

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Sub-Registry Tobago**

**CLAIM NO. CV-2011 –04300**

**BETWEEN**

**ESTHER MILLS**

**CLAIMANT**

**AND**

**LLOYD ROBERTS**

**DEFENDANT**

**BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR**

**APPEARANCES:**

Mr. Ramesh Maharaj S.C. for the claimant

Mr. Elvis O Connor for the defendant

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## REASONS FOR DECISION

### BACKGROUND

1. The Claimant claims an interest, allegedly arising by virtue of estoppel, in a property in Tobago comprising a parcel of land and buildings thereon - (the said property).
2. The said property belonged to the defendant's mother - Hannah Elizabeth James, (Hannah), now deceased.
3. The Defendant is the only child of Hannah and is claiming to be the sole beneficiary of her estate.
4. The claimant's mother, Marie Mills (deceased), (Marie) was Hannah's sister. Marie and the claimant were involved in the **operation of a guest house, (the guest house)**, on the said property under an arrangement with Hannah.
5. The claimant claims that they expended substantial sums of money in renovating, furnishing and improving the guest house after taking it over from the previous operator, Mr. Young. The claimant allegedly also built **her dwelling house** on the subject lands.
6. Hannah allegedly assured the Claimant and her mother that if they established a Guest House on the subject lands, continued to live on the subject lands and maintained the subject lands and the buildings thereon, **that the subject lands and the buildings thereon would belong** to them.
7. The Defendant contends that **the Claimant and her mother were employed by Hannah** and were paid a salary, and that his mother was in control of the guest house.
8. Hannah and the Defendant migrated to the United States of America in or around the 1960s.

9. As the defendant points out, the history of the parties' dealings and their relationship spanned a period of almost 50 years, and requires scrutiny to ascertain the facts and the effect in law thereof. For convenience and clarity the first names of the parties will sometimes be used.

10. The issues are primarily factual, and require determination by this court after full consideration and analysis of the evidence.

## **ISSUE**

**What was the nature of the arrangement between the claimant and her mother on the one hand, and the defendant's mother?**

## **THE EVIDENCE**

11. It was submitted that certain paragraphs of the witness statements on behalf of the defendant were inadmissible. I ruled that some were, and do not rely on those portions which were struck out.

12. It was contended that the defendant had not called any admissible evidence to rebut the claimant's case. Even if that were so the burden of proof lies upon the claimant to establish by evidence the facts and matters that she alleges give rise to the estoppel, whether or not the defendant's evidence is accepted.

## **FINDINGS OF FACT**

14. I find as follows:-

The property comprised a main house, a servant's quarters and an office. Hannah leased part of the main house to Mr. Vidol Young for him to operate a Guest House called "Young's Guest House" The claimant and her mother were requested by Hannah to operate a guest house on the premises after Mr Young's tenancy was terminated.

15. With respect to the details of that arrangement I find as follows.

**a. The alleged representation**

It was alleged that Hannah represented to the Claimant and her mother that if they continued to live there and maintained the lands and buildings and established and operated a Guest House from the said buildings that the subject lands and the buildings would belong to them. Hannah allegedly told the Claimant and her mother that neither her son nor herself intended to return to Tobago. Hannah said she did not want any rent for the property but that they should pay all of the utility bills and taxes for the lands.

16. I find this evidence difficult to accept. Neither the claimant, nor her witness in this regard, was independent. The claimant herself made it clear repeatedly in cross examination that the **property** belonged to Hannah, and the guest house/business belonged to her – the claimant.

17. Hannah did not sever all links to Tobago. She visited, and stayed at the guest house. She received rents from the guest house. It was alleged that this was as a gift. I do not accept this.

18. The defendant's version was that this was part of the arrangement with the claimant and her mother to share in the profits of the guest house. I find this more likely, and on a balance of probabilities, prefer and accept this version.

19. There is no evidence on which I can place any weight that the defendant and Hannah did not enjoy a good relationship, to the point where Hannah would bypass him , (her only son), and her grandchildren, for consideration regarding inheritance of the guest house.

20. I find that the evidence is clear that Hannah did not intend to divest herself of her interest in the land on which the guest house stood.

21. However the evidence is also clear that she did intend that the claimant and her mother would run the guest house, and would earn an income and “make a living” from it. The arrangement was in place for over 30 years without interruption or incident. The evidence of the defendant that there was friction between the claimant and Hannah in the latter years is tenuous and I place no reliance on it. In any event Hannah could have terminated the arrangement during her lifetime if the defendant’s version of the arrangement was correct. She never did, and this suggests, (and I find), that Hannah had no compelling cause to do so.

### **b. Furnishing**

22. Even if the claimant and her mother did **furnish** the guest house, such expenditure on chattels was part of the normal business operations of a guest house, and would not give rise by estoppel to an interest in the **property** on which the guest house stood.

### **c. Painting**

23. Assuming the alleged expenditure of \$6000.00 per year from to paint the buildings, (more than the alleged cost of \$5000.00 of adding a room in the mid 1970s), this would also have been part of the normal business operations and expenses of a guest house.

24. It could not therefore give rise by proprietary estoppel to an interest in the property on which the guest house stood. The guest house must have generated income to remain in operation for over 35 years. That must have involved concomitant expenditure on its upkeep, for example, on the alleged painting.

25. In fact the evidence is that the savings of the guest house were used by the claimant and her mother for expenditure on the guest house. Any surplus would be the profit which was available to the owners/ operators of the guest house. The claimant alleges that the owners/ operators of the guest house were her and her mother. Such expenditure in those circumstances

cannot give rise, in addition to such profit, to an interest in the property on which the guest house was operated, to a party, like the claimant, who is also allegedly in receipt of such profit. The focus must be on who was entitled, under the arrangement with Hannah, to the profits of the guest house.

#### **d. Expenditure on Renovation Repairs and Expansions**

26. The claimant alleges that she and her mother relied on the representations and encouragements of Hannah and they invested, with the knowledge of Hannah, substantial sums of money in repairs and expansions to the properties to facilitate the operation of the guest house and for them to reside on the said lands.

27. In fact the evidence is that **the savings of the guest house** were used by the claimant and her mother for expenditure on the guest house. To the extent that the claimant states that she used funds from her own business to contribute to such expenditure I find that this assertion was not proved by any reliable evidence.

28. In summary, the expenditures consisted of the following:

- a) A loan taken by the Claimant of **\$12,000.00** from the Royal Bank which was used as capital to purchase **furniture** and to conduct **repairs** to the properties to establish a guest house which was called "Mills Guest House". This was guaranteed by one of the witnesses for the claimant whose evidence I accept.
- b) In or about the 1970s the Claimant and her mother built a storeroom annex to the Maid's Quarters and also renovated the maid's quarters into a self contained apartment at the cost of approximately **\$5000.00**. **This apartment was rented as part of the guest house to long term tenants.**
- c) In mid 1970s the Claimant and her mother renovated the **garage** located to the front of the main house into a **studio apartment** which cost approximately **\$6500.00**. This apartment was also rented as part of the Guest House.

- d) **The Claimant's sister and her husband** who were living on the subject properties built a **two room apartment downstairs** in the basement of the main house for them to live until they bought their own house and the said apartment was used as part of the Guest House when they moved out in 1997.

I find that such alleged expenditure by third parties cannot, without more, give rise to an interest in the property by the claimant.

- e) When they moved out in 1997, the Claimant and her mother added **a toilet and bath to the said apartment** at the cost of **\$6300.00**.

29. I find that here is no reason to disbelieve the claimant's evidence that these expenditures were incurred. I find they were, and the source of finance for them, as well as for repaying the loan guaranteed by Cloyd Blackman, must have been income from the guest house. I find that that loan is compelling evidence of an ownership stake in the guest house by the claimant and her mother.

30. The Claimant **upgraded the guest house**, the lands and furnishings with the knowledge of Hannah and those improvements over a period of time **from 1996 cost approximately \$250,000.00**.

31. These alleged expenditures must have been expenses incurred in the operation of the business of the guest house. If it was run as a business by the claimant and her mother they would have been in a position to produce, or at least account for, the tax returns of that business. She could have provided the relevant receipts and bills. The absence of documentation for such a substantial alleged expenditure, which was a fundamental component of her claim, is suspicious, and I find that figure not proved.

32. It was alleged that in addition to the sums expended the Claimant and her mother, in reliance on the representations, encouragements and assurances of Hannah in respect of the guest



house, cooked, cleaned, served meals, did bookkeeping and the administration of the guest house. It was alleged that **they were not paid any salaries by Hannah** and they expended monies and devoted their labour on the basis of the promises and assurances given by Hannah to them that the property would belong to them.

33. I cannot accept this somewhat incredible evidence without reservation. The substantial expenditures that the claimant alleges she and her mother undertook could not have been funded merely from income as salaried employees. Mere salaried employees would not spend their own money on a business in which they had no interest.

34. If I accept the claimant's evidence that they were operating the guest house, then clearly they would have received the profits. They would therefore have been compensated thereby for their labours. I cannot find that their supply of their labour constituted a detrimental reliance. Alternatively, if they were in fact paid a salary, then equally they were compensated for their labour. In addition they resided at the premises rent free.

#### **e. Dwelling House**

35. The Claimant alleges that between 1978 and 1979 after she had a daughter Hannah encouraged her to **build a dwelling house** on the spot where the office of Mr. James was situated. She again assured the Claimant that she had no intention of moving back to Tobago and that **the subject lands** would belong to her. The Claimant in further reliance on those assurances **to the knowledge of Hannah** broke down the dilapidated office structure and constructed a **3 bedroom house** with a living room, kitchen, a toilet and bath and a porch. This was at a cost of approximately \$65,000.00.

36. The defendant accepts that the claimant lives there and that she made an addition thereto. He does not accept that she demolished the existing structure or that the structure she constructed had 3 rooms. He claims that the structure is largely unchanged.

37. I do not accept his evidence in this regard. It was a simple assertion, whereas the claimant's evidence on this important issue was corroborated by witnesses. In any event the common ground is that the claimant does live there, and did make additions, though the extent is disputed.

38. She claims to have spent \$65,000.00, though this is unsupported by receipts. The fact is, whatever her expenditure thereon, it could not have occurred without Hannah's consent, express or implied. There is no evidence that Hannah ever objected to the claimant's living there or making her home there or expending monies to make it suitable for her living quarters.

39. I find that such a building was constructed and renovations and upgrades were done, though not to the extent of \$250,000.00.

40. While I accept that Hannah was aware of and acquiesced in the claimant's occupation of **the dwelling house** that the claimant built, I find that Hannah's alleged assurances that **the lands and buildings would** belong to the claimant less credible. On the claimant's case there is no reason why at that point Hannah could not have given effect to her alleged intention to divest herself completely of the said property and transfer it to the claimant and her mother, if in fact she did not intend to retain any interest in the said property, or the guest house, or the profits thereof. In fact I find, on the claimant's own evidence that Hannah did intend to retain an interest, as set out hereunder.

**f. The guest house business**

41. The claimant and her mother were afforded the opportunity to operate the guest house for over 35 years. In that time they appear to have had a degree of autonomy. The evidence as to who retained the profits of the guest house is deficient. There were no tax returns by the claimant, and no coherent records from the defendant, though they both surprisingly claimed to have such records.

42. In the absence of any tax returns from either the claimant or the defendant in respect of the guest house it is unclear who was in receipt of some or all of the profits, or even whether the guest house was profitable. The possibilities are

- a. That the claimant and her mother were in receipt of **all** the profits,
- b. That they were in receipt of **none** of the profits, and were simply employees, as they had been employees of Mr. Young previously, or
- c. that they were in receipt of **some** of the profits, with Hannah sharing therein.

Such evidence as there is, is that the latter arrangement applied de facto, as Hannah received the rent from the long term tenants.

43. The guest house was run in their name as Mills Guest House. The claimant's mother made her living there since 1975 until her death in 1998. The claimant operated it since 1998 "wholly and solely". The defendant never participated in its operation.

44. To the extent that Hannah's intentions need to be ascertained, these can best be ascertained by her actions. If she had intended the defendant to operate the guest house or participate in its operation she could have executed instructions.

45. If she intended that on her death the Guest House and the lands thereon would pass to the claimant she could have made this clear in her will, by deed or some other written documentation. She never did so.

**g. Rents from long term tenants**

46. It is undisputed that the rents from long term tenants were for Hannah's account. The claimant says this was a gift to Hannah. The defendant says that it shows Hannah retained control and ownership. Her retention of rents from long term tenants is certainly consistent at least with Hannah's retaining partial control and ownership, and I so find, especially as Hannah never sought to effect any transfer of the said property to the claimant or her mother when she had ample opportunity to do so.

47. It is clear that she **intended the claimant and her mother to derive a living** from the operation of the guest house.

48. I find that it is equally clear that she **intended to retain some level of residual interest** as

a. she did not make an outright gift of the premises to them,

b. she retained the right to occupy a room on the premises, and

c. **she had the rent of long term tenants directed to her bank account .**

49. Hannah had not made any unequivocal direction in writing as to whom the guest house would pass on her death. Her actions however demonstrate clearly that she intended to share the benefit of that property with her family who remained in Tobago, as the claimant and her mother, and the claimant's sister and other siblings all were permitted to occupy the property at various times. I find that Hannah was clearly a generous person who kept her family in mind.

50. The occupation and operation of the guest house over more than 35 years, by the claimant's mother and the claimant, are consistent with that, and with an intention by Hannah that upon her death they would not be dispossessed or deprived of the means of making a living, as they had collectively done over 35 years. Permitting the claimant to construct a dwelling house on the premises is consistent with and corroborates such an intention.

### **The extent of the Equity**

51. Hannah's actions were not consistent with any intention that **all** her interest in the said property be divested from her estate, bypassing her son and grandchildren. I find on a balance of probabilities that the alleged representation to that effect is not credible, and that if Hannah had really wished to do that she had sufficient acumen and experience that she could have accessed lawyers to give effect thereto.

52. That equity can best be satisfied by a life interest in the property for the continued operation of the guest house by the claimant, and occupation of the dwelling house.

53. In accordance with the common evidence of the arrangement that applied with respect to Hannah, the rents from long term tenants would go to her successor in title, the defendant, should he apply for and receive a grant of letters of administration in respect of Hannah's estate.

### **DISPOSITION AND ORDERS**

54. **It is hereby ordered as follows:**

1. A declaration is granted that:
  - (a) The Claimant is entitled to remain in possession of the parcel of land comprising approximately 28,000 square feet of land situated in Scarborough, Tobago bounded on the North by Young Street, on the South by the lands of the Seventh Day Adventist Church on

the East by Mc Kay Hill Street and on the West by Cuyler Street to Convent together with the buildings thereon, the subject of this action (“the subject lands”) and to continue to operate the guest house known as Mills Guest House from the subject lands, for the duration of her life, or for as long as she continues to operate a guest house thereon, whichever is sooner, subject to the disposition of the rents of the long term tenants as set out in paragraph 1 (d) below.

- (b) The Defendant is entitled to the use of the front room of the said guest house comprising a bedroom, a bathroom and a kitchen located along the western side of the upper floor of the building located on the northern eastern portion of the subject lands (“the said front room”) for use by himself and/or his servants and/or agents at his discretion, upon the Defendant giving the Claimant 48 hours notice of his intention to occupy the said front room.
  - (c) The Claimant is entitled to remain in possession and occupy for the remainder of her life, the dwelling house situated on the south western portion of the subject lands where she now resides.
  - (d) The successor in title to the late Hannah Elizabeth James who receives a grant of letters of administration is entitled to the rents from the long term tenants of the building on the south eastern portion of the subject land and the Claimant is to account for and pay such rents to such successor in title from the 27<sup>th</sup> February, 2010 being the date of Hannah’s death.
- (2) An undertaking is recorded from attorney at law, on behalf of the Defendant without prejudice to the exercise of any further options arising from the oral judgment of this court on September 28<sup>th</sup> 2012, that he will refrain, whether through himself, his servants and/or agents, from:
- (a) Hindering or obstructing the Claimant’s occupation of the subject lands and the operation by her of the said Guest House, and from

(b) Trespassing upon the subject lands, save for the purpose of peaceful use and occupation of the said front room referred to aforesaid, and from obstructing the operation of the said Guest House.

(3) Liberty to apply.

## **ANALYSIS AND REASONING**

### **Law**

55. In the case of Horace Reid v Charles and Bain PC Appeal No. 36 of 1987 Lord Ackner stated at page 4:

*“...where the wrong impression can be gained by the most experienced of judges if he relies solely on the demeanor of witnesses, it is important for him to **check that impression against contemporaneous documents, where they exist, against the pleaded case and against the inherent probability of improbability of the rival contentions, in the light** in particular of **facts and matters which are common ground or unchallenged, or disputed only as an afterthought or otherwise in a very unsatisfactory manner. Unless this approach is adopted, there is a real risk that the evidence will not be properly evaluated and the trial judge will in the result have failed to take proper advantage of having seen and heard the witnesses.**”*

## **EVIDENCE – THE WITNESSES**

### **Cloyd Blackman**

56. Cloyd Blackman gave evidence that he guaranteed the loan which the Claimant said she took from the bank in order to establish the guest house. The monies were used to purchase furniture and appliances in order to run the guest house.

57. I accept his evidence. He appeared to give his evidence in a straightforward and candid manner, and was clear on what he knew, as well as what he did not know. For example, he did not claim to have been aware of the details of any business plan that the claimant and her mother alleged they presented to the bank. His role was simply to guarantee the loan taken from the bank.

58. If the claimant and her mother were merely employees they would not have needed to invest their own funds in the operation of the guest house. He confirmed that the Claimant demolished the dilapidated structure located in front of the main house (ATP James' office) and constructed a dwelling house for herself.

### **Jessie Hurdle**

59. Jessie Hurdle gave evidence inter alia, that he assisted in the **construction of the dwelling house of the Claimant** on the spot where there was an old dilapidated one room structure. While I accept his evidence on this aspect he was not a witness on whose evidence I would otherwise be prepared to rely. He was clearly not an independent party.

### **The Claimant**

60. The Claimant Esther Mills contends that in or about 1975 her aunt the late Hannah Elizabeth James represented to her and her mother Marie Mills that **if they continued to live on the subject lands and maintain the subject lands and the buildings thereon and if they established and operated a Guest House on the subject lands, that the subject lands, the buildings thereon and the Guest House would all belong to them.**

61. In fact, Hannah during her lifetime never returned to Tobago to live, and the Defendant to date continues to live in the United States. The Claimant contended that Hannah visited Tobago every 2-3 years and that the Defendant rarely visited. The Claimant also contends that Hannah



told her that she and the Defendant had no intention of returning to Tobago to live and in fact Hannah retired in Florida.

62. During Hannah's visits to Tobago she allegedly repeated her said assurances and encouraged the Claimant and her mother to further renovate and/or expand the buildings and the guest house on the subject lands and repeated her assurances that the subject lands would belong to them.

63. I do not accept this on a balance of probabilities. It is inherently improbable for the following reasons.

i. Hannah had a son.

ii. The future was uncertain. At the time Hannah was leaving she would not have known whether she might have changed her mind, or whether her financial circumstances might have deteriorated in future. To make a promise, at that stage, during the 1970s, divesting herself, and her son, and any future grandchildren, of any interest in the said property is illogical, and would not be a rational decision at that point in time. The evidence however is that Hannah was a methodical and meticulous person, and a supervisor at a bank in New York. No one has even suggested that Hannah was not a clear thinking, rational person. As pointed out by attorney for the defendant, this is corroborated by the transactions that she undertook to get the said property in her sole name, converting her one third share in the entire property of her late husband into sole ownership of the said property, and her dealings via attorneys with Mr. Young as evidenced by the correspondence.

iii. Hannah continued to visit Tobago. She did not cut off all ties to Tobago to the extent where it would be reasonable to infer that she would have also divested herself of her property there.

iv. Even according to the evidence of the claimant herself, Hannah retained an interest in the proceeds of the guest house. She retained the use of a room on her occasional visits to Tobago, and since 1998 she received the proceeds of rent from the original servants' quarters. I do not accept that this was merely a gift from the claimant to Hannah.

All the evidence is consistent. Hannah was generous to her family, but also meticulous and forward thinking.

## **THE DOCUMENTARY EVIDENCE**

64. The Claimant's case must be considered in relation to the documents adduced into evidence.

### **(a) Income tax and health surcharge payments**

Copies of these payments for 2010 and 2011 are at agreed document No. 23. (Trial Bundle, Vol 4). These recent documents are, at best, neutral and do not advance her case. Agreed Document No. 22 similarly does not assist her case.

### **(b) The utility bills**

The Claimant and/or her mother have allegedly paid all taxes and utility bills including water, electricity, telephone and cable bills since they established Mills Guest House. I find this evidence also is, at best, neutral. If they were running the guest house, as I find they were, then it is only to be expected that they would pay those bills for the services consumed by the guest house. The fact that those bills were in their name does not advance the claimant's case, in so far as it relates to the entire property.

### **(c) The passports and their entries in respect of Hannah and the Defendant**

These allegedly negative the case for the Defendant that regular visits were made to Tobago by them as part of the exercise by Hannah of control of the guest house and the other properties. I find however, that the arrangement with the claimant's mother, and the claimant herself, was for the very reason that the obligations of the defendant and his mother in the United States, where they lived, did not permit their day to day involvement in the business.

Even if their visits were not frequent, that does not by itself mean that they had relinquished all their interest in the said property to the claimant. In fact it demonstrates that they had not relinquished all ties to Tobago.

(d) **The agreement which the Defendant requested the Claimant to sign**

I find that the fact that this agreement was proposed suggests that the claimant was in fact involved in the operation of the guest house and that a variation to the then status quo required her consent. In any event I find that nothing occurred pursuant to his agreement.

(e) **The receipts allegedly showing that the Claimant maintained the property**

*Receipts for maintenance and recent upgrades undertaken during the period 2005-2009 are annexed at Tab 2 of the Agreed Bundle of Documents (Trial Bundle 4).*

I find that these receipts are for fairly small maintenance and consumable type expenditures and, even if undertaken by the claimant, such expenditures are to be expected as incidental to the running of the guest house.

(f) **Evidence of renovations done to the property given by the Claimant and the witnesses Jesse Hurdle and Cloyd Blackman**

I accept the evidence that some works were carried out on the site of the former office and a dwelling house for the claimant now exists thereon. In fact this is common ground, though the extent of works done there by the claimant is disputed.

65. Jessie Hurdle also gave further evidence that between 1989 and 2006 he was contracted and paid by Esther Mills for 4 major projects. I find that this witness was in no position to know the source of the funds that Esther Mills used to pay him. He cannot say whether those funds which were used to pay him came from Esther Mills or Hannah, or the share of either in the profits of the guest house, or what if any, was the arrangement between Esther and Hannah regarding the guest house, and expenditures thereon.

**DETRIMENT**

66. It is clear that the Claimant relied on the assurances of Hannah and acted to her detriment in constructing her dwelling house on the subject lands. I find that Hannah's conduct encouraged the Claimant to rely on same and to act to her detriment in this regard.

67. I find that the Claimant would not have invested money and built her dwelling house on the subject lands if such promises and assurances were not given to her. Hannah visited Tobago and saw that dwelling house of the Claimant.

68. It was contended that the following constituted further detrimental reliance by the claimant and her mother.

**(a) Painting of the buildings on the subject lands**

*Esther Mills and her mother since the 1970s in reliance on the promises of Hannah acted to their detriment in painting the buildings on the subject land on a yearly basis.*

69. However I find that painting is a necessary expense of the upkeep of premises on which a guest house is being run. After expenses are deducted from income there would have been profit. The guest house would not have been run for decades if it were not profitable. Any receipt of profits by the claimant and her mother would negate the existence of detriment. They cannot assert detrimental reliance if all they were doing was making necessary expenditure to generate a profit in which they participated. I find that they must have participated in the profits. As the claimant insisted, “it was Mills Guest House”, and she and her mother were not employees. In fact she asserts that the rent from the original servants’ quarters was given **by her** to Hannah as a gift. Clearly, therefore, this at least must have been income surplus to expenditure.

**(b) Payment of insurance for the subject lands and buildings thereon**

*The Claimant and/or her mother allegedly paid the insurance from 1972 to 2005. A letter from Tatil confirming this is exhibited at document No. 24 of the Agreed Documents (Trial Bundle 4).*

70. However I again find that payment of insurance is a necessary expense of running a guest house. The same reasoning applies as with the painting expense.

**(c) Payment of land and building taxes and all utility bills**

71. As set out above these are normal incidental expenses of running a guest house. I also find nothing turns on payment of land and building taxes. The source of the funds for this has not been established and there is a real possibility that it was the income from the guest house.

**(d) Construction of Storeroom annex and renovation to Maid's Quarters**

*In the 1970s in reliance on the promises of Hannah, the Claimant and her mother built a store room annexure and renovated the maid's quarters which already contained two rooms by adding a toilet and bath and a kitchen to make it into a self contained apartment. This extension and renovation cost approximately \$5000.00. They thereafter rented out this apartment to long term tenants.*

72. I find that this was for the purpose of generating income, and that the cost probably came from the profits of the guest house. (See Claimant's witness statement paragraph 23 and evidence in cross examination). Income must have been generated. The decision to gift this to Hannah, (or more likely as I find, the decision to apportion the rent from this area as Hannah's share, or part of her share, of the profits), does not affect the fact that it was not to their detriment, but rather to their eventual advantage as the objective effect of the evidence is that Hannah and the claimant and her mother were sharing in the profits of the guest house.

**(e) Renovation of Garage**

*In the 1970s the Claimant and her mother based on the promises of Hannah expended over \$6500.00 in renovating the garage located to the front of the main house into a studio apartment consisting of a sleeping area, a kitchen/dining room and a toilet and bath.*

73. I find that this was for the purpose of generating income, and that the cost probably came from the profits of the guest house. The claimant and her mother would have shared in the

enhanced income this investment provided, and it therefore would not have been to their detriment.

**(f) Basement apartment**

*In or about 1977 the Claimant's sister Makeda and her husband built a two room apartment in the basement of the main house so that they could live there for a few years based on the encouragement of Hannah. They did this on the basis that when they moved out, the room could be used as part of the Guest House. In or about 1997 when they left, the Claimant and her mother added a toilet and bathroom to this apartment at the cost of \$6300.00*

74. I find that this was for the purpose of generating income, and that the cost probably came from the profits of the guest house. The claimant and her mother would have shared in the enhanced income this investment provided, and it therefore would not have been to their detriment.

**(g) Closure of Boutique**

*In or about 1996 the Claimant had no choice but to close down a boutique which she operated because it was no longer possible for her to continue to run the boutique and the Guest House at the same time as her mother was ill and could no longer work in the Guest House.*

75. She had workers at the boutique that she was able to, and did, check upon as it was close to the guest house. I find that her alleged decision to concentrate on the guest house was her choice, and not necessarily mandated by her mother's illness. In any event she would have benefitted from the income of the guest house.

**(h) Renovations and improvements over \$250,000.00**

*In or about 1996 the Claimant commenced renovations and improvements to the Guest House in the sum of \$250,000.00. She invested money from her boutique together with **some savings from the Guest House** and a grant which she got from the Tourism Board. The improvements made*

*included adding a toilet and bath to one of the rooms in the main house, building a concrete wall with a gate at the back of the property, renovating the front room by tiling the room and changing the cupboards, purchasing a new bed and mattress, a new wardrobe and door. She added a kitchen to her mother's room and tiled the bathroom to this room. In the other rooms of the guest house, she removed the carpet and varnished the wood flooring, painted, bought televisions and air-conditioning units for all the rooms. She has changed the ceiling and made repairs to the roof, bought new furniture for the Guest House and appliances for the kitchens.*

76. In bold is the expenditure more directly referable to the property. I find a suspicious dearth of evidence for such a considerable expenditure.

77. In any event to the extent that the grant and the guest house savings were the source of funds I find that this was for the purpose of generating income and that the cost probably came from the profits of the guest house. The claimant and her mother would have shared in the enhanced income this investment provided, and it therefore would not have been to their detriment.

**(i) Continuous maintenance**

78. The Claimant and/or her mother since the establishment of Mills Guest House have allegedly been solely responsible for the general and daily upkeep and maintenance of subject lands and the buildings thereon.

79. Receipts for maintenance and recent upgrades undertaken during the period 2005-2009 are annexed at Tab 2 of the Agreed Bundle of Documents (Trial Bundle 4).

I find that these receipts are for fairly small maintenance and consumable type expenditures and, even if undertaken by the claimant, such expenditures are to be expected as incidental to the running of the guest house. I find that the Claimant cannot assert detrimental reliance if what

they were doing was making necessary expenditure to generate a profit in which they participated.

80. The Claimant at paragraph 31 of her witness statement at pg 532 of Volume 2 of the Trial Bundle indicated that **in or about 1998 she told Hannah that every time rooms located in the servant's quarters were rented out she would deposit these monies into her account at First Citizens Bank for her.**

81. She further indicated that the Defendant's mother indicated that once she became ill or died, she wished her to cease placing the funds therein, because "the Guest House was (the claimant's) and she did not wish her son to claim the money".

82. However I find that if the Defendant's mother did not wish him to benefit she could have taken steps to prevent same, rather than stating that she did not so wish him to benefit. The only evidence that Hannah made such a statement comes from the claimant, and Hannah, as a literate and competent person, could easily have made her intentions clear in this regard by reducing them to writing.

83. This latter alleged statement simply appears odd. It seeks to give the impression that the deceased Hannah and her son were not only not on good terms but that Hannah actively wanted to dispossess or disinherit him in respect of the Guest House and its income. I do not accept that Hannah made any such statement. It would be illogical that she would wish, at the point in time if or when she became ill, to deprive herself of a source of income when she might then have most need of it, just to ensure that her only son did not benefit from it. I find this simply not credible. It demonstrates that the claimant's evidence must be treated with some reservation.



## **THE DEFENDANT'S CASE**

84. I accept the submission that the Defendant **had no direct knowledge of the arrangement between his mother and the Claimant and Marie Mills** and that he was relying upon his interpretation of documents which he found.

85. It was submitted that there are no records in the Defendant's documents for national insurance payments, income tax, payment of salaries, maintenance and renovations undertaken or for the payment of utility bills originating from Hannah or the Defendant.

86. Of these I consider the lack of income tax returns most significant, as the other items could have been paid by the claimant or her mother in their role as managers of the guest house. Both the claimant and the defendant claim to have had such records. The production of such records would have clarified the source of funds for payment of the other expenses, the quantum of expenditure on improvements and renovations, the ultimate beneficial ownership of the Guest House business, and the entitlement to the profits thereto.

87. Various disjointed documents were produced by the defendant, but on examination their admissibility and relevance are questionable and they do not advance the case for the defendant for the reasons set out by the claimant in her submissions.

88. In so far as the Defendant is seeking to rely on the correspondence between him and the Claimant, I expressly pay no attention to any 'without prejudice' correspondence, or any communications between the parties aimed at resolving this matter.

## The Defence

1. *That the Claimant's mother Marie Mills was the person appointed by his mother as agent/manager of the guest house and that the relationship which existed between them was that of employer and employee.*

89. In his cross examination it became clear that he did not have any knowledge of the arrangement Hannah had with the Claimant and his mother.

2. *That the Claimant's involvement in the business was intermittent and that she embarked on several ventures during the time the guest house was in operation including forays out of the jurisdiction for extended time periods.*

90. I find that her participation in other ventures does not detract from her involvement, with her mother, in the Guest House.

3. *That the Claimant only commenced managing the business after her mother's death in 1998.*

91. I accept her evidence that it was only after her mother's death that she commenced "wholly and solely" managing the Guest House, but she was involved to a lesser extent before, with her mother.

4. *That any monies expended in the guest house came from the proceeds of the guest house.*

92. I so find.

5. *That the Claimant was required **at all times** to account to his mother in respect of the operations and income of the guest house and that his mother maintained special accounts to treat with the different income generating sources of the business, that is the transient guest component and the fixed tenant component.*

93. I find that the evidence in this regard is lacking. Such alleged regular accounts to Hannah could, and should, have been produced if the defendant had any.

94. In paragraph 25 of the witness statement of the Defendant he says that his mother was a meticulous person and that she maintained records, letters, bills, and receipts, and other documents regarding her affairs in Tobago.

95. He did not produce documents to support this, or to show that the Claimant and her mother acted on behalf of Hannah in running the guest house, and that Hannah maintained control of the business and the properties. He stated in cross examination that he had records.

96. The Defendant could have produced bank statements, receipts, his mother's Inland Revenue number if any, profit and loss statements, "letters, bills, and receipts", and other records associated with the guest house and the business to support his case that Hannah exercised control of the Guest House and other properties.

97. They would have been in his possession if Hannah did in fact exercise such control. He would have been able to show evidence that Hannah paid for those improvements or that the payments were made on her behalf.

98. I accept the submission that the failure of the Defendant to produce the records or any contemporaneous documentary evidence leads to the inference that Hannah was not exercising total control over the guest house and its operations, as alleged by the Defendant.

99. At paragraph 26 the Defendant said his mother "maintained responses from her agents in respect of issues she raised in respect of the management of her affairs in Tobago". I accept the

submission that this shows that as a meticulous person, if the Defendant were speaking the truth, she would have made written communications to the Claimant particularizing any complaints about the Guest House and other properties.

100. He referred to a handwritten letter which allegedly gave instructions as to how the guest house was to be managed and then said “those instructions resulted in deposits being made by the Claimant and her mother into my mother’s account”. I accept the submission that he did not identify this letter in his witness statement. He made no attempt to tender this letter as part of his examination in chief, and there is no evidence, even that it was Hannah’s letter, or that it was given to the Claimant and/or her mother.

101. The Defendant at paragraph 30 states that his mother paid all utility bills for the Guest House through the proceeds of the Guest House and sometimes from her own personal income. He said that he also assisted at times in the payment of these bills. I accept the submission that since his mother kept meticulous records the Defendant ought to have been able to produce evidence that he paid bills for the Guest House and that his mother paid utility bills for the guest house. No such evidence was produced. On the contrary, there is evidence that up to the time of Hannah’s death the Claimant paid the utility bills.

102. As part of his case that Hannah had control of the businesses and the properties he said that she went to Tobago every year. At paragraph 31 the Defendant gave evidence that his mother returned to Tobago every year and stayed at least 2-3 months at a time. I accept the submission that the endorsements of his and his mother’s passport (exhibited as No. 41 and 42 of the Agreed Bundle of Documents, Trial Bundle, Vol 4.) show that this evidence was not true. The endorsements on the passport of Hannah Elizabeth James show that she visited Trinidad and Tobago on the following dates:

- (1) 16<sup>th</sup> December, 1985- 31<sup>st</sup> December, 1985.
- (2) November, 1987 (exact date is illegible) to 26<sup>th</sup> November, 1987

- (3) 17<sup>th</sup> December, 1988 to 20<sup>th</sup> December, 1988.
- (4) 12<sup>th</sup> November, 1990 to 23<sup>rd</sup> November, 1990
- (5) 22<sup>nd</sup> February, 1993- 11<sup>th</sup> March, 1993.
- (6) 28<sup>th</sup> April, 1994.

103. The endorsements on the passport of the Defendant show that he visited Trinidad and Tobago, sometimes at the same time Hannah, on the following dates:

- (1) 16<sup>th</sup> December, 1985 to 31<sup>st</sup> December, 1985.
- (2) 28<sup>th</sup> April, 1994.
- (3) 22<sup>nd</sup> August, 1992.

104. At paragraph 35 the Defendant stated that the office of his stepfather was not demolished as alleged by the Claimant and that the office remained standing though he admitted in cross examination that alterations were made to the structure, and admits that the claimant lives in it. I find that this was "disputed only as an afterthought" in the sense contemplated in *Reid v Charles supra*.

105. At paragraph 37 and 38 the defendant gave evidence of alleged complaints his mother made to him about the finances and resources of the guest house being misappropriated by the Claimant. However he produced no evidence to show that Hannah, who he said was a meticulous person, wrote or made any complaints in writing to the Claimant over a period of 35 years on such a serious matter. I accept the submission that this is especially strange having regard to the fact that he gave evidence that she maintained responses from her agents in respect of her business affairs.

106. I accept the submission that the Claimant and her mother were in charge of the guest house since around 1975 to the time of the death of Hannah in 2010, a period of 35 years. The Claimant's mother died in 1998 and from 1998 to the time Hannah died in 2010 would be 12

years. I accept the submission that it is reasonable to infer that Hannah would have taken steps to write a complaint or stop the Claimant from running the guest house if such a state of affairs existed. Instead the evidence is that up to the death of Hannah she allowed the guest house to be operated by the Claimant.

107. In paragraph 41 the Defendant stated that the Claimant's mother, sister and other relatives were duly remunerated for their services in assisting in the guest house. I accept the submission that he produced no evidence to show that they were remunerated by Hannah, or by him, to support his case of the arrangement he alleged Hannah had with them.

108. At paragraphs 46 and 47 he said that his mother in 1995 opened an account in their joint names at FCB bank in Tobago in preparation for him to assume control of the business and that his mother "wanted to gradually remove the Claimant" from operating the business. Certainly, even if true, no further concrete action appears to have been taken.

109. At paragraph 62 the Defendant again said that he was aware that his mother utilized her personal funds to meet items of expenditure and he also assisted with his personal funds. He has not produced any documentary evidence to support the use of his or his mother's funds for that purpose.

110. He also states that the claimant told him and his mother that the guest house was not generating profits. This is inconsistent with his further claim that Hannah intended to finance her acquisition of a property from the **profits** of the guest house. (Paragraph 39, 40 witness statement of defendant) If that were so then it is unlikely that Hannah would pin her expectations of financing of the Florida property on any profits from the guest house from which she had not been benefitting.

111. I do not accept that the guest house was not profitable. I find that on a balance of probabilities it must have been to allow for:-

- i. Expansion over the years, and
- ii. The claimant and her mother to derive a living therefrom for decades,
- iii. Hannah to receive deposits of rent from the long term tenants,
- iv. Hannah to plan, if she did so at all, her financing of another property, on expectations of income from the guest house.

112. I accept the submission that in paragraphs 64 to 68 the Defendant states that in or about December, 1998 his mother stressed the need for active and direct involvement in the business and indicated to his mother that he would partner with the Claimant pending his retirement in a few years. He relied on the document entitled “Letter of Agreement” exhibited at Vol 2 of the Trial Bundle at page 499. I accept the submission that there is no admissible evidence to connect his mother to this document.

113. The Claimant stated that she signed the document on the basis that the Defendant would inject funds into the guest house for, inter alia, the construction of a swimming pool, and cable for the Guest House. The Defendant did not inject any funds into the Guest House and the partnership agreement never materialized.

114. I accept the submission that this document supports the case for the Claimant because it is an acknowledgement by the Defendant that the Claimant was in control of the Guest House. If Hannah was in control and she wanted a joint partnership of the Guest House ,as alleged by the Defendant, she merely had to give instructions to the Claimant to that effect. The Defendant did not have to enter into an agreement with the Claimant to jointly manage the guest house. He could have only sought that agreement on the basis that the Claimant was in control and he acknowledged that.

115. Further, I accept the submission that if that is what Hannah wanted there is no reason why it could not be signed by Hannah. She was alive at that time.

116. I accept the submission that if the purpose of that agreement was for him to become more involved in the business and see that his mother got her due his actions did not demonstrate this. After this agreement the defendant did not insist on profit and loss statements or financial accountability from the claimant. As joint manager he would reasonably be expected to insist on receiving evidence of the profits of the guest house, approving major expenditure, and ensuring deposit, for Hannah's benefit, of whatever portion of the profits she would have been entitled to. On his own evidence none of this took place.

117. In paragraph 80 the Defendant said his mother Hannah expressed displeasure and concern of lack of financial records. I accept the submission that if this was the case, Hannah as a meticulous person would have made written complaints to the Claimant about it and sought written responses and would also have taken steps to remove the Claimant, especially if the Claimant was operating the business as an employee of Hannah. The Defendant did not produce any written record to support his bare allegations.

## **ESTOPPEL - THE LAW**

118. For the Defendant to succeed in her claim she must establish an equitable interest that entitles her to maintain that claim against the defendant or the estate of the deceased. It is therefore necessary to examine the basis of the claimant's claim to ascertain whether any interest was created by virtue of:

- (a) Proprietary estoppel
  
- (b) Promissory estoppel.



**(a) PROMISSORY ESTOPPEL**

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

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

120. I find that there is no evidence which I can accept that any such promise or assurance was made in respect of the **entire property including the lands**. I do not accept the evidence of Jessie Hurdle or the claimant on this aspect of the matter. His evidence on this aspect is not independent evidence. Hers is self serving and appears to be contradicted by her own evidence under cross examination. It also lacks inherent credibility for the reasons set out previously.

**(b) PROPRIETARY ESTOPPEL**

121. “ 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.” ( all emphasis added) **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**

The claimant must establish that the defendant or his predecessor in title, had represented that she will obtain an interest in property “either by making an express promise (as where a father

*persuades his son to build a bungalow on the father's land or ...a mother assures her daughter that she will have the family home for life ... or by **encouraging** the claimant to believe that she will obtain such interest **by words or conduct**..... or by **encouraging the claimant's belief passively by remaining silent**.*

It is not necessary for the claimant to prove that the defendants agreed that the promise or assurance would be irrevocable since it is the claimant's detriment which makes the assurance binding and irrevocable provided that it was clearly intended to be acted upon. See **Snell's Principles of Equity 31<sup>st</sup> Ed. Paragraph 10-17.**

## **2. 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. See Snell's Principles of Equity 31<sup>st</sup> Ed. Para. 10-18**

**3. She must have incurred expenditure or otherwise acted to her detriment. See Snell's Principles of Equity 31<sup>st</sup> Ed. Ibid Para. 10-19.**

122. I find that the Claimant was granted the right to construct / renovate, and occupy her dwelling house rent free and no time limit was specified. Her expenditures thereon were permitted by the deceased and not objected to. I find that Hannah encouraged the claimant to believe that she will obtain an interest in the dwelling house that she constructed on the said property, by her conduct and by encouraging the claimant's belief passively by remaining silent.

123. I find that there must have been some maintenance type expenditure on the said property in order to maintain the Guest House in a condition to receive guests who would be willing to pay to stay there. I accept that the Guest house now is in a different condition to that in which it was at the inception of the arrangement. For example, I accept the claimant's evidence that each room now has its own toilet and bath.

124. I find that such expenditure came from the profits of the Guest House. While such expenditure may have decreased the amount of profit that the claimant and her mother would share in, as a matter of logic and common sense it would only have been undertaken if a business decision had been made that such expenditure was likely to preserve or enhance revenues for the Guest House. As persons entitled to share in the profits of the guest house it is difficult therefore to characterise such expenditures as being to the detriment of the claimant or her mother.

125. I take into account the Privy Council case of - **Knowles v Knowles Privy Council Appeal No 28 of 2007 delivered the 9<sup>th</sup> June 2008** where the Privy Council was mindful of depriving an owner of property who had done nothing at all to encourage any belief that the occupants could treat the property as belonging to them (at Paragraph 27)

*"In Jennings v Rice [2002] EWCA Civ 159; [2003] 1 P & CR 100 Robert Walker LJ said at paragraph 56*

*"that the essence of the doctrine of proprietary estoppel is to do what is necessary to avoid an unconscionable result.....*

*In E & L Berg Homes Ltd v Grey (1979) 253 EG 473, [1980] 1 EGLR 103 Ormrod LJ said at p 108:*

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

126. Property rights are not created out of sympathy, especially when their creation in this case would diminish the interest of whoever is entitled to the estate of the deceased, and that

person's successors in title. The Privy Council's guidelines are clear. The courts must approach a case of this type with extreme care.

127. *In the case of Gillet v Holt [2001] Ch. 210 at page 232 (D), Robert Walker LJ in respect of the element of detriment required in a claim for proprietary estoppel stated:*

*“The overwhelming weight of authority shows that detriment is required. But the authorities show that it is not a narrow or technical concept. The detriment need not consist of the expenditure of money or other quantifiable financial detriment, so long as it is something substantial. The requirement must be approached as part of a broad enquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances.*

128. I find that the claimant did sustain detriment, **with respect to construction of her living quarters** on the subject lands.

129. Further, as the defendant points out in his submissions, the claimant was capable of embarking on other ventures. The fact is that she eventually focused her energy on the Guest house and in investing her time and energies into making the Guest House business sustainable and profitable, both for the benefit of the deceased, as she shared in the profits, and for the benefit of her mother (while she was alive), and the claimant.

130. I find that this also constitutes a detriment. It would be inequitable, after such an extended period, to deprive the claimant of the means of making a living from running the Guest House. This is what Hannah appears to have intended, as it is consistent with her actions. A repudiation at this stage of Hannah's implied assurance in this regard would be unconscionable.

131. However Hannah at no time evinced in tangible or documentary form any intention that the fee simple in the entire property should pass to the claimant, to the exclusion of the defendant, her only son, and his children. I find therefore that it would also be inequitable to deprive the defendant of his share of the profits that, on the undisputed evidence of the claimant and the defendant, Hannah enjoyed.

132. I also find that there is no reason to quantify any equitable interest in the said property as exceeding a life interest. As far as the dwelling is concerned the claimant has enjoyed rent free accommodation there, and on the premises, since the 1970s.

133. In those circumstances, and for the reasons set out hereinabove, I make the following orders.

## **DISPOSITION AND ORDERS**

### **134. IT IS HEREBY ORDERED AS FOLLOWS:**

A declaration is granted that:

- (a) The Claimant is entitled to remain in possession of the parcel of land comprising approximately 28,000 square feet of land situated in Scarborough, Tobago bounded on the North by Young Street, on the South by the lands of the Seventh Day Adventist Church on the East by Mc Kay Hill Street and on the West by Cuyler Street to Convent together with the buildings thereon, the subject of this action (“the subject lands”) and to continue to operate the guest house known as Mills Guest House from the subject lands, for the duration of her life, or for as long as she continues to operate a guest house thereon, whichever is sooner, subject to the disposition of the rents of the long term tenants as set out in paragraph 1 (d) below.

- (b) the Defendant is entitled to the use of the front room of the said guest house comprising a bedroom, a bathroom and a kitchen located along the western side of the upper floor of the building located on the northern eastern portion of the subject lands (“the said front room”) for use by himself and/or his servants and/or agents at his discretion, upon the Defendant giving the Claimant 48 hours notice of his intention to occupy the said front room.
  - (c) The Claimant is entitled to remain in possession and occupy for the remainder of her life, the dwelling house situated on the south western portion of the subject lands where she now resides.
  - (d) The successor in title to the late Hannah Elizabeth James who receives a grant of letters of administration is entitled to the rents from the long term tenants of the building on the south eastern portion of the subject land and the Claimant is to account for and pay such rents to such successor in title from the 27<sup>th</sup> February, 2010 being the date of Hannah’s death.
- (2) An undertaking is recorded from attorney at law, on behalf of the Defendant without prejudice to the exercise of any further options arising from the oral judgment of this court on September 28<sup>th</sup> 2012, that he will refrain, whether through himself, his servants and/or agents, from:
- (a) Hindering or obstructing the Claimant’s occupation of the subject lands and the operation by her of the said Guest House, and from

(b) Trespassing upon the subject lands, save for the purpose of peaceful use and occupation of the said front room referred to aforesaid, and from obstructing the operation of the said Guest House.

(3) Liberty to apply.

Dated this 5<sup>th</sup> day of December, 2012.

**Peter A. Rajkumar**  
**Judge.**

The court wishes to record its appreciation to counsel for the parties who provided comprehensive and thorough submissions from which much assistance was derived.