

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV 2014-00205

BETWEEN

ELLIE D. GABRIEL

**(By Eversley Gabriel appointed to represent her estate in this
Claim by Order of Hon. Mr. Justice Rahim dated 4th May 2017)**

Claimant

AND

STEPHEN GABRIEL

Defendant

Before the Honourable Mr. Justice R. Rahim

Appearances:

Mr. W. E. J Campbell instructed by Mr. A. Ramjohn for the claimant

Ms. C. A.C. Alleyne instructed by Ms. A. Holder for the defendant

Judgment

1. This claim is for possession of a house situate at No. 2 Samuel Street, Basse Terre, Moruga. The house is comprised of two storeys. Subsequent to the institution of these proceeding and the filing of her witness statement, the claimant, Ellie D. Gabriel died on the 24th July, 2016. Consequently, Eversley Gabriel (“Eversley”) was appointed to represent the claimant’s estate. The deceased claimant, defendant, and Eversley are siblings. Their parents were Eldan Gabriel (“Eldan”) and Mary Gabriel (“Mary”). Eldan and Mary died on the 11th August, 1973 and the 5th June, 2013 respectively.

2. It is undisputed that the claimant purchased the land upon which the house stands. At the time of the purchase of the land, her family’s old wooden house stood thereon. However, it is the claimant’s case that subsequent to purchase of the land, the old house began to deteriorate and by 1990, it was irreparable. Mary informed the claimant that she did not have any money to rebuild the house and claimant’s siblings also stated that they did not have money to assist in the rebuilding. Mary and the claimant therefore made an agreement that the claimant would provide all of the money for the rebuilding of the house and on completion, the newly rebuilt house would belong to the claimant alone. It was further agreed that Mary would continue to live in the house for her lifetime and also continue to operate her business (a shop) which was located on the ground floor of the house. Consequently, it is the case of the claimant that she alone provided all the monies for the rebuilding of the house and therefore, the newly built house which now stands on the land belongs to her.

3. The defendant currently operates a bar on the ground floor of the house. Mary, by her will dated the 5th March, 2012 appointed the defendant her executor and bequeathed the upper floor to the claimant and the ground floor to the defendant. The claimant alleges that the house did not belong to Mary at the time of her death and so she could not have devised it by will. Consequently, by Claim Form filed on the 17th January, 2014, the claimant claims inter alia, a declaration that she is the sole owner of the house.

4. By Defence filed on the 21st February, 2014, the defendant denies that the claimant is the owner of the house. He avers that the house has always belonged to Mary. As such, the defendant claims that Mary did in fact validly bequeath the ground floor to him. Further, he denies that the claimant bore all the expenses to rebuild the house. According to the defendant, his siblings pooled their finances and resources to renovate the upstairs together with Mary and Mary and he financed the renovations of the ground floor.

Issues

5. The issues for determination are as follows;
 - i. Whether there was a promise by Mary or an agreement between the claimant and Mary that the claimant would supply all the money for the rebuilding of the entire house.
 - ii. If there was such a promise or agreement, whether the claimant is entitled to possession mesne profits from the defendant for his use and occupation of the ground floor of the house.

The case for the claimant

6. In addition to her own testimony the claimant called two witnesses, Eversley Gabriel and Neal Martin Gabriel.
7. Prior to her death, the claimant lived at Croydon, London, England and was a retired nurse. She was the first born of her parents Mary and Eldan and the first of thirteen children. Eldan was not regularly employed but earned a living by taking care of other people's cocoa and coffee plantations as well as a five-acre estate which he owned. According to the claimant the family were not wealthy and so she and her siblings grew up in the old wooden house which consisted of three bedrooms with a latrine and bathroom constructed to the exterior of the house, quite a common occurrence in the olden days in Trinidad.

8. According to the claimant, she and her brother Boyce left school prematurely in order to work to help maintain the family. She eventually decided to travel to England to become a nurse. It was her thinking at the time that in so doing she could help the family, especially her younger brothers and sisters. In 1966 therefore she set sail for England where she obtained employment immediately. It is of course a matter of historical record that residents of the colonial West Indies (prior to independence in 1962) would in those days have been conferred with British citizenship under the British Nationality Act 1948 resulting in a steady stream of migration to England by West Indians seeking a better standard of life both for themselves and for their families left at home, than that which obtained in the West Indies at the time. The symbiotic relationship also facilitated the provision of much needed skilled labour to England. Despite the advent of independence, the migration from the now newly minted West Indian Commonwealth territories continued well into 1970 and beyond. In those circumstances the court wholly accepts this aspect of the testimony of the claimant that she migrated in 1966 and that part of the purpose of her migration was to assist her less fortunate family who remained in Trinidad.
9. The claimant immediately began to remit money by way of money orders to her mother, Mary to assist in the care of the family. Thereafter, the claimant sent monthly remittances to Mary for the upkeep of herself and the family. Once more this was a common occurrence in this territory in those days. It was usual for the eldest child to leave the home and travel to England for a purpose of improvement of her standard of living and education and also to remit money to those left behind, so that the court also accepts this evidence in its entirety. The claimant stopped sending money in or about the year 2000, when according to her, Mary became too demanding. It is the claimant's testimony, that the business Mary operated at the house was not very lucrative however she was able to meet her debts.
10. The land was initially rented from one Montgomery Alpheus ("Alpheus"). On or about the year 1986, Alpheus offered to sell the land to Mary but she could not afford it. Mary informed the claimant of the offer to purchase the land. As the claimant's siblings were also not in a position to purchase or assist in the purchase of the land, Mary and the claimant arrived at an agreement whereby the claimant would purchase the land for her sole use and

benefit and that the claimant would assist in the repair of the old wooden house. That she would do so primarily for her later use and benefit and also for the use and benefit of the family as the claimant was still resident in England. It was also agreed that Fitzroy Gabriel (“Fitzroy”) who was a builder and a hardware owner would oversee the repairs to the house. Fitzroy is Eldan’s son from another relationship. The claimant testified that the defendant was present when Mary and she made the agreement and so were other siblings.

11. In or about the year 1988, the claimant purchased the land. In or about 1990, the claimant paid for eye surgery for Mary as Mary and the claimant’s siblings could not finance same. It is the claimant’s evidence that Mary begged the claimant to be present at the time of the surgery and so the claimant came to Trinidad to be with Mary. The claimant alleges that Mary did not have money to pay for the surgery because in 1990 she purchased a property at Roy Amora Street, Basse Terre, Moruga (“the Roy Amora property”) which comprised two lots of land with a house thereon.
12. Further, by 1990 Fitzroy advised the claimant that the old house was beyond repair and therefore had to be rebuilt into a concrete structure. The family met to discuss the matter. Neither Mary nor any of the claimant’s siblings were in a position to contribute to the rebuilding of the house. Mary again openly stated that she had no money for rebuilding the house and that she did not intend to repair or rebuild the house for other persons to live in. The defendant also openly stated that he had no money as he had his own family to care for.
13. The claimant was very concerned about the conditions in which Mary and her younger siblings were living and so in or about 1990, Mary and the claimant made the following oral agreement;
 - i. The claimant would provide the money to rebuild the house;
 - ii. Fitzroy would draw the necessary plans for the new house and supervise its construction at the claimant’s expense;

- iii. The claimant would remit the necessary monies for the construction of the new house to Mary by monthly or regular remittances to an account at Republic Bank Limited which was owned jointly by the defendant and Mary;
 - iv. Upon completion the house would belong to the claimant solely but Mary would be permitted to live therein for and during her lifetime and that further Mary would continue to carry on her small business as a seller of dry goods. Further, Mary would allow any of the claimant's siblings who so desired to live therein; and
 - v. The claimant would continue to pay all bills connected with the new house such as rates and taxes and would also be responsible for the care and maintenance of the house.
14. Pursuant to the above agreement, the claimant remitted money from the beginning of 1991, via her bank in England, to the defendant and Mary's joint bank account. Fourteen debit advances from the claimant's bank were annexed to the claimant's witness statement. By April, 1999 the claimant had expended over eighty-five thousand dollars in constructing the new house. In addition to those monies sent by the claimant via her bank, she gave cash money to Mary whenever she visited Trinidad. The claimant also sent money for Mary with family members and close friends who visited England and were returning to Trinidad.
15. As such, it was the testimony of the claimant that she bore all of the expenses to demolish the wooden house and build a concrete structure. She also paid for the installation of a water pump and the costs of the associated plumbing.
16. Fitzroy constantly kept the claimant updated with the progress of his work and the expenses he incurred. He later presented the claimant with his notes and/or record of the expenses. For the month of December, 1992 those expenses were noted by the claimant in several dairy pages which are annexed to the claimant's witness statement.
17. The construction of the new house was completed in or about 1997. Mary continued to live on the upper floor as agreed and continued to carry on the sale of her dry goods on the ground floor. In or around 1997 the claimant paid for an airline ticket and Mary visited her

in England. During her visit Mary informed the claimant that the defendant owed her over twenty-four thousand dollars for goods he took on credit from her business and that because of his debt she was unable to restock her business. The claimant therefore gave her two hundred pounds to assist in restocking.

18. Sometime after the completion of the new house, the defendant and Mary altered the downstairs of the house to include a bar. This was done without the claimant's consent and/or approval. The claimant did not immediately question the defendant or Mary about their act, but did so in 2001 at which point Mary did not respond but the defendant became very aggressive towards the claimant, verbally abused her and invited her to take him to court. The claimant never spoke with the defendant after that incident.
19. By letter dated the 6th June, 2013, the claimant's attorney wrote to the defendant informing him that the claimant was the owner of the house and demanding that he enter into discussions to regularize his occupation. However, the defendant did not respond to this letter.
20. By her will dated the 5th March, 2012, Mary stated that she was the owner of the said house.
21. **Eversley Gabriel** ("Eversley") is sixty-three years of age and is a retired labourer. He has lived at the house for his entire life and currently resides there. Much of Eversley's evidence was the same as the claimant's and as such, there was no need to repeat it. During cross-examination, Eversley testified that Mary never executed a deed conveying the house to the claimant. This is not in issue.
22. According to Eversley, in 1990 the defendant did not have money to help with the rebuilding of the house because at that time he had joined up with Mary to purchase the Roy Amora property. In 1990, the defendant's family consisted of his wife and their four children. As such, it was the evidence of Eversley that the defendant had no financial input into the rebuilding of the upper floor of the house. He admitted that after the house was rebuilt, the defendant and Mary renovated the ground floor of the house.

23. Eversley testified that when Mary called upon her companion, Percy Harper (“Harper”) to assist with the rebuilding of the house, he bluntly refused and called for his share of the business that he and Mary were operating at the house at that time. Harper was paid off and he left. Between 1988 and 1989, Eversley assisted Mary in the business.
24. Eversley testified that the defendant possessed Eldan’s five acre parcel of land. Mary also gave the defendant her share of the Roy Amora property. When the relationship between the defendant and Eversley was more cordial, the defendant would complain to Eversley about the difficulties he was having to make ends meet since his salary was small and his family was growing. Eversley further testified that the defendant would take goods on credit from Mary’s business.
25. During cross examination, Eversley testified that the claimant did not contribute to the renovation of the ground floor. That the defendant and Mary exclusively occupied and managed the business and the claimant had no part in the business.
26. **Neal Martin Gabriel** (“Neal”) is the younger brother of both the claimant and the defendant. He is sixty years of age and is employed as a Carpenter with a company. Most of the evidence given by Neal was the same as the evidence given by claimant and Eversley, as such, it was unnecessary to repeat it.
27. During cross-examination, Neal testified that the renovations carried out on the ground floor was done solely by the defendant and Mary. He further testified that while the ground floor was used for business, the upper floor was the family home.

The case for the defendant

28. Giving evidence for the defence was the defendant himself, Ian Thomas, Heulix Anthony Henry and John Wayne Mc Caulay La Rode.
29. The defendant is a retired Prison Officer. Mary and Eldan were tenants of the land since the 1940’s and they constructed the old wooden house. During cross-examination, the

defendant testified that Mary and Eldan initially had thirteen children but three died. The defendant is the tenth child.

30. Over the years the house was renovated in order to make it stronger and more stable. After Eldan's death in or around 1973, Mary became the sole tenant of the land. The defendant admitted that the claimant purchased the land, however during cross-examination, he denied that the claimant purchased the land because Mary and his siblings could not afford to. Further during cross-examination, the defendant denied that after Eldan died, the family was in a serious financial situation. The defendant testified that he was capable of purchasing the land but that Mary did not give him the option to purchase same.
31. According to the defendant, Mary was always the owner of the house. He testified that since the claimant left Trinidad in 1966 to become a nurse, she has not returned to live at the house save and except when she visited for holidays. During cross-examination, the defendant testified that he was thirteen years of age in 1966.
32. During cross-examination, the defendant also testified that he was twenty-six years of age when he married in 1979. At that time he was a Prison Officer. He became a Prison Officer in or about the year 1978 and his salary was approximately eight hundred and fifty dollars to nine hundred dollars a month. Prior to becoming a Prison Officer, he was a Guard's Man.
33. The defendant testified that after discussions between Mary and her children, it was agreed that the repair of the house would be done through the assistance of all her children once they were capable of so doing. The upper floor of the house was being transformed from a wooden structure into a concrete structure. The defendant further testified that the purpose of the renovation was to make same stronger and more modern by putting the bathroom and toilet inside of the house as opposed to having those facilities outside. During cross-examination, the defendant denied that the house was deteriorating in 1990. He further denied that Mary stated that she did not have money to rebuild the house and that she was not renovating the house for other persons to live in.

34. The defendant's evidence as to who contributed to the rebuilding of the upper floor of the house was somewhat ambiguous. At paragraph 10 of his witness statement he testified that he, Mary and the claimant agreed to rebuild the upper floor of the house because they were in a better position to pool together their finances to rebuild the upper floor into a stronger concrete structure. Thereafter, at paragraph 13 of his witness statement, the defendant testified that he, Mary, the claimant and their siblings who could have assisted with the finances for rebuilding the upper floor of the house, all pooled together their resources. According to the defendant, the plumbing for the upper floor of the house was not paid for by the claimant alone but was paid out of the collective monies pooled together.
35. During cross-examination, when questioned as to who was responsible for the repairs to the house, the defendant testified that the entire family, whosoever could have contributed was responsible for the repairs. When asked how many of the family members did in fact make contributions, the defendant testified that Mary, the claimant, a brother from Canada, another brother who died and he contributed. However, when asked whether anyone gave him money personally towards the rebuilding of the house, the defendant testified that he did not receive any money personally from anyone towards the rebuilding of the house. He further testified that he could not say whether anyone gave Mary any money towards the rebuilding of the house.
36. According to the defendant, it was agreed that Mary would continue to be the owner of the house after same was repaired. It was further agreed that he would oversee the renovations and/or repairs of the upper floor of the house, obtain, supervise and pay the workmen and purchase the material required. The defendant hired a contractor, one Kelry Mc Kenzie to carry out the works done to the upper floor of the house.
37. During cross-examination the defendant testified that the money he paid to the workmen for the renovations that were done to the upper floor came from Mary. That he did not hire the workmen but simply he obtained the workmen for Mary. The defendant further testified that he did not know where Mary got the money from to pay the workmen but he denied that the claimant gave Mary all the money because his brother from Canada contributed

money. Moreover, the defendant testified that he did not give Mary any cash money for the rebuilding of the house.

38. The defendant testified that the renovations that were being done to the upper floor of the house was for the benefit of the entire family and not just for the claimant's use and benefit. According to the defendant, the claimant never indicated that she was going to return to Trinidad to live. The claimant was never married and she did not have any children.

39. Mary continued to live in the upper floor of the house with her companion at the time, Harper. The defendant's younger siblings also lived in the upper floor of the house. In 1981, Mary and Harper operated a small shop or business at the ground floor of the house in order to obtain more finance for the family's maintenance. During the renovations of the upper floor, the ground floor was not renovated, so that Mary continued to operate her business as usual.

40. According to the defendant, after 1981, Mary and Harper's business flourished into a grocery. In 1985 Mary and Harper obtained a Grocer's License to sell wholesale dry goods and liquor. The defendant always took an interest in the business as he would usually assist Mary in the selling and purchasing of stock. The defendant testified that the grocery was lucrative enough to sustain Mary and her children in the economy at that time. During cross-examination, the defendant denied owing Mary twenty-four thousand dollars for groceries he had allegedly taken on credit. This is not an issue.

41. When Mary and Harper decided to bring their personal and business relationships to an end, Mary and the defendant discussed paying off Harper for his one half share in the grocery. The defendant testified that he provided the money for the purchase of Harper's share in the sum of eight thousand, seven hundred and seventy-five dollars. The court notes that on the receipt for the payment of the sum of eight thousand, seven hundred and seventy-five dollars to Harper, Mary's name appears as the person from whom the sum was received and not that of the defendant.

42. During cross-examination, the defendant admitted that he and Mary purchased the Roy Amora property together. He could not recall when the property was purchased and how much was paid for it. He further testified that that this property was not the first property he bought. Prior to that purchase, in 1996, the defendant bought the property in which he lives a few houses away from the property which is the subject of these proceedings.
43. From the latter part of the year 1991, Mary and the defendant officially started doing business together. Mary operated the dry goods section and the defendant operated the liquor section of the business. The defendant took over the “heavier parts” of the business as Mary decided she needed more of his assistance because she was getting older. The defendant testified that Mary and he were very close as she depended on him for general assistance daily.
44. Also in 1991, the defendant and Mary decided to renovate the ground floor of the house as same was still a wooden structure and he approached Scotiabank for a loan which he obtained in or around 1996 or 1997 for that purpose. The defendant then hired a builder, Ian Thomas, and an electrician, Heulix Henry to carry out the renovations. Mary also assisted the defendant with the renovations of the ground floor. Subsequently, the defendant obtained a further loan from Scotiabank in the sum of fifteen thousand dollars specifically for the purchase of alcohol to stock the bar.
45. In or around 1997, the liquor business was converted into a Recreational Club and the liquor license for the club was placed on the defendant’s wife’s name, Merle Gabriel (“Merle”). At the time, the defendant was a Prison Officer and therefore could not have had his name on the liquor license. The bar section of the business was officially re-opened on the 5th May, 1997. In the meantime, Mary operated the dry goods section of the business and continued to do so up until 2012. Since 1997 to the present time, the income incurred from the club has sustained the defendant’s family. Sometime in the year 2010, the ground floor was rewired to include a second electrical meter.
46. According to the defendant, Mary always lived in the upper floor and used the ground floor for her business. He testified that Mary always maintained the house and operated as its

owner and so she did not need the claimant's permission to continue her business especially as the business was in operation since 1981. That while the business transformed and grew into a bigger and more modern type of business, Mary always maintained ownership of the business.

47. The defendant testified that the claimant never acted like she was the owner of the house. That he has always accepted that she purchased the land but that Mary owned the house. According to the defendant, the claimant never assisted or contributed to the business and therefore had no interest in the business. Just before Mary died, the family had a meeting and Mary made it very clear that the ground floor was for the defendant as he was the only child who was interested in running the business and the upper floor was for the claimant. The meeting came to an abrupt end.

48. According to the defendant, Mary published her last will and testament to reflect her intentions and reiterated what she had stated in the meeting. The defendant testified that he obtained a grant of probate of Mary's will on the 4th April, 2014 without notice of any caveats being filed. The defendant testified that Mary was a very strong willed person and was of sound mind up to the time of her death. That she was not a typical aged person as she was very aware of all her circumstances.

49. The defendant testified that he received the claimant's letter dated the 6th June, 2013 but that the letter was very unreasonable as it came at a very tragic time, a day after Mary died. According to the defendant, the claimant only pursued this action after Mary died because she could not have pursued it whilst Mary was living because Mary was the owner of the house.

50. **Ian Thomas** ("Thomas") has been a builder for over thirty years. He has known Mary, the defendant, the claimant and their siblings for many years. According to Thomas, he knew Mary because she had a shop which became a grocery that also sold liquor since the 1980's. Mary's shop was one of the first shops in the community.

51. Thomas has always regarded Mary as the owner of the house especially since she would often contact him to do works on either the upper or ground floor of the house. During

cross-examination, Thomas testified that he never saw any deed for the house with Mary's name on it. That he assumed that the house belonged to Mary. Thomas testified that the defendant and Mary had a very close relationship and that Mary would often contact the defendant to assist her with the payment and supervising of the work being conducted by Thomas. Thomas further testified that the defendant played a supportive role to his mother especially during the renovations of the house.

52. In or around 1991 to 1993, Thomas was hired by Mary to do the ceiling and the cupboards in the upper floor. In 1997, the defendant approached Thomas to thoroughly renovate the ground floor. Thomas testified that he had no contact with the claimant with regard to the renovations done to both the upper and lower floors. That the defendant would purchase the material for the work and pay for the labour at the end. On occasions Mary would pay Thomas.

53. **Heulix Anthony Henry** ("Henry") has been an Electrician since 1972 and became a Licensed Wireman in 2007. He has been well acquainted with Mary and her family since 1972 or thereabout. During the years, Henry often visited Mary and did small electrical jobs for her in the house. Henry testified that as far as he was aware and to the best of his knowledge, Mary owned the house. During cross-examination, Henry likewise testified that he never saw a deed stating that Mary owned the house. This of course is to be expected as it is not the case for the claimant that Mary possessed a deed in relation to the house. Henry and the defendant are friends. According to Henry, the defendant was a major part of Mary's life as he assisted her in general as well as in the business.

54. The defendant hired Henry to install a commercial meter for the ground floor. The defendant was in charge of the renovations to the ground floor. The defendant purchased all the material required and supervised Henry whilst he carried out the electrical works. When the defendant was not available, Mary supervised Henry. Henry testified that Mary was a serious business woman. The defendant would also pay Henry for his labour costs and on occasions, Mary would pay Henry.

55. **John Wayne Mc Caulay La Rode** (“La Rode”) is a Plumber. He has been a plumber since the age of seventeen. He has known Mary and her family for over forty years. He knows the defendant since they grew up as children in the same neighbourhood. Throughout the years, La Rode has done plumbing work in the house for Mary. La Rode has always acknowledged Mary as the owner of the house. La Rode was hired by the defendant to do extensive plumbing work to the ground floor. Mary supervised La Rode on occasions when the defendant was unable to do so. Mary also directed La Rode as to what had to be done in the event the defendant was not present. According to La Rode, when the upper floor was being renovated, persons in the community assisted Mary and her family with some of the labour. While La Rode was a trained plumber, he assisted with some of the other renovations in the entire house.

56. La Rode testified that the defendant supervised some of the workmen during the renovations. However, Mary was the chief supervisor of the renovations as she was the owner of the house. La Rode further testified that the defendant was a major influence in the renovations of the house since he visited Mary on a day basis. According to La Rode, the claimant has never communicated with him to do any work on the house.

Issues of fact

Was the house rebuilt or renovated

57. On an evaluation of the evidence, the court finds that the house was not rebuilt but that both the upper and ground floors were renovated at different times. According to the evidence of the claimant, the old wooden house which initially stood on the land was rebuilt entirely. The evidence demonstrates however, that while the upper floor of the house was being renovated into a concrete structure, the ground floor of the house remained intact. As such, it is clear that the old house was never demolished. Therefore, the court finds that the entire house was not rebuilt but was simply renovated, the upper floor at first and the ground floor much later on. The evidence that would have led the court to this conclusion is the same evidence treated with in the next finding of fact.

Was the entire house renovated as alleged by the claimant

58. Both witnesses for the claimant and the claimant herself admitted that subsequent to the renovations done to the upper floor, renovations to the ground floor of the house began. Further, both of the claimant's witnesses, Eversley and Neal testified that the claimant did not contribute to the renovations of the ground floor. That the defendant and Mary were solely responsible for the renovations done to the ground floor of the house. Moreover, Thomas, a witness for the defendant testified that in 1997, the defendant approached him to thoroughly renovate the ground floor. Therefore, the evidence demonstrates clearly that while Mary may have contributed to the renovations of the upper floor of the house, she did not contribute to the renovations to the ground floor. As such, the court finds that the renovations done to the ground floor of the house were undertaken by the defendant and Mary after the upper floor renovations were completed. It is therefore abundantly clear to this court that the entire house was not renovated as the claimant alleges and the court so finds.

Was the claimant solely responsible for the renovations of the upper floor

59. According to the evidence of the claimant, she was solely responsible for the renovations. Having regard to the findings of the court that she played no part in the renovations of the ground floor, the court must examine whether she was in fact the sole financier of the renovations of the upper floor. The fourteen debit advances from the claimant's bank which were annexed to her witness statement demonstrate that the claimant remitted money to her mother, Mary and most of the sums appear to be consistent with the time period during which the renovations to the upper floor were carried out. Therefore, the court finds that Mary did in fact contribute substantially to the renovations of the upper floor.

60. The defendant testified in his witness statement that he, Mary, the claimant and their other siblings all pooled together their finances for the renovations of the upper floor of the house. However, during cross examination the defendant testified that he could not say

whether anyone gave Mary any money towards the renovating of the house. Neither has he produced any evidence whether documentary or otherwise in support of his allegation that the other siblings contributed. In the absence of such evidence and in the absence of a reasonable explanation for the absence of such evidence the court does not accept that the other siblings contributed.

61. During cross-examination, the defendant also testified that he did not give Mary “any cash money” and that the money that was used to pay the workmen were supplied by Mary. The defendant attached several receipts to his witness statement. He testified that those receipts reflected materials purchased with his and Mary’s money for the renovations of the upper floor. Upon perusing those receipts which were legible, the court noted that the following receipts had the defendant’s name recorded as being the person who paid for the goods;

- i. Receipt dated the 8th November, 1991 from H. Sigoolam Maharaj & Sons Hardware for the sum of \$1304.00;
- ii. Receipt dated the 9th November, 1991 from H. Sigoolam Maharaj & Sons Hardware for the sum of \$1304.00;
- iii. Receipt dated the 25th November, 1991 from H. Sigoolam Maharaj & Sons Hardware for the sum of \$1304.00; and
- iv. Receipt dated the 26th January, 1992 from Gabriels’ Building services for the sum of \$1143.07.

62. There was no evidence that the sums recorded on the aforementioned receipts were provided to the defendant by Mary. Accordingly, the court did not understand the defendant’s evidence that he did not supply Mary with cash money for the renovating of the upper floor to mean that he did not contribute at all to the finances of the renovations. The receipts clearly demonstrate that the defendant did contribute to the renovations by purchasing certain material for use in the renovation. The defendant’s contributions may not have been as significant as the claimant’s on the evidence but is the finding of the court that he nevertheless contributed. Further, there is no evidence that the defendant was reimbursed either by the claimant or by Mary.

63. Moreover, the court finds that since Mary could have afforded to and did in fact purchase land in 1990 coupled with the fact that she was operating a business at the time, it was more likely than not that she could have afforded to contribute to the renovation. The evidence on this issue therefore appears to be consistent with the case for the defendant. Consequently, the court finds that the claimant did not solely contribute to the renovation of the upper floor of the house.

Issue 1

Law

64. Where there is an acute conflict of facts, the trial judge must check the impression that the evidence of the witnesses makes upon him against the following:

- i. Contemporary documents, where they exist;
- ii. The pleaded case; and
- iii. The inherent probability or improbability of the rival contentions. **See Horace Reid v Dowling Charles & Percival Bain Privy Council App. No. 36 of 1987 page 6, per Lord Ackner.**

65. The legal title to the land is vested in the claimant and Mary was the owner of the house. However, equity will assist the claimant should it be proven that a promise was made to the claimant by Mary that should she expend funds to repair the entire house, upon completion the house would belong to her. It is in this context that the court understood the term “agreement” to have been used in this case. To that extent the use of the word agreement appears to have been a misnomer. If such a promise was in fact made the court would have to determine whether in keeping with the equitable doctrine of estoppel, it would be unconscionable not to uphold the promise having regard to the detriment suffered by the claimant having acted upon the promise. This can be ascertained by examining several issues of fact the primary one being whether there was in fact a promise.

66. **Rajkumar J in Fulchan v Fulchan CV 2010-03575** at paragraphs 11 & 13 defined promissory estoppel and proprietary estoppel as follows:

“11. Promissory Estoppel

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 emphasis mine ” Snell’s Equity 31st ed. 2005 Para 10-08”

“13. Proprietary Estoppel

If A under an expectation created or encouraged by B that A shall have a certain interest in land thereafter, on the faith of such expectation and with the knowledge of B and without objection from him, acts to his detriment in connection with such land , a court of Equity will compel B to give effect to such expectation.” Taylor Fashions Ltd. v Liverpool Victoria Trustee Co. Ltd. Per Oliver J. cited in Snell’s Principles of Equity 31st Ed. Para 10-16 to 10-17”

The submissions of the claimant

67. The claimant bases her ownership of the house on an agreement allegedly entered into by Mary and her in or about 1990. The claimant submitted that the main ingredient and/or obligation of this agreement was the rebuilding of the house for her sole benefit. According to the claimant, she has fulfilled her obligations under the agreement by providing the necessary finances for the rebuilding alone and therefore the rebuilt house in accordance with the agreement belongs to her.

68. The claimant submitted that the defendant has admitted that she has sent money to Mary but that he did not know whether the monies sent was to finance the repairs of the house or for the upkeep of Mary. According to the claimant, upon an examination of the evidence

given by the defendant, it was highly questionable what was his and/or anyone else's contribution to the rebuilding of the house. According to the claimant, the defendant testified that the house was rebuilt with monies pooled from Mary and his siblings. However, in cross-examination the defendant testified that he did not give Mary any money and did not know where Mary got the money to pay the workmen. The claimant submitted that the defendant failed to prove that he made any contribution towards the rebuilding of the house and that on a balance of probabilities, it was more probable than not that the house was rebuilt with the monies she provided alone. As such, it was the submission of the claimant that since she fulfilled her obligations under the agreement between Mary and she by providing the necessary monies to rebuild the house, the house belongs to her.

The submissions of the defendant

69. The defendant submitted that there has always been two separate uses attached to the house. That the renovations to the upper floor of the house were considered to be renovations to the family home and that the family home did not extend to the ground floor of the house as that portion was used solely for the operation of the business. According to the defendant, the ground floor of the house was always viewed as a separate entity. That this was evident by the fact that the defendant purchased Harper's share in the business less than one year after the alleged agreement between the claimant and Mary. The defendant submitted that both witnesses for the claimant during cross-examination agreed that the upper floor of the house was for the family's use and benefit and the ground floor was a business.
70. As such, the defendant submitted that the onus rested on the claimant to prove her entitlement to both parts of the house and that her entitlement must be examined in the context of proprietary estoppel. The defendant submitted that it is trite law that in order for the claimant to establish promissory or proprietary estoppel, she would need to prove an assurance, reliance and detriment in the circumstances in which it would be unconscionable to deny her a remedy.

71. The defendant submitted that due to the contributions made by several family members which included Mary to the rebuilding of the house and the fact that a Deed of Conveyance was no done in favour of the claimant solely, a strong inference can be drawn against the veracity of the alleged agreement between Mary and the claimant or in the alternative that any agreement made did not include the ground floor of the house.
72. The defendant submitted that the claimant has not proffered any evidence of her involvement in the ground floor of the house and/or in the business. According to the defendant, when the claimant's witnesses were probed it was clear that the claimant made no contributions towards the ground floor of the house and/or to the business and its operations. As such, the defendant submitted that the claimant has failed to show that there was any specific assurance made with regard to the ground floor of the house and further that she acted to her detriment in reliance of such assurance.
73. The defendant submitted that he on the other hand has demonstrated through his evidence that he made several contributions to the ground floor of the house which were as follows;
- i. In 1991, he purchased Harper's share of the business; and
 - ii. He obtained two loans from Scotiabank for the renovation of the downstairs portion of the house and to further invest into the business.
74. Moreover, the defendant submitted that the credibility of the claimant's evidence that the entire house belonged to her was undermined by her own admission that she failed to assert her ownership of the house when the defendant and Mary altered the ground floor of the house. According to the defendant, it remained unchallenged that the defendant and Mary conducted repairs in or around 1996 or 1997 and that although the claimant believed she owned the house she failed to address those alleged unauthorized alterations until some four odd years later.
75. The defendant submitted that the court must engage in an enquiry as to what would be conscionable in the circumstances of this case. In so submitting, the defendant relied on

the case of *Phyllis Harrypaulsingh v Anthony Harrypaulsingh and others CV2015-02345* wherein Mohammed J at paragraph 26 stated as follows;

“Sir Jonathan Parker in Theresa Henry’s case also drew extensively from Lord Walker’s discussion of proprietary estoppel in Gillett v Jennings v Rice and Cobbe v Yeoman’s Row Management Ltd, adopting approvingly the following observations:

(i) Reliance and detriment are often interlined. However, the fundamental principle that equity is concerned to prevent unconscionable conduct, permeates all of the elements of the doctrine.

(ii) Detriment is not a narrow or technical concept; it need not consist of the expenditure of money or other quantifiable detriment, so long as it is substantial.

(iii) Whether the detriment is sufficiently substantial is to be tested by whether it would be unjust or inequitable to allow the assurance to be disregarded; in this regard, the essential test is unconscionability.

(iv) The aim of the court in satisfying an equity arising from a proprietary estoppel is to decide in what way the equity can be satisfied in the context of a broad inquiry as to unconscionability.”

76. Accordingly, the defendant submitted that it would be unconscionable in all circumstances to declare the claimant the owner of the entire house in light of 1) the defendant’s contributions to the ground floor of the house and to the business and 2) the claimant’s failure to prove her case.

The claimant’s submissions in reply

77. The claimant submitted that by the defendant claiming that since he and Mary spent monies in renovating the downstairs that they or he has an equitable interest in the house automatically means that the claimant has the legal title to the house.

78. According to the claimant, in the context of the defendant’s new claim based on proprietary estoppel, it must be remembered that the defendant and the claimant had no dealings with each other in relation to the house. The claimant submitted that there were no assurances

whatsoever given by either party. That the defendant cannot say that the claimant encouraged him, or he and Mary, to expend monies in renovating the ground floor of the house. As such, the claimant submitted that the defendant has failed to prove that he has any equity in the ground floor of the house. However, it must be noted that contrary to what was submitted by the claimant, the court did not understand the defendant's submission to be that he obtained an equitable interest in the ground floor of the house but rather that the claimant's claim was based on promissory or proprietary estoppel.

79. Moreover, the claimant submitted that the business is not the ground floor of the house. That the ground floor of the house is where the business is being carried on and the defendant does not live there. As such, the claimant submitted that just as the renovations were made to better facilitate the conduct of the business, the same way the defendant can easily remove his business to a new location and should he remove his renovations which he can do, the claimant will not obtain any benefit.

Findings

80. In light of the findings that the house was not entirely rebuilt and the fact that the claimant did not provide all of the money for the renovation of the upper floor of the house, it is highly unlikely that there would have been a promise or an agreement between the claimant and Mary that the house would have solely belonged to the claimant after it was rebuilt as claimed. The evidence of what occurred simply does not support the fact of such a promise or agreement. As a matter of common sense the court must ask itself whether if such a promise was made then why did the claimant not in fact renovate the entire house and why did she permit the defendant to expend money without refunding him.

81. Further, in the court's view the claimant's evidence was inherently unreliable. Firstly, the claimant testified under oath that the entire house was rebuilt when the evidence clearly shows that the upper floor alone was renovated at that time. This is a material fact in respect of which the claimant attempted to deceive. Secondly it is abundantly clear on the evidence of the defendant and his witnesses, which the court accepts that the claimant had nothing whatsoever to do with the renovations to the ground floor but she was adamant that she

rebuilt the entire house. Thirdly, the fact that the claimant stated that she alone supplied all of the money to rebuild the entire house, when it is clear that the defendant expended money in renovating both the upper and ground floors of the house once again spoke volumes to this court. Fourthly, the fact that the claimant failed to assert her alleged ownership of the house immediately after or during the time when the defendant and Mary allegedly conducted the unauthorized renovations to the ground floor of the house also demonstrated to the court that she in knew that she was not the owner and so could not assert an entitlement that she did not possess. Finally, the claimant only sought to declare her ownership of the house to the defendant, one day after her mother's death, by letter dated the 6th June, 2013. The letter (ill timed to say the least, coming so shortly after the death) read as follows;

“Re: Your occupation of the downstairs of premises No: 2 Samuel Street.

I act for your sister, Ms. Ellie Delcina Gabriel, the owner of the premises you now occupy at the above address.

My instructions are that you live at Basseterre, Moruga but you carry on a bar at the downstairs of the premises situate at No. 2 Samuel Street. I am further instructed that my client permitted her mother Mary Gabriel [now deceased], who was also your mother to reside in the upstairs of the said premises while carrying on a small business in the downstairs.

I am also instructed that you assisted the said Mary Gabriel with her business and that you gradually without my client's permission, proceeded to rebuild the said downstairs shop into a bar that it is today. My further information is that you both are not on speaking terms. You must realize that a state of affairs such as that cannot continue to exist. There ought to be some family love and/or understanding between you both.

Now, in the interest of a compromise, my client is suggesting that your occupation of the said downstairs of the said premises be regularized by her granting you a lease of the said portion of the said premises on such terms and conditions as can be agreed by you both and your Attorney at Law. If you are prepared to discuss your continued occupation of the

said premises kindly indicate this to me within the next six [6] days, that is, by Wednesday 12th June, 2013, so that arrangements can be made for such a discussion.

In default of your agreeing to these discussions I am instructed to inform you that you are to quit and deliver up to my client the said downstairs of the said premises which you occupy as a licensee, on or before the 30th June, 2013 or legal proceedings will be taken against you to eject you therefrom...”

82. It is to be observed that the letter failed to mention the alleged agreement between the claimant and Mary or a promise at all. Even if one was to accept that the claimant did not wish to disturb her mother's occupation while alive, certainly, in acting so soon after she died, it would have been imperative to set out in the letter the basis upon which the claimant was alleging that the entire property now belonged to her. But that is patently absent. In the circumstance, the court is left to conclude that the alleged agreement was an afterthought created to bolster a claim to ownership of the house and the court so finds.
83. Moreover, the court accepts the defendant's evidence that Mary was a very strong willed person who appeared to be of sound mind up to the time of her death as there is no reliable evidence to the contrary. As such, it is reasonable to infer that Mary being the keen business woman as she was, it is more likely than not that she would have made provision in her will to reflect any agreement between her and the claimant if there was one. It is to be noted at this stage that the case for the claimant was not that Mary agreed or promised that she would become owner of the upper floor of the house should she have expended money on the renovation of same. The claimant sought as it were to take the "whole hog" and in so doing her claim must fail.
84. Consequently, the court finds that there was no agreement between the claimant and Mary and since there was no agreement, equity will not assist the claimant and the second issue does not arise.

Mary's Will

85. The defendant has obtained probate of Mary's will dated the 5th March, 2012. No direct challenge has been made to the contents thereof. For the record the will is set out hereunder as follows;

*"... I hereby appoint my son **STEPHEN GABRIEL** of Basse Terre, Moruga, in the Ward of Moruga, in the Island of Trinidad and Tobago, to be the sole Executor of this my Last Will and Testament.*

I declare that I am seised and possessed of the following:

- a) ***ALL AND SINGULAR** that certain piece or parcel of land **COMPRISING TWO LOTS OF LAND** situated at Amora Street, Basse Terre Moruga, in the Ward of Moruga, in the Island of Trinidad and Tobago, together with Two buildings thereon.*
- b) *One Two Storey Concrete building, situate at Samuel Street, Basse Terre Moruga, in the Ward of Moruga, in the Island of Trinidad and Tobago, on One Plot of land owned by Ellie Gabriel.*

... I give devise and bequeath my estate as follows

*Unto my son the said **STEPHEN GABRIEL**, I give devise and bequeath **ALL AND SINGULAR** that certain piece or parcel of land **COMPRISING TWO LOTS OF LAND** situated at Amora Street, Basse Terre Moruga, in the Ward of Moruga, in the Island of Trinidad and Tobago, together with Two buildings thereon, absolutely.*

*Unto my daughter **ELIE GABRIEL** I give devise and bequeath the **UPSTAIRS** of the property situated at Samuel Street, Basse Terre, Moruga in the Ward of Moruga.... and the **DOWNSTAIRS** in the said Property unto my son the said STEPHEN GABRIEL, for their own use and benefit share and share alike..."*

Disposition

86. The order of the court is therefore as follows;

- a. The claim is dismissed; and
- b. The claimant shall pay to the defendant the prescribed costs of the claim in the sum of fourteen thousand dollars (\$14,000.00).

Dated the 9th day of November, 2017

Ricky Rahim

Judge