

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Claim No: CV2016-02989

Between

**LLOYD BLAKE**

Claimant

And

**ALBERTINA WILLIAMS**

First defendant

**RICARDO WILLIAMS**

Second defendant

**SHELDON WILLIAMS**

Third defendant

**Before the Honourable Mr. Justice R. Rahim**

Date of Delivery: May 2, 2019

Appearances:

Claimant: Mr. K. Wright instructed by Ms. Whittier

Defendants: Mr. S. Trotter

## JUDGMENT

1. This claim is one for possession of property consisting of a two story house and land situate at No. 19 Bellesmythe Street, Curepe (“the subject property”). The claimant’s parents who are both deceased were Cleota Downs and Conrad Benjamin Blake (“Conrad”). According to the claimant, the subject property was originally owned by Conrad who died intestate on March 16, 1963. On July 8, 1964 a grant of Letters of Administration was granted to Etheline Rebecca Blake (“Etheline”), the lawful widow and relict of Conrad. Etheline was the step-mother of the claimant. As such, it is the case of the claimant that he is beneficially entitled to the subject property. The defendants do not dispute that the claimant is beneficially entitled to the subject property and it is to be noted that no assent of the property to the claimant has yet been done.
  
2. The claimant is the step brother of the first defendant, Albertina Williams (“Albertina”). The second defendant, Ricardo Williams (“Ricardo”) and the third defendant, Sheldon Williams (“Sheldon”) are the sons of Albertina.
  
3. According to the claimant, in or about 1990, he travelled to the United States of America and gave Albertina permission to occupy the subject property. The claimant avers that he neither collected any rent from Albertina nor demanded that rent be paid because he had a family arrangement with her. The claimant visited and stayed at the subject property annually. The claimant further avers that he only gave Albertina permission to occupy the subject property rent free out of the love and affection he has for his family and that whilst he was in the States, he was working to acquire finances to renovate and refurbish the subject property on his eventual return to Trinidad. According to the claimant, the subject

property is in dire need of repairs as it is basically in the same state as it was when he left in 1990.

4. Albertina owns a property situate in Malabar, Arima which was rented out by her but has been unoccupied since March, 2012. Between the years 1990 to 2014, the claimant became aware that Albertina also rented out the downstairs apartment of the subject property and collected the rent for her own benefit.
5. The claimant avers that at no time did he give Albertina an assurance that he would transfer the subject property to her. The claimant claims that in or about 2013, he unequivocally communicated to Albertina that he wanted to return permanently to Trinidad and move into the subject property. The defendants have however not vacated the subject property.
6. As such, by Claim Form filed on December 15, 2016 the claimant claims the following relief;
  - i. Delivery of possession of the subject property;
  - ii. Mesne profit;
  - iii. Interest;
  - iv. Costs and
  - v. Such further and/or other relief as the nature of the case may require.
7. By Defence filed on February 16, 2017 the defendants aver that after the death of the claimant's step mother, Etheline in 1989 and Etheline sister, Mercy Thomas ("Mercy") in 1990, the claimant came to Trinidad and visited Albertina at her home in Arima. Albertina had lost contact with the claimant for many years. The defendants claim that the claimant told Albertina that he had migrated to the States for more than forty years prior

to 1991, that he lived there with his children and that he did not plan not to return to Trinidad to live permanently. The defendants further claim that the claimant told Albertina that after the death of Etheline and Mercy the subject property was vacant and that he wanted Albertina to have the subject property for her sole use and benefit and that he would later transfer the legal title to Albertina. The defence is therefore one of promissory estoppel.

8. According to the defendants, the claimant told Albertina that she should relocate to the subject property and rent her property in Arima. Albertina was very happy with the aforementioned suggestion as she had lost her job because of retrenchment and was struggling to find another job. It was especially hard for Albertina as she had to take care of Ricardo and Sheldon on her own. Albertina therefore accepted the claimant's proposal.
9. The defendants claim that the claimant repeated his assurance that the subject property was for Albertina's sole and benefit and that he would later transfer the legal title to same to Albertina on many occasions both orally and in writing by letters dated August 14, 1992, September 21, 1992 and December 22, 1993. The defendants further claim that from 1993 to 2012 or thereabout the claimant repeated those assurances on many occasions over the phone and when he returned to Trinidad on vacation.
10. As such, the defendants claim that in reliance upon the assurances given by the claimant and the understanding that the subject property was for Albertina's sole use and benefit, they relocated to the subject property in 1991 and later spent considerable sums of money in repairing and renovating the subject property. The defendants aver that from 1996 to 2006 they undertook substantial renovations to the subject property costing in the region of \$350,000.00. Consequently, the defendants aver

that although the subject property is an old structure and needs some repairs, it is not in dire need of repairs as they have maintained and renovated same over the years.

11. The defendants claim that it was only in late 2013 or early 2014, the claimant visited the subject property and told Albertina that she, Sheldon and Ricardo should return to Arima because he wished to sell the subject property.

12. The defendants discontinued their counterclaim by Notice of Discontinuance filed on May 1, 2018. By their counterclaim, the defendants had sought an order that the claimant transfer the legal title to the subject property to them.

### **ISSUES**

13. The issues for determination by this court are as follows;

- i. Whether the claimant made a clear unequivocal assurance that he would transfer the subject property to the defendants; and
- ii. If so, did the defendants act on the assurance to their detriment.

### **THE CASE FOR THE CLAIMANT**

14. The claimant gave evidence and called one witness, Kenneth Joseph.

#### **The evidence of the claimant**

15. The claimant is eighty-eight years of age having been born on February 15, 1931. He is the son of Cleota Downs and Conrad Benjamin Blake ("Conrad"). Both of his parents are deceased. His father, Conrad died

intestate on March 16, 1963. On July 8, 1964 Letters of Administration was granted to Etheline Rebecca Blake (“Etheline”), the lawful widow and relict of Conrad.

16. In or about 1990, the claimant left for the USA and gave Albertina permission to occupy the subject property. The claimant visited and stayed at the subject property annually. He neither collected nor demanded rent from Albertina because it was a family arrangement and he returned regularly to stay at his property. Between 1990 to date, he was aware that Albertina was renting out the downstairs apartment of the property and collecting the rent for herself.
17. In or about 1990, Albertina obtained a house situate at Malabar, Arima from the National Housing Authority (now HDC). She rented out that house.
18. The claimant testified that when he gave Albertina permission to stay at the subject property, same was on the basis of his love for his family. He further testified that at the same time, he was spending some time in the States working to ensure that he had enough money to renovate his property on his eventual return to reside permanently in Trinidad.
19. To show his faith and trust in Albertina, by virtue of Power of Attorney registered as No. 5129 1999 the claimant appointed Albertina as his lawful Attorney to conduct his affairs in Trinidad and Tobago during his absence.<sup>1</sup> By Deed of Revocation dated March 25, 2013 the claimant caused the Power of Attorney to be revoked.<sup>2</sup>

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<sup>1</sup> A copy of the Power of Attorney was annexed to the claimant’s witness statement at “LB1”.

<sup>2</sup> A copy of the Deed of Revocation was annexed to the claimant’s witness statement at “LB2”.

20. Since around 2013, the claimant has been making serious arrangements to permanently reside in Trinidad and to move into his property. In fact he has been in Trinidad since either 2011 or 2012 without access to his property.
21. In or about 2013 he clearly told Albertina that he wanted to return permanently to his property. The claimant categorically denied that he gave Albertina any assurance that he would transfer the subject property to her. He regularly visited and stayed at the subject property but since 2013, he was no longer welcomed.
22. The claimant testified that he is aware that the subject property is in dire need of repair. He has communicated the aforementioned to Albertina based on his observations between 2008 and 2010.
23. Sheldon sent an email dated December 13, 2014 to the claimant's son, Lindsay Blake ("Lindsay").<sup>3</sup> The email stated as follows;

*"...With due respect to the property owned by uncle Lloyd Blake, I could carry on and on how he promised us this property and how much time he went to the lawyer to have the deed transfer in our name. All of this would be pointless to mention because it was not done and he is still the owner. We are not looking for conflict or fight, obviously his finance has taken a turn and he has a change of mind. We have always have a good relation and I expect to see it remain that way in the future even with you all whom I have met once...What we were expecting from uncle was a civil discussion with whatever problem with a quick resolve. My mother...was quite upset when uncle approached her telling her she had to leave without explanation or discussion after so many years. If we knew this day will come*

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<sup>3</sup> A copy of the email was annexed to the claimant's witness statement at "LB4".

*we would of prepared for it in advance, we never followed uncle to do what he said he was going to do concerning the transfer...we trusted in what uncle promised...We accept moving and ask adequate time for this transition. I believe uncle was sincere when he said he was giving us this place which was generous of him, but for whatever reason he changed his mind, we will not fight him and allow back control of his property. I wish if it was possible to just sit and talk of the situation so you can get a holistic view, I don't want to give the impression we don't care about uncle... and all we want is his property, which is not true, I am realizing for myself certain events in his life has change, I also want him to be comfortable in his home to enjoy after so many years of hard work..."*

24. The claimant on several occasions asked his nephew, Kenneth Joseph ("Kenneth") to talk to Albertina and her family about vacating the subject property. The defendants' Attorney-at-law, Mr. Trotter emailed Kenneth indicating that the defendants gave him instructions to issue a proposal or settlement.<sup>4</sup>

25. By letter dated March 25, 2015 Mr. Trotter wrote to Kenneth and stated the following among other things;

- i. The defendants forewent numerous opportunities to obtain property of their own;
- ii. The defendants undertook substantial renovations to the property costing about \$300,000.00;
- iii. Kenneth indicated to the defendants that they had until the end of March, 2015 to move out;
- iv. In the interest of arriving at an amicable resolution of the matter, Mr. Trotter made the following demands;

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<sup>4</sup> A copy of this email was annexed to the claimant's witness statement at "LB5".



- a) The claimant allow the defendants to reside at the subject property until December 21, 2017 and provide compensation to the defendants in the sum of \$250,000.00;
- b) The claimant agrees to sell the subject property to the defendants for the sum of \$400,000.00. The court notes that \$450,000.00 was written in words but that \$400,000.00 was written in numbers.

26. By letter dated April 14, 2015 the claimant caused his Attorney-at-law to respond to the defendant's letter.<sup>5</sup> In that letter, the following was stated;

- i. The claimant denied that he gave several assurances that he would transfer the subject property to Albertina;
- ii. That he was aware that Albertina owns and rents out her house in Malabar, Arima;
- iii. That he is at an advanced age and has returned to Trinidad to reside and now has to seek lodging at a relative's home;
- iv. That he informed the defendants of his intention to return to Trinidad and to commence the much needed renovations to the subject property in order that he may reside therein;
- v. That all his attempts to negotiate an amicable resolution failed;
- vi. The claimant refuted the defendants' claim that they undertook renovations to the subject property;
- vii. That the defendants never disputed that he is the owner of the subject property; and
- viii. That he is calling upon Albertina to vacate the subject property on or before May 31, 2015.

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<sup>5</sup> A copy of this letter was annexed to the claimant's witness statement at "LB6".

27. The claimant testified that he is frustrated at the attitude of the defendants and more so Albertina who he has loved and trusted all these years and who he allowed to live rent free in his property.

The cross-examination of the claimant

28. The claimant is married and has two children, Lindsay and Link Blake. He first went to the States in 1969. He went there in seek of employment and obtained employment as a truck driver with a company called Green Star. He earned approximately \$1,500.00 per week as a truck driver. He first returned to Trinidad in 1970. Between 1969 and 1990, he would have only visited Trinidad. By 1990, he had already established himself in the States. He owns one property in the States. Between 1990 and 2013, the claimant visited and stayed at the property in Trinidad every year.

29. The claimant was referred to email dated December 13, 2014. This email was written by Link to Sheldon. Link's signature which appeared at the bottom of the email was as follows;

*"Link Blake  
LBlakes Partners, LLC  
Private Equity / Media & Entertainment  
..."*

30. The claimant was asked whether his sons own a private equity company and he stated that they do not. He testified that his sons work for companies like McDonald's cleaning and selling. As such, the claimant denied that his sons are millionaires. When asked if they were quite successful, he stated that they help themselves. He denied that they support him.

31. The claimant currently resides in Arouca with his cousins. He owns no other property in Trinidad besides the subject property. The subject property was built in 1947.
32. In 1990, the claimant suffered the loss of his step mother, Etheline and Etheline's sister Mercy. At that time, the claimant was fifty-nine years of age. As such, he was close to his retirement age of sixty-five.
33. In 1990, the subject property was vacant and the claimant was concerned about the condition of it and so he was desirous of renovating same. The claimant was aware that the subject property could have been rented out to earn money but he did not feel like renting out same. He did not give Albertina permission to collect rent from the property.
34. The claimant was referred to letters dated August 14, 1992, September 21, 1992 and December 11, 1993.<sup>6</sup> He accepted that he wrote those letters to Albertina. The court notes that in his Defence to Counterclaim filed on March 31, 2017 the claimant denied writing and sending those letters. The claimant further accepted that the arrangement he had with Albertina pertaining to the house was reflected in letter dated August 14, 1992. In that letter, the following was stated;

*"...Sister I wrote to Mr. Murray telling him that I want a lawyer to make up the papers and transfer the house on my name. He got the lawyer and the lawyer told me to write to him and let him know when to start, so that when I come down is just to sign and leave the all the papers with you... If the people downstairs giving you any trouble just write and let me know and I will be very quick down there. You and your mother could do whatever you all want with the money I don't want nothing, all I want to know is that*

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<sup>6</sup> These letters were admitted into evidence by agreement.

*you ok. When I come to Trinidad, I will stay by my woman in Port-of-Spain and sometimes we will come and look for you in the night..."*

35. In the letter dated December 22, 1993 the following was stated;

*"...Mama when I come down, I am going to put the house on Tina name, I don't want no house..."*

36. The claimant accepted that he referred to Albertina as "Tina". He further accepted that that what was stated in the letter was the arrangement he had with Albertina. He was then asked why he changed his mind and he responded by saying that he could change his mind at any time because it was his property. As such, the claimant agreed that he changed his mind and that the first time he communicated that change of mind was in 2013. He further agreed that since 1990, the defendants were relying on that fact that he would transfer the property to Albertina. It was then put to the claimant that in 1990 he promised and assured Albertina that the property would be transferred to her to be put on her name. He responded by saying *"I could promise you the red house but if I don't want to give it to you"*.

37. The claimant accepted that the defendants were very close and that they operated as a family unit. He further accepted that the defendants would have maintained the subject property over the years. However, he did not accept that between 1990 and 2014 the defendants did renovations to the subject property. As such, he denied that the subject property was renovated. He was aware that Albertina paid the taxes and utilities for the subject property. She did not ask him for any money to pay the taxes and utilities.

38. During re-examination, the claimant testified that in 1990 he neither spoke to and/or informed Albertina that he would give her the subject property. He further testified that he never had any discussion with Ricardo and/or Sheldon pertaining to the subject property.

#### The evidence of Kenneth

39. During the year 1990, the claimant visited Kenneth and informed him that he was moving to the States and that he (the claimant) was concerned about the subject property. The claimant further informed Kenneth that Albertina who was then residing at her house situate at Malabar, Arima had asked him (the claimant) to move to the subject property with her sons until the claimant was ready to return to Trinidad from the States. Moreover, the claimant informed Kenneth that after much deliberations on the matter, he (the claimant) allowed the defendants to move into the subject property.

40. According to Kenneth, the claimant visited Trinidad every year for the carnival celebrations until his retirement in 2013, when the claimant returned to Trinidad permanently. Upon his return, the claimant informed Kenneth that he wished to re-occupy the subject property. The claimant further informed Kenneth that he approached Albertina and told her of his intention to re-occupy the subject property and that she became very hostile towards him. The claimant also informed Kenneth that his sons Lindsay and Link suggested that he (the claimant) renovate the subject property before moving in.

41. The claimant subsequently asked Kenneth to represent him in the discussions with the defendants in an attempt to have the matter resolved.

42. In or around the year 2014, Kenneth attended two meeting at the subject property in an attempt to bring some resolution to the matter. The first meeting was held between Kenneth and all three defendants whereas the second meeting was held between Kenneth, the claimant and Sheldon. During both meetings, Kenneth explained the claimant's situation to the defendants to no avail.

43. At the first meeting, Albertina told Kenneth that the downstairs apartment of the subject property was being rented. Albertina admitted that the rental of the downstairs apartment of the subject property was done without the consent of the claimant. Kenneth subsequently wrote several letters to Sheldon and made several attempts to meet with him to resolve the matter but his attempts were to no avail.

44. Kenneth received letter dated March 25, 2015 via email.

#### The cross-examination of Kenneth

45. Kenneth denied that his knowledge pertaining to this matter was entirely based on what was told to him by the claimant. Kenneth was not aware that the claimant promised Albertina that he would transfer the title to the subject property to her. Kenneth visited the subject property once or twice.

#### **THE CASE FOR THE DEFENDANTS**

46. Ricardo and Sheldon gave evidence.

#### The evidence of Ricardo

47. Ricardo is forty-eight years of age having been born on December 31, 1970. He has been a prison officer for twenty-one years. He lives at the upper portion of the subject property with his mother, Albertina. Sheldon lives at the downstairs apartment of the subject property with his wife and three children. The defendants have resided at the subject property for the past twenty-six years after they relocated from Malabar, Arima in or around 1991.
48. Ricardo and Sheldon have always been close to Albertina who raised them on her own. They first resided at an apartment in Curepe and then when Ricardo was about seven years old, they moved to Malabar, Arima.
49. In or around 1990, Albertina told Ricardo and Sheldon that the claimant had given her the subject property. Prior to the claimant's visit to the defendants at their home at Malabar in or around 1990, Ricardo never knew the claimant. When he visited them, Ricardo came to understand that the claimant was his uncle who lived in the States with his children.
50. Shortly after the claimant's visit to Malabar in 1990, the defendants relocated to Curepe in reliance on the claimant's assurance that the subject property was for Albertina's sole benefit. Ricardo testified that over the years, the claimant repeated the assurance (both orally and in writing) that the subject property was for Albertina's sole benefit and that he would later transfer the legal title to her.
51. By letter dated August 14, 1992 the claimant assured Albertina that he was making preparations to give instructions to his lawyer to transfer the property to her and that she could do what she wanted with the money collected from rent. By letter dated September 21, 1992 the claimant assured Albertina that he had already contacted a lawyer who was going

to tell him when to come to sign the necessary documents to transfer the subject property to her and that nobody could move her from the subject property.

52. According to Ricardo, the understanding between the claimant and Albertina that the subject property was to be permanently for her sole use and benefit was reflected in letter dated December 22, 1993 wherein the claimant again stated that he was going to transfer the property to Albertina.

53. Ricardo testified that the claimant repeated those assurances on many occasions over the phone and when he returned to Trinidad on vacation. In reliance on the claimant's assurances and statements, the defendants spent considerable sums of money in the region of \$350,000.00 to renovate and repair the subject property. Those renovations and repairs included but were not limited to the following;

- i. The replacement of the entire roof including the construction of a ring beam to accommodate same;
- ii. The replacement of the entire upstairs ceiling
- iii. The replacement of rotting or infested flooring boards;
- iv. The replacement and rebuilding of the soak away pit or septic tank;
- v. The building of a storeroom annex;
- vi. The building of a concrete walkway to the back of the subject property;
- vii. The replacement of parts of the perimeter wall;
- viii. The installation of burglar proofing to the downstairs apartment;
- ix. The redoing of the electrical wiring of the upstairs premises and adjustments to the downstairs premises to obtain a conditional inspection in respect of the downstairs;



- x. A complete overhaul of the plumbing system;
- xi. The refurbishment of the upstairs and downstairs kitchen;
- xii. The painting of the entire exterior and interior of the house.

54. Ricardo could not recall the exact sequence of the renovations but he testified that they started work on the subject property from 1996 and that the works continued until 2006.

55. When they moved into the subject property, the water pressure was low. Shortly thereafter, it was discovered that low water pressure was due to a faulty system which was in need of repair. In or around 1996, Albertina used money from her personal savings to overhaul the plumbing system. The pipes in and around the property were changed. In at least three locations, the pipes were underground and so the defendants had to dig through the dirt and concrete to effect the changes and then redo the pavement and flooring in some areas.

56. The flooring to the property was dilapidated when they moved in. Significant sections were rotting and infested with termites. In or around 1997, the defendants changed the entire flooring of the upstairs of the property. In or around either 1999 or 2000, they had to rebuild the septic tank as there was a backlog problem. Albertina employed Ricardo's uncle, Albert to rebuild the septic tank. Ricardo and two other men assisted Albert. This work was very costly and labour intensive.

57. Parts of the concrete perimeter wall had also fallen and the defendants eventually rebuilt approximately 40 feet (length) by 7 feet (height) of wall. Another old section of the perimeter wall collapsed about three weeks ago and the defendants intend to rebuild a section of the wall that is 30 feet (length) by 7 feet (height) once this court matter is concluded.

58. From his savings, Ricardo built the storeroom annex to the subject property. Around that time, the defendants also paved a concrete walkway to the back of the subject property and replaced parts of the perimeter wall.
59. The defendants renovated the downstairs portion of the subject property which included a complete refurbishment of the kitchen, replacing the floors, installing burglar proofing and painting the interior.
60. The defendants also replaced the roof and the entire ceiling. They conducted electrical rewiring of the upstairs portion of the subject property and adjustments to the downstairs premises to obtain a conditional inspection in respect of the downstairs portion of the subject property. The kitchen in the upstairs portion of the subject property was also refurbished.
61. Ricardo testified that all the repairs and renovations to the subject property were done in reliance and in the expectation that the property would be transferred to Albertina who would thereafter leave same to Sheldon and him after she passed on.
62. Ricardo further testified that Sheldon and he have always been close to Albertina and that there was always the understanding that the subject property and the property at Arima would be passed on to them (Ricardo and Sheldon). As such, it was the testimony of Ricardo that they treated the subject property as if it was their own and on the basis that Sheldon and he would ultimately be the legal owners.
63. The defendants' comfort at the subject property was destroyed in or around January, 2014 when the claimant began to demand that they vacate same as he wished to sell the property. Ricardo testified that the

aforementioned was a complete betrayal of the trust they had in the claimant as the claimant had repeated the assurances to Albertina over the years and the understanding that they had regarding the ownership of the subject property was an arrangement which was set in stone.

64. Albertina is now an elderly and sometimes sickly woman. The rental income from the Arima property is for Albertina's financial support and for her medical expenses. Ricardo testified that Albertina has established her ties within the community in Curepe and that she is kept happy by her neighbours and friends in the area. Ricardo fears that Albertina may become despondent and stressed if forced to move.

65. Ricardo testified that if he had known that the claimant would one day return to demand that they vacate the subject property, his mind set would have been completely different. That he would have put things in place for Albertina in her old age. Ricardo would have also devoted his time and energy in acquiring a property of his own.

66. Ricardo testified that no amount of compensation could cover the loss they will suffer if they have to leave the subject property. That justice demands that they be declared the owners of the subject property and that they obtain an order of the court for the claimant to transfer the property to them.

#### The cross-examination of Ricardo

67. Ricardo became aware of who the claimant was in 1990. Ricardo did have conversations with the claimant concerning the subject property. However, he could not recall the time and date when he would have had those conversations. Ricardo saw the claimant speaking to Sheldon.

Whenever the claimant visited, he would tell Ricardo that he was going to the lawyer. Ricardo testified that the claimant gave him the assurance orally but he (Ricardo) could not recall the time and date that assurance was given to him.

68. Ricardo derived all his knowledge pertaining to this case from Albertina. When Albertina informed Ricardo of those matters pertaining to this case, the claimant was in Trinidad.

69. The downstairs apartment of the subject property was rented to a number of persons. It was rented out from around 1991 to 2013. The rent payable for the downstairs apartment was first approximately \$400.00 per month. From 1992 the rent increased to about \$1,200.00 per month.

70. Ricardo was asked whether it was a fact that the sum of \$350,000.00 was spent on renovating the property and he responded by saying no. Ricardo then stated that he put a figure of \$350,000.00. Ricardo has some of the bills for the repairs and renovations that were done to the subject property but some of the bills were misplaced. The bills which were found were given to his lawyer. Ricardo agreed that the bills which were supplied to his lawyer were those annexed to his Defence. Counsel for the claimant then indicated to Ricardo that the sum of those bills annexed to the Defence amount to about \$3,000.00. Ricardo responded by saying "*I don't know*".

71. Ricardo could not recall when the renovations took place. Albertina would have hired the contractors to do the renovations to the subject property. There were approximately four contractors. Ricardo did not know the contractors who did the works and who paid the contractors. He estimated

that the works costed \$350,000.00. The subject property is in need of repairs but not in dire need of repairs.

72. Albertina's property in Arima was previously rented out but currently no one resides therein. It has been vacant for about a year. It was rented out from about 1996 to 2016 or 2017. For some years it was rented at \$1,200.00 per month and thereafter at \$1,600.00 per month. Ricardo collected the rent. The property at Arima is not available for the defendants to reside as it has some plumbing issues.

73. Ricardo had a meeting with Kenneth to discuss the subject property. Due to that meeting, it was agreed that the defendants would move out of the subject property under certain conditions. Those conditions were that Albertina had to be compensated for the money spent on the subject property and all the stress she had to go through. Ricardo just gave the figure of \$350,000.00 for the costs of the repairs done to the house. If he had gotten the sum of \$350,000.00 he would have moved out of the subject property.

74. Ricardo was referred to letter dated May 25, 2015. In this letter it was demanded that the defendants be allowed to reside in the subject property until December 31, 2017 and for the claimant to provide the defendants compensation in the sum of \$250,000.00 or in the alternative for the claimant to agree to sell the subject property to the defendants for the sum of \$400,000.00. The court notes that \$450,000.00 was written in words but \$400,000.00 was written in numbers. Counsel for the claimant enquired why the sum demanded for compensation (\$250,000.00) differed from the sum now being claimed (\$350,000.00). In response, Ricardo stated that it was just a \$100,000.00 difference. Counsel for the

claimant then asked which figure should be believed and Ricardo stated that both figures should be believed.

### The evidence of Sheldon

75. Sheldon is forty-six years old having been born on September 16, 1972. He is an Electrician. Some of his evidence was the same as Ricardo's evidence and so there was no need to repeat same.

76. Sometime after the death of Virginia Williams, Sheldon moved into the downstairs apartment of the subject property. He presently lives there with his wife and their four children. He testified that it was extremely upsetting when in or around January, 2014 the claimant began to demand that they vacate the subject property as he (the claimant) wished to sell same without any reason or explanation.

77. According to Sheldon, being forced to relocate from the subject property would be most difficult on him as he would have nowhere to accommodate his wife and four children. The property at Arima, only has two bedrooms and so there would not be sufficient space for all of them. Sheldon testified that he has the option of looking for a place to rent but that at this juncture in his life, he cannot afford to pay rent every month. As such, it was his testimony that he is most affected by the claimant's demands to have them vacate the subject property. Sheldon reached out via email to Kenneth to voice his concerns and to attempt a negotiation.

78. Sheldon testified that contrary to what was alleged by the claimant and although he (Sheldon) may have referred to the claimant as the owner of the subject property, he (Sheldon) has always maintained the defendants' beneficial rights to the property because of their reliance on the claimant's

assurances. Further, at the time of the writing of the email, the defendants had not retained an attorney and so Sheldon was unaware that there was a legal basis for resisting the demands of the claimant.

79. According to Sheldon, neither the claimant nor Kenneth wished to negotiate. Sheldon testified that fortunately Albertina kept the several letters written to her by the claimant wherein he (the claimant) stated that he was going to transfer the property to her.

80. Sheldon testified that although they have estimated their expenditure in costs and repairs in the sum of \$350,000.00, the loss they would suffer if they have to leave the subject property is immeasurable. That if they had known that the claimant would one day take back the subject property from them, they would have invested in securing property of their own and for the past twenty years, they would have managed their money much differently towards realizing that goal.

#### The cross-examination of Sheldon

81. Sheldon knows the claimant very well. When the claimant visited Trinidad, Sheldon would take him around.

82. The sum of \$350,000.00 was an estimate of the costs for the repairs and renovations done to the subject property. Some of the bills for the repairs and renovations done to the subject property were misplaced.

83. The claimant spoke to Sheldon about the subject property. Sheldon was also around when the claimant spoke to Albertina about the subject property. According to Sheldon, the claimant told Albertina, "*Tina here is for you and your children and let nobody come here*". The claimant first made that assurance to Albertina in 1990 and continued to make that

assurance between 1993 and 1994. The claimant always stated that he was going to a lawyer to get the deed changed.

84. Sheldon was referred to email dated December 13, 2014 which he sent to Lindsay. He agreed that in 2014 he referred to the claimant as the owner of the subject property.

**ISSUE 1 & 2** - *whether the claimant made a clear unequivocal assurance that he would transfer the subject property to the defendants and if so did the defendants act on the assurance to their detriment.*

### **Law**

85. 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.<sup>7</sup>

86. Rajkumar J in **Fulchan v Fulchan**<sup>8</sup> 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.*

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<sup>7</sup> Halsbury's Laws of England Volume 23 (2013) paragraph 153.

<sup>8</sup> CV 2010-03575



*Ltd. Per Oliver J. cited in Snell's Principles of Equity 31st Ed. Para 10-16 to 10-17."*

87. In the Court of Appeal decision of **Ester Mills v Lloyd Roberts**,<sup>9</sup> Jamadar J.A. had the following to say;

*"19. Whereas in promissory estoppel there must be a clear and unequivocal promise or assurance intended to effect legal relations or reasonably capable of being understood to have that effect, in the law of proprietary estoppel there is no absolute requirement for any findings of a promise or of any intentionality.*

*20. The seventh edition (2008) of The Law of Real Property adequately summarises<sup>10</sup> "the essential elements of proprietary estoppel", as follows:*

*(i) An equity arises where:*

*(a) the owner of land (O) induces, encourages or allows the claimant (C) to believe that he has or will enjoy some right or benefit over O's property;*

*(b) in reliance upon this belief, C acts to his detriment to the knowledge of O; and*

*(c) O then seeks to take unconscionable advantage of C by denying him the right or benefit which he expected to receive.*

*(ii) This equity gives C the right to go to court to seek relief, C's claim is an equitable one and subject to the normal principles governing equitable remedies.*

*(iii) The court has a wide discretion to the manner in which it will satisfy the equity in order to avoid an unconscionable result, having regard to all the circumstances of the case and in particular to both the expectations and conduct of the parties.*

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<sup>9</sup> Civil Appeal No. T 243 of 2012 at para 19 and 22

<sup>10</sup> At pages 698 - 699.

21. *The eighth edition of A Manual of The Law of Real Property explains the 'modern approach' as follows:*

*"Since 1976, the majority of the judges have rejected the traditional approach and have regarded these three situations as being governed by a single principle. They have adopted a very much broader approach which is directed rather at ascertaining whether, in particular individual circumstances, it would be unconscionable for a party to be permitted to deny that which, knowingly or unknowingly, he has allowed or encouraged another to assume to his detriment than to inquiring whether the circumstances can be fitted within the confines of some preconceived formula serving as a universal yardstick for every form of unconscionable behaviour. This broader approach has been developed into the principle that a proprietary estoppel requires:*

- (i) an assurance or a representation by O;*
- (ii) reliance on that assurance or representation by C; and*
- (iii) some unconscionable disadvantage or detriment suffered by C."*

22. *In proprietary estoppel therefore, the focus shifts somewhat from the search for a clear and unequivocal promise and for intentionality, to whether the party claiming the benefit of the estoppel had a reasonable expectation induced, created or encouraged by another, and in those circumstances acted detrimentally to the knowledge of the other.<sup>11</sup> For proprietary estoppel to operate the inducement, encouragement and detriment must be both real and substantial and ultimately the court must act to avoid objectively unconscionable outcomes."*

88. At paragraphs 25 and 26 in **Ester Mills** supra, Jamadar J.A. stated the test to determine whether a claim in proprietary estoppel has been established in the following terms;

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<sup>11</sup> See Snell's Principles of Equity, 31st Edition, 2005, paragraphs 10-16 to 10-17.

*“25. The Privy Council in Theresa Henry and Anor. v Calixtus Henry has carefully explained that in cases of proprietary estoppel, when it comes to determining how the equity is to be satisfied, the following are relevant guidelines:<sup>12</sup>*

- (i) The court should adopt a cautious approach.*
- (ii) The court must consider all of the circumstances in order to discover the minimum equity to do justice to the claimant.*
- (iii) The court however enjoys a wide discretion in satisfying an equity arising from proprietary estoppel.*
- (iv) Critical to the discovery of the minimum equity to do justice, is the carrying out of a weighing process; weighing any disadvantages suffered by the claimant by reason of reliance on the defendant’s inducements or encouragements against any countervailing advantages enjoyed by the claimant as a consequence of that reliance.*
- (v) In determining the balance in the relationship between reliance and detriment: just as the inquiry as to reliance falls to be made in the context of the nature and quality of the particular assurances, inducements and encouragements which are said to form the basis of the estoppel, so also the inquiry as to detriment falls to be made in the context of the nature and quality of the particular conduct or course of conduct adopted by the claimant in reliance on the assurances, inducements and encouragements.*
- (vi) Though in the abstract reliance and detriment may be regarded as different concepts, in applying the principles of proprietary estoppel they are often intertwined.*

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<sup>12</sup> See paragraphs 51 - 55, per Sir Jonathan Parker.

26. Sir Jonathan Parker in *Theresa Henry's* case also drew extensively from Lord Walker's discussion of proprietary estoppel in *Gillett v Holt*,<sup>13</sup> *Jennings v Rice*<sup>14</sup> and *Cobbe v Yeoman's Row Management Ltd*,<sup>15</sup> adopting approvingly the following observations:<sup>16</sup>

(i) *Reliance and detriment are often intertwined. 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."*

89. As such, in order to establish proprietary estoppel the defendants have to prove the following elements;

- i. That a representation or assurance was given to them,
- ii. That they relied on the representation or assurance; and
- iii. That they incurred some detriment as a consequence of that reliance.<sup>17</sup>

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<sup>13</sup> [2001] Ch 201.

<sup>14</sup> [2003] P. & C. R. 8.

<sup>15</sup> [2008] 1 WLR 1752

<sup>16</sup> See paragraphs 37 – 42

<sup>17</sup> 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 representation or assurance**

90. Ricardo and Sheldon gave evidence for the defendants. According to the evidence of Ricardo, in or around 1990, Albertina told Sheldon and him that the claimant had given her the subject property. The court placed no weight on the aforementioned evidence of Ricardo the evidence having come not from an independent source but from Albertina herself who was not a witness in this case.

91. Ricardo testified that shortly after the claimant's visit to Malabar in 1990, they relocated to Curepe in reliance on the claimant's assurance that the subject property was for Albertina's sole benefit. Ricardo further testified that over the years, the claimant repeated the assurance (both orally and in writing) that the subject property was for Albertina's sole benefit and that he would later transfer the legal title to her. During cross-examination, Ricardo testified that he derived all his knowledge pertaining to this case from Albertina. Moreover, Ricardo testified during cross-examination that the claimant gave him the assurance orally but he (Ricardo) could not recall the time and date that assurance was given to him.

92. Further during cross-examination, Sheldon testified that he did have conversations with the claimant concerning the subject property but he could not recall the time and date when he would have had those conversations.

93. In his witness statement, Sheldon testified that in or around 1990, the claimant visited them and in reliance on the claimant's assurance that the subject property was for Albertina's sole benefit, they (the defendants)

relocated to the subject property in 1991. Sheldon further testified that over the years, the claimant repeated the assurance, both orally and in writing that the subject property was for Albertina's sole benefit and use and that he would later transfer the legal title to the property to her.

94. During cross-examination, Sheldon testified that the claimant spoke to him about the subject property. That he (Sheldon) was also around when the claimant spoke to Albertina about the subject property. According to Sheldon, the claimant told Albertina, "*Tina here is for you and your children and let nobody come here*". Sheldon further testified that the claimant first made that assurance to Albertina in 1990 and continued to make that assurance between 1993 and 1994. The court finds that the evidence that Sheldon was around when the claimant stated the aforementioned words told to Albertina was of utmost importance. It is reasonable to accept that if Sheldon was present when the claimant said those words to Albertina, the presence of Sheldon at the time the assurances were made (not the evidence of the assurances themselves) would have been pleaded. But this is not the case. Further, and even more obviously, same would have certainly found itself into the witness statement of Sheldon. But again, that evidence is patently absent from the witness statement. The absence of this crucial evidence leads the court to disbelieve Sheldon when he says in cross examination for the first time that he was present when the claimant informed Albertina that the property belonged to her and for her children. That it was more probable than not that the information may have come from Albertina in the like manner as that which came to Ricardo. For the same reasons as set out above therefore the court rejects the reliability of this evidence and has given no weight to it.

95. In his witness statement, the claimant categorically denied ever giving Albertina any assurance that he would transfer the subject property to her.

However, during cross-examination the claimant contradicted his own testimony and admitted in clear terms that he did in fact give Albertina an assurance in 1990. Further and even more telling, during cross-examination, the claimant was referred to letters dated August 14, 1992, September 21, 1992 and December 22, 1993 which themselves speak volumes, and he replied in equally clear terms when confronted with the contents thereof in manner that demonstrates admissions on his part.<sup>18</sup> Although in his Defence to Counterclaim, the claimant denied writing and sending those letters, during cross-examination, he accepted that he wrote those letters to Albertina.

96. In letter dated August 14, 1992 the following was stated;

*"...Sister I wrote to Mr. Murray telling him that I want a lawyer to make up the papers and transfer the house on my name. He got the lawyer and the lawyer told me to write to him and let him know when to start, so that when I come down is just to sign and leave the all the papers with you... If the people downstairs giving you any trouble just write and let me know and I will be very quick down there. You and your mother could do whatever you all want with the money I don't want nothing, all I want to know is that you ok. When I come to Trinidad, I will stay by my woman in Port-of-Spain and sometimes we will come and look for you in the night..."*

97. In letter dated September 21, 1992 the following was stated;

*"...The lawyer is going to write me soon, so he will tell me when to come and sign up the papers...Don't forget sister don't let Kenneth mash his foot in that yard if any letters come there for him them away. I hope the people who renting downstairs paying you your money on time and not giving you*

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<sup>18</sup> These letters were admitted into evidence by agreement.

*any trouble. If they want to give you trouble just send and tell me. Mama tell me that the people who living in your house, don't want to pay the rent, when I come down we going to go up there.*

*Little sister? Whatever you want to build downstairs for your palour and sell you go ahead don't even worry to ask me, you are my sister, all I want to know is that you are happy and your two boys, is no body could move you from there.*

*People want to know if I am selling the house, I tell them ask my sister when you all come down*

*I hope Albert and Hollis come down and help you clean up the place, because that is there job..."*

98. In the letter dated December 22, 1993 the following was stated;

*"...Mama when I come down, I am going to put the house on Tina name, I don't want no house..."*

99. During cross-examination, the claimant accepted that he referred to Albertina as "Tina". He further accepted that what was stated in letter dated December 22, 1993 was the arrangement he had with Albertina. He was then asked why he changed his mind and he responded by saying that he could change his mind at any time because it was his property. As such, the replies of the claimant demonstrated to this court that he in fact agreed that he made the assurance but that he changed his mind. He was of the view that he was entitled so to do. However, the first time he communicated that change of mind was in 2013, some twenty-three years after he first made the assurance.

100. He further accepted that since 1990, the defendants were relying on the fact that he would transfer the property to Albertina. It was then put to



the claimant that in 1990 he promised and assured Albertina that the property would be transferred to her to be put on her name. He responded by saying *"I could promise you the red house but if I don't want to give it to you"*.

101. The court finds that that claimant's admissions in cross-examination means that he accepted that his evidence in chief was untrue. Further, that the equitable doctrine of promissory estoppel was developed overtime to prevent an occurrence such as that which has taken place in this case. Of course the claimant was fully entitled to change his mind as anyone who makes such a promise is entitled to do, but he waited some twenty three years to communicate same. The consequences of such delay may be dire to the lawful decision to change one's mind in circumstances where reliance and detriment has been proven by those to whom the promise was made. This is the essence of the principle that equity will step in to make fair that which the strict application of law renders unfair.

102. Evidentially, to make matters worse on his own case, the claimant further destroyed the reliability of his evidence when during re-examination he testified that that in 1990 he neither spoke to and/or informed Albertina that he would give her the subject property. Consequently, the court finds that the claimant is not to be believed when he says that he never assured Albertina having regard to his very clear admissions during cross-examination. When taken in context with the contents of the letters he wrote, it was more probable than not that he promised and/or assured Albertina in 1990 and in the years following thereafter up to 2013 that the subject property was for her sole benefit and use and that he would transfer the legal title to her.

### Reliance and detriment

103. In determining whether the requirement of detriment is satisfied the court has conducted a balancing exercise, weighing the disadvantages suffered by the defendants by reason of their reliance on the claimant's assurances against the countervailing advantages that they enjoyed as a result of such reliance.<sup>19</sup>

104. The defendants submitted that they relocated from Malabar, Arima to the subject property in reliance on the claimant's assurance to transfer the subject property to Albertina. In terms of financial detriment, the defendants submitted that they incurred expenditure of over \$350,000.00 dollars in repairing and renovating the subject property. According to the evidence of Ricardo, those renovations and repairs included but were not limited to the following;

- i. The replacement of the entire roof including the construction of a ring beam to accommodate same;
- ii. The replacement of the entire upstairs ceiling
- iii. The replacement of rotting or infested flooring boards;
- iv. The replacement and rebuilding of the soak away pit or septic tank;
- v. The building of a storeroom annex;
- vi. The building of a concrete walkway to the back of the subject property;
- vii. The replacement of parts of the perimeter wall;
- viii. The installation of burglar proofing to the downstairs apartment;

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<sup>19</sup> Theresa Henry & Ors v Calixtus Henry [2010] UKPC 3 at para 51.

- ix. The redoing of the electrical wiring of the upstairs premises and adjustments to the downstairs premises to obtain a conditional inspection in respect of the downstairs;
- x. A complete overhaul of the plumbing system;
- xi. The refurbishment of the upstairs and downstairs kitchen;
- xii. The painting of the entire exterior and interior of the house.

105. During cross-examination, Ricardo was asked whether it was a fact that the sum of \$350,000.00 was spent on renovating the property and he responded by saying no. Ricardo then stated that he put a figure of \$350,000.00. Ricardo retained some of the bills for the repairs and renovations that were done to the subject property but some of the bills were misplaced. The bills which were found were given to his lawyer. Ricardo agreed that the bills which were supplied to his lawyer were those annexed to his Defence. Counsel for the claimant then indicated to Ricardo that the sum of those bills annexed to the Defence amount to about \$3,000.00. Ricardo responded by saying "*I don't know*".

106. In letter dated May 25, 2015 it was demanded that the defendants be allowed to reside in the subject property until December 31, 2017 and that the claimant compensate the defendants in the sum of \$250,000.00 or in the alternative the defendants were willing to purchase the subject property for the sum of \$400,000.00. The court notes that \$450,000.00 was written in words but \$400,000.00 was written in numbers. Counsel for the claimant enquired as to why the sum demanded for compensation (\$250,000.00) differed from the sum now being claimed (\$350,000.00). In response, Ricardo stated that it was just a \$100,000.00 difference. Counsel for the claimant then asked which figure should be believed and Ricardo stated that both figures should be believed. Quite a confusing answer.

What this demonstrates to the court is that Ricardo seemed to have no idea as to the precise sum of money expended on the property.

107. During cross-examination, Sheldon testified that the sum of \$350,000.00 was an estimate of the costs for the repairs and renovations done to the subject property. He further testified that some of the bills for the repairs and renovations done to the subject property were misplaced.

108. It is pellucid to this court that the defendants did not spend the sum of \$350,000.00 in repairing and renovating the subject property and that the sum of \$350,000.00 was an estimate. The defendants have failed to produce bills amounting to the sum of \$350,000.00. Instead, the defendants relied on receipts which total \$3,734.21.

109. However, the fact of non-production of all of the receipts is not and cannot be determinative of the issue. It is clear and the court accepts that renovations to the property would have taken place during the period 1996 and 2006. This claim having been initiated in 2016, it was more likely than not that the defendants would have misplaced some of the bills as it is seldom the case in the course of human affairs that all bills are kept especially in circumstances where one does not reasonably expect the occasion to arise whereby the bills will be needed for future use in court proceedings. Having regard to the assurances consistently given by the claimant to Albertina this is one of those cases. The court therefore accepts the evidence on the defendants in that regard.

110. Further, the court finds that the nature of the evidence led by the defendants in relation to the repairs and renovations undertaken on the subject property, namely the fact that they have condescended to specifics that appear entirely reasonable over the period, leads the court to believe

that the defendants did in fact carry out substantial repairs and renovations to the subject property in reliance upon the claimant's assurance that the subject property was for Albertina's sole use and benefit and that he would transfer the title to the subject property.

111. According to the defendants, there are the other forms of detrimental reliance which are impossible to quantify in monetary terms. The defendants submitted that it is not in dispute that for over twenty-three years they relied on the claimant's promise that the freehold title to the property would be transferred to them and that their entire lifestyle was affected by that expectation. The defendants further submitted that the aforementioned expectation created by the claimant affected them in terms of spending practices, in seeking employment opportunities and opportunities to acquire property of their own and making arrangements to provide for Albertina in her old age. The court accepts these submissions.

112. The defendants further submitted that the court also has to consider the detriment that would be suffered by them if the claimant is allowed to renege on his promise. That although it is true that Albertina owns a dwelling house in Malabar, Arima, that is her only source of income to finance her medical expenses. Moreover, that the Malabar property is not sufficient accommodation for the defendants and Sheldon's family which consists of a wife and two children. Additionally, Albertina who is now seventy-six, will become despondent and distressed in her old age if forced to vacate the subject property which she has considered her home for the past twenty-eight years.

113. The court finds the defendants would have opted to forego other opportunities to acquire property of their own in reliance on the assurance

given by the claimant to Albertina that the subject property was for her sole use and benefit and that he would transfer the title to the property to her. The court further finds that assurances given by the claimant would have affected the defendants in terms of their spending practices, in seeking employment opportunities and making arrangements to provide for Albertina in her old age.

114. In so far as countervailing advantages are concerned, the evidence establishes that the defendants have lived rent-free in the subject property since 1991 and that they obtained a rental income from the Arima property and the downstairs apartment of the subject property. It is clear from letters dated August 14, 1992 and September 21, 1992 that the claimant was aware and supportive of Albertina renting out her property in Arima and the downstairs apartment of the subject property. In letter dated August 14, 1992 the claimant informed Albertina that she could do whatever she wanted with the money she received from the rental of the downstairs apartment of the subject property.

115. In conducting the balancing exercise, the court finds that the disadvantages suffered by the defendants by reason of their reliance on the claimant's assurances outweigh the countervailing advantages that they would have enjoyed as a result of such reliance. As such, the court finds that this is a case in which a remedy can be granted to the defendants on the basis of proprietary estoppel. That it can be said that the defendants has suffered detriment in reliance on the claimant's assurances to such an extent that it would be unconscionable to allow the claimant to resile from them. The court therefore finds that the minimum equity required to do justice in this case would have been an order for the transfer of the subject property to the defendants. However, that order is unavailable due to the fact that the claimant does not yet hold legal title and further the

defendants chose to withdraw their counterclaim. The court is therefore constrained to dismiss the claimant's claim and order costs.

**DISPOSITION**

116. The order of the court is as follows;

- i. The claim is dismissed;
- ii. The claimant shall pay to the defendants the prescribed costs of the claim on the basis of the value of the claim being one for \$50,000.00 in the sum of \$14,000.00.

Judge

Ricky Rahim