THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV 2016-02192

BETWEEN

GWENDOLYN BROWN

Claimant

AND

ENID CIELTO-COLLINS

Defendant

Before the Honourable Mr. Justice R. Rahim

Appearances:

Mr. A. Brazer for the Claimant

Mr. B. D. Winter for the Defendant

Judgment

1. This case concerns residential property situate at Light pole number 28 (Lp 28) Mausica Road, D'Abadie ("the property") consisting of a dwelling house and land comprising five thousand and ninety superficial feet. The claimant currently resides at the property and has been residing there since 1982. The property was originally owned by Pearl Elizabeth Cumberbatch ("the deceased"). It is the case of the claimant that the deceased promised her that when she died she would leave the house to her. The claimant avers that she has relied on this promise to her detriment. Consequently, by Claim Form filed on the 28th June, 2016, the claimant claims a declaration that she is entitled to an equity coupled with an irrevocable interest in the property amongst other things.

2. The defendant on the other hand avers that she holds a legal title to the property by virtue of Deed of Gift dated the 28th August, 2009 and registered as DE200902268827D001 ("the defendant's deed of gift"). As such, the defendant counterclaims for a declaration that she is entitled to possession of the property.

Issues

3. The issues for determination by this court are as follows;
    i. Whether the deceased made a clear unequivocal promise to leave the said property to the claimant and if so did the claimant act on the promise to her detriment; and
    ii. Whether the deceased was of sound mind and body when she executed the deed of gift in favour of the defendant.

4. The defendant submitted on the issue of whether the deceased was unduly influenced to execute the deed of gift. However, undue influence was never pleaded in this case whether by the claimant or the defendant. It therefore does not arise for the court's consideration. In fact the claimant did not submit on the issue and the defendant's submissions simply relates to the fact that it was not pleaded.

Case for the claimant

5. The evidence is this case is somewhat extensive but it is necessary that the material parts be set out. The claimant called three witnesses in addition to her testimony, Clint Devenish, Clytus Brown and Renisten Brown.

6. The claimant is sixty-three years of age and is blind. She married Renisten Brown ("Renisten") on the 3rd October, 1981. After marriage, Renisten and the claimant lived with the claimant's sister, Natalie Marcelle ("Natalie") and Winfield Hinkson ("Winfield") at an apartment in La Resource Road South, D'Abadie. They lived there for approximately four months. At the end of the month of January, 1982 Renisten was approached by the deceased (his cousin) who informed him that she wanted he and the claimant to live with her at her home as she lived alone.

7. At the end of January, 1982 Renisten and the claimant moved into the deceased's home at Lp 28 Mausica Road, D'Abadie ("the said house"). During cross-examination, the claimant testified that when she moved into the house in 1982, the house consisted of two bedrooms. She and Renisten occupied the front bedroom and the deceased occupied the back bedroom.

8. According to the claimant, in August 1982 the deceased informed both she and her husband that she (the deceased) wanted them to continue living with her at the house as she did not enjoy living alone. The deceased then promised the claimant and Renisten that if they remained living at the said house with her, when she died she would leave the house to the claimant. Consequently, Renisten and the claimant agreed to remain living with the deceased at the house. This is the interpretation of what was allegedly said by the deceased. There has been no evidence of the words used by the deceased.

9. At this time, the claimant was employed as a clerk with a law firm. The claimant testified that as a result of the promise, Renisten and she decided to take her savings and open a shop at the front of the property to sell on evenings and weekends. The deceased agreed with the claimant's idea of opening the shop and as such, the claimant employed her brother

to build the shop. The claimant further testified that she used monies from her savings to purchase all the materials for the shop. During cross-examination, the claimant testified that the shop was opened in 1982.

10. The claimant then decided to quit her job with the law firm in order to devote all of her time to the management of the shop as the shop was very profitable. However it is to be noted that during cross-examination the claimant testified that she worked at the law firm for a period of only four months. She further testified that it was originally her plan to sell in the shop on evenings and on weekends but that at the time of opening the shop, she had taken vacation leave from her employment and at the end of her vacation leave she sent in her resignation since the sales in the shop were good.

11. The claimant testified that she and Renisten assisted the deceased in maintaining the property by repairing the roof, painting, upgrading the windows and doors, cleaning the surroundings, planting a lawn and pruning the trees. The deceased was employed at the time and also collected money from lands she rented out at Arima Old Road. Renisten and the claimant paid the light bills whereas the deceased, Renisten and the claimant shared the grocery bills. During cross-examination, the claimant testified that the windows in the house were the same as it had been originally. She further testified that the deceased paid the water and sewerage bills.

12. Renisten and the claimant had two children, Sean Brown ("Sean") and Sade Brown ("Sade"). After the birth of Sade, the deceased told the claimant and Renisten to build a split level annexure to the back of the house so that they could have more space for their children but they could not afford to do so at the time. However, Renisten and the claimant upgraded all of the electrical work in the house and installed new cupboards in the kitchen.

13. According to the claimant, the deceased treated Sean and Sade as if they were her own grandchildren. She loved them as her own and was very protective of them. The claimant testified that she, her husband, their children and the deceased all lived like a big family.

14. In 2002, Renisten left the said home as a result of a disagreement he had with the claimant. Subsequently, Renisten and the claimant separated. The claimant became upset and told

the deceased that she was leaving the said house whereupon the deceased reminded the claimant of her promise and dissuaded the claimant from packing her clothes and leaving. The defendant was also there at the time consoling the claimant. The claimant testified that the break up was traumatic and it resulted in her burning all of her wedding photographs and other personal documents which included all the receipts for the works done on the house and the shop. During cross-examination, the claimant testified that should she have left the house at that time she had places to go. That at the spur of the moment she would have gone to her mother's home.

15. According to the claimant, she took care of the deceased as she became older and was unable to take care of her affairs. The defendant (another cousin of the deceased) then paid a care-giver to assist in taking care of the deceased on most days from 9 a.m. to 12 noon during which time the claimant was tending to the shop. When the care-giver left at 12 noon, the claimant would continue caring for the deceased. During cross-examination, the claimant testified that the defendant only provided her with the sum of $500.00 on one occasion to take care of the deceased because the care-taker had left the job. The claimant denied that the defendant gave her money for groceries.

16. In February, 2004 Sean had his first child with his then girlfriend, Shelly. The deceased welcomed the addition to the family. Shelly moved in with Sean at the house. The claimant testified that the deceased was happy to have the kids at her house and embraced them as her own.

17. In 2006, the claimant renovated the shop by upgrading the walls and the roof. She also installed burglarproofing. She testified that she expended $35,000.00 on the renovations. During cross-examination, the claimant testified that she has no receipts to show that she did expend the $35,000.00. Around this time the claimant's eyesight began to fail because of glaucoma. The result saw Sade playing a more active role in the managing of the shop. The claimant testified that the money from the shop was their only source of income and they depended on it for their survival.

18. According to the claimant, she began to accompany the deceased to the bank to pay her bills as the deceased could no longer operate on her own. As she had the shop to manage, she decided to ask the defendant for her assistance with the deceased because the deceased was suffering from memory loss which had begun in 2008. At this time, the claimant realized that the defendant began exhibiting different behaviour towards she and her family in that the defendant ceased conversing with the children as before and would take the deceased out without informing anyone of where she was taking her.

19. Sometime in 2007, the defendant went to the said house and told her that because she was not a *"Devenish",* she could not get the land as promised to her by the deceased. The defendant then told the claimant that she (the defendant) was born on the land and that she would ensure that the claimant did not get the land. In other words, the claimant was not related by blood but had married into the family.

20. Sometime in 2008 the deceased approached her and told her that she had made a will and that the house was left to the claimant as promised. The claimant asked the deceased to see the will. The deceased told the claimant to take out some food for her while she got the will. The deceased began looking for the will but could not find it. She then told the claimant that the lawyer, Mr. Holder and Joslyn Kingston ("Kingston"), Renisten's cousin who was named as executrix had a copy of the will. During cross-examination, the claimant admitted that she never saw this will.

21. On the 29th July, 2009 Sean and his now common law wife Shelly had their third child. Whilst Shelly was in the hospital giving birth, the defendant went into the claimant's shop and confronted the claimant in a hostile manner. The defendant told the claimant that the house was hers and that Shelly could not bring the baby into the house after giving birth. The defendant then told the claimant that she was only there during her lifetime and that she (the defendant) had the deceased's will and instructions. The defendant refused to show the claimant the will and instructions.

22. During cross-examination, the claimant testified that Sean and Shelly now have seven children. That would have made it twelve persons occupying a two bedroom house before

the deceased died. When asked whether the accommodation became cramped after a while, the claimant testified that it did not.

23. By Deed of Gift dated the 11th November, 2009 and registered as DE200902517107D001, the deceased transferred the said property to the claimant ("the claimant's deed of gift"). This deed was prepared by Mr. Lindsay Holder. During cross-examination, the claimant testified that she is not relying on this deed of gift as the root of her title to the property because at the time the deed was executed the deceased, due to her advanced age had become extremely pliable and was not of sound mind. The claimant further testified that the deceased was also not of sound mind when she executed the defendant's deed of gift. The claimant did not provide any medical evidence to support that the deceased was not of sound mind. But the court notes that the claimant pleaded that she became seized and possessed of the said property by way of the deed at paragraph 3 of her statement of case. This is a clear pleading of ownership on the part of the claimant. In paragraph 24 of her reply the claimant avers that when she realized that the deceased had gifted the property to the defendant by deed of the 28th August 2009 she became perturbed as she concluded that the deceased was of unsound mind since 2007. Therefore the pleadings of the claimant on this issue makes no sense and appears to be a creation which goes against the grain of common sense. This will betreated with later on.

24. Moreover, initially during cross-examination the claimant testified that she paid Mr. Holder to carry out the title searches in preparation for the execution of her deed of gift. However, the claimant retracted that statement and testified that the deceased would have paid Mr. Holder for everything in connection with the preparation and execution of the deed of gift. The claimant's evidence in relation to her knowledge of the preparation of her deed of gift was somewhat inconsistent. Firstly, she testified that she was unaware that the deceased was executing this deed of gift. She then testified that she was aware that the deed of gift was executed at the house because she was present at the time of its execution. When asked whether she was present when the deceased signed the deed in the presence of Kingston, the claimant stated that she knew they were preparing something but only knew two months after when the deed of gift was given to her that it was done in her favour.

25. Sometime later in 2009, the defendant together with some workers began constructing an extension to the said house which contained a kitchen and a toilet and bath. During cross-examination, the claimant testified that she did not object to this extension being built by the defendant because it was for the benefit of the deceased. When asked whether the defendant asked her for her permission before starting the construction, the claimant testified that the defendant informed her of what she was going to do.

26. The claimant testified that she continued to care for the deceased until she died on the 5th November, 2015.

27. Since the claimant became blind, Sade cares for her and manages the shop. The claimant is unable to move around the outside of the house without assistance. The claimant testified that due to the said promise, she has been residing at the property for the past thirty-five years. She further testified that by relying on the promise, she invested all her life's income in the property and she is now unable to leave the property and seek accommodations elsewhere. During cross-examination, the claimant admitted that neither she nor her family ever paid rent whilst living at the property.

28. On the 16th March, 2016 the claimant received a letter from the defendant's attorney which called upon she and Sean to quit and deliver up possession of the said property before the 30th June, 2016. According to the claimant, the defendant has now produced a copy of her deed of gift.

29. The claimant testified that she now believes that the series of deeds which the deceased executed between 2007 and 2009 are inconsistent, illogical and not in keeping with someone of sound mind.

30. By Power of Attorney dated the 1st October, 2007 and registered as DE200702604485D001, the defendant was appointed as the lawful attorney of the deceased ("the power of attorney"). According to the claimant, the defendant did not act openly with the authority from the power of attorney. She knew that because she lived together with the deceased in the same home and shared close conversations with the deceased. During cross-examination, the claimant testified that she was aware that the

defendant collected rent from properties owned by the deceased as the defendant did that task openly.

31. The claimant further testified that she and her family members discovered the existence of the power of attorney after lands owned by the deceased began to be sold off by the defendant prior to death of the deceased and without the deceased's knowledge. However, during cross-examination the claimant testified that she was the one who asked the deceased to execute the power of attorney in favour of the defendant because she, the claimant could not continue to assist the deceased to do all of her business as she usually did since her eye sight was depleting.

32. According to the claimant, during her time of living at the said home, the defendant had never previously attempted to exercise any claim to ownership and/or legal title to the said property. As a result, the claimant never had any cause to demur and/or challenge any claim by the defendant.

33. The claimant testified that the defendant unknowing to all who resided at the said property, secretly used the power of attorney to make changes (in respect of which she has not specified) to the following documents relating to the house;

    i. The T&TEC bill;
    ii. The WASA bill; and
    iii. The Certificate of Assessment from the District Revenue Office.

34. According to the claimant, the defendant made the aforementioned changes in order to lay a claim to the said property because she knew that the deceased was of advanced age and would have departed life shortly. The claimant further testified that the changes were done after the defendant sold off lands of the deceased in a clandestine manner.

35. During cross-examination, the claimant testified that the purported will of the deceased dated the 25th May, 2012 did not consist of the words and/or intention of the deceased but that of the defendant. The claimant testified that the will was the creation of the defendant with the deceased signature. She further testified that the deceased was not of sound mind

when this will was executed. This will made no provision for the claimant and her children. There has been no challenge to that will. This case has not been about that will.

36. **Renisten** is the defendant's younger brother. Much of Renisten's evidence was a repeat of the claimant's evidence and as such, the court found it unnecessary to traverse such evidence in its written decision.

37. Additionally, Renisten testified that the deceased together with his cousin, Kingston went to the attorney Holder where the deceased made a will leaving the property to the claimant. During cross-examination, Renisten testified that neither was he present when this purported will was executed nor has he seen this will. He heard about the making of this will from someone. He did not identify the person to whom he was referred.

38. When the defendant retired from the Elections and Boundaries Commission ("the EBC"), she agreed to take control of the deceased's affairs. According to the defendant, after this arrangement the defendant began behaving differently towards the family. He testified that the defendant got a hold of the deceased's will from her room and that the family never saw the will again. The defendant then began to sell off the deceased's lands without the family's knowledge. During cross-examination, Renisten testified that he in fact assumed that the defendant had gotten a hold of the purported will but he did not know this from his personal knowledge.

39. During cross-examination, Renisten also testified that he went to live with the deceased because she asked him to and not because Natalie and Winfield moved out of the apartment. He further testified that initially the deceased promised to leave the house to he and the claimant but when he moved out the deceased promised to leave the house to the claimant only.

40. Moreover, during cross-examination Renisten testified that the only real addition to the property for which the claimant was responsible was the shop. He stated that parts of the roof which were leaking was repaired but that the entire roof was not changed.

41. **Clint Devenish** ("Clint") knew the deceased since he, Clint, was a little boy. She was like a grandmother to him. Clint lived a few houses away. Much of Clint's evidence was also the same as the testimony of the claimant and Renisten and as such, there is no need for it to be repeated.

42. According to Clint, when the deceased fell ill, the claimant asked the defendant to assist in taking care of the deceased. He testified that the defendant rarely went to the house but when she did, she would pick up the deceased and take her to the doctor. He knew that the deceased wanted to give his uncle, Renisten the power of attorney but that it was given to the defendant because Renisten left the house and the claimant's eyesight was failing. According to him the entire family knew that the deceased always wanted to give the said house to the claimant and her children. This evidence of course is of no weight whatsoever as the testimony presumes that he knew what was contained in the mind of the entire family. No weight is therefore attached to this evidence. During cross-examination, Clint testified that he heard when the deceased stated that she wanted to give the house to the claimant. That the deceased stated this on several occasions. He however gave no date or time or even a year.

43. During the period when the defendant asked him to carry the deceased to the hospital, Clint noticed that the deceased's memory would fade. The defendant also asked Clint's common law wife Stacey to help take care of the deceased at times. Clint testified that the defendant organized some people to take care of the deceased but that it did not work out. During cross-examination, Clint testified that the defendant hired him to transport the deceased to the hospital. He further testified that the defendant hired Stacey to take care of the deceased for a few months.

44. According to Clint, when the defendant began overseeing the affairs of the deceased, he began to see a drastic change in the defendant. He testified that sometime during this period when the defendant found out that the deceased had executed a will, she went to the said home and began searching until she got a hold of the will. He further testified that the family later found out that the defendant had carried the deceased to a lawyer's office to sign certain deeds. During cross-examination, Clint testified that he has never seen the

purported will wherein the deceased allegedly bequeathed the house to the claimant. That he has only heard of it. He further testified that he saw the defendant cleaning the deceased's room and assumed she was searching the room for the purported will.

45. Clint testified that after the deceased passed away, the relationship between the defendant and the family became quite strained.

46. **Clytus Brown** ("Clytus") is the brother of both Renisten and the defendant. The deceased was his cousin. Clytus testified that the deceased was diagnosed with Alzheimer's disease in 2008 and as a consequence, power of attorney was given to the defendant and Kingston. During cross-examination, Clytus testified that he heard that the deceased had Alzheimer's from the defendant. According to Clytus, the defendant visited the deceased's attorney, Mr. Pierre when Kingston travelled out of the jurisdiction and had Kingston's name removed from the power of attorney. During cross-examination, Clytus testified that he was told by family members that the power of attorney was given to both the defendant and Kingston and that the defendant removed Kinston's name. Subsequently, Clytus noticed that the defendant began selling the deceased's properties and spending the money acquired from the sales to enrich herself. This evidence is unsupported both in terms of a foundation for such knowledge and by way of legal logic in the way that Powers of Attorneys are executed and registered. It also purports to make an unsubstantiated allegation against the attorney at law who has not been called as a witness in this case. This evidence is therefore given no weight.

47. According to Clytus, the entire family informed the defendant that they were displeased with her actions. Once again a witness purports to speak for all persons so that no weight is given to that evidence. The defendant then took some money and extended the said house by adding a room to the back. The room had one window. Clytus testified that the one widow was insufficient ventilation for the room. This witness is not qualified to give that evidence. He further testified that a chair was placed in the room facing the wall and that the defendant would place the deceased to sit in the chair to face the wall. Moreover, Clytus testified that the deceased was not taken outside for fresh air or to see other people. According to Clytus, it seemed as though the defendant did not want the deceased to see

anyone. This is speculation. When the deceased was unable to walk, the defendant would keep her inside so that the claimant could not take care of her, again speculative. This witness' evidence as set out above is rife with speculation and has been accorded no weight.

48. Clytus' mother, Ursula Devenish-Brown ("Ursula") would visit the deceased at the room the defendant arranged for the deceased to stay in. During cross-examination, Clytus testified that the deceased told his mother, Ursula in front of him that when she died the house was for the claimant. This occurred sometime in the year 1983 or 1984. This appears not to have been pleaded and was clearly an attempt to bolster the case for the claimant. This evidence has also therefore been accorded no weight. It was clear in the court's view that this witness was brought to court with the purpose of supporting the claimant with evidence that appeared to be unreliable and lacking in credibility. The court has therefore given no weight to all the evidence of this witness.

The case for the defendant

49. The defendant called two witnesses in addition to her testimony, Hazel Brown and Theodora Cedeno.

50. The defendant testified at first that she is the niece of the deceased. During cross-examination, she however testified that the deceased was actually her cousin but that she grew up thinking of her as an aunt. The defendant has six siblings, namely, Carla Brown-Ifill ("Carla"), Hazel Brown ("Hazel"), Cheryl Devenish ("Cheryl"), Renisten, Clytus and Ronald Brown ("Ronald"). She is the eldest of her siblings.

51. The defendant lived with the deceased for some two years from 1978 to 1980. This was before the deceased built the said house. She testified that she and the deceased were very close. According to the defendant, the deceased asked her advice on whether she should permit the claimant and Renisten to live with her. The defendant informed the deceased that she had no objection to the claimant and Renisten staying with her. At that time, the house comprised two bedrooms, a toilet and bath, a living room and a kitchen. One bedroom was located to the front of the house and the other was located at the back of the

house. According to the defendant, when the claimant and Renisten began living with the deceased, the deceased was fifty years of age and had lived most of her life on her own. The deceased occupied the front bedroom and the claimant and Renisten occupied the back bedroom. During cross-examination, the defendant testified that later on the arrangement changed so that the deceased then occupied the back bedroom and the claimant and Renisten occupied the front bedroom.

52. The defendant testified that she never heard the deceased promise the claimant and Renisten to leave the said home for the claimant. Neither was she told of the alleged promise during her conversations with the deceased. In August, 1982 the deceased had only known the claimant for a couple of years and had lived with her for mere months. As such, it was the testimony of the defendant that it was unbelievable that the deceased would make such a promise to the benefit of the claimant and to the exclusion of Renisten.

53. The defendant testified that when the claimant opened her shop in 1982, it was small in size, the walls were made of wood and the roof was made of galvanize. The defendant frequently visited the said house during the time Renisten and the claimant lived with the deceased. She testified that she never observed any repairs done to the roof of the said house. That the roof is the same as it was originally constructed. Additionally, the windows are the same, the doors were never upgraded except for the installation of a steel door in the kitchen which the defendant bought.

54. Moreover, the defendant testified that the electricity bills were paid by the deceased and not by the claimant and Renisten. She further testified that the claimant and Renisten never installed any new cupboards in the kitchen of the said house. Additionally, the defendant never saw the claimant burn any documents after Renisten and she separated.

55. According to the defendant, in 2002 the deceased was about seventy years of age and was an able-bodied person who cooked and cleaned for herself. She would also travel on her own to Arima to attend to her business at the bank.

56. The defendant testified that in or about 2004, Sean and Shelly moved into the said house. The defendant denied that she told the claimant that she was not a *"Devenish"* and therefore could not get the land as promised. The defendant reiterated that she was never aware of the alleged promise until she was served with the instant proceedings.

57. The defendant further denied that she went to the claimant's shop on the 29th July, 2009 and told her that the house was hers and that Shelly could not bring her new-born child into the house. The defendant testified that she told the claimant that Sean and Shelly were making a lot of children and that Sean should therefore find an alternative place for his family to live since there was limited space at the said house. Moreover, the defendant denied telling the claimant that she was only there for a lifetime because she (the defendant) had the will of the deceased. According to the defendant, the only will of the deceased that she is aware of was made in the year 2012. Therefore, the defendant testified that she could not have been in possession of a will of the deceased in 2009.

58. The said power of attorney was prepared by Attorney-at-law, Mr. Alfred I. Pierre. The defendant testified that following the grant of the power of attorney, she began to actively and openly manage the affairs of the deceased. During cross-examination, the defendant testified that the deceased wanted someone to help with her business and that is why she executed the power of attorney.

59. In August, 2009, the deceased informed her that she wanted to gift the said property to her but retain a life interest in same for herself. In this regard, the deceased went to see Attorney-at-law, Mr. Anthony A. Jack and had the defendant's deed of gift prepared and executed. The defendant testified that at the time of the execution of this deed of gift, the deceased was of sound mind and body. Of course, as was the case throughout this entire claim, there has been no medical evidence forthcoming.

60. The defendant testified that she openly exhibited her management of the said property in 2009 when she hired workers to construct an additional room at the back of the said house. This additional room was constructed for the use and benefit of the deceased. It contained a kitchenette, a table, an open area and a separate toilet and bath. The room could have

been accessed externally via the back of the house or internally through the bedroom of the deceased. During cross-examination, the defendant testified that she did not show the claimant her deed of gift when she started to construct the additional room to the house.

61. According to the defendant, at no point in time during those renovations did the claimant and/or any of her servants and/or agents seek to dispute or challenge the defendant's claim to title of the said property. The claimant did not show the defendant any deed or other document of title entitling her (the claimant) to ownership of the property.

62. The defendant testified that she further demonstrated her control over the affairs of the deceased by hiring three caregivers over a period of time to take care of the deceased. The caregiver would generally work on mornings and leave at 2:00 p.m. During cross-examination, the defendant testified that the caregivers worked from 9:00 a.m. to 2:00 p.m. The caregiver's duties included cleaning, bathing and dressing the deceased as well as preparing light meals. According to the defendant, she hired the caregivers because she felt that the claimant and her family were not taking proper care of the deceased. This was despite the fact that the defendant gave the claimant $500.00 per month and also bought groceries on a frequent basis. During cross-examination, the defendant testified that after the caregiver left, the claimant would have taken care of the deceased. She further testified that she paid the claimant $500.00 on more than one occasion. There is no documentary evidence whatsoever to support the evidence that money was provided on a monthly basis to the claimant.

63. The defendant testified that it was untrue that the claimant took care of the deceased until she died as the claimant began suffering from glaucoma in 2006 which significantly impaired her eyesight. The defendant further testified that during the years preceding the death of the deceased, the claimant was not even able to take care of herself.

64. On the 25th May, 2012, the defendant accompanied the deceased to the office of Mr. Jack where the deceased executed her last will and Testament. The defendant was appointed the executrix of the will. During cross-examination, the defendant testified that she has never probated this will. By this will, the deceased made several devises and bequests to the

defendant and her siblings. There was no provision in the will for the claimant and/or for any of her children. The defendant testified that she does not know of any other will being executed by the deceased.

65. During cross-examination, the defendant testified that she has fulfilled about forty percent of the deceased's instructions as per her will dated the 25th May, 2012. The defendant has paid $20,000.00 each to Cheryl, David, Yvonne, Renisten, Ronald and Clytus. She testified that she explained to her siblings that as the lots of land were sold and she received payments for the land, she would pay the remaining balances owed to them as per the deceased's will. The defendant made those payments to her siblings after the 31st January, 2017. A grant of probate in relation to this will has never been applied for.

66. The defendant testified that she knows that the claimant in recent years caused the wooden walls of the shop to be replaced with concrete blocks. These works were done by the claimant's brother. The defendant does not know the amount of money the claimant expended on renovating the shop and whether the renovations were done in 2006.

67. Due to the increased size of the Sean's family, the said house became overcrowded and began to fall into a state of disrepair. As such, with the defendant's instructions Mr. Jack wrote to Sean by letter dated the 23rd August, 2012 demanding that he and his family seek alternative accommodation within three months. Sean did not accede to the defendant's request. As such, by letter dated the 12th September, 2014 the defendant through attorney-at-law, Ms. Sparkle Kirk demanded that Sean and Shelly surrender possession of the said home by the 30th October, 2014. Further, the letter complained that the said home was in a state of disrepair. At paragraph two of this letter it was set out that the defendant acquired an interest in the said property from the deceased.

68. The defendant testified that she continued to openly display her interest in the ownership of the property by having her name recorded on the Assessment Rolls at the District Revenue Services. The T&TEC and WASA accounts in respect of the said home are listed in the names of the defendant and the deceased.

69. According to the defendant, after the death of the deceased disputes began to arise concerning access to the said property. The defendant testified that the claimant and her family used obscene language towards her and even placed a bolt lock on the door to the bedroom where the deceased slept. The defendant notified the police of the situation and the claimant and her family were made to open the door. Thereafter, the defendant caused Ms. Kirk to write a further letter dated the 7th December, 2015 to Sean and Shelly. By this letter, the defendant advised Sean and Shelly that she has an interest in the property by virtue of her deed of gift and that the occupants of the said home should refrain from harassing her. Further, the letter advised Sean that he is not to make any additions to the house and/or remove anything from the property.

70. Despite the abovementioned letters, the claimant and her family continued to keep the said house in a state of disrepair. The defendant decided to conduct renovations to the said property in order to bring it up to standard.

71. By letter dated the 16th March, 2016 the claimant and Sean were advised that the defendant was now the sole owner of the property. Further, by this letter the claimant was advised of the defendant's plans to renovate the said property and was called upon to quit and deliver up possession of the property on or before the 30th June, 2016.

72. According to the defendant, these proceedings are the first time the claimant has ever asserted any claim of ownership to the said property. The defendant testified that the said promise was a recent invention by the claimant and a desperate attempt to avoid the call for her and her family to quit and give up possession of the property.

73. The defendant further testified that she has no knowledge of the circumstances in which the claimant's deed of gift was executed. The defendant's deed of gift was executed and registered prior to the execution and registration of the claimant's deed of gift.

74. According to the defendant, the deceased only began to show signs of physical weakness and mental slowing down in or about the year 2013 or 2014. Again no medical evidence in support of this broad statement has been presented to the court. During cross-examination, the defendant testified that when she stated that the deceased started showing signs of

mental slowing down, she meant that the deceased started *"going and coming".* When asked to explain what she meant by *"going and coming"*, she stated that the deceased was a person with a *"hot mouth"*, and would no longer respond as quickly as she used to. The defendant testified that it was not true that the deceased began to lose her memory sometime in 2008. The defendant distinctly remembered the deceased being attentive and retentive during that time.

75. The defendant further testified that it was equally preposterous to suggest that the series of deeds executed by the deceased were inconsistent, illogical and not in keeping with someone of sound mind. That it was also false to contend that by the year 2007, the deceased was extremely pliable and of unsound mind. According to the defendant the only inconsistency which lies between the two deeds of gift is that the claimant's deed of gift was apparently executed without the benefit of a proper title search. The defendant testified that another anomaly with the claimant's deed of gift was that Kingston who is a close friend to the claimant was a witness to it.

76. According to the defendant, the claimant has lived in the said home for the past thirty-four years rent free. Sean and his family have also enjoyed the benefit of living at the property rent free. The defendant testified that the claimant's investments into the property were negligible and essentially limited to the construction of the shop.

77. **Hazel Brown** ("Hazel") is the niece and God-daughter of the deceased. She is also the younger sister of the defendant. She is fifty years of age. Much of Hazel's evidence was the same as the defendant's and therefore, there was no need to repeat it.

78. According to Hazel, after the claimant and Renisten got married, they frequently visited her family home situate at #3 Victoria Street, Arima. During one of those visits, Hazel heard the claimant say that Natalie and Winfield were moving out of the apartment and therefore the claimant and Renisten needed a place to stay since they would not be able to afford the rent on their own. During cross-examination, Hazel testified that the claimant was having a conversation with her (Hazel's) mother which she overheard. Hazel testified

that since the deceased was living on her own and had a two bedroom house, the claimant and Renisten approached her to live with her.

79. After the claimant and Renisten moved in with the deceased, Hazel would often visit them at the house. She testified that the deceased only knew the claimant from her association with Renisten and only really came to know the claimant after she moved into the house.

80. Hazel got married in 2005 and the deceased attended her wedding. Hazel testified that at that time, the deceased was active and was of sound mind. In 2006, there was a family gathering to celebrate Hazel's mother's eightieth birthday. The deceased attended and she was still able-bodied and of sound mind at the time.

81. According to Hazel, the claimant's primary source of income came from the shop. Hazel testified that with the increased amount of occupants in the house, it began to fall into a state of disrepair.

82. Hazel testified that the deceased only began to show signs of physical weakness and slowing down sometime in or around 2012 or thereafter. According to Hazel, she had many conversations with the deceased during her lifetime and at no time did the deceased inform her of the alleged promise. During cross-examination, Hazel agreed that even though she had many conversations with the deceased, there were somethings that the deceased may not have told her.

83. **Theodora Cedeno** ("Cedeno") testified that she has worked as a legal secretary for the past thirty years and has witnessed many people execute hundreds of legal documents during that time. During cross-examination, Cedeno testified that she started working as a legal secretary in 1990, therefore she has been working for approximately twenty-seven years.

84. She further testified that she knew the deceased for several years as the aunt of the defendant. She also knew the deceased was the owner of the said property. During cross-examination, Cedeno testified that she only saw the deceased once and that was when the deceased went to Mr. Jack's office to execute her will. That she did not know the deceased

prior to that. She further testified that it was incorrect that she knew the deceased for several years as the aunt of the defendant and that the deceased was the owner of the said property.

85. On the 25th May, 2012, Cedeno was asked by Mr. Jack to attend his office for the purpose of witnessing the execution of the deceased's last will and Testament dated the 25th May, 2012. Cendeno duly attended and was present together with Mr. Jack and his legal secretary, Ms. Grace Jack when she saw the deceased sign her name as and for her last will. Following the deceased's signature, Cedeno and Ms. Grace Jack both signed as having witnessed the execution of the said will. During cross-examination, Cedeno testified that the execution of the deceased will took about ten minutes to be completed.

86. Prior to the execution of the said will by the deceased, Cedeno heard Mr. Jack read out the contents of the will to the deceased and asked her if she understood what was read, to which she replied in the affirmative.

87. Cedeno testified that on the said date, the deceased was alert, responsive, conversational and appeared to be of sound mind and body. During cross-examination, Cedeno agreed that she was not qualified to say whether the deceased was of sound mind and body as she was not a medical professional. She further testified that the court could disregard that bit of her evidence. Mr. Jack died on the 11th November, 2014.

Proprietary estoppel

Law

88. An estoppel may arise where a property owner makes a representation to another party which is relied on by that other party and which leads that other party to act to their detriment. The representation usually relates to the current or future ownership of land or of interests in land. If the party to whom the representation has been made acts to their detriment in reliance on that representation, the representation cannot be revoked and the courts will enforce it despite the lack of a written agreement: ***Halsbury's Laws of England Volume 23 (2013) paragraph 153.***

89. Rajkumar J in ***Fulchan v Fulchan CV 2010-03575*** at paragraph 13 stated as follows;

" 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."

90. As such, in order to establish proprietary estoppel the claimant has to prove the following elements;
    i. That a representation or assurance was given to her,
    ii. That she relied on the representation or assurance; and
    iii. That she incurred some detriment as a consequence of that reliance: *See Thorner v. Majors and others (2009) UKHL 18, [2009] 3 All ER 945 at 951 (Lord Walker identified and explained the three elements of proprietary estoppel which were then summarized by Lord Scott at paragraph 15).*

Findings

The promise

91. 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: ***See Snell's Principles of Equity, 31st Edition, 2005, paragraph 10-08.*** It is the claimant's evidence that is important in that regard. According to the claimant, in August 1982 the deceased informed both she and Renisten that she (the deceased) wanted them to continue living with her at the house as she did not enjoy living alone. The deceased then promised the claimant and Renisten that if they remained living at the said house with her, when she died she would leave the house to the claimant. As mentioned before, this is the interpretation

by the claimant of what was allegedly said by the deceased. The claimant did not provide the court with the words used by the deceased, nor a specific day, time and occasion.

92. A court has to approach evidence of this nature with much scrutiny as by its very nature, such evidence admits easily of fabrication where the other party is deceased and is unavailable to answer the allegation. In this regard, what is said by the claimant must, in the court's view accord with common sense, what is plausible and reasonable in the circumstances.

93. There was some confusion as to whether the deceased promised to leave the house to the claimant alone or to both the claimant and Renisten. Two of the claimant's witnesses, Renisten and Clytus testified that the house was allegedly promised to both the claimant and Renisten. These witnesses' evidence will be dealt with later on. However, what was clear to this court was that the alleged promise if made at all, lacked clarity.

94. There are a number of material inconsistencies within the claimant's evidence. Firstly, the claimant testified that she and Renisten did a number of renovations to the property which included repairing the roof and upgrading the windows and doors. However, during cross-examination, the claimant testified that windows and doors in the house were in its original state.

95. Secondly, the claimant testified that she took care of the deceased until the deceased's death in 2015. However, the claimant's eye sight began deteriorating in 2006 as an effect of glaucoma. As such, it was highly unlikely that the claimant could have taken care of the deceased while suffering from extremely poor eyesight (which eventually led to blindness) and in circumstances where she herself would have relied on the assistance of her daughter, Sade to move around.

96. Thirdly, in relation to the claimant's deed of gift, the claimant testified that she was present at the house when the deed of gift was being executed but that she was unaware that the deed of gift was being executed in her favour. The court finds that such an assertion simply

does not accord with common sense and carries the deafening ring of untruthfulness. It is more likely than not that the claimant would have known about the deed of gift since coupled with the fact that she was present when it was executed, the claimant testified that she usually assisted the deceased with her affairs. It is also to be noted that the deed of gift in her favour was being executed after the deed executed in favour of the defendant and quite probably for the purpose of ensuring that the defendant did not take the benefit of the gift.

97. Fourthly, the claimant testified that she only became aware of the power of attorney executed in the defendant's favour after the defendant began to sell the deceased's property. However, during cross-examination the claimant admitted in a roundabout turn that she was the one who advised the deceased to execute the power of attorney in favour of the defendant. If this is correct then clearly the claimant was being untruthful in her witness statement. These inconsistencies served to destroy the credibility of the claimant and her case.

98. Moreover, the court finds that the evidence given for the claimant by her witnesses in relation to the alleged promise also lacked credibility. Renisten testified in his witnesss statement that in or about August, 1982 the deceased promised the house to the claimant. It is to be noted once again that he gives no specific date or event which ties in with what is said by the claimant as to when the alleged promise was made. In the court's this appeared to be by design. However, during cross-examination when asked to give the exact words used by the deceased when she made this promise, Renisten testified that *"she told us that she promised us the home".* Counsel for the defendant then asked Renisten if the deceased promised him and the claimant the house in 1982 to which Renisten answered in affirmative. Renisten then sought to alter his evidence in an attempt to rectify the inconsistency within his testimony by saying that the initial promise was to him and the claimant and thereafter when he left the home, the promise was made to the claimant only. This evidence is also wholly inconsistent with the evidence of the claimant who speaks nothing about a promise to both which is then altered on an unknown date to become a promise to her alone. The evidence of the claimant is that after Renisten left, the deceased

reminded her of her promise to the claimant, which on the claimant's evidence must mean a promise to the claimant alone and not to Renisten.

99. Clytus also testified that the deceased promised Renisten and the claimant the house. During cross-examination when asked the words used by the deceased when she made the promise, Clytus testified that the deceased said that *"upon her death the property would be divided between Renisten, Clytus, Ronald, Carla, Hazel, Enid and Cheryl (the deceased's cousins)".* Counsel for the defendant then asked whether there was no mention of the claimant. Having at that stage apparently realized that there was a fundamental loophole in his story, he then attempted to alter his testimony, Clytus by saying that *"she stated that the house would be given to Gwendolyn and Renisten and that they were to remain there until they pass on and they could leave it for their children whatever".* In the court's view, Clytus' evidence in relation to the alleged promise seemed to have been fabricated in order to support the claimant's claim. This is so especially because of the fact that he initially testified that the deceased stated that upon her death the property would be divided amongst her cousins. As such, the court attached no weight to his evidence.

100. Clint testified that the deceased promised the claimant house. During cross-examination when asked what were the words used by the deceased, Clint testified that the deceased said *"not to leave the house, I'll give the house to you".* He further testified that the alleged promise was made sometime around 2006 or 2007. The court placed little weight on the evidence of Clint since his version is different once more to that of the claimant. Additionally, the claimant spoke nothing of the years 2006 and 2007 and was vague on the date, time and circumstances of the occasion. According to his evidence, the alleged promise would have been made approximately ten to eleven years ago in 2006 at the earliest when the claimant and Renisten were separating, but the evidence is that the separation occurred as far back as 2002, so that he is either not telling the truth or is mistaken.

101. Certainly the claimant has gained a significant advantage over the years since she and her family occupied the majority of the house without paying rent. However even this has not demonstrated to the court that any alleged promise was made.

102. For the foregoing reasons, the court does not believe the claimant or her witnesses when they say that such a promise was in fact made. There being no promise there can be no estoppel.

103. Having concluded that there was no promise by the deceased to the claimant, the claimant has failed to prove one of the material elements of the doctrine of proprietary estoppel and her claim in that regard must fail. However, *ex abundante causa* the court will examine the evidence in light of the other elements which the claimant must prove to discharge the burden.

Reliance and detriment

104. According to the claimant, in reliance on this promise, she spent her life's savings on renovating and maintaining the house and also expended $35,000.00 to build a shop at the property.

105. The court finds that the claimant would have spent money on the house as she lived there for some thirty-five years however, based on inconsistencies brought out in her cross-examination, it is clear that she exaggerated the amount of money spent on the house. Further, the court finds that the only addition made to the property by the claimant was the shop. However, she failed to prove that she actually expended $35,000.00 on renovating the shop. It was her responsibility to provide receipts and or other documents to the court to prove her expenditure and to call witnesses to support her case.

106. Additionally, the court agrees with the submission of the defendant that the construction of the shop was barely an act of detriment as the claimant benefited significantly from its construction. As such, even if the court takes into consideration the money expended by the claimant, she did not act to her detriment in all of the circumstances

especially given the fact that the claimant and her family enjoyed occupation of the house rent free for more than thirty-five years. Consequently, the court finds that any expenditure on the part of the claimant did not suffice to create an equity in the property.

Unsound Mind

107. Both at law and in equity, where a party to a contract is of unsound mind, the contract is voidable at his option provided that his mental disability was known or ought to have been known to the other party. The validity of a contract entered into by a person of unsound mind who is ostensibly sane is to be judged by the same standards as a contract by a person of sound mind, and is not voidable in equity by reason of unfairness, unless such unfairness amounts to constructive or equitable fraud which would have enabled the complainant to avoid the contract even if he had been sane. Mere weakness of mind, short of mental disorder, is not alone a ground for relief in equity; but, if the transaction is in itself improvident or unfair, it may be set aside if there are facts showing imposition or advantage taken of the weakness of mind: ***See Halsbury's Laws of England Volume 47 (2014), paragraph 33.***

108. In ***Re Beaney Deceased [1978] 1 WLR 770*** (a case relied upon by the claimant), Martin Nourse QC sitting as a Deputy High Court Judge stated the following at page 774d–g:

"In the circumstances, it seems to me that the law is this. The degree or extent of understanding required in respect of any instrument is relative to the particular transaction which it is to effect. In the case of a will the degree required is always high. In the case of a contract, a deed made for consideration or a gift inter vivos, whether by deed or otherwise the degree required varies with the circumstances of the transaction. Thus, at one extreme, if the subject matter and value of a gift are trivial in relation to the donor's other assets a lower degree of understanding will suffice. But, at the other extreme, if its effect is to dispose of the donor's only asset of value and thus, for practical purposes, to

pre-empt the devolution of his estate under his will or on his intestacy, then the degree of understanding required is as high as that required for a will, and the donor must understand the claims of all potential donees and the extent of the property to be disposed of."

Findings

109. The claimant testified that the deceased was of unsound mind and body when she executed the deeds of gift. However, she has led no medical evidence of this. According to the claimant, this was the reason she did not plead and/or rely on the deed of gift executed in her favour. This evidence of the claimant is important as it proves how unreliable her evidence was since she did in fact plead and/or rely on the deed of gift executed in her favour in her Statement of Case contrary to what she has now submitted. Further, in her Statement of case there was no mention of the deceased being of unsound mind and body. It is only in her Defence to Counterclaim, that the claimant raises the issue for the first time. The court therefore finds that the claimant was being untruthful when she testified that the deceased was of unsound mind mainly because such evidence was self-serving. The claimant knew that in order to be able to rely on the alleged promise, both deeds of gift would have to be set aside. The earlier deed (the deed in favour of the defendant) could not have been set aside on the basis of unsound mind without the later deed (the deed in favour of the claimant) falling by the way as a matter of logic and common sense. In the court's view therefore, the claimant's attempt to admit that the deceased was of unsound mind at the time of execution of the deed in favour of the claimant was an attempt to deceive the court. As such, the claimant's credibility on such a material issue was completely destroyed. This finding also affected the credibility of the other testimony of the claimant in relation to the issue of estoppel. It was clear that the claimant was prepared to be untruthful on material issues. The court has therefore found that there is no medical evidence before it that the deceased was of unsound mind and was incapable of execution of both deeds and that the testimony of the claimant in this regard is not to be believed.

110. Consequently, both deeds although validly executed the deed of gift executed in favour of the claimant must be set aside since the deceased could not have gifted to the claimant that which she had already gifted to the defendant, namely the fee simple. At the time of the purported gift to the claimant, the fee simple no longer belonged to the deceased so that the purported gift to the claimant must fail.

The shop

111. According to the pleaded case of the claimant, in 1982 the deceased promised her the house and as a consequence she took her savings and built a shop. In her pleading the claimant avers that the deceased was "in support" of the idea. She renovated the shop in 2006 at the cost of $35,000.00. Nothing is pleaded in relation to the position of the deceased on the renovation. In her evidence in chief she testified that because of the promise, she decided to open the shop, she informed the deceased and she agreed. No evidence is given as to when and in what circumstances this conversation would have occurred. The defendant pleaded that the shop was at first constructed with wood and was renovated thereafter. The defendant testified that the shop was constructed to the front of the land. The court therefore infers that the shop is a stand-alone structure located to the front of the land. It is clear on the evidence that no objection was taken to the construction of the shop and that the claimant was permitted to renovate the shop likewise with no objection. This is not to say that the court agrees with the submission of the claimant that permission to build and operate the shop is evidence of a promise by the deceased to give the entire property to the claimant. The court therefore finds that fairness would dictate that the claimant be compensated for the value of the structure.

Disposition

112. The court will therefore make the following order;

a) The claim is dismissed;

b) Judgment for the defendant on her counterclaim as follows;

i. It is declared that the defendant is entitled to possession of the property known as Light Pole 28 Mausica Road, D'Abadie more particularly described in Deed of Gift dated the 28th August, 2009 and registered as DE200902268827D001;

ii. The claimant and all other occupants shall vacate and surrender possession of the property to the defendant.

iii. The defendant shall pay to the claimant the value of the structure of the shop situated thereon to be determined by Valuators Raymond and Pierre Ltd, in default of agreement, the cost of such valuation to be borne by the defendant.

iv. The claimant is restrained whether by herself, or through her servants, agents, or otherwise from entering upon and/or interfering with the defendants' use and/or occupation and/or quiet enjoyment of the property;

v. The claimant shall pay to the defendant the prescribed costs of the claim in the sum of fourteen thousand dollars ($14,000.00);

vi. The claimant shall pay to the defendant the prescribed costs of the counterclaim in the sum of fourteen thousand dollars ($14,000.00).

c) Deed of Gift dated the 11th November, 2009 and registered as DE200902268827 is hereby set aside. The Registrar General is directed to cancel and expunge the said deed from the registry of deeds.

d) There shall be a stay of execution of paragraphs b)(ii) and b)(iii) hereof for ninety (90) days.

Dated the 12th day of October, 2017

Ricky Rahim
Judge