillip and asked for their permission to seek consent to obtain government assistance to access funds to repair the roof of the dwelling house. In 2012, the Claimant spoke to the children of Edward Phillip about purchasing the property and they did not object to her purchasing same. All tax and rent receipts that were in the possession of Eugenia Phillip were given to Bernice Isaac. Eugenia possessed some receipts because she assisted Lucy Phillip to conduct business. Bernice also sold her house on the land to the Claimant. On 31 March 2017, a meeting was held between the sisters and her daughters to discuss the property. The meeting ended with all persons in agreement that the Defendant was welcomed to have whatever he wanted from the dwelling house, and Eugenia Phillip saying that she would make the necessary arrangements to have the Defendant move in with her. On 9 April 2017, the Defendant made a public statement in the road that he would not be moving. Bernice testified that since the time of the purchase of the property by the Claimant, the Defendant was informed by the Claimant and herself that the time would come when he would no longer be permitted to live in the house and would have to move out so that the Claimant could make full use of her property.

[44] The Claimant's evidence was that after Lucy Phillip died, her aunts, mother, siblings and herself spoke and agreed that she and her mother would jointly continue the lease agreement with A.B. Mootoo and Company. From 1998-2010 she paid for the WASA

connection to the property, which she testified included the dwelling house and the other house on the property since it was one connection. In 2010, she sought a separate connection for her house. The Defendant does not contribute to the maintenance of the land. Prior to the completion of sale, she had a conversation with Eugenia Phillip regarding the Defendant's occupation of the dwelling house and she explicitly stated to Eugenia Phillip that she was purchasing the entire property, inclusive of the portion on which the dwelling house sat and that the Defendant could reside there until such time as she required the use of the property. In January 2014, Eugenia Phillip indicated that she wanted to relocate to the dwelling house, and expressed an interest in building a structure on the land, however she informed Eugenia Phillip that this was not feasible at all. Following this, Eugenia Phillip asked her for assistance to repair the roof of the dwelling house with which she assisted. Following a meeting with the children of Edward Phillip, it was agreed that the dwelling house was not salvageable, and Eugenia Phillip informed them that the Defendant would move in with her at her home. Eugenia Phillip also agreed to have the electricity connection to the dwelling house disconnected.

**Issue 1: Has the Claimant's title to the dwelling house and portion of land occupied by the Defendant been extinguished by the Defendant's adverse possession?**

[45] Having assessed the evidence of the witnesses, I find that the Defendant's claim for adverse possession must fail for the following reasons.

[46] Firstly, the Defendant in cross-examination did not appear to be a credible witness. There were numerous inconsistencies between the evidence in his witness statement and under cross-examination as shown in the summary of his evidence above. On the contrary, the Claimant and her witnesses appeared to be credible and their evidence corroborated the Claimant's case.

[47] Secondly, the Defendant has failed to satisfy the Court that he had the requisite factual possession and intention to possess. The Defendant admitted in cross-examination that for his Self- Help application, he went to his mother who organised the necessary letter

for him from the landowner. This is supported by Mr Mootoo who testified that in 2010 the children of Edward Phillip asked him to write a letter on their behalf to Self- Help. The Defendant agreed in cross-examination that the letter to T&TEC stated that Eugenia Phillip is the tenant and her son is the occupier of a dwelling house on the land. He agreed that the letter stated that the company A.B. Mootoo and Company had no objection to the electricity supply being placed in his name, that is, that A.B. Mootoo and Company consented. The Defendant admitted in cross-examination that the reason no one ever objected to him doing works on the dwelling house was because they consented. He denied that he was living in the dwelling house with permission, but accepted that his mother agreed to him living in same. He admitted in cross-examination that the landlord was aware that he was living in the dwelling house and was in agreement with him living there, conducting works on it and going to T&TEC. He accepted that his mother and aunts agreed to him going to Self-Help, and that after Lucy Phillip died in 1998, he was living in the dwelling house with the consent of his mother.

[48] The evidence of the Defendant does not support his claim for adverse possession, as he was well aware that he had permission to live in the dwelling house. He was aware of this consent, as on more than one occasion he required letters of authorization for the works he wished to conduct on the dwelling house. By requesting authorization letters and being known to the landlord as the son of Eugenia Phillip, a tenant, it cannot be said that his occupation of the dwelling house would have been interpreted as being adverse to that of the landlord.

**Issue 2: Has the Defendant established that he has an equitable claim to the property?**

[49] The Defendant avers that alternatively, by acquiescence and/or promissory estoppel and/or proprietary estoppel, he has acquired an equitable interest in the dwelling house, and pleaded the following particulars:

- (i) The Defendant was born and raised in the dwelling house constructed on the land. He continued to live in the dwelling house after the death of his grandfather, Edward Phillip, and after all his grandparents' children left the dwelling house.

- (ii) While living there with his grandmother, Lucy Phillip, he was the only person to give any kind of assistance to her. The Defendant did many odd jobs since he was 15 years of age and any income earned was used for the benefit of Lucy Phillip and himself, which included maintenance of the house. Lucy Phillip used to earn a small income from selling homemade snacks such as sugar cake. Together, the Defendant and Lucy Phillip were responsible for running the household and despite their financial constraints, they maintained the dwelling house to the best of their ability.
- (iii) Lucy Phillip prior to her death assured the Defendant that he could occupy the dwelling house for the duration of his lifetime. As such, after the death of Lucy Phillip, the Defendant never bothered to source alternative living arrangements. Instead, he continued to occupy the dwelling house and did whatever renovations and/or repairs as he was able to, including but not limited to repairing part of the roof and the flooring, causing electricity to be connected and installing Digicel services.

[50] The elements of proprietary estoppel were repeated by Mendonça JA in **Nester Patricia Ralph and Esau Ralph v Malyn Bernard**<sup>6</sup> at paragraph 38 where he referred to the dicta in **Thorner v Major and Ors**<sup>7</sup> where Lord Walker pointed out that while there is no universal definition of proprietary estoppel, which is both comprehensive and uncontroversial, that most scholars agree that the principle of proprietary estoppel is based on *“three elements, although they express them in slightly different terms; a representation or assurance made to the claimant; reliance on it by the claimant and detriment to the claimant in consequence of his (reasonable) reliance...”*

[51] In **Mills v Roberts**<sup>8</sup> Jamadar JA (as he then was) explained that the elements of proprietary estoppel must be examined holistically in the round and are not “watertight compartments”. Jamadar JA stated at paragraph 19:

---

<sup>6</sup> Civil Appeal No. 131 of 2011

<sup>7</sup> [2009] UKHL 18

<sup>8</sup> CA T243 of 2012



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

[52] Sir Henry Brooke in the Privy Council decision of **Knowles v Knowles**<sup>9</sup> at paragraph 27 stated -

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

[53] **Snell’s Equity**<sup>10</sup> describes the doctrine of promissory estoppel as -

---

<sup>9</sup> [2008] UKPC 30

<sup>10</sup> 31st ed 2005 at paragraph 10-08

*“Where by his words or conduct one party to a transaction freely makes to the other a clear and unequivocal promise or assurance which is intended to affect legal relations between them (whether contractual or otherwise) or was reasonably understood by the other party to have that effect, and, before it is withdrawn, the other party acts upon it, altering his or her position so that it would be inequitable to permit the first party to withdraw the promise, the party making the promise or assurance will not be permitted to act inconsistently with it.”*

[54] In **Fulchan, Harry v Fulchan, Naresh**<sup>11</sup> Rajkumar J (as he then was) noted that not each and every contribution made to a property would give rise to an equitable interest. Rajkumar J at pages 7 - 8 stated what constitutes “substantial detriment” as:

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

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

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

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

- a. payment of land and building taxes,*
- b. painting,*
- c. purchase of chattels – for example furniture and air-conditioning units,*
- d. cleaning of the yard and surroundings,*

*and the assertions that these either singly or in combination with other matters, gave rise to an equitable interest which had to be recognized by the holder of legal title. Such payments may be ancillary to other contributions but would rarely suffice on their own to create an equitable interest in real property.*

---

<sup>11</sup> CV 2010-03575

*16. Further such an interest can be given effect in many ways, and the benefit that such party has already enjoyed from the subject property can be taken into account, in assessing alleged detriment, to determine whether it is necessary to recognize and declare any further interest.*

*17. Routine maintenance activities on property that is occupied by such a claimant, such as cleaning or painting, would not usually fall into the category of detrimental actions that require compensation by the award and recognition of an equitable interest in property. This is activity to be expected of anyone who occupies and has the benefit of occupying property.*

*18. Payment of water and electricity bills would similarly not be examples of such detrimental reliance. This is again activity expected of anyone who enjoys the benefit of those services.*

*19. Payment of land and building taxes is equivocal as these can be paid by anyone, and are accepted from anyone who tenders payment.*

*20. Purchasing of furnishings and chattels for the better enjoyment of premises cannot in most if not all cases, give rise to any benefit in land or real property. Apart from not being an expenditure that can constitute detrimental reliance, these are removable and severable, by definition from the subject property.”*

[55] In order to succeed on a claim of estoppel, the Defendant must establish some type of promise and/or encouragement, reliance on that promise and/or encouragement and detriment.

[56] The Defendant pleaded that Lucy Phillip assured him that he could occupy the dwelling house for the duration of his lifetime. In cross-examination he admitted that prior to the filing of his Defence, he did not make any mention of this assurance by Lucy Phillip in his correspondences to the Claimant.

[57] I have concluded that there was no clear, unequivocal promise, assurance or intention by Lucy Phillip to the Defendant. I have already determined that the Defendant was not a

credible witness owing to the numerous inconsistencies in his evidence. Further, the Defendant brought no witnesses to corroborate his claim that Lucy Phillip made any assurances to him. The Claimant and her mother both stated in their evidence that there was a meeting with the children of Edward Phillip after the death of Lucy Phillip, and that it was agreed by Eugenia Phillip that the Defendant would move out of the dwelling house and move in with her. However, neither the Claimant nor her mother were cross-examined on this aspect of their evidence. It is more probable that had Lucy Phillip made such an assurance to the Defendant, she would have told her children of this, especially Eugenia Phillip since she had assisted Lucy Phillip with her business affairs during her later years, and the Defendant is her son.

[58] As it relates to detrimental reliance, the Defendant pleaded that he helped maintain the property, and his evidence was that he conducted works on the dwelling house and paid the T&TEC bill from 2010. He pleaded that after the death of Lucy Phillip, he continued to occupy the dwelling house by himself and caused certain works to be carried out, namely the renovation of part of the roof, part of the flooring and causing the dwelling house to be wired and an electrical connection supplied. He contended that he did all these works at his expense for his benefit. As his evidence showed, he received assistance from Self-Help to do this. Apart from this, the Defendant supplied no documentary evidence to the Court to prove that he did in fact expend monies on renovation works to the dwelling house. Following the learning in **Fulchan**, even if the Defendant did conduct routine maintenance works on the dwelling house and property, of which there is no evidence, he did so for his own benefit since he resided in the dwelling house. Contribution alone does not give rise to an equitable interest. As a result, he cannot now claim that this was to his detriment that allows him any equitable interest in the dwelling house and property.

[59] Accordingly, the Defendant has not established any equitable claim to the dwelling house and land.

**Issue 3: Is the Claimant entitled to damages for trespass?**

[60] In **Halsbury's Laws of England Volume 97 (2015) at paragraph 575**, actual possession of land for the purposes of trespass is defined as follows:

*“Actual possession is a question of fact. It consists of two elements: the intention to possess the land and the exercise of control over it to the exclusion of other persons. The extent of the control which should be exercised in order to constitute possession varies with the nature of the land; and possession means possession of that character of which the land is capable....”*

[61] In the case of **Gabriella Belfon v Anil Chotalal**<sup>12</sup>, Rahim J at paragraph 10 of the judgment stated as follows:

*“Where a party shows that he has a greater possessory title to the land than the person alleged to have interfered with this right to possession, he may recover possession of the land. This is because possession of land, entitles the person in possession, whether rightfully or wrongfully, to maintain an action of trespass against any other person who enters the land without his consent, unless such other person has himself a better right to possession: JA Pye (Oxford) Ltd v Graham (2002) UKHL 30.”*

[62] In **Jacob & Polar v Samlal**<sup>13</sup>, Pemberton J (as she then was) accepted that nominal damages will be awarded in two circumstances:

- (a) In recognition of an infraction of a legal right giving the successful party judgment. There is no need to prove actual loss; and
- (b) Where damage is shown but its amount is not sufficiently proved.

[63] The Claimant pleaded that she requested vacant possession of the land from the Defendant sometime in March 2017, to which the Defendant admitted. However, he pleaded that she did so without consideration for his rights. Having determined that he has no rights to the

---

<sup>12</sup> CV2012-01479

<sup>13</sup> CV2005-00454

dwelling house and land, and his refusal to deliver vacant possession, this is a case where damages for trespass is appropriate.

[64] Since there is no need to prove actual loss, the award serves as a vindication of rights. In **Jacob**, Pemberton J (as she then was) stated that the rate in this jurisdiction was between \$3,500 and \$10,500. Having regard to the circumstances of the instant case, I shall place the quantum of damages to be awarded in the sum of **\$5,000.00**.

#### IV. Entitlement to Costs

[65] The general rule is that the Court must order the unsuccessful party to pay the costs of the successful party: **CPR Part 66.6(1)**. However, under the CPR, this general rule that costs follow the event is just a starting point since **CPR Part 66.6(2)** gives the Court the discretion to order the successful party to pay all or part of the costs of the unsuccessful party: [see **A.E.I. Rediffusion Music Ltd v Phonographic Performance Ltd**<sup>14</sup> per Lord Woolf and **Multiplex Constructions (UK) Ltd v Cleveland Bridge UK Ltd**<sup>15</sup> per Jackson J.]

[66] The new approach which is the issue-based approach, requires the Court to consider issue by issue to ascertain where costs should fall, particularly in cases which are not “money claims” which more accurately reflect the level of success achieved: [see the cases of: (1) **Summit Property Ltd v Pitmans**<sup>16</sup>; (2) **Secretary of State v Frontline**<sup>17</sup>; (3) **Fulham Leisure Holdings v Nicholson Graham**<sup>18</sup> per Mann J.; and **A.E.I. Rediffusion** (supra).

[67] In exercising its discretion as to who should pay costs, the Court is mandated to consider all the circumstances of the case including, but not limited to: (a) the conduct of the parties (both before and during proceedings); (b) whether the party has succeeded on particular issues even if not wholly successful; (c) the manner and reasonableness in which a party

---

<sup>14</sup> [1999] 1 W.L.R. 1507, CA

<sup>15</sup> [2008] EWHC 2280 (TCC)

<sup>16</sup> [2001] EWCA Civ. 2020

<sup>17</sup> [2004] EWHC 1563

<sup>18</sup> [2006] EWHC 2428, Ch

pursued the proceedings, a particular allegation or issue; and all other factors provided for in **CPR Part 66.6 (5) and (6)**: [see **Firle v Data Point International Ltd**<sup>19</sup> and **Islam v Ali**<sup>20</sup>].

[68] The question as to who is the successful party was considered in the case of **BCCI v Ali (No. 4)**<sup>21</sup> which was approved in **Day v Day**<sup>22</sup> in which it was stated that the Court must treat “success” not as a technical term but “a result in real life” to be determined with the “exercise of common sense”. In **CPR Part 66.6(3)**, the Court is given the power in particular to order a person to pay (a) only a specified proportion of another person’s costs; (b) costs from or up to a certain date only; or (c) costs relating only to a certain distinct part of the proceedings.

[69] It has long been settled that a **Claim** and a **Counterclaim** must be treated as distinct and separate actions and so for the purposes of entitlement and quantification of costs separate orders must be made. In light of the new regime to the entitlement of costs under the CPR, it appears to me that in relation to the **Claim** there is no question that the Claimant is the fully successful party and therefore the general rule that costs follow the event ought to be applied. In this regard, since the Claim is a non-monetary claim and one which must be calculated on the prescribed scale, the said Claim is to be treated as one for **\$50,000.00** pursuant to **CPR 1998 Part 67.5(2)(c)**. Consequently, in accordance with the scale of costs in **CPR Part 67** Appendix B, the Claimant will be entitled to the sum of **\$14,000.00** on the Claim.

[70] In relation to the **Counterclaim**, it also cannot be disputed that the Claimant has been the overall winner having been substantially successful on all major issues raised in the Counterclaim. Taking all the circumstances into account, I am of the view that the Claimant is entitled to her full costs on the Counterclaim. The Counterclaim being also a non-monetary claim and no value of the claim having been determined, in accordance

---

<sup>19</sup> [2001] EWCA Civ. 1106, CA

<sup>20</sup> [2003] EWCA Civ. 612]

<sup>21</sup> The Times March 2, 2000

<sup>22</sup> [2006] EWCA Civ. 415

with CPR 1998 Part 67.5(2)(c) the Counterclaim is to be treated as one for \$50,000.00 the prescribed costs for which is \$14,000.00 as aforesaid.

**V. Disposition**

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

**ORDER:**

1. Judgment be and is hereby awarded to the Claimant on her Claim filed on the 9 June 2017 for the reliefs stated hereunder in this order.
2. The Claimant is entitled to and is hereby awarded possession of the piece or portion of the property as is occupied by the Defendant being part of a larger property situate at Lot #228 on Ramdass Street, Sangre Grande, in the Island of Trinidad comprising EIGHT THOUSAND TWO HUNDRED AND THIRTY SIX square feet more or less bounded on the North by Kenny Street and on the South by Lot No. 229 and in the East by Ramdass Street and on the West by Lot No. 227 and which said piece or parcel of land is shown as Lot No. 228 on the General Plan attached to Deed registered as 1432 of 1957.
3. The Claimant is also awarded nominal damages for trespass to the said portion of land in the sum of \$5,000.00.
4. The Defendant's Counterclaim be and is hereby dismissed.
5. The Defendant shall pay to the Claimant costs of the Claim and Counterclaim to be quantified on the prescribed scale of costs. On the basis that both the Claim and Counterclaim are deemed claims valued at \$50,000.00, prescribed costs are quantified in the sum of \$14,000.00 each, making a total of \$28,000.00 to be paid, in default of agreement.

---

**Robin N. Mohammed**  
**Judge**