

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2009-02823

BETWEEN

GILLIAN THOMSON

AND

GISELLE THOMSON-LOWE

Claimants

AND

GUNBRIDGE ENTERPRISES LIMITED

Defendant

BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

APPEARANCES:

Ms. S. Chote instructed by Ms. T. Hadad-Maharaj for the Claimants.

Mr. P. Lamont instructed by Ms. K. Piper for the Defendants.

JUDGMENT

Index	Page
Background	4
The Family Arrangement	6
Issues	7
Disposition	8
Orders	9
Analysis and Reasoning	10
The Claims	10
Litigation Chronology	14
Medical Chronology	15
Evidence of the first named claimant	16
Evidence of the Defendant	32
Cause of Action Estoppel and abuse of process	37
The Effect of the Family Arrangement	41
The 1998 Mortgage	46
Finding	48
Care by Gillian	49
Expenditure by Gillian	52
Promissory Estoppel	52
Proprietary Estoppel	52
Finding	53
Gillian's right to occupy an apartment	54
Findings	56
Alleged termination of permission	58
Chronology	58

The compromise of the 2002 action by consent order	62
Whether Gunbridge was entitled to terminate the claimant's permission to occupy the said apartment	62
Conclusion	63
Whether eviction lawful.	64
Circumstances of eviction	65
Abuse of Court's Process	65
Trespass to the person – Assault	66
Trespass to Goods	68
Conclusion	68
Orders	70

Background

1. Gill Thomson was married to Ursula Patricia Thomson. Their six children included Gillian (the first named claimant, and the mother of Giselle – the second named claimant), Ian and Roger (the shareholders of the defendant company) and Cecilia.

2. The Second Claimant is the daughter of the First named Claimant and the granddaughter of Ursula and Gill.

3. Property at No.19 Alcazar Street St Clair, (the said property) was originally owned by Gill.

4. The defendant company, Gunbridge, was incorporated on August 17 1995.

5. In or around March 12 1998 Gill transferred the said property to the defendant company Gunbridge.

6. On 23rd July 2009 the claimants were evicted from their occupation of an apartment, (one of four) situate on the said property and claimed inter alia damages for trespass to their persons and damage to their property.

7. The defendant asserts that it was entitled to do so as the claimants were trespassers, who had exceeded any permission, express or implied, that had been afforded them, after any such permission had been revoked.

8. The claimants however claim an interest in the property, the legal title to which is vested in the defendant Gunbridge by virtue of Deed of Assignment dated the 12th March, 1998.

9. The claimants contend that the transfer of the said property, which had been owned by Gill, was subject to a trust by which both Gill **and** his wife Ursula, (mother of the first named claimant) retained an interest, and Ursula and/or Gill retained a sufficient interest to enable her, in turn to confer an interest upon the first named claimant, or alternatively a permission, so as to entitle her to remain on those premises.

10. This action on the face of it arises from the act of the defendant on July 23 2009 in evicting the claimants from their occupation of an apartment – the said apartment, which was occupied by them with Ursula, (who was their mother and grandmother respectively), until Ursula left the premises on or around March 6 2008.

Family Arrangement

11. The circumstances leading up to that eviction however began long before that. In 1995-6 a family arrangement was entered into. The details of that arrangement are the subject of dispute. However it is accepted by all parties that the effect of that arrangement was that the property at Alcazar Street – the said property, would be vested in the defendant Gunbridge.

12. It is not in dispute that the defendant Gunbridge was formed and that the said property was transferred to and vested in it pursuant to the family arrangement made in or around 1995 or 1996. Further, after the transfer of the said property to Gunbridge, Ursula and Gill instituted legal proceedings (against Gunbridge and their four sons including Roger and Ian (“the 2002 action”)) to inter alia set aside that transfer, which proceedings were compromised after the death of Gill resulting in a consent order (“the 2009 consent order”).

13. It is also not in dispute that under the family arrangements

(i) The defendant was to take out a mortgage. This was done.

(ii) The said property was to be renovated and converted into 4 apartments. This was done.

(iii) All the children of Ursula and Gill were to be members of the defendant.

14. Is further accepted that Ursula repaid to her sons, Roger and Phillip the sums of \$200,000.00 and CAN \$25,000.00 respectively which they had allegedly spent on renovations

Issues

15. 1. Whether the claimants are debarred by the doctrines of issue estoppel, or abuse of process arising from the determination of the 2002 action from asserting that any one, other than the defendant Gunbridge had an interest in the said property or the said apartment

a. If not, did a trust arise, express, constructive, or resulting, in favour of Ursula.

b. Assuming such a trust existed in Ursula's favour are the claimants entitled to rights of occupation of the said apartment so as to preclude them being trespassers.

2. The effect of the family arrangement

3. Whether Gillian is entitled to any rights over the said apartment by virtue of

a. The family arrangement.

b. Representations made by Gill and /or Ursula.

c. Permission / licence to occupy by Ursula.

4. Whether any permission the claimants enjoyed through Ursula had been revoked.

5. Whether the eviction of the claimants was lawful.

6. Whether Gillian was entitled to any rights in respect of Gunbridge.

7. Whether, even if the claimants had become trespassers, the defendant was entitled to evict the claimants in the manner it did.

8. Whether the claimants have established any entitlement to

(a) damages for trespass to the person, or

(b) trespass to goods.

and if so, to what extent.

Disposition

16. 1. The first claimant is not debarred by issue estoppel from instituting these proceedings seeking to establish her own claim to the said apartment, and the action is not an abuse of process.

2. The family arrangement created an express trust for the benefit of all six of the children of Gill and Ursula.

3. Gillian had no rights to the said apartment by virtue of the family arrangement.

4. Gillian has not established that even if representations were made to her by Gill and Ursula that she relied on them to her detriment to an extent sufficient to create an interest in the said apartment. Further, even if she did, any such interest could not exceed the contractual licence to occupy for Ursula and Gill's lifetime that the compromise of the 2002 action established.

5. The claimants were entitled to occupy the said apartment by virtue of permission from the 1st claimant's mother Ursula.
6. That permission was not revoked by Ursula.
7. The eviction of the claimants by Gunbridge from the apartment that Ursula was entitled to occupy for life was unlawful.
8. The eviction was also unlawful by virtue of the use of excessive force.
9. Gillian was entitled, under the trust established by Gill, to a one sixth share in the ownership of Gunbridge, and entitled to a one sixth shareholding.
10. The first named claimant is entitled to damages for the assault and injuries that she sustained in the course of the eviction.
11. The claimants are entitled to nominal damages for the damage, detention, and theft of their items by the servants and/or agents of the defendant.

Orders

17. Accordingly it is ordered as follows:
 1. A declaration is granted that the actions of the Defendant, its servants and/or agents, on the 23rd July, 2009 in forcibly evicting the Claimants from the premises situate at #19 Alcazar Street, St. Clair were unlawful;
 2. A declaration that the defendant company holds the premises at # 19 Alcazar Street , St. Clair on trust for the first named defendant, (as well as all the other children of Gill Thomson, including Phillip Thomson, David Thomson, Roger Thomson, Ian Thomson and Cecelia Thomson).

3. In respect of the first named claimant, the defendant is to pay damages for trespass to the person in the sum of \$15,000.00.
4. In respect of the first and second named claimants the defendant is to pay nominal damages for wrongful interference with the Claimants' goods and/or trespass to the Claimants' goods and/ or detention and/ destruction of the Claimants' goods in the sum of \$15,000.00.
5. A Declaration is granted that the 1st named Claimant is beneficially entitled to a one-sixth share in the Defendant Company.
6. An order that the Defendant company by its Board of Directors do issue the requisite number of shares representative of a one-sixth share in the Defendant company and do allot same to the 1st Claimant herein within 14 days of the date hereof.
7. Provided that the defendant issues the shares to the first named claimant as above the claimants are to vacate the said apartment on or before May 31, 2011.
8. Each party, being partly successful and partly unsuccessful on the issues raised herein, is to bear its own costs.

Analysis and reasoning

The Claims

18. The 1st claimant claims against the defendant for:
 1. Damages for Trespass to the person;

2. A Declaration that the Defendant is estopped from denying the beneficial interest of the First Claimant in the premises situate at #19 Alcazar Street, St. Clair and her right to possession thereof;
 3. A Declaration that the First Claimant is beneficially entitled to a one-sixth share in the Defendant Company and to be appointed a Director of the Defendant Company;
 4. An order that the Defendant Company by its Board of Directors do issue the requisite number of shares representative of a one-sixth share in the Defendant Company and do allot same to the First Claimant herein for and at the same consideration that the original shares were sold to Roger and Ian Thomson;
19. Both claimants claim against the defendant for inter alia;
1. A Declaration that the actions of the Defendant, its servants and/or agents, on the 23rd July, 2009 in forcibly evicting the Claimants from the premises situate at #19 Alcazar Street, St. Clair were unlawful;
 2. Damages for trespass;
 3. Damages for wrongful interference with the Claimants' goods and/or trespass to the Claimants' goods;
 4. Damages for detention of the Claimants' goods;
 5. Damages for conversion of the Claimants' goods listed in schedule A;
 6. Delivery of the said items listed in schedule B;
 7. Special damages;
 8. Damages for negligence;
 9. Damages for the destruction of the Claimants' personal items and property;

10. Aggravated Damages.

20. **The defendant contends as follows:**

- a. That there was no such trust – At the date of conveyance the property was vested in the sole name of Gill. The conveyance to Gunbridge was effective to transfer all the estate and interest that Gill possessed in the property. There was no express trust, constructive trust, or resulting trust that would avail the claimants, as neither Gill nor Ursula retained any beneficial interest in the property after the conveyance to Gunbridge. It is admitted however that Ursula and Gill had irrevocable contractual licences, personal to them, by virtue of the family arrangement.
- b. That Ursula never asserted any rights under the Matrimonial Proceedings and Property Act so as to vest in herself any rights, interest, or title in the said property.
- c. That issues as to whether Ursula and/or Gill retained any beneficial interest in the property were issues that arose in previous litigation, (the 2002 action) which was determined by a compromise agreement, and then a consent order, and the claimants were estopped from raising these again by the doctrine of issue estoppel. The fact that the previous litigation was settled by a consent order made no difference.
- d. That further or alternatively, to raise the issue as to whether Gunbridge held property as trustee was an abuse of process as the Compromise agreement has not been set aside and the consent order has not been set aside and is still in effect.

21. **The claimants contend**

- a. That the family arrangement, which preceded the transfer to Gunbridge of the property, was admitted by all parties.
- b. That the terms of that arrangement, at the very least, were that the said property, was to remain in the family, and that all the children of Gill were to be “members” – or shareholders - of Gunbridge.
- c. That the principals of Gunbridge, Ian and Roger Thomson, had admitted as much in their pleadings in the previous 2002 action.
- d. That their subsequent suggestion, in the instant action, that Gillian forfeited her right to participate in Gunbridge by her declining to participate in the mortgage which Gunbridge took out upon receiving the assignment of the property, and the further suggestion that the family arrangement had been modified to exclude Gillian, between the time of that arrangement and the transfer of the property to Gunbridge, was an afterthought, and inconsistent with their express pleadings in the 2002 action- which should have referred to these matters if they were true. (The defendant contends however that Gillian is not a party who provided consideration for the contract by which Gill assigned the property to Gunbridge and that even if it were for her benefit therefore she could not enforce it.)
- e. That Ursula conferred on the claimants a right to occupy the said apartment by virtue of representations made to Gillian, in reliance upon which she expended monies. (The defendant contends however that on the evidence neither Ursula nor Gill made any representation to Gillian).

- f. That the circumstances of the consent order which settled Ursula's claim against the defendants in the 2002 action were highly suspicious and that it could be set aside.
- g. That in any event, as a matter of fact, Ursula never revoked her permission to the claimants to occupy the said apartment. (The defendant contends that she did, and accordingly the defendant was entitled to use self help to evict the claimants as trespassers)

22. The circumstances under which the consent order was entered into certainly require scrutiny. Ursula was in occupation of the said Apartment up to March 6th 2008 when she was removed from that apartment by Roger, Ian and Cecilia, and thereafter apparently was taken to reside with Ian and/or Roger. The reason for her removal is murky. What is clear however is the following chronology.

Litigation chronology

- 23. September 30th 2002 – HCA. 3081 of 2002 (the 2002 action) filed
- December 2003 – Trial of 2002 action commenced.
- February 2006 – Trial of 2002 action concluded.
- March 6 2008 – Removal of Ursula from the said apartment.
- June 10th 2009 – Entry of consent order.

Medical Chronology Relating To Ursula

24.	August 2007	-	Referred to Cardiologist Dr. Omardeen
	September 5 th 2007	-	Loss of consciousness
	September 2007	-	Death of Gill
	November 2007	-	Referred to psychiatrist Sandra Reid
			Depressive disorder – Mini Mental score 21/30
			Cognitive impairment, loss, poor concentration
	December 2007	-	Diagnosed with severe aortic valve disease
	December 17 th 2007	-	Seen by Dr. Reid
	January 23 rd 2008	-	Seen by Dr. Reid
	February 18 th 2008	-	Seen by Dr. Reid
	March 6 th 2008	-	Ursula removed from Gillian's care
	April 21 st 2008	-	Dr. Neehall (in presence of Roger and Ian)
			Alert, fully understood questions
			Folstein mini mental state examination
			Scored 24 out of 30

Mentally **capable** of giving intelligent instructions to lawyer about management of legal and financial affairs

September 22nd 2009

-

Examined in absence of Cecilia, Roger and Ian –

Concentration poor, scored 19 out of 30 on minimal state examination.

Deterioration in cognitive functions, depressed

Found **not** fit to conduct her legal and financial affairs by reason of her early dementia and depression.

Evidence of the first named claimant

25. The evidence of the claimant Gillian Thomson is as follows (Emphasis added):

4. *I have continuously resided at the said premises **since September 2001** when I resumed living there at the request of my mother, Ursula Patricia Thomson and my father, Gill Thomson the **beneficial owners of the said premises.** ...*

5. *...It was divided into four apartments sometime in 1996-97 pursuant to a family arrangement whereby we agreed to convert the family home into apartments so that several of us could reside there and if need be the empty apartments could be rented to provide an income for our parents. We basically entered into an oral agreement following several conversations **in 1996** between my parents, my brothers, my sister Cecilia Thomson and me. **It was agreed that***

my father would assign the leasehold interest in the said premises to a limited liability company controlled and owned by all six of his children. It was expressly agreed that the said premises would be mortgaged and renovated such that it would comprise self-contained apartments which could be occupied by our parents and rented in order to provide an income for the exclusive benefit of my parents. It was also agreed that my parents would remain the beneficial owners of the said premises and that the said premises would be managed by the limited liability company. It was further agreed that ownership would eventually vest in the limited liability company on their deaths. All six siblings, including myself, would be entitled to reside at the said premises.

6. *On or around September 2001 both my parents lived in one of the apartments located on the said premises, namely the first floor apartment, and I resided there with them from on or around September 2001 as aforesaid.....*

- 13. *I am personally aware that Ian Thomson failed to apply my father's income to his care and that of my mother because when I moved in with my parents in 2001 I took over all the financial obligations related to the care of my parents and the running expenses of the property, including but not limited to, purchasing food, paying utilities and maintenance costs for the property and all expenses related to the care of my parents. Cecilia would also assist from time to time by sending items from abroad. I also made improvements to the said premises the particulars of which are set out below:*

- a. *Painting of the house and maintenance of the wood floors;*
- b. *Maintenance of the grounds and cleaning of the exterior of the house;*
- c. *Installation of burglar proofing and windows;*
- d. *Installation of safety doors in the kitchen to accommodate Gill Thomson's wheelchair;*
- e. *Installation of cupboards and wardrobes;*
- f. *Rewiring of the electrical system;*

14. *I assisted my mother in caring for my father continually until his death on the 30th September 2007. I had to give up full time employment in exchange for part time employment as a result of which my standard of living and that of my children was significantly decreased. I seldom went out socially and I traveled abroad infrequently since they could not be left alone. When I moved in with my parents in September 2001 they only had minor sources of income, that is, approximately \$3,000.00 per month from the rental of a property in Tobago owned by my mother and annual rental fees from Deleyre Investment and Trust Ltd., a company which owns tenanted lands, which said sum was not even enough to cover the cost of their daily living. My father was suffering with severe diabetes as a result of which he had lost his leg in May 2001 and Alzheimer's disease. He had also undergone treatment for colon cancer. My mother suffered with emphysema and osteoporosis and was not very mobile.*

15. *When my parents asked me to return to the said premises they **expressly represented to me that they would give to me a proprietary interest in the said premises** if I would take financial and physical care of both of my parents. My father had Alzheimer's at the material time but he frequently had lucid moments and **he made the said representation to me during one such moment together with my mother in September 2001. Subsequent to the initial representation my mother then assured me that I would be given a proprietary interest in the property following the deaths of my parents.** ...I am also aware that she made a Will in favour of Cecilia and me on the 20th December 2006 and that she issued instructions to her Attorney at Law Bruce Procope Q.C. that Cecilia and I should have her property in equal shares following her death. ...*

16. *...Cecilia and I supported our mother in her decision to apply to set aside Deed of Assignment dated the 12th March, 1998 whereby my father purportedly assigned his leasehold interest in **the said premises** to Gunbridge Enterprises Limited. ...*

17. ...The Deed of Assignment was not made for valuable consideration as Gunbridge Enterprises Limited never paid \$700,000.00 to Gill Thomson. **The said premises** were mortgaged to Maritime by Deed No. 6451 of 1998 by Gunbridge Enterprises Limited to secure a loan of \$450,000.00 ...

18. ...To date, only my brothers are Directors of Gunbridge Enterprises Limited and Roger and Ian own the only two issued shares.

20. Thereafter, I was informed by my mother and verily believe that due to demands placed on her by my brothers that she was constrained to pay \$230,000.00 towards the Mortgage and a further \$200,000.00 to Roger Thomson by way of cheque in the sum of \$150,000.00 made in favour of his wife, Marcelle Thomson and cheque made out to cash in the sum of \$50,000.00 allegedly in reimbursement for monies expended by him on the said premises. My mother also reimbursed David Thomson for his investment in the renovations amounting to approximately CD\$25,000.00. ...

23. Having obtained the order appointing her Receiver ad interim **my mother initiated HCA No. 3081 of 2002 (hereinafter referred to as the "main action") on her own behalf and on behalf of my father. This action was filed against the Defendant company as well as its Directors; my brothers, Roger, Ian, Phillip and David Thomson.** My mother also caused her Attorneys at Law to file an ex parte application on the 30th September 2002 for an injunction restraining the Defendants therein from physically harming her or my father or restricting their right to possession of **the said premises**. In support of this Application my mother swore an Affidavit which was filed on the 30th September, 2002.

24. On the 30th September 2002 my mother, on her own behalf and in her capacity as Receiver ad interim, caused her Attorneys at Law to file a Writ of Summons and thereafter a

*Statement of Claim on the 12th February, 2003. The basis of the action was that Gunbridge Enterprises Limited held **the said premises** on trust for my parents and sought to set aside the Deed of Assignment from Gill Thomson to Gunbridge. The Defendants to the action filed a Defence and Counterclaim on the 1st April, 2003 and thereafter the Plaintiffs filed a Reply and Defence to Counterclaim on the 6th June, 2003. ...*

26. *In their Defence as amended and in their oral and affidavit evidence, Gunbridge Enterprises Limited and my brothers admitted that the Deed of Assignment was not made for valuable consideration in that the \$700,000.00 sale price was never paid. They also admitted that all six of us were supposed to form Gunbridge Enterprises Limited and **that I was to occupy an apartment on the said premises.***

27. *In their Defence and Counterclaim in the main action the Defendant company made certain representations as a result of which **it is estopped from denying my right to a one sixth share of the company as well as my right to reside on the premises.** These representations are set out at paragraph 4 which reads as follows:*

- *“The defendants deny paragraph 7 of the Statement of Claim and say further that in the year 1996, pursuant to the collective intention and/or family arrangement of the plaintiffs and the defendants, the first defendant was formed for the purpose of (a) keeping the property mentioned at paragraph 5 of the Statement of Claim (the said property) **within the family....**The 2 female children of the family mentioned at paragraph 7 of the Statement of Claim, Gillian and Cecelia, **were members and/or were invited to membership of the first defendant.**”*

as well as paragraph 6 which reads as follows:

- “At a subsequent meeting of the aforesaid members of the family, it was agreed that:
(5) **Gillian would occupy an apartment in the said property**”;

28. In Roger’s first Affidavit filed on the 22nd October, 2002 in the main action he made certain representations on his own behalf and on behalf of the Defendant company **as a result of which it is estopped from denying my right to a one sixth share of the company as well as my right to reside on the premises.** The relevant paragraphs of his Affidavit are set out at below:

- Paragraph 6 – “As to the matters set out in paragraph 10 of the said affidavit I say that **sometime in 1996, the children, including Gillian, but not including Cecilia met with our father...to discuss our views on the future of 19 Alcazar Street, St. Clair.**”
- Paragraph 7 – “Prior to that meeting, in 1995, Gunbridge Enterprises Limited...was formed and, registered for the purpose of (i) **keeping the property within the family free of any Tax liabilities of my father;** (ii) taking over all of my parents’ debts; (iii) **to avoid having to dispose of the property in the event of any disagreement among the children over distribution of property on the death of Gill..**”
- Paragraph 9 – “There was no initial decision to use any of the apartments to generate rental income although decisions were taken subsequently that....(6) **Provision was made for Gillian to occupy the remaining apartment.**”
- Paragraph 21 – “The conveyance of the property to Gunbridge in 1998 was consistent with our collective intention, **expressed in 1995, that the property should be transferred to Gunbridge and the property was to be mortgaged as a means of financing the renovations.** It is therefore not true to say, as is deposed in paragraph 12 of the affidavit, that Gill’s health was a factor in the decision to convey the property at that time. **By letter to the mortgagor dated 20th May, 1996 Gill confirmed his intention.** There is produced and shown to me and hereto annexed and marked “RT1” a true copy of the said letter.”

- Paragraph 23 – “...Gunbridge was intended and agreed, at our meeting in 1995, **to be incorporated and owned by the six children, as to the legal and beneficial interests therein....**”
- Paragraph 58 – “My mother has taken upon herself, on the instigation of our sisters (Gillian moreso) to disrupt or hinder the work of renovation. She appears to hold the view that Gillian and Cecilia should be better provided for although **their interests in Gunbridge are not at risk.**”

29. During the course of the trial of the main action Roger Thomson gave evidence on his own behalf and on behalf of the Defendant Company on the 16th and 17th December, 2004. His cross examination commenced on the 17th December, 2004 and continued on the 2nd February, 2005. It was concluded on the 10th May, 2005. Under oath and in the course of his evidence he made representations as a result of which the Defendant Company is estopped from denying my right to a one sixth share of the company as well as my right to reside on the premises.

- 2nd February, 2005 [under cross examination]: “All the children were supposed to have a share in Gunbridge Enterprises Limited.”

30. ...The trial of the main action commenced in December 2003. I gave evidence on behalf of my mother and Cecilia and I supported her throughout the proceedings. I did not join in the proceedings as a party because there was no reason for me to do so. **To an extent I supported the position of my brothers and Gunbridge** in so far as I was aware and **agreed that the property was supposed to be held in a company owned by all of us** and that we were all supposed to be able to reside there. Their Defence guaranteed my right to own a share in and reside at 19 Alcazar Street St. Clair. I was present at the several hearings and trial of the main action and I was well aware of their Defence. It was my understanding that if the company was held to own the property then it would have been held on trust and on the terms and conditions set out in their own case.

31. *I did not agree with the manner in which our parents had been treated especially since it was always our express understanding that our parents would remain the beneficial owners during their lifetime. Moreover, my brothers went ahead to take the legal steps to effect the agreed family arrangement without properly involving everyone and at a time when my father was vulnerable and unwell. They also breached his trust and his express intention that all his children would form the company that would own the property situate at 19 Alcazar Street St. Clair. My father's intention was clearly set out in his letter to Maritime dated the 20th May, 1996 which was referred to in paragraph 21 of Roger's First Affidavit in the main action and marked "RT 1". (A copy of this letter is now attached to my Witness Statement and marked "GT 7".)*

32. *Neither Cecilia nor I were invited to participate in the company at the date of incorporation or in the years that followed until sometime in 2000 when my mother discovered the Deed of Assignment from my father to the company. When my brothers realized that my mother fully intended to take them to Court and that I supported her decision to do so they invited me to become a Director although no mention was made of a shareholding..... I refused to take up the position of Director at that time since my parents had indicated that they would be taking legal action for breach of trust.*

34. *The trial of the main action ended on or around February, 2006. Copies of the proceedings are attached to my Witness Statement as a bundle and marked "GT 8" excluding the consent order dated the 10th June, 2009. The judgment was reserved by the Honourable Mr. Justice Myers and I continued to reside on the said premises together with my parents and to care for them financially and physically. ...My mother was very angry and bitter towards both Roger and Ian... Both Roger and Ian had given evidence against her at the trial of the main action.... On the whole however, my parents were estranged from their sons but remained on good terms with Cecelia and me.*

36. ... From on or about **31st August 2007** I noticed that my mother began hallucinating and would become very confused at times. She would also attempt to leave the house often between 1:00 and 3:00 in the morning. My father died on September 30th 2007, at the said premises after having suffered a Pulmonary Embolism.

38. My mother's condition continued to deteriorate dramatically following my father's death. She became more and more depressed and confused and on Dr. Telemaque's advice she was taken to see Dr. Sandra Reid on **November 19, 2007**. Dr. Reid produced a report dated December 14, 2007. A copy of this Report is attached to my Witness Statement and marked "**GT 11**". On or around **17th December 2007** I took my mother to see Dr. Reid again. (On that occasion Dr. Sandra Reid asked to speak with me privately and she then advised me that my mother was in no better condition than the previous occasion on which she saw her and that in her opinion her mental condition had become worse. She also impressed upon me the importance of my mother taking the prescribed medication in the precise manner that it was prescribed. My mother has been diagnosed as having a depressive disorder (pseudodementia)

40. On or about the **20th December, 2007** my mother could not get out of bed and she complained of pain to the left side of her head and that she felt as if everything was spinning. My mother then appeared to be unconscious and after approximately thirty minutes she regained consciousness. My mother was experiencing what I later came to know as "syncope". I called my mother's regular physician Dr. Michael Telemaque who visited the said premises the following morning and instructed me to organise an echocardiogram with Dr. Feroze Omardeen as soon as possible. Therefore, an appointment was made for this to be done on the **28th December, 2007**. Prior to the scheduled appointment my mother had another severe syncope on or about the **25th December, 2007**.

41. When my mother visited Dr. Feroze Omardeen on or about the 28th December, 2007 he diagnosed her as suffering from severe aortic stenosis. He explained this to me by stating that her aortic valve is blocked and that her condition was very serious and life-threatening and that she was at risk of sudden death. He also told me that I had to keep her quiet and stress free and that I should return with my mother on the 31st of December, 2007 because he wanted to further examine the tests.

42. On or about the 31st of December, 2007 I took my mother to visit Dr. Feroze Omardeen again as previously arranged.

44. I informed Cecilia that our mother had been referred to Dr. Reid and that she had diagnosed her with pseudo dementia. Despite the fact that Cecilia was aware of our mother's mental condition, my mother was made to sign **a Power of Attorney in favour of her Cecilia on the 13th December 2007** which was registered on the 14th December 2007 and assigned Deed No. DE2007 031878 26D001.

45. On or about the **11th February, 2008** at approximately 11:30 a.m. I checked on my mother in her bedroom. ... My mother was shaking uncontrollably, her eyes were glassy and her pupils dilated.

46. On or about the **18th February, 2008** I went to Dr. Feroze Omardeen's office and joined Ian and Cecelia who had arranged to meet with him that afternoon....

47. On or about the **2nd March, 2008** my mother had another severe syncope after she finished having a shower and again on or about the **3rd March, 2008** at approximately 2:30 a.m. my mother had an episode and was totally disoriented and confused. She did not know where she was, she did not know her bedroom and I had to repeatedly explain to her that she was at home and I comforted her until she fell asleep at around 5:00 a.m. Furthermore, **later that day**, at around 10:00 a.m. my mother had a syncope that was so frightening that I called Roger and asked him to come and see my mother as soon as possible. [Roger hung up the phone on me but he did come together with Ian and Cecilia to see my mother at approximately 2:00 or 3:00 p.m.]

48. For the reasons set out in the foregoing paragraphs **my mother was very weakened and vulnerable during this period of time**. I was therefore very surprised to receive a telephone call from Mr. Bruce Procopé, Q.C. on or around the 4th March, 2008 advising me to go immediately to Phelps & Co. in order to see Mr. Clive Phelps, my mother's attorney which I did. When I met with Mr. Clive Phelps he explained to me that Phelps & Co. Ltd. had received a Notice of change of attorneys dated the 3rd of March, 2008 and that they could no longer represent my mother. This notice appointed Mrs. Gillian Seecharan-Scott in place of Phelps & Co. as my mother's new attorney.

49. Shortly thereafter and on or about the 5th March, 2008 my daughter received a letter dated the 25th February, 2008 requesting that she vacate the premises within two weeks of receipt of the letter. This letter was from **Gunbridge Enterprises Limited** and was signed by Roger and Ian Thomson and as a result I changed the padlocks for the external gates of the premises.

50. On or about the 6th March, 2008 at approximately 11:00 a.m. while my mother was asleep in her bedroom, my brother Philip, who was in Trinidad, jumped over the wall and broke into the house, breaching the injunction previously granted by the Honourable Justice Jamadar (H.C.A. No. 3081 of 2002). The locksmith, Mr. Thomas told me that Phillip jumped over the wall

but I did not see him myself. I did however see him rush up the stairs. I was downstairs at the time and I followed him up. He then opened the connecting door to **Ian's apartment and let in Roger, Cecilia and Ian who together forcibly removed my mother from her bedroom and took her back through the connecting door to Ian's apartment on the southern side of the matrimonial home.** Ian eventually removed my mother from his apartment to another location on the 8th March, 2008.

51. Between the period of the 6th March, 2008 and the 8th March, 2008 I was unaware of the whereabouts of my mother.

53. On or about the 8th March, 2008 at approximately 11:30 a.m. I was contacted by one of my mother's nurses, namely one Mrs. Wendy Martin-Nancoo who told me that she had just been dropped off to her home by Roger. Wendy relayed to me that she had just been in the company of my mother who remained with **Roger.**

54. On or about the 9th March, 2008 at approximately 8:25 a.m. I called Roger's house in order to see if my mother was in fact there. Roger's wife told me that my mother was sleeping. Again at 10:30 a.m. I called to speak with my mother and was told that she was unavailable. On every occasion since the 9th March, 2008 whenever I called to speak with my mother I was told that she was either asleep or unavailable.

56. On the 8th April 2008 I received a letter from Trinidad and Tobago Electricity Commission advising that it had received a request to have my mother's meter disconnected from electricity supply.

60. *I am not aware of any reason why my mother would have willingly left the said premises where she has always expressed a desire to reside. My relationship with my mother was completely amiable when she was forcibly removed from the home. We had lived together since on or around September 2001 in relative peacefulness. ...*

On the 10th July, 2008 I saw my mother Ursula Patricia Thomson walk out from my brother, Ian's apartment located on the said premises. [That was the first time I had seen her since the Habeas Corpus proceedings. Roger shouted to her] "Where are you going?" and she replied, "I am tired of being cooped up." Roger in turn said "If you go outside Gillian will hold you and beat you." She walked to Alcazar Street and I asked the security guard at British Gas to assist her while I tried to get to her. Roger grabbed my mother before I could get to them and took her back inside Ian's apartment. [After that he went to the security guard and warned her not to get involved again.]

62. ***Thereafter my mother allegedly compromised the main action on or around the 10th June, 2009 by entry of a consent order before the Honourable Mr. Justice Boodoosingh wherein my mother was granted exclusive possession of the first floor apartment and the Defendant company was "declared" to be the owner of the said premises.***

63. *However, I was not present on the date when the consent order was entered. I had no notice of the hearing. On Wednesday the 8th July, 2009 however, I saw a publication in the newspaper advertising the Grant of Letters of Administration in respect of my father's estate.*

65. ***I do not believe that my mother is sufficiently well, physically or mentally, to have taken the steps which she allegedly did in the execution of the Power of Attorney in favour of Cecilia, the Notice of Change of Attorney, the Discharge of the Injunction and the Compromise of the action. She was not considered well enough in December 2007 to apply for***

the Grant of Probate in respect of my father's Estate and yet she has applied for a Grant of Letters of Administration in May 2009. ...

In the absence of direct communication with my mother I cannot accept that she would willingly compromise this action when she felt strongly enough to initiate it and moreover I cannot believe that she would have compromised it to her detriment and to the detriment of my father's estate.

66. *...On or around the 8th March, 2003 the Defendants to the main action allegedly concluded a compromise agreement with Ursula Patricia Thomson the particulars of which are set out at paragraph 14 of their Defence and Counterclaim in the main action. ...My mother issued instructions to her own Attorneys at the time that she did not enter into the compromise voluntarily and it was pleaded in her Reply and Defence to Counterclaim in the main action.*

67. *.... despite the alleged compromise of the main action I assert that I am independently entitled to possession of the said premises following the **representation** made to me by my parents on or around September 2001 and my own acts in reliance on the representation. I further assert that even if the compromise stands and Gunbridge Enterprises Limited is the owner of the said premises then I am entitled to a one-sixth share in the company and I have the right to possession of the said premises in accordance with the original family arrangement and the several representations made by my brothers and Gunbridge Enterprises Limited in the main action. At any rate, even on the terms of the said consent order I am not excluded from possession and the order makes specific reference to the "other occupants" of the said premises. Both my daughter and I belong to that class of persons and the first floor apartment which my mother was granted exclusive possession of is the same portion of the said premises which I occupy. I do not therefore understand why my removal was necessary in order to make it available to her when we have long resided there together. ...*

68. *In breach of our right to possession of the said premises my daughter and I were forcibly evicted on Thursday 23rd July, 2009 by Gunbridge Enterprises Limited. Both my brothers Roger and Ian were present during the said eviction.*

(Alleged Assault)

77. *I had several personal items downstairs which I managed to retrieve. I went back upstairs to the loft apartment to get items of food when I saw **Roger** coming out of the loft apartment with a bag in his hand, he shouted to me “Time to get out!” I told him I needed to get my foodstuff; he shouted “No get out!” **He then placed his right hand on my chest and pushed me forcibly down the stairs. I spun around 360° and managed to break my fall with my right shoulder hitting the wall and holding onto the railing for dear life.** I was screaming and when I got to the bottom of the stairs there were several people surrounding me... Roger and Ian were shouting at me to shut up. As a result of this I was in great pain and discomfort during the night and the following morning and to date I am still experiencing pain in my neck.*

79. *I was physically and verbally intimidated into leaving the premises along with my daughter, extended family members and legal advisors. A portion of my belongings were set down on the wet and dirty pavement and several of them were damaged during their removal. I repeatedly requested that they be careful in handling my belongings and that they refrain from handling them at all but I was ignored. **A portion of my belongings were locked in the said premises** by Gunbridge Enterprises Limited and I was forcibly removed before I could retrieve them. The Directors of Gunbridge Enterprises Limited, Roger and Ian, and the servants and/or agents of the company including the Bailiff and his unidentified group of assistants were all aware that **a large portion of my belongings remained on the said premises.** My brother Roger proceeded to chain the interior and exterior gates to prevent me from accessing my belongings. During the course of the unlawful eviction **several of my personal belonging and those of my daughter** were stolen. In accordance with the advice of my Attorney at Law Theresa Hadad-Maraj, I prepared an inventory of all of the belongings which I had been able to remove from the*

premises, an inventory of all those belongings which remained thereon and an inventory of the items believed to have been stolen. The following items were damaged during the eviction due to the carelessness and aggression of the servants and/or agents of Gunbridge Enterprises Limited:

- a. cushions for the Morris antique chairs and scatter cushions were damaged by the rain and were stained by the grease and dirt of the pavement;*
- b. the slats of the Morris chair loveseat were broken;*
- c. the arms and seats of the bamboo chair seat have been damaged;*
- d. the glass tops of the bamboo table set were broken and some glass tops are missing;*
- e. 1st Claimant's trophy for Guardian Life Insurance Industry Award broken;*
- f. A crystal bowl was shattered;*
- g. The Claimant's items of clothing have been soiled and required professional cleaning;*

83. --- *When we went back into possession we found some of the missing items stored in the apartment below the one which we occupy. My daughter and I went through all the items which we found there and amended the Lists of stolen and detained items to reflect our updated inventory. The amended lists were inserted into our Amended Statement of Case which was filed on the 29th October, 2009. The **Amended Lists of Stolen and Detained Items** are attached to the Witness Statement of Giselle Thomson Lowe and marked "D" and "E" respectively. I wholly adopt these lists.*

84. *I have estimated the value of the **stolen goods** to be approximately \$100,000.00, and the value of the **detained goods** to be approximately \$150,000.00. I had originally estimated the value of the detained goods to be \$350,000.00 but the majority of the more valuable belongings were located and as such I have adjusted my estimate. Due to my financial conditions I have been unable to replace any of the stolen or detained goods.*

89. *In the Injunction proceedings which occurred at the start of this matter Ian Thomson deposed to an Affidavit in response to my own. In his Affidavit sworn to on the 16th September, 2009 Ian states at paragraph 33 that “it is untrue that my mother is suffering from severe memory impairment and impaired decision making and lack of confidence. Further since she has been apart from Gillian, she has not suffered any seizures of syncopes or other mishaps.” ...at no point does he mention that she has suffered any mental deterioration.*

The evidence of the defendant

Evidence of Cecilia

25. In so far as relevant Cecelia Thomson testified via her witness statement as follows:

21. *The day after I was locked out our brother Phillip came to Trinidad in March, 2008, he was able to enter our mother’s apartment via the kitchen door. When our mother saw us she indicated that she wanted to leave and walked to Ian’s apartment with us. The first claimant who was present made a scene, shouting to our mother “why are you doing this to me?” She even falsely reported to the police that she (Gillian) was being “roughed up” and later that my brothers and I had kidnapped her mother.*

22. *Acting on our mother’s instructions her Attorney-at-Law (----) during the period February, 2008 to March, 2009 firstly withdrew the injunction against my brothers and secondly negotiated and settled a consent order in the 2002 High Court Action. The Consent Order which was signed by our mother was entered on 6th July, 2009.*

Evidence of Roger Thomson

25. Roger Thomson is one of the shareholders and directors of the defendant.

In his Witness statement he attests as follows:

Statement of Roger Thomson

5. *The initial plan was that the defendant company would have all 6 children as shareholders with the directors being agreed, but ownership of a company brings liabilities as well as benefits, and Gillian and Cecelia opted out of participation in the defendant company. Indeed, one of the uses of the company was to acquire a loan from Maritime to renovate the house at Alcazar Street. Gillian did not wish to stand security for this loan and it was left to the boys to do so. I also put up insurance policies as added collateral. --*

6. *The house at No.19 Alcazar Street, by 1996, was in need of renovation, and it was the boys and the parents who financed this renovation. As principal borrower, I approached the Republic Bank of Trinidad and Tobago, where I (secured) a 'bridging finance' loan in order to facilitate the commencement of the said renovation. I was refunded some of this by my mother when she sold one of her properties in Tobago, and some from the mortgage loan taken out by the defendant company. We have not yet done a strict accounting in this regard and there may be monies outstanding to me. My father put up money obtained from the sale of his shares in Maritime Insurance Company Limited and from the sale of lands he owned in Cunupia. My mother put up*

*money garnered from the sale of lands owned by her in Tobago. **Gillian, the First Claimant herein put up nothing.** Gunbridge took out a loan in the sum of \$450,000.00 and put approximately \$95,000.00 of this towards the renovation. Ian, David and I have repaid and are repaying by monthly installments, the mortgage loan taken out by the defendant.*

11. ***On the 26th February 2008, my mother sent the first Claimant herein a letter calling upon her to vacate No. 19 Alcazar Street by 11th March, 2008 I know that the claimant received this letter because I am informed by my sister Cecelia that she was the person who put the letter in the First Claimant's mail box and verily believe the same to be true. The First Claimant's mail box is always locked and she is the only person with a copy of the key. Again, on the 2nd July 2008 my mother sent the First Claimant another letter again calling upon her to vacate No. 19 Alcazar Street so that she might have occupation and be free to enjoy the comfort of her home. Again I know that the Claimant received this letter because I am informed by my brother Ian and verily believe that not only did he place the letter in the First Claimant's mail box on the night of the 2nd July, 2008, but also that he witnessed the [sic] retrieved mail from the said mail box the following day. [Hereto annexed in a bundle and marked "R.T.8" are true copies of those letters. Also hereto annexed and marked "R.T.9" is a true copy of a psychiatrist's report. This report comes at a date between the dates of the two letters and says that my mother was well able to conduct her affairs at that time.]***

12. *But that is not all. The First Claimant had her attorney at law, Mr Kelvin Ramkissoon, write a letter dated 14th March 2008 to the Secretary of the Defendant. A true copy of this letter is hereto annexed and marked “R.T.10”. On 6th October 2008, the Defendant’s Attorney at Law, Wheeler & Co. responded to that letter. Importantly, the response included a letter written to Counsel for the defendant, Mr. Prescott by attorney at law for my mother. **The letter from my mother’s attorney at law states that the First Claimant herein has never been given authority to occupy the premises for the duration of her natural life as she now claims---***

14. *In addition to this, the Defendant itself has written to the claimant. **The defendant** has made clear to the Claimant that **it was acting on behalf of our mother**. The position was that the Defendant, in order to **comply with the court order**, and in order that our mother might have undisturbed possession of her apartment on various occasions called upon the First and Second Claimant to vacate the mother’s and grandmother’s apartment. When the claimant failed to do this, **the Defendant**, having ascertained that our mother had no objections to **any course of action it decided to pursue**, evicted both claimants **from the said apartment...***

26. *I say that it is true that mother repaid me a further sum of approximately \$200,000,00 and that she paid David the approximate sum of CD\$25,000.00. She made these payments of her own free will because she saw that our personal monies were being*

spent on the renovations. She made these payments after she sold a Tobago property to Stressego Company Limited.

36. *The First Claimant had become a trespasser upon the Defendant's property at No. 19 Alcazar Street. **Consequently on the 23rd July 2009 through an appointed Bailiff, one Mr. Tony Beepat, the belongings of the First Claimant were put out of the said premises.** The First and Second Claimant were present during this incident. Had she left the premises when asked to do so, all of this would not have happened. The eviction described did take place, but no one touched the Claimants. **The First Claimant did slip upon the stairs and injure herself, however this was because of her own aggressive behavior, and not because I ever touched her, for I never did.***

37. *Further, no one converted any items belonging to the First Claimant. All her items were put in the downstairs apartment or were given to the claimants themselves. The claimants suffered no loss as a result of the eviction.*

These extracts from some of the witness statements illustrate the background and evidential issues that require examination.

Cause of action estoppel and abuse of process

26. In the 2002 action the claim by Ursula and Gill was for, inter alia, a declaration that the said property was held upon trust for the benefit of Gill and Ursula, or alternatively on trust for Gill. This is a different issue from Gillian's claim in the instant action,

a. that she is entitled to share in the ownership of Gunbridge itself, or

b. that her right, if any, to the said apartment was derived from, and is a sub set of, any rights that Ursula had and was able to convey to her, or

c. that as part of the trust created by the family arrangement she was entitled to reside at the premises and /or occupy a specific apartment, namely the said apartment.

27. Gillian's claims against Gunbridge as above are separate and distinct from Ursula and Gill's claims that they retained the beneficial interest in the said property,

28. Save possibly for issue (b) above these were not issues that were determined or could have been determined in Ursula's and Gill's 2002 action.

29. In any event the affidavits and pleadings by the defendant in that action were consistent with some of the claims by Gillian in the instant action namely -

a. an initial and continuing intention for Gillian to be an owner of Gunbridge,

b. an initial intention that Gillian would have the right to occupy a separate apartment at the said property.

30. Therefore neither cause of action estoppel nor abuse of process can be raised in the face of these admissions, consistent with Gillian's case in this action, to preclude her from seeking, in her own separate and distinct action, to claim her separate relief.

31. I find that issue estoppel would not avail the defendant, and the claimants are not precluded from presenting their case on their rights, if any, to occupy the said apartment.

32. It is not necessary for the consent order to be set aside to enable a finding that the existence of that consent order does not preclude the claimants from asserting in these proceedings that the issue of their rights of ownership in the said property and rights of occupation in the said apartment were not settled once and for all by that purported consent order.

See Bradford and Bingley Building Society v Malcolm Seddon and Ors per Auld LJ (emphasis added) [1999] WLR 1482 at page 1490 c.

The starting point is the well known dictum found in Henderson v Henderson:

"... where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time."

Auld LJ stated at pages 1491 g - 1492b:

"In my view, it is now well established that the Henderson rule, as a species of the modern doctrine of abuse of process, is capable of application where the parties in which the issue is raised are different from those in earlier proceedings. Indeed, it is inherent in Sir James Wigram V-C's reasoning that, as a general rule, all persons who are to be sued should be sued at the same time and in the same proceedings where such a course is reasonably practicable, and whenever it is so and is not taken then, in an appropriate case the rule may be invoked so as to render the second action an abuse. See e.g., Yat Tung; Bragg; North West Water; MCC Proceeds Inc. v. Lehman Bros. International (Europe) [1998] 4 All E.R. 675, CA; and per Potter

LJ in Morris v. Wentworth-Stanley CA (unreported) 4th September 1998. In Bragg Kerr LJ said, at 137:

"... it is clear that an attempt to relitigate in another action issues which have been fully investigated and decided in a former action may constitute an abuse of process, quite apart from any question of res judicata or issue estoppel on the ground that the parties or their privies are the same."

Further per Auld LJ at page 1494 a-d:

The burden of establishing abuse of process lies on the person alleging it.

*"It follows from what I have said that, in a case of "re"-litigation falling short of res judicata, **the onus should be on the person alleging abuse of process to establish it**, that is, what makes the further litigation an abuse. That was the view of Sir David Cairns, with whom Stephenson LJ agreed, in Bragg; and it is consistent with the approach of Kerr LJ in that case and with other judicial pronouncements, of **the need for flexibility in the exercise of this jurisdiction**. Sir David said, at 138-9:*

" I do not accept the proposition ... that when an issue has already been decided in proceedings between A and B it is prima facie an abuse of the process of the Court for B to seek to have the issue decided afresh in proceedings between himself and C and that in such circumstances there is an onus on B to show some special reason why he should be allowed to raise the issue against C.

On the contrary, I consider that it is for him who contends that the retrial of the issue is an abuse of process to show some special reason why it is so.”

Further per Auld LJ at page 1496e-f (ibid) citing with approval Drake J’s judgment in **North West Water Limited v Binnie & Partners [1990] 3 All E.R. 547 at 561**

“I think that great caution must be exercised before shutting out a party from putting forward his case on the grounds of issue estoppel or abuse of process. Before doing so the court should be quite satisfied that there is no real or practical difference between the issues to be litigated in the new action and that already decided, and the evidence may properly be called on those issues in the new action.”

The effect of the family arrangement

33. The relevant paragraphs of Roger’s first Affidavit filed on the 22nd October, 2002 in the 2002 action are set out at below:

- *Paragraph 6 – “As to the matters set out in paragraph 10 of the said affidavit I say that sometime in 1996, the children, including Gillian, but not including Cecilia met with our father...to discuss our views on the future of 19 Alcazar Street, St. Clair.”*
- *Paragraph 7 – “Prior to that meeting, in 1995, Gunbridge Enterprises Limited...was formed and, registered for the purpose of (i) keeping the property within the family free of any Tax liabilities of my father; (ii) taking over all of my parents’ debts; (iii) to avoid*

having to dispose of the property in the event of any disagreement among the children over distribution of property on the death of Gill..”

- *Paragraph 9 – “There was no initial decision to use any of the apartments to generate rental income although decisions were taken subsequently that....(6) **Provision was made for Gillian to occupy the remaining apartment.**”*
- *Paragraph 21 – “The conveyance of the property to Gunbridge in 1998 was consistent with our collective intention, **expressed in 1995**, that the property should be transferred to Gunbridge and the property was to be mortgaged as a means of financing the renovations. It is therefore not true to say, as is deposed in paragraph 12 of the affidavit, that Gill’s health was a factor in the decision to convey the property at that time. **By letter to the mortgagor dated 20th May, 1996 Gill confirmed his intention.** There is produced and shown to me and hereto annexed and marked “RT1” a true copy of the said letter.”*
- *Paragraph 23 – “....Gunbridge was intended and agreed, at our meeting in 1995, **to be incorporated and owned by the six children, as to the legal and beneficial interests therein....**”*
- *Paragraph 58 – “My mother has taken upon herself, on the instigation of our sisters (Gillian moreso) to disrupt or hinder the work of renovation. She appears to hold the view that Gillian and Cecilia should be better provided for although **their interests in Gunbridge are not at risk.**”*

34. On May 20th 1996 Gill wrote to Maritime in the terms set out hereunder. The letter was relied upon by the defendant Ian, and Roger inter alia in the 2002 action which is a matter of record, being also part of the bundle GT8 exhibited to the witness statement of Gillian Thomson. The letter **RT 1** reads as follows:

Dear Sir/Madam

I am now 82 years old and I wish, to give the property situated at No. 19 Alcazar Street St. Clair – By way of Deed of Gift – to Gunbridge Enterprises Limited which is a company formed by my six children. This company is solely owned by the children.

Given my intention I am asking that you give consideration to my request for paying off the small mortgage still held on the property...

35. While it is clear that Gunbridge had not been formed, nor was it owned by all his six children at that point in time, and that the said property was subsequently vested by Deed of Assignment for a stated consideration, (and not by a deed of gift), this letter confirms **Gill's intention that all his children would own Gunbridge and that Gunbridge would in turn own the said property.**

36. Further, in further and better particulars filed in the 2002 action by the defendants Gunbridge, Ian, Roger, Phillip, David they state:

*“the terms of the (family) arrangement were that a the second plaintiff Gill would convey the property at No. 19 Alcazar Street to a limited liability company of which the second, third, fourth and fifth named defendants (sic) would be directors and the said defendants and their sisters **Gillian and Cecelia Thompson would be members” (emphasis added).***

37. Also they stated as follows in response to the request: “*State between which persons the alleged agreement was made* (the agreement that Gill would convey the said property to Gunbridge as part of the family arrangement):

‘The said agreement was made between Ursula...Gill...Roger...Ian...Phillip...David....Gillian’.

38. They further state in response to particulars requested under paragraph 8 of their defence and counterclaim as follows:

‘The conveyance at (sic) No. 19 Alcazar St to the first named defendant by deed of assignment was not a sale neither was it intended to be a sale, (sic) the conveyance was made in order to give effect to the collective intention of the parties expressed at the family meeting and to the agreement between the parties.’

39. In the case of **Barclays Bank v Quistclose [1970] A.C. 567** Lord Wilberforce, in rejecting an argument that the lender only had contractual rights in a transaction of loan, stated, at p. 581:

"There is surely no difficulty in recognising the co-existence in one transaction of legal and equitable rights and remedies:

40. I find that it is indisputable that the family arrangement, given effect to by Gill when he transferred the said property to Gunbridge, was intended to and did create a trust for the benefit

of all his children. This is **evidenced in writing by his letter to Maritime [see Dora Walcott v Barclays Bank DCO (1974) 26 WIR 554 at page 558 g - 559 a,]** and was recognized and accepted by the first named claimant, and Ian and Roger, as reflected in the affidavit of Roger in the 2002 action, the pleadings therein set out above, and Roger's witness statement in the instant action.

In Dora Walcott v Barclays Bank DCO (1974) 26 WIR 554 at page 558 g - 559 a per Phillips JA

“As to the creation of an express trust, I consider it useful to refer to the following passage from Cheshire's Modern Law of Real Property (9th Edn), p 320:

*There are very few rules restricting the mode in which a trust may be created. The trust is the successor of the old use, and for the raising of a use no formalities were necessary. Spoken words were as effectual as written instruments, and according to the preamble to the Statute of Uses bare signs and gestures seem to have been sufficient. The one guiding principle was that effect should be given to the **intention** of the settlor, no matter how it had been indicated by him. So in general is it with the modern trust.”*

The legal position in regard to trust relating to land is stated in 38 Halsbury's Laws (3rd Edn) para 1388:

A declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare the trust or by his will. The trust

need not be constituted by writing. It is sufficient if the writing is evidence of the fact of the trust. The writing must, however, show its terms and not merely its existence.”

This requirement for evidence in writing is stipulated by section 53 (1) (b) of the English Law of Property Act 1925, replacing s 7 of the Statute of Frauds (29 Car 2, c 3), which, being a statute of common application, forms part of the law of this country by reason of the provisions of s 12 of the Supreme Court of Judicature Act 1962”. (Emphasis added)

The 1998 mortgage

41. It is not in dispute that despite the stated consideration in fact the said property was gifted to Gunbridge and no consideration was paid.

42. Given that Gunbridge and its shareholders received the full benefit of the said property free of charge, the reasons propounded by the defendant as to why Gillian should not enjoy rights of ownership in Gunbridge as initially contemplated must be examined. In particular the assertion that membership in Gunbridge carried with it obligations that were a precondition to participation in such ownership requires scrutiny.

43. The mortgage of the said property by Gunbridge in 1998 was to raise **\$450,000** – (see witness statement of Roger Thomson at paragraph 5)

44. The loan was taken out for the purposes of
- a. repaying the pre-existing mortgage - that amount was **\$105,000** [paragraph 1 of witness statement of Roger Thomson]
 - b. financing renovations on the property – that amount was **\$95,000**. (See paragraph 6 of witness statement of Roger Thomson. The amounts expended on the renovations of the said property to date were in the vicinity of \$95,000)
 - c. stamp duty – presumably on the price of \$750,000 stated in the deed of assignment
 - d. legal fees

45. Roger admits that Ursula repaid him \$200,000 and repaid David \$25,000 CAN and asserts that the final accounts have not yet been done. Given that Ian is a chartered accountant this is incredible. He claims the intention of Gill was to vest the said property in capable hands – yet the defendant claims to be unable to account for the disposition of a mere \$450,000.

46. That disposition is important as it is claimed, as part of its case, that Gillian and Cecilia disentitled themselves from participation in ownership of Gunbridge because they declined /refused to participate in the liabilities inherent in taking out the mortgage loan. Gunbridge is supposedly repaying that loan with some unspecified contribution from Ian.

47. Whether there are any liabilities at all associated with that mortgage loan or with Gunbridge itself have not been established. It would have been quite straightforward to provide an accounting for the proceeds of the mortgage loan, an accounting of what liabilities were associated with it, and with Gunbridge. The accounting which has been provided, as referred to above, suggests that, after renovations and repayment of the previous mortgage, the sum of \$250,000, less legal fees and stamp duty, was left.

48. Further, Ursula had repaid in excess of the sum stated to be used for renovations. There is no mention of the income, if any from the non family occupied apartments at the said property. It has therefore not been demonstrated that the liabilities which were supposedly the basis of objection to participation by Gillian in Gunbridge even exist.

49. I find that there is no evidence on which reliance can be placed, that there were in fact any such liabilities, which Gillian was required to assume a proportionate part of before being entitled to a shareholding in Gunbridge.

Finding

50. I find therefore that Gillian has established that under the trust created by the family arrangement she is entitled to a one sixth shareholding in the defendant Gunbridge, and no credible reason has been demonstrated for disentitling her therefrom.

Care by Gillian

51. The defendant alleges that Gillian was not taking proper care of Ursula. One of the complaints by Roger was that she was not properly administering Ursula's medications. The medical reports establish that while Ursula was under her care, Gillian ensured that she saw Dr. Reid, a psychiatrist, Dr. Omardeen, a cardiologist, and Dr. Telemaque, her regular general practitioner.

52. While under the care of the defendant the evidence is that she was not taken to a cardiologist, though she had a serious heart condition for which surgery had been recommended. Neither was she taken to her regular long standing general practitioner.

53. While under the care of the defendants she saw Dr. Neehall, a psychiatrist, on April 21, 2008. The timing of that visit suggests that it was a prelude to the execution of the power of attorney to Roger.

54. In any event under cross examination Roger admitted that Ursula, had been taken by him and/or Ian and/or Cecelia to see more lawyers than doctors, despite Ursula's medical conditions, for the purpose of

1. Executing power of attorney to Cecelia.
2. Executing change of attorney.

3. Executing power of attorney to himself.
 4. Providing consent to the injunction being discharged.
 5. Agreeing to the consent order.
-
55. The allegation that Gillian was not taking proper care of Ursula as an explanation of
 - a. Why Ursula would want to leave Gillian's care and
 - b. Why Ursula was taken into custody by Ian and Roger
 - c. Why the defendant Gunbridge, and Ursula herself would want vacant possession of the apartment in which Ursula had lived with Gillian and Giselle prior to her being taken to live with Ian/ Rogeris simply not borne out by the admitted medical evidence.
 56. This is significant as it goes directly to the credibility of Roger's statement that "the defendant, *having ascertained that our mother had no objections to any course of action that it decided to pursue*, evicted both claimants from the apartment".
 57. This is apparently based on a letter dated September 11 2008 from attorney at law to this effect – purporting to be on behalf of Ursula.

58. I have serious reservations, in light of Dr. Neehall's report dated September 23 2009, whether Ursula did hold the view ascribed to her on this issue. I note that at the time the letter was written that Ursula had executed a power of attorney to Roger, and it is unclear who was actually providing the instructions to attorneys at law purporting to act on behalf of Ursula. By that time Ursula was also in the custody and under the control of Roger and Ian.

59. It is also unclear whether she was in a position to hold that view. If she was, I entertain considerable doubt as to whether the position set out in that letter was in fact the product of Ursula's own, uninfluenced mind or of her own free will. At some time between April 11 2008 and September 23 2009 Ursula's mental condition deteriorated to the point where she was not capable of making legal and financial decisions. Although there is no evidence as to when exactly that she lost that ability it is clear that her mental deterioration was progressing. It is simply not credible that if she were of sound mind and full understanding that she would have authorized the extreme and excessive action of authorizing a bailiff to forcibly evict the daughter with whom she had lived, as well as her granddaughter, and expose them to the potential of humiliation and trauma, (which as it turned out, did materialize).

60. That position, at the instigation of sons against whom Ursula had thought it necessary in the past to initiate legal proceedings, is completely at odds with her actions of acquiescing in a family arrangement for the benefit of **all** of her 6 children in relation to the said property at Alcazar Street.

Expenditure by Gillian

Promissory Estoppel

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

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

Proprietary Estoppel

62. “ 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

63. “The defendant must establish that the plaintiffs or their predecessor in title had represented that she 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 defendant to believe that she will obtain such interest by words or conduct ..

or by encouraging the defendant's belief passively by remaining silent . It is not necessary for the defendant to prove that the plaintiffs agreed that the promise or assurance would be irrevocable since it is the defendant's detriment which makes the assurance binding and irrevocable provided that it was clearly intended to be acted upon." **Snell's Principles of Equity 31st Ed. Para 10-17**

64. Her belief must have been encouraged by the **titleholder** or his agent or predecessor in title.

65. Expectation or Belief - She must have acted in the belief either that she already owned sufficient interest in the property to justify the expenditure or that she would obtain such interest.

Snell's (ibid) Para. 10-18

Finding

66. I am not convinced that Gillian made any significant expenditure on the said apartment. The items referred to in her witness statement, namely,

- a. Painting of the house and maintenance of the wood floors;*
- b. Maintenance of the grounds and cleaning of the exterior of the house;*
- c. Installation of burglar proofing and windows;*
- d. Installation of safety doors in the kitchen to accommodate Gill Thomson's wheelchair;*
- e. Installation of cupboards and wardrobes;*

f. Rewiring of the electrical system;

include items of maintenance. The expenditure on these and on the other items is not quantified. Those amounts allegedly expended have not been established or proved on a balance of probabilities. I do not consider that any level of expenditure however minimal would give rise to an equitable right to remain in possession for life

67. I also take into account that the claimants were living rent free on the said premises for several years.

68. Further, even were I to accept the first named claimant's uncorroborated assertion that Ursula and Gill made the alleged representations, I do not accept the vague assertion that the first claimant's income was reduced as a result of having to look after her parents as being sufficient evidence of reliance thereon to her detriment.

Gillian's right to occupy an apartment under the family arrangement

69. a. The said apartment was one of four. The initial arrangement by which Gillian was to get an apartment for her own occupation, seemed to have fallen by the wayside, superseded by events occurring after the family arrangement in 1995-1996 (Gillian's falling out with Gill and departure from the said property in **1997**) by the time the said property was conveyed to

Gunbridge in 1998. In fact there is no evidence that prior to this action Gillian ever sought to assert that the upstairs apartment which her parents occupied was in fact meant to be hers under the family arrangement.

b. That being so, even if the said property were held by Gunbridge as trustee, the first claimant as a beneficiary of a trust of **the said property**, would have had no personal right to occupy the said, or any individual, **apartment**.

c. In so far as the first named claimant's right to occupy the said apartment derives from the representations allegedly made to her by Gill and Ursula, the nature of their rights **in the said apartment** after the transfer to Gunbridge would be relevant.

Even if Gill and Ursula retained a beneficial interest in the said property, after its transfer to Gunbridge, the nature of that interest would have to be examined. Assuming such an interest, it would be at highest, unless or until the deed of assignment to Gunbridge had been set aside, a retention of the beneficial **ownership in the entirety** of the **said property**, either alone or in common with all their 6 children, **together with a licence to personally occupy the said apartment**. (The defendant admits Ursula, and Gill, had a contractual licence to occupy that apartment, though denying any retention of their beneficial interest in the said property).

In fact the 2002 action was settled by a compromise to that effect. The only interest that Ursula or Gill had in the said **apartment** therefore, and to the said **property**, was determined by the compromise of the 2002 action and the consent order recognizing their personal licences to occupy it for life.

d. It is clear therefore that the claimants initially occupied the said apartment with the permission of Ursula, and did not acquire any specific rights to the said apartment either by virtue of the family arrangement, by her intended or actual ownership of a share in Gunbridge, or by virtue of reliance to her detriment on representations by Ursula or Gill because,

i. no such reliance to her detriment has been established and

ii. Ursula and Gill's interest in the said apartment has been determined by the consent order in the 2002 action, establishing thereby that they each had only personal licences to occupy for life, and therefore could not in any event convey more than that to the claimants.

Findings

70. 1. Gillian is entitled to a 1/6 share in Gunbridge by virtue of the express trust created by the family arrangement, evidenced in writing by Gill's letter to Maritime.

2. Gunbridge is estopped from denying that trust by virtue, inter alia, of the pleadings and admissions in the previous 2002 High Court action.

3. Gillian's right to occupation of apartment cannot be based on a right to shareholding in Gunbridge. Any such right of occupation must be based on either

- a. proprietary / promissory estoppel,
- b. an independent right to occupy the said apartment under the terms of the family arrangement,
- c. sub license/permission from Ursula and Gill.

71. As to (a) I find there is insufficient evidence of expenditure or (b) reliance to her detriment on representations made.

72. Gillian's claim to the said apartment was based on representations allegedly made to her by Gill and Ursula in 2001 after the said property was vested in Gunbridge.

73. Ursula and Gill could not confer any greater interests in the said apartment than they themselves had. That interest after divestment of their legal interest to Gunbridge was determined by the consent order in the 2002 action to have been a personal right, a licence to occupy for life.

74. As to (b) Gillian did not base her right to occupy her parents' apartment on any independent rights conferred on her by the family arrangement. Though the pleadings in the previous action contained an admission by Gunbridge that it was contemplated that Gillian would occupy an apartment, this was apparently superseded by events. Gillian's entry into her parents' apartment was not based upon the family arrangement, and there is little evidence otherwise of an express trust created in her favour for her occupation of a specific apartment.

Alleged termination of permission

75. As to (c) it was contended that Ursula terminated any permission by which Gillian and Giselle were entitled to occupy the apartment. Letters were tendered, purportedly by Ursula, dated February 26th 2008 and July 2nd 2008. On the 6th March 2008 Ursula was removed from the premises in suspicious circumstances. The evidence as to this must be examined.

Chronology

76.

- i. 2002 - Litigation ensued between the sons of Ursula and the defendant on the one hand and Ursula and Gill on the other.
- ii. In Ursula's last will and testament dated December 2006 – (exhibit RT 5 to witness statement of Roger Thomson), she specifically made reference to the behaviour of the sons as precluding her wishing to benefit them any further.
- iii. December 14 2007 – Power of attorney given to Cecilia
- iv. February 25 2008 – **Gunbridge** gives notice to Gillian to terminate occupation of the premises.

- v. February 26 2008- first letter by **Ursula** to Gillian requesting that she leave premises.
- vi. March 6 2008 – Ursula removed from premises.
- vii. July 2 2008 – second letter by Ursula to Gillian requesting that she leave premises.
- viii. August 5 2008 - Power of attorney given by Ursula to Roger.
- ix. June 10th 2009- 2002 litigation was compromised by entry of consent order
- x. September 23 2009 – Dr. Neehall – psychiatrist attested by his medical report that Ursula was not fit to conduct her legal and financial affairs by virtue of her early dementia and depression.

77. This is 3 and a half months after the compromise agreement was purportedly entered into. Dr. Neehall expresses the opinion that the deterioration in her condition was probably brought on by her removal from the area where she had lived for several years and recommended that she put back to live there.

78. But she had been removed from the premises since March 6 2008. There is no reason to believe her deterioration suddenly occurred after June 10th 2009. It is far more likely that it commenced after April 21 2008, when she was first seen by Dr. Neehall, and that the factor of her absence from her original living quarters, the said apartment, was operating continuously on her mind from at least that time to June 10th 2009.

79. In those circumstances the issue of her mental competence to enter into a consent order at all is highly questionable, especially when she was taken into the care of the very sons, principals, directors and sole shareholders, of Gunbridge, with whom she had been engaged in that litigation, which had gone to trial.

80. It is significant that on February 25th 2008, it is Gunbridge which first purported to serve notice on Gillian to vacate the said apartment. Gillian asserts she did not receive that letter. The significance of that letter is that it demonstrates that it was the wish of Gunbridge (which meant in reality Ian and Roger) to have Giselle and Gillian leave the apartment.

81. At that time Ursula was engaged in litigation with Gunbridge and all her sons, including Ian and Roger seeking inter alia an order setting aside the conveyance of the said property to Gunbridge and injunctions restraining them from molesting Ursula, and prior to his death, Gill, and asserting therein that Gill executed that conveyance under the undue influence of Roger and Ian. Although those proceedings were compromised by consent order dated 10th June 2009 that context is significant and cannot be ignored. Ursula was in a weak and vulnerable position, as demonstrated by the medical reports. She was in contentious litigation with Gunbridge, yet strangely she supposed to have issued a letter revoking the permission to occupy the said apartment of the daughter who was looking after her.

82. Further she is supposed to have voluntarily placed herself in the custody and care of the very sons whom she was alleging had cheated her and her husband out of their residential property. That strains credibility. In so far as the 2nd letter is concerned I have no hesitation in finding that in relation to an elderly, sick, depressed person as Ursula clearly was at that time, that letter, produced while in the custody of Gunbridge's principals Ian and Roger, reflected Gunbridge's wishes, which were not necessarily her own.

83. In fact I find that they were not her own as by that time she was under the control of Gunbridge, as evidenced by her taking a series of actions which were for the benefit of Gunbridge. Under the circumstances this is suspicious, and highly unlikely to have an innocuous explanation. There is no credible reason put forward as to why she would voluntarily leave the surroundings that she was familiar with, and the medical attention that she was clearly receiving while in Gillian's care, to place herself in the uncertain unknown future represented by the custody of her estranged sons.

84. For the reasons set out above I have found that Ursula's alleged termination of the claimants' permission to reside with her is not credible, conveniently coinciding as it did with Gunbridge's agenda, with Ursula's deteriorated mental and physical condition, and with her being taken into the care, control and custody of Ian and Roger, the shareholders of Gunbridge.

The compromise of the 2002 action by consent order

85. While in the circumstances outlined above the entry of the consent order must also be regarded as highly suspicious, no authority has been supplied that empowers a court of its own motion, in proceedings not brought for that purpose, to set aside an order entered by consent. I am constrained to decline to do so.

Whether Gunbridge was entitled to terminate the claimant's permission to occupy the said apartment.

86. Clearly Ursula did not have simply a bare licence such as might have arguably allowed Gunbridge to terminate. Ursula's interest in the said apartment was described by the defendant in its written submissions as an irrevocable contractual licence to occupy for life. Her interest is therefore either (a) a contractual licence or (b) a licence coupled with the grant of an interest i.e. to occupy.

87. If her licence were contractual then she would be entitled to assign it. If she could have assigned her benefit of a contractual licence then obviously she would be entitled to assign any interest short of her contractual interest. That would include a permission to persons like the claimants to reside with her at the said apartment. [See page 21-22 **Hill and Redman 17th Edition** under the rubric "*nature of licence*".]

88. If Ursula's interest were a contractual licence then it would only be revocable in accordance with the terms of the contract i.e. the licence document attached to the 2009 consent order. In any event Gunbridge never sought to terminate **Ursula's** licence. If Ursula's licence were coupled with a grant then it would be irrevocable, and this appears to be conceded.

Any permission or sub assignment to the claimants therefore could only be revoked by Ursula.

The issue therefore must be whether Ursula terminated the claimant's permission to occupy the said apartment.

Conclusion

89. I find that the Claimants had personal permission to occupy the said apartments with the consent of Ursula. I do not accept that Ursula ever revoked her permission for the claimants to occupy the said apartment, and, in the entirety of the circumstances, view with extreme suspicion the letters alleged to have been written by Ursula to this effect at a time when her mental condition was deteriorating and she was vulnerable to external pressure.

Whether eviction lawful?

90. The eviction was by **Gunbridge**, in circumstances where the claimants had permission by Ursula to occupy. Suffice it to say it is difficult to convey, without burdening this judgment with excessive historical detail, the shifting allegiances and power plays revealed on the evidence and the several affidavits and documents disclosed and filed in the continuous litigation among the members of this family.

91. The actions of the defendant in this case despite careful sanitization by its attorneys, demonstrates an intention at the end game to have the said property owned, occupied, and controlled by Ian and Roger under the guise of Gunbridge, with shareholding in that company being exclusively reserved for them. The milestones en route to that end include inter alia -

1. Vesting of the shareholding in Gunbridge in Roger and Ian to the exclusion of all other siblings.
2. The 2002 litigation by their mother and father against them.
3. Their removal of their mother from her said apartment and from Gillian's care.
4. Their procuring execution of powers of attorney by Ursula purportedly in favour of Cecelia and then Roger.
5. Procuring the entry of the 2009 consent order in the circumstances detailed herein.

Circumstances of the eviction

92. I find that there can be little dispute regarding the facts and matters relating to the eviction. The evidence in this regard was not the subject of serious challenge.

Abuse of Court's Process

93. I also accept that there was subterfuge regarding the eviction in that the consent order in the 2002 action was produced to the police as the authority for the eviction.

94. It is clearly an abuse of the High court's process to misrepresent the effect of the 2009 consent order, which was not an order for possession against the claimants, and to secure on that basis the involvement of the police. It appears from the evidence of Anil Maharaj, that Mr. Sookhai may have presented that order at the police station to secure police attendance at the eviction. Their inaction in the face of the aggressive and hostile invasion of the said apartment, (and I accept the evidence that this is what it was), can only be explained on the basis that they were under the impression that they were assisting a court sanctioned process. The thuggery by the bailiffs and their agents that was permitted to accompany the eviction remains inexcusable.

95. I do not accept the evidence of Sookhai that he just happened to be conveniently passing and assisted his friend Tony Beepat with the eviction. That level of coincidence is unlikely. His

presence there cannot be explained by mere happenstance. I find his presence there and participation must have been by prior arrangement.

I am satisfied that the circumstances of that eviction were as claimed by the claimants.

96. It is clear that the eviction was carried out in a high handed and aggressive manner. I find that the evidence is clear that the bailiff intended, come what may, to complete his mandate to evict, and the defendant's shareholders and principals Ian and Roger were also similarly obsessed. I find that care for the claimant's possessions was not a priority and neither was concern for her safety.

Trespass to the person - Assault

97. The first named claimant states that she was pushed down the stairs by Roger Thomson. I find that the circumstances of the eviction as described in graphic and horrendous detail by the first and second named claimants support a finding that Roger Thompson:-

- a. was present,
- b. was posturing in an aggressive manner intent on ensuring the rapid and total eviction of the claimants,

c that he brought onto the premises persons who were uncouth, aggressive and menacing,

d. That he himself, if not an active participant in the menacing behavior by his agents, at the very least stood by without making the slightest attempt to prevent the situation from escalating out of hand.

98. This is all consistent with his behaviour as described by the first named claimant. I have no hesitation in concluding, on the evidence of the first named claimant that he acted in a menacing manner towards her, sufficient to put her in fear for her safety and pushed her. I find that he committed an assault which resulted in the injuries she sustained. In those circumstances damages would be awardable and such damages are assessed, based on the injuries sustained and the circumstances in which they were sustained, in the sum of **\$15,000.00**.

99. The fact that injury was sustained raises squarely the issue of excessive force. I find that excessive force was being used in the course of this eviction as there is absolutely no justification for personal injury being sustained by anyone in the course of a lawful eviction. For this reason also I find that the eviction was unlawful.

Trespass to goods

100. I accept the claimant's evidence as to the fact that certain of their personal goods were damaged, some were stolen and some were detained. It is difficult to arrive at a value for each such category of items. In the absence of evidence of the value of those items, I am constrained to award nominal damages as in **Carlton Greer v Alstons Engineering, Civil Appeal No. 2 of 1996 at pg.13** per Jones J.A. I award the sum of \$15,000.00.

Conclusion

101.

1. The first claimant is not debarred by issue estoppel from instituting these proceedings seeking to establish her own claim to the said apartment, and the action is not an abuse of process.
2. The family arrangement created an express trust for the benefit of all six of the children of Gill and Ursula.
3. Gillian had no rights to the said apartment by virtue of the family arrangement.
4. Gillian has not established that even if representations were made to her by Gill and Ursula that she relied on them to her detriment to an extent sufficient to create an interest in the said apartment. Further, even if she did, any such interest could not exceed the contractual licence to occupy for Ursula and Gill's lifetime that the compromise of the 2002 action established.

5. The claimants were entitled to occupy the said apartment by virtue of permission from the 1st claimant's mother Ursula.
6. That permission was not revoked by Ursula at the time of eviction, but could not continue beyond her lifetime. Ursula is now deceased.
7. The eviction of the claimants by Gunbridge from the apartment that Ursula was entitled to occupy for life, was unlawful.
8. The eviction was also unlawful by virtue of the use of excessive force.
9. Gillian was entitled, under the trust established by Gill, to a one sixth share in the ownership of Gunbridge, and entitled to a one sixth shareholding.
10. The first named claimant is entitled to damages for the assault and injuries that she sustained in the course of the eviction.
11. The claimants are entitled to nominal damages for the damage, detention, and theft of their items by the servants and/or agents of the defendant.

Orders

102. Accordingly it is ordered as follows:

1. A declaration is granted that the actions of the Defendant, its servants and/or agents, on the 23rd July, 2009 in forcibly evicting the Claimants from the premises situate at #19 Alcazar Street, St. Clair were unlawful.
2. A declaration that the defendant company holds the premises at # 19 Alcazar Street , St. Clair on trust for the first named defendant, (as well as all the other children of Gill Thomson, including Phillip Thomson, David Thomson, Roger Thomson, Ian Thomson and Cecelia Thomson).
3. In respect of the first named claimant the defendant is to pay damages for trespass to the person in the sum of \$15,000.00.
4. In respect of the first and second named claimants the defendant is to pay nominal damages for wrongful interference with the Claimants' goods and/or trespass to the Claimants' goods and/ or detention and/ destruction of the Claimants' goods in the sum of \$15,000.00.
5. A Declaration is granted that the 1st named Claimant is beneficially entitled to a one-sixth share in the Defendant Company.
6. An order that the Defendant company by its Board of Directors do issue the requisite number of shares representative of a one-sixth share in the Defendant company and do allot same to the 1st Claimant herein within 14 days of the date hereof.
7. Provided that the defendant issues the shares to the first named claimant as above the claimants are to vacate the said apartment on or before May 31, 2011.

8. Each party, being partly successful and partly unsuccessful on the issues raised herein, is to bear his own costs.

The Court is indebted to counsel for all parties, and their teams, for the diligence of their research and the thoroughness and detail of their written submissions.

Dated this 5th day of April 2011

Peter Rajkumar

Judge