

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2009-01825

Between

**(1) VONDELL TAYLOR
(2) ANNMARIE TAYLOR**

Claimants

And

VINCENT N. TAYLOR CONSTRUCTION LIMITED

Defendant

BEFORE THE HONOURABLE MR. JUSTICE PETER A RAJKUMAR

APPEARANCES:

Mr. Ronnie Bissessar for the Claimants

Mr. David Clark for the Defendant

ORAL JUDGMENT

Monday 18th April 2011

POS 16

10:48- 11:06

1. The claimants have established that representations were made to them by the defendant via Mr. Taylor. They relied on those representations. They acted to their detriment. Their occupation of the house and their agricultural activities on a portion of the land were not objected to by the defendant, but rather were with its full knowledge and consent.

2. I find that there were no restrictions placed by the defendant on the claimant's use of the land either:

- (a) for the period for which it was to be used
- (b) the area to be used; or
- (c) the activities that could be conducted thereon.

3. It is also clear however that the area of land to be occupied was not unlimited. They accept that the lands were to be available to be used for the entire family of the defendant.

4. The claimants both indicated in their witness statements the area of land that they occupied, inclusive of the house, the poultry operation and crops, was three (3) lots. I consider that evidence a more accurate reflection of the area of permitted occupation than the area currently fenced, which is approximately 6 lots.

5. The claimants have established that they are entitled to an interest in the said lands, (by which I mean 3 lots), by proprietary estoppel. There was no representation made that the area to be occupied **must** include road frontage nor was there any reason why the interest in the area comprising 3 lots had to include the specific road frontage that is now enclosed, save possibly for its proximity to the house.

6. **I propose to award an interest in 3 lots of the said land for the life time use and occupation of the claimants, with such area being inclusive of the area occupied by the house in which the claimants reside.**

7. This case has been hampered by the absence of a survey plan. In the first instance **I propose to adjourn the final determination of this matter** to permit the parties an opportunity to commission appropriate surveying expertise to advise on the most effective way to carve out the area of 3 lots, including the area in which the house stands, so as:

(a) to minimize any impediments to any proposed further sub division of the entire 6 acre parcel, as well as

(b) to ensure that it does not include an excessively large portion of frontage of the entire parcel.

8. In the circumstances it is strongly suggested that the parties should attempt to achieve this consensually, since it is in both parties' interests to do. If consensus is not achieved, the court, not possessing the requisite expertise, will be constrained to do the best it can with regard to identifying a portion of 3 lots in light of the evidence before it.

Dated the 18th day of April 2011

Peter A. Rajkumar

Judge

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APPEARANCES:

Mr. Ronnie Bissessar for the Claimants

Mr. David Clark for the Defendant

DECISION

Thursday 1st December 2011

POS 19

1. The claimants are entitled to a life interest in a portion of the property comprising 3 lots of land. I had adjourned the matter to allow for a survey to take place for those 3 lots of land to be demarcated in a way that it did not affect the potential planning permission or the value of the land, and that did not affect access to the remainder of the land.

2. In the absence of any survey having taken place, despite the opportunity having been provided, I now declare that the claimants are entitled to an interest in respect of 3 lots of land for their use during their joint lifetimes of the 3 lots of land, with a road frontage of 50 ft. – 50 ft to the front, 300 ft in depth and to include the portion of the area on which their dwelling house stands.

3. I further grant an injunction restraining the defendant, whether by itself, its servants or agents, from interfering with the claimants' possession of the lands the subject of the last order.

COSTS

4. The defendant is to pay the claimants' costs of the action in the sum of \$14,000.00 – (that is - on the basis prescribed under the Civil Proceedings Rules for an unquantified claim).

5. The Counterclaim is dismissed.

Dated this 1st day of December 2011.

Peter A. Rajkumar

Judge

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APPEARANCES:

Mr. Ronnie Bissessar for the Claimants

Mr. David Clark for the Defendant

REASONS FOR DECISION

Background

1. The Defendant, a limited liability company, is the registered proprietor of a parcel of land comprising 6 acres 1 rood and 1 perch (“the main parcel” or “the Land”). The Certificate of Title for the said Land is registered in Volume 4654 Folio 95 of the Real Property Register.

2. Mr. Vincent N. Taylor (“Mr. Taylor”) is the Defendant’s managing director and sole shareholder. The first named Claimant (“Vondell”) is Mr. Taylor’s son and the second named Claimant is Vondell’s wife, Ann Marie (“Ann Marie”). Vondell is a policeman – an acting

corporal - based in Tobago. The Claimants are in occupation of a portion of the main parcel since in or about March, 2003. They now occupy a portion of the main parcel which comprises 30,807 square feet (the said land), which is enclosed by barbed wire and has a frontage of 189 feet out of the total of 325 feet.

3. It is not disputed that:-

- (i) Mr. Taylor invited Vondell and Ann Marie to live on the said lands.
- (ii) Vondell and Ann Marie planted crops and reared poultry on the said lands, (though the extent of those activities is disputed).
- (iii) By letter dated 08th July 2008 Mr. Taylor gave written permission to Vondell and Ann Marie to cultivate one (1) acre (of the main parcel) for one (1) year commencing July 2008 (*“the permission letter”*).
- (iv) By letter dated 12th September 2008 the Company called upon Vondell to vacate the lands on or before 31st September 2008 (*“the termination letter”*).

4. The claimants claim against the Defendant for, inter alia, the following relief:

a. A declaration that they have an equity coupled with an irrevocable interest in the said Lands. (As defined by the claimants the said lands were the main parcel of approximately 6 acres but a copy of a sketch signed by the parties certifying the area and dimensions of the lands **now occupied** was admitted into evidence by consent on 14th February 2011), and it is these lands that the claimants claim.

b. An injunction restraining the Defendant, its servants and/or agents, from interfering with the Claimant’s possession of the (occupied) Land

ISSUES

6. This matter is largely one of fact. It turns upon whether I believe the evidence of the claimants or the defendant's witnesses on the issues of -

1. Whether, and if so what, representations or promises were made to them by the Defendant via Mr. V. Taylor.
2. Whether they relied on those representations or promises.
3. Whether, based thereon, they acted to their detriment.

FINDINGS

7. Having heard and considered the evidence of the witnesses for the claimants and for the defendant, I am satisfied that the claimants have established that representations were made to them by the Defendant via Mr. V. Taylor. I accept their evidence in this regard. It is, to some extent, corroborated by the evidence of Mr. Taylor himself.

8. I do not accept the evidence of the defendant that such representations as made were expressed to be for a limited period, and that the claimants knew this. I find that that was an afterthought and was inconsistent, inter alia, with the defendant's knowledge of the use that the claimants were making of the land.

DISPOSITION AND ORDERS

9. A declaration is granted that the claimants are entitled to an interest in respect of 3 lots of land, out of the main parcel, for their use during their joint lifetimes of the said 3 lots of land, with a road frontage of 50 ft. (50 ft to the front, 300 ft in depth), and to include the area on which their dwelling house stands.

10. I further grant an injunction restraining the defendant, whether by itself, its servants or agents, from interfering with the claimants' possession of the 3 lots of land, the subject of the previous order.

COSTS

11. The defendant is to pay the claimants' costs of the action in the sum of \$14,000.00, (that is, on the basis prescribed under the Civil Proceedings Rules for an unquantified claim).

The Counterclaim is dismissed.

ANALYSIS AND REASONING

The evidence

The Claimants' Evidence

Evidence of Vondell and Ann Marie Taylor

12. They assert in their witness statements that:-

- i. In October 2002 Vondell and Ann Marie were approached by Mr. Taylor with a request that they relocate from their rented apartment in Trinidad to live on the main parcel and **develop an agro business.**
- ii. Ann Marie and Vondell were not persuaded at first however but Mr. Taylor was persistent. In November 2002 the three of them visited the lands. Mr. Taylor showed Vondell and Ann Marie where they could build their own home adjoining a shed at the front of the said lands, (which was occupied by one Stephen Gonzales), and suggested, inter alia, that they would be able to utilize the lands, or part thereof, for a working farm. No limit was mentioned on the area they could use.
- iii. Mr. Taylor had made similar promises to Vondell's brothers but they declined.
- iv. Vondell and Ann Marie were still not convinced. They again rejected the offer because Vondell, in transferring to Tobago, would lose benefits as a member of the Guard and Emergency Branch.
- v. After a third visit Vondell and Ann Marie decided, in reliance on Mr. Taylor's promises, to relocate to the lands.
- vi. Between the second week in February and the end of March 2003 a two bedroom house was erected next to the shed on the lands. Mr. Taylor was very involved in the construction

works and supplied, inter alia, timber and galvanize, louvers, a toilet set, and electrical panels.

- vii. Vondell purchased hardware materials from Bhagwansingh's Hardware in Chaguanas which were shipped to Tobago. He took a loan of \$10,000.00 from FCB Limited. Both Vondell and Ann Marie also used their own monies. The costs of materials and labour were \$35,000.00 including the loan proceeds.
- viii. In March 2003 Vondell, Ann Marie and her three children from a previous relationship moved into their new home on the said lands which comprised two bedrooms, a living/dining room, kitchen, toilet and bath.
- ix. Ann Marie's three (3) children had to be enrolled in schools in Tobago.
- x. Vondell had to apply for a transfer which he did by letter dated 15th April 2003. He obtained the transfer. He lost the opportunity to make overtime. They saved \$800.00 per month in rent.
- xi. Ann Marie started planting the said lands in late 2003; she cleared **three (3) lots** around the dwelling house and planted sweet potatoes, pimentos, tomatoes, seasoning and lettuce. Vondell and Ann Marie hired help and purchased seedlings, fertilizer and farming implements. In 2003/2004 they earned a profit of \$15,000.00 from revenues of \$30,000.00. The produce was sold in the market and to wholesalers.
- xii. By the end of 2004 three (3) lots were under cultivation; Mr. Taylor was a frequent visitor. He complimented Vondell and Ann Marie on their cultivation and even offered advice.
- xiii. On 26th December 2004 Vondell and Ann Marie were sufficiently settled to get married. Mr. Taylor was present at the wedding.

- xiv. Between 2005 and 2007 Vondell and Ann Marie continued cultivating the said lands and earned \$30,000.00 in 2005 and \$35,000.00 in 2006 Ann Marie claims that these are the gross figures and that average annual profit was \$20,000.00.
- xv. Vondell claims they invested \$65,000.00 in poultry rearing in 2007. Ann Marie says it was \$80,000.00.
- xvi. They claim that Mr. Taylor was aware of the investments that Vondell and Ann Marie made and of their commercial agriculture and poultry business. He disputes this.
- xvii. She is adamant that Mr. Taylor never said that they could not farm or rear poultry and, in fact, complimented them on how well they were doing with the property.
- xviii. In September 2008 Vondell says he erected a barbed wire fence to enclose the area they occupied. (In fact Ann Marie says it was in October 2008). Vondell and Ann Marie both assert that that area was just over 3 lots. In fact, according to the plan put into evidence by consent they had enclosed 30,807 square feet of the lands and with a frontage of 189 feet out of a total road frontage of 325 feet. The timing of the wire enclosure is important as Mr Taylor asserts that they only did so after receiving the termination letter and sought to greatly increase the area they occupied in preparation for making a claim. The timing of the fence, and the enclosure of more than double the area they admit to occupying, supports this.

Mr. Taylor's evidence

- 13. In his witness statement **Mr. Taylor** stated as follows:
 - i. In paragraph 2 he says that the said Land is very suitable for development for mixed residential and commercial use. He has always intended that the Defendant should develop the said Land along the above lines but **no development had taken place as yet nor has the Defendant obtained any planning approvals for same.**
 - ii. In paragraph 3 he says that there was an existing wooden temporary building on the Land made of wood and ply board which had been built by him in or about 2001. There was

also a galvanized shed used for storage of materials located on the Southern side of the wooden building and attached to it.

- iii. In paragraph 4 (2) he says that the Claimants originally occupied a portion of the main parcel comprising approximately 2 lots and that in or about October or November, 2008 they fenced additional land without the Defendant's permission so that they now occupy a portion comprising approximately 1 acre. In fact the fenced area is now agreed to be approximately 30,000 square feet or a little over 6 lots.
- iv. In paragraph 4 (3) he admits initiating discussions with the claimants for their relocation from the island of Trinidad to the island of Tobago and describes his reasons for wanting Vondell to come and live in Tobago and occupy a portion of the main parcel.
- v. His motivations had nothing to do with any problem of squatters on the said Land or the development thereof for an agro business.
- vi. In paragraph 4 (5) he **denies that the Claimants would be permitted to build their own house.** He says that he agreed to assist in **fixing** and **extending** the existing temporary wooden building. He did not give the Claimants permission to utilize the said Land for agricultural or poultry rearing but **told them that they could plant a kitchen garden and keep animals such as chickens for their personal use.**

I find that monies must have been expended by the claimants in making the wooden building habitable, even with Mr. Taylor's assistance.
- vii. In paragraph 4 (6) he denies there were any squatters on the said Land or a problem with Stephen Gonzalez. (I find that the references to Gonzales or squatters do not take the case any further in light of the undisputed fact that the defendant invited and encouraged the claimants to come and stay on the lands, whatever his motivations.)

In fact there were no squatters on the land, and Gonzales did move out uneventfully.

- viii. In paragraphs 4 (8) and (9) he recounts a conversation with Vondell in which he tells him that there were no set plans for the development of the said Land because there were discussions at the company level how to go about getting the planning permission for development and that would take time and **in the meantime** the Claimants could **temporarily occupy** a portion of the said Land comprising about **two lots** and **make a kitchen garden** and **raise a few animals** for personal use. He also reminded Vondell about a neighbour to the East of the said Land who had a chicken farm which was closed down by the Health Department and said that he must not allow the same thing to happen to him. He told him that he would assist in the hiring of the necessary labour and materials use to extend the existing wooden building. Mr. Taylor pointed out that **his plan was that Vondell would occupy** the wooden building and **when he returned to Trinidad** another sibling would take over until they caught themselves financially and they would move and so on **until the Defendant got the necessary permission to develop the said Land**. In fact up to the time of trial such permission had not been obtained.
- ix. Mr. Taylor suggested under cross-examination that he had specified a period of 5 years to the Claimants. In fact no such period was specified in his witness statement.
- x. In paragraph 4 (11) Mr. Taylor denies that Vondell informed him that the transfer to Tobago would result in loss of income or prospects of promotion in the Police Service. He also denies that Vondell ever requested or that he (Mr. Taylor) ever gave him permission to cultivate crops for sale.
- xi. In paragraph 4 (12) Mr. Taylor denies that it was the Claimants who built a dwelling house on the Land. He states that he arranged to repair and extend the temporary wooden building and transferred 4 workmen from his work crew to work on the project and he supervised them. He provided tools and even did some of the work himself. He supplied several materials that are itemized.

- xii. In paragraph 4 (13) Mr. Taylor disputes the Claimants' claim to have spent \$35,000.00 on their house as he claims that the greater part of the cost of extending the wooden building was incurred by him in payment to the Defendant's workmen and in the purchase and supply to the Claimants of materials, without charge.
 - xiii. In paragraph 4 (14) Mr. Taylor states that the Claimants cultivated 1 lot of the Land. In that context. He draws attention to the fact that Vondell was working full time as a police officer and Ann Marie was working part time on cruise ships. Hence they would have been unable to devote the time alleged to agriculture. In fact as the claimants had hired labour on occasion, and the planting was seasonal such cultivation is not as unlikely as Mr. Taylor contends.
 - xiv. In paragraph 4 (16) Mr. Taylor denies that he ever encouraged the Claimants to invest in equipment and machinery for farming since they knew that their occupation was temporary.
 - xv. In paragraph 4 (17) Mr. Taylor denies that the Claimants started rearing poultry for sale in or about late 2007. At the time the Claim was filed on May 22, 2009 there was only 1 small shed on the said Land measuring approximately 8 feet x 8 feet used by the Claimants to mind chickens for their own use. Since then they have erected a few more fowl coops. The fence was only erected in or about October or November, 2008. All these steps were taken by the Claimants after the Defendant had given them notice to vacate and deliver up the said Land. I find that his date for the fencing is correct as the date of fencing - October 2008 was confirmed by Ann Marie. This is in fact after the termination letter. It is therefore, on a balance of probabilities likely that the poultry farming expansion also took place after that letter, as Mr Taylor claims.
14. The Defendant counterclaimed, inter alia, for an order directing the Claimants to deliver possession of the said 1 acre parcel to the Defendant.

Other witnesses

15. Vincent Jr. is a director and the secretary of the Defendant. I place little reliance on his evidence. It was abundantly clear that he had come to support his father's case and that his allegiances lay there.

16. Similarly I place no weight on the evidence of Vondell's twin brother.

FINDINGS

The alleged expenditure in building the house

17. As regards the alleged expenditure in building the house, the Claimants claim that they spent \$35,000.00 in building their house. Mr. Taylor denies that they spent so much. They have produced bills, but to the extent only of \$2,210.21, and produced evidence of a loan from First Citizens Bank in the sum of \$10,000.00.

18. Vondell claims that he did not keep most of the bills because he never expected to have to prove the expenditure. This expenditure was specifically denied in paragraphs 11 and 12 of the Defence filed on July 7, 2009.

19. It was contended that the Claimants knew that they needed to prove this expenditure at the trial and that it would be of fundamental importance to their case. Yet they never produced any secondary evidence such as credit card statements, cancelled cheques, or bank statements which could have shown (i) the existence of adequate funds at the time the house was built and (ii) withdrawals or debits in sufficient amounts to meet the alleged expenses.

20. It was contended further that the Claimants were able to produce a copy of First Citizens Bank's Consumer Credit Disclosure Statement dated February 3, 2003 to support the loan of \$10,000.00, and therefore could equally have produced other documentation from that time. Accordingly the Court would be entitled to conclude from such failure that bank statements, cheques and other documentation was not produced as it would not have assisted them in proving their case, and entitled to reject their claim that the sum of \$35,000.00 was spent by them.

21. I consider that the fact that, after all these years they have not been able to substantiate the majority of that expenditure with bill and receipts, is not particularly important in the context of this case. It would not be reasonable to expect them to in the circumstances.

22. I find that the extent of their investment in the house is also not particularly important as their alleged income from agriculture exceeded even their maximum alleged expenditure on the house, even if they had supported that expenditure by bills, receipts and statements. Any claim to financial detriment, based on alleged expenditure on the house, must be considered in that context.

23. It was submitted that the claimants did not spend any money in improvements to the house even though it was a very modest building, and that this was indicative of the claimants' acceptance that their tenure on the said land was limited in duration, as they therefore would not have invested in a structure which it was intended they would eventually vacate.

24. I am unable to read that much into this evidence and draw no such conclusion therefrom. The evidence is unclear as to whether their income was such that priority could be given to improving this structure even if they thought they had permission to reside there indefinitely.

25. What is undisputed is that they lived in that house and that it formed the base of their activities – school, work, farming, for several years - with the knowledge of and active encouragement by Mr. Taylor.

Alleged specific poultry business

26. Vondell says that they invested \$65,000.00 in the poultry business (Ann Marie claims that they spent \$80,000.00. The Claimants knew that the alleged investment by them of \$65,000.00 in the poultry business would be an important part of their case. Even though that business was allegedly in operation shortly before the Defendant demanded possession of the portion of the said Land that they occupied, they never produced any documentary evidence to support the expenditure. This is a business expenditure for which the Claimants are required for tax purposes to keep proper records yet they did not do so. Ann Marie under cross-examination said that she had records, save for payments for labour. Yet they were not produced.

27. It was submitted that the court would be entitled to conclude that no bills or receipts were produced because these would have shown that the expenditure took place in October or November, 2008 when, according to the evidence of Mr. Taylor and Vincent Jr., the Claimants started the poultry business and erected the barbed wire fence, i.e. after the letter of September 12, 2008 to vacate the said Land had been served on Vondell.

28. Such a business would have affected the surrounding remaining area of the main parcel for which Mr. Taylor always had further plans. I accept the evidence of Mr. Taylor that he would have objected to such a business because of the experience of a neighboring land owner / occupier. No documentation was produced. I find that the alleged investment in the poultry business was not proved.

Foregone promotional prospects and overtime

29. Vondell claimed to have given up guard and emergency branch employment and the overtime that he was getting there. I find this is unproven. If that were of such significance then the savings of \$800 per month in rent would not have been sufficient incentive to relocate to Tobago. The future profits from agriculture were then an unknown quantity.

Alleged general agribusiness

30. The Claimants' claim that Mr. Taylor always wanted to establish an **agro business** on the Lands and expressed satisfaction at their achievements in farming. The description of the poultry rearing operation, together with a small scale production of short term crops, would need to be supported by far more cogent evidence of profitability to properly qualify for that description. I have found that the profits and scale of the poultry operation remain unproven. Although there is little reason on the evidence to doubt that they did make profit from cultivation of crops on a small scale even at \$30,000.00 per year profit the average monthly profit would have been just \$2500.00 per month. (The profitability of that production however must be taken into account just as their alleged expenditure on the house).

31. Further, when the Claimants asked for his written permission to farm for the purpose of their application for a farmer's licence he specifically limited the permission to 1 year and 1 acre.

This represented a substantial expansion of the area that they had previously cultivated, which on their own evidence was limited to **approximately 3 lots**. This clearly demonstrates that there was a limit to the area of land for which Mr. Taylor was prepared to permit occupation.

32. Further Mr. Taylor thereby made it clear that for this expanded area it was for a limited period. However, this letter also confirms that Mr. Taylor's assertion for the first time in the witness box that he had intended a time frame of 5 years was an afterthought. The letter was issued after the alleged 5 year period would have elapsed. Further that alleged 5 year period was never the subject of an agreement. Mr. Taylor was careful to say that it was discussed but himself drew the distinction between discussion of the alleged 5 year period, which he claimed they had, and an agreement on the 5 year period, which he accepted, it was not.

33. The Claimants accepted this and presented the document to the ADB. Both Claimants in their respective witness statements (paragraph 23 of Vondell's and paragraph 19 of Ann Marie's) say that they asked Mr. Taylor for his consent for the lands to be used as security.

34. I find that it is inherently unlikely that Mr. Taylor would have given the Claimants a carte blanche to develop all the said Land for agro business. This is especially the case where the Defendant had applied on one (1) occasion before they commenced occupation, for planning permission to develop the said Land for mixed residential and commercial use. Vondell himself recognized that the land was intended to benefit all Mr. Taylor's family, not only the claimants.

35. The establishment of a significant agro business on the said Land would have been inconsistent with any further application for approval of similar uses. Mr Taylor admits that he did not tell the claimants of this further application.

36. In fact I find that the concept of an agro business appears to be subjective in this case, and exaggerated by the claimants to bolster their claim. They did farm a part of the land 3 lots and supplemented their income with the sale of produce. The alleged expansion and alleged profitability of the poultry business I find to be an exaggeration unsupported by any bills and I decline to accept that even if poultry was sold at a profit on occasion, that it was as profitable as claimed, that the investment in it was as great as claimed, that it was a business contemplated by

the defendant at the time that he invited them, or even that he approved of or encouraged that particular business.

37. Even in paragraph 4 (8) of Mr. Taylor's witness statement he claims that he told Vondell they intended to seek planning permission for development, that that would take time, and **in the meantime** the Claimants could **temporarily occupy** a portion of the said Land comprising **about 2 lots** and make a **kitchen** garden and **raise a few animals** for personal use. The vague reference to **temporary** occupation "**in the meantime**" glosses over the reality of what actually took place.

FINDINGS

38. The claimants were invited to come to Tobago to occupy the said land. On his own evidence Mr. Taylor gave permission to the claimants to use about 2 lots of land. The claimants were encouraged to carry out agricultural activities, (on whatever scale), over a portion of the said lands. I accept their evidence and I find they initially occupied an area comprising 3 lots. This is not much different from the area of "about 2 lots" that the defendant had invited them to, and gave them permission to occupy and cultivate. In fact they used 3 at first, (and then extended it to around 6 lots – whether before their permission was revoked or after is in dispute). I find that neither the area nor the period of occupation was ever defined or limited, save that it was not with respect to the whole of the main parcel and did not extend to full ownership of the main parcel.

39. Mr. Taylor never intended to provide the benefit of the entire land to the claimants exclusively. It was recognized, even by the claimants, that it was family land for the benefit of his entire family, including his grandchildren.

40. They invested money in the house - I find the extent of the investment is not particularly important, nor the fact that after all these years they have not been able to substantiate with bill and receipts the majority of that expenditure. It would not be reasonable to expect them to in the circumstances. What is undisputed is that they lived in that house and that it formed the base of

their activities – school, work, farming, for several years - with the knowledge of and active encouragement by Mr. Taylor.

41. The claimants relocated and uprooted their children to come to Tobago to live in a modest house and establish their lives there. The fact that they now seem to have established themselves there is to their credit. It is also to the credit of Mr. Taylor as this is what he set out to achieve- setting up his son in a stable and productive life situation. I find that the time frame for “in the meantime” was never specified.

42. Despite his protestations that his invitation to use the land was only for a limited duration it is clear that this was an afterthought under cross examination as it is referred to nowhere in the pleadings nor the witness statement.

43. Mr. Taylor always had a long term vision for all his family. The claimants were not excepted from this vision. He wanted to see all his children and his grandchildren, established in meaningful and productive situations to the extent that he could, with the land being central to those efforts.

44. The road to the present situation was clearly paved with good intentions. The ambiguities in that arrangement have led to the present point.

45. The claimants asked Mr. Taylor for written permission to farm 1 acre, which he granted. The ADB then enquired of him whether he would be prepared to grant a security interest in the land as collateral for the loan that the claimants sought from the ADB.

46. That appears to have raised suspicion and alarm that the claimants were seeking to exert rights of ownership over the whole of the main parcel far in excess of the rights of occupation that Mr. Taylor had granted them, or had intended to grant them. He had sought planning permission a second time to develop the said land but I find that this was unknown to them.

47. The extent of their occupation was increased with the establishment of a poultry rearing operation, and the enclosure of 6 lots of land, whether before or after the termination letter. I find that it is suspicious that no records of the investment and profitability of that operation were

produced, and I therefore infer that they would not have supported the claimants case on this alleged operation – neither the extent of investment in it nor the dates when the alleged investment were made.

48. Mr. Taylor has clearly fallen out with the claimants. His animosity toward them pervaded his testimony. He has clearly changed his attitude toward their occupation of the defendant's land, and has sought to minimize the extent to which he encouraged the claimants to relocate to Tobago from Trinidad, where Vondell was already employed, and the claimants and Ann Marie's children were already settled and established. I find that his evidence was in substance forthright and generally truthful but with a distinct bias in this regard.

49. He also sought to downplay the significant extent to which his actions led them to believe that their occupation of the land was secure, to the point where the claimants' children were established in schools in Tobago, the claimants expanded their efforts at agriculture, and Ann Marie applied for a loan and a farmer's licence, and Mr. Taylor, on behalf of the defendant, issued the permission letter for farming in respect of one acre of land in 2008 - a substantial increase in the area occupied. I find that no time limit was specified for the claimants' occupation of a portion of the main parcel, and no express limit was placed on the area to be occupied, except in the permission letter.

50. I find that once the area occupied by them was confined to 3 lots their occupation was not contentious, and in fact it was encouraged and supported by Mr. Taylor.

LAW

51. The Claimants' claim is based on the principle of proprietary estoppel.

PRINCIPLES

52. The case of **Thorner-v-Major and Ors [2009] 3 All ER 945** (House of Lords) was cited - per Scott LJ at 951 (h) where he noted:-

*“Lord Walker, in paragraph 29 of his opinion (@page 957) below identified the three elements requisite for a claim based on **proprietary estoppel** as first a representation made*

or assurance given to the claimant; second a reliance by the claimant on the representation or assurance; and third some detriment incurred by the claimant as a consequence of that reliance.

These elements would, I think, always be necessary but **might**, in a particular case, **not be sufficient**. Thus, for example, the representation or assurance would need to have been sufficiently **clear and unequivocal**; the **reliance** by the claimant would need to have been **reasonable in all the circumstances**; and the **detriment** would need to have been **sufficiently substantial** to justify the intervention of equity”.

Proprietary Estoppel

53. “ 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.**

1. Promise

54. The claimants must establish that the defendant had **represented** that they will obtain an interest in property “either by making an express promise ..as .. where .. a mother assures her daughter that she will have the family home for life .. or by encouraging the claimant to believe that she will obtain such interest by words or conduct .. or by encouraging the claimant's belief passively by remaining silent. **It is not necessary for the claimant to prove that the defendants agreed that the promise or assurance would be irrevocable since it is the claimant’s detriment which makes the assurance binding and irrevocable provided that it was clearly intended to be acted upon.** ” See **Snell’s Principles of Equity 31st Ed. ibid**

55. Even on the defendant’s own evidence it is clear that representations or assurances were made to Vondell and Ann Marie at minimum that they would be allowed to live on at least 2 lots of the main parcel and to cultivate a kitchen garden and raise a few animals.

2. **Their belief must have been encouraged by the titleholder or his agent** or predecessor in title. This may be done **actively or by passively looking on while the person spends money on one's land.** See” **Snell’s Principles of Equity 31st Ed. ibid.**

56. I find that it is abundantly clear on the evidence that Mr. Taylor actively encouraged the claimants in their expectation or belief that they would be entitled to live on some portion of the main parcel, in the house, would be permitted to carry out agricultural activities there, and that their occupation would not be disturbed.

57. Though he always considered the entire main parcel to be his own, or the defendant’s (it makes no difference in this case), Mr. Taylor:-

- a. did not tell the claimants about the further application for planning permission to develop the main parcel;
- b. did not tell the claimants that he had in mind a 5 year time limit for their occupation;
- c. did not remind the claimants of this alleged time limit or bring it to their attention subsequently;
- d. further encouraged the claimants, and expressly represented to them, by the permission letter in July 2008 after the expiration of the alleged time limit, - that their occupation could be expanded to as much as one acre, for a period of one year.

The termination letter was abruptly issued 3 months after.

3. **Expectation or Belief -**

They must have acted in the belief either that they already owned sufficient interest in the property to justify the expenditure or that she would obtain such interest. See **Snell’s Principles of Equity 31st Ed. Para. 10-18**

58. I find that the Claimants were granted the right to occupy the said land rent free and no period was specified. Their expenditures thereon were permitted and in fact encouraged by the defendant and not objected to. See **Snell’s Principles of Equity 31st Ed. Ibid.**

59. They were actively led to believe that this arrangement was permanent, and Mr. Taylor sat by and watched them spend money on developing the land for small scale agriculture. In fact he even signed the permission letter in July 2008, recognizing that the claimants intended to

expand their agricultural activities and investment on the main parcel of land. It is even possible, based on his witness statement that the idea for some form of agriculture – kitchen garden and raising a few animals – may even have come from Mr. Taylor himself.

60. I find that their occupation of 3 lots of land for several years until September 2008 was known to Mr. Taylor and actively supported and encouraged by him, to the extent that he was prepared on behalf of the defendant to acquiesce in July 2008 to a significant expansion of their farming operations, though for the limited period of one year in respect of the expanded area.

4. **They must have incurred expenditure or otherwise acted to their detriment. See” Snell’s Principles of Equity 31st Ed. Ibid**

Reliance

61. Vondell and Ann Marie relied on these representations and assurances and relocated to the said lands. That reliance was reasonable in the circumstances of Mr. Taylor’s encouragement and persistence.

Detriment

62. They allegedly suffered detriment as a consequence of that reliance. That detriment alleged by the claimants in their submissions must be examined carefully.

Vondell transferred to Tobago – the alleged loss of pay suffered and loss of promotional prospects is not established on the evidence. It is a mere unsubstantiated assertion by Vondell.

Ann-Marie had to enroll her three (3) children in new schools in Tobago; I find that this was a significant though temporary inconvenience and detriment.

Both Vondell and Ann Marie expended monies in erecting a new home;

63. Even on their own evidence the monies expended were exceeded by income from agricultural activities in later years, even without taking into account alleged unproven profits from poultry farming.

The personal sacrifices and social dislocation involving the whole family to make a new life for themselves in Tobago

64. By the following year the claimants were sufficiently settled to get married. However the very fact that they were so settled, and remains so, was the result of Mr. Taylor's assurances to them. I accept their evidence that they relied on those representations and they acted to their detriment. I accept that the move to Tobago involved a substantial dislocation of the claimants' lives in Trinidad, and would not have been undertaken unless the assurances they received did not stipulate a time period for their occupation of the defendant's land.

65. I find that no time period or express limit on area of occupation was ever communicated to them. They arranged their lives on the promise of Mr. Taylor that they could live on the main parcel while recognizing that the main parcel was for the eventual use of the entire family of Mr. Taylor.

66. It would be inequitable to permit the defendant to now resile from those assurances and representations, and require the claimants to vacate the land they had come to rely upon to supplement their income and on which they have established a home. They have foregone the opportunity to have established and arranged their lives differently in Trinidad, and have committed to a different way of life in Tobago, with agriculture as a key component.

67. I take into account the Privy Council case of - **Knowles v Knowles** Privy Council Appeal No 28 of 2007 delivered the 9th June 2008 where the Privy Council was mindful of depriving an owner of property who had done nothing at all to encourage any belief that the occupants could treat the property as belonging to them:

"In Jennings v Rice [2002] EWCA Civ 159; [2003] 1 P & CR 100 Robert Walker LJ said at para 56 that the essence of the doctrine of proprietary estoppel is to do what is necessary to avoid an unconscionable result. In the opinion of their Lordships it would be unconscionable in this case to deprive George of his property when he had done nothing at all to encourage any belief that his brother and sister-in-law could treat the property as belonging to them. While recourse to the doctrine of estoppel provides a welcome means of effecting justice when the facts demand it, it is equally important that

the courts do not penalise those who through acts of kindness simply allow other members of their family to inhabit their property rent free. In E & L Berg Homes Ltd v Grey (1979) 253 EG 473, [1980] 1 EGLR 103 Ormrod LJ said at p 108:

“...I think it important that this court should not do or say anything which creates the impression that people are liable to be penalised for not enforcing their strict legal rights. It is a very unfortunate state of affairs when people feel obliged to take steps which they do not wish to take, in order to preserve their legal rights, and prevent the other party acquiring rights against them. So the court in using its equitable jurisdiction must, in my judgment, approach these cases with extreme care.”

68. In this case I have no doubt that the defendant encouraged the claimants in the occupation of the said land, and actively invited their relocation and resettlement thereon, without specifying any time limit for that occupation or any specific limit on the extent of such occupation.

69. Moreover he was a frequent visitor to the said land and he was well aware of occupation by the claimants of at least 2 lots of the land that he admits to, and, more probably, 3 lots thereof. He did more than simply allow the claimants to inhabit the land rent free.

How would any equity be valued?

70. I do not consider that any level of expenditure, however minimal, would give rise to an equitable right to remain in possession for life, especially expenditure outside of the terms of their initial permission.

71. However I accept that a balancing exercise must be conducted and that any interest created by the operation of equity must be in proportion to the claimants' detriment, if any, which must be assessed taking into account **all** the circumstances.

Balancing Exercise

72. Accordingly the nature of the detriment (if any) suffered by the Claimants in relocating to Tobago and the Defendant's expenditure on the land must be balanced against their rent free occupation of premises for several years, and profits from agriculture.

73. In this case it is quite arguable that when the **profits** from cultivation are taken into account, (even ignoring the alleged investment and profits from expanded poultry farming, which I find not proved, and in all probability, embarked upon after the termination letter), they offset the expenditures by the claimants on the renovation/ construction of the dwelling house. (By definition of course they exceed any **investment** in agriculture on the land). Even assuming that the claimants sustained on balance zero **monetary** detriment, the nature of the detriment in relocating to Tobago remains to be considered.

74. I find that in this case it is difficult to underestimate the dislocation that would be occasioned by permitting the defendant to resile from its assurances made via Mr. Taylor.

75. The claimants would be left without a home. They would be without a means of supplementing Vondell's employment income from the profits of agriculture. They would have to relocate once again and reestablish themselves somewhere else, when they had been led to believe by Mr. Taylor's assurances that they could settle on the main parcel, repair the house thereon, and occupy it and cultivate and farm part thereof.

76. An unconscionable result in all the circumstances of this case would be to permit the defendant to resile from the assurances made on its behalf by Mr. Taylor to his son, completely disrupt the lives of the claimants established and based upon those assurances, and exonerate the defendant from the consequences.

77. I find the equity arising from the facts that I have found, can, in order to avoid that unconscionable result, best be satisfied by an order that gives effect to what I find was the assurance/ representation made by the defendant, repeatedly and over a period of years, namely that the claimants could occupy a portion of the main parcel with no time limit ever being

specified, and their reliance thereon in occupying 3 lots of land and farming it without objection, and in fact with the active encouragement of Mr. Taylor.

78. Accordingly it is ordered as follows:-

DISPOSITION AND ORDERS

- i. A declaration is granted that the claimants are entitled to an interest in respect of 3 lots of land out of the main parcel for their use during their joint lifetimes of the said **3 lots** of land, with a road frontage of 50 ft. (50 ft to the front, 300 ft in depth), and to include the area on which their dwelling house stands.

- ii. I further grant an injunction restraining the defendant, whether by itself, its servants or agents, from interfering with the claimants' possession of the said 3 lots of land, the lands the subject of the above order.

COSTS

79. The defendant is to pay the claimants' costs of the action in the sum of \$14,000.00, (that is - on the basis prescribed under the Civil Proceedings Rules for an unquantified claim).

The Counterclaim is dismissed.

Dated this 31st day of December, 2012.

Peter A. Rajkumar

Judge