REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO. CV2015-02062

BETWEEN

RAMDATH JOKHAN

Claimant

AND

RADHIKA PREMCHAND

Defendant

Before the Honourable Madame Justice Quinlan-Williams

Appearances: Mr. Edwin K. Roopnarine for the Claimant

Mr. Ronald Dowlath instructed by Ms. Melissa Ramdial for the defendant.

Date of Delivery: 24th January 2020

JUDGMENT

---

1. The claimant and the defendant were romantically involved from in or around 1978. The defendant has three children, however the claimant and the defendant do not share any children together. Their relationship, although challenged by multiple issues, endured for a long time.

2. During the year 1987 the parties acquired a property registered as DE198800230011. The property was registered in both their names. In 1999 the claimant was convicted and incarcerated for criminal offences. The relationship between the claimant and defendant came to an end sometime during the claimant's twelve years of incarceration. Eventually the defendant moved on with her life and the defendant was released from prison after serving his sentence for the criminal offences.

3. The court is called upon to resolve the ownership and other issues relating to that said property jointly owned by the claimant and defendant. In so doing the court has to determine the following issues:
    A. Whether the claimant can be afforded protection under the doctrine of laches, the expiration of the limitation period and undue influence;
    B. Whether the defendant's counterclaim ought to be struck out;
    C. Whether it was the common intention of the claimant and the defendant that the property be shared equally between them;
    D. If so, whether the claimant made a promise and/or representation to the defendant to gift his share in the property to a third party i.e. the defendant's son Rajesh and whether the defendant acted on this promise to her detriment; and
    E. If not, alternatively whether the defendant expended a substantial sum in renovating the property and paying legal fees for the claimant during his incarceration and whether she is entitled to recover same.

The Law and Analysis

A. Whether the claimant can be afforded protection under the doctrine of laches, the expiration of the limitation period and undue influence.

4. The claimant in his closing submissions stated that the promise to give the property to the defendant's son, if made at all, is null and void as a result of presumed undue influence as it was made during the time he was incarcerated and before their relationship had ended. As a result of the relationship of trust and confidence it is evidence and there is presumed undue influence[1] with respect to the nature of the promise made by the claimant to the defendant.

5. The claimant in his said closing submissions also averred that the monies that the defendant allegedly expended in the sum of $300,000.00 for legal fees is now 'out of time' in accordance with the doctrine of laches. The claimant highlighted that the defendant testified that monies were paid from the day the claimant was incarcerated in June 1999 and payments ceased in or around 2004/2005. As a result, since the four year period has elapsed pursuant to section 3 of the Limitation of Certain Actions Act Chapter 7:09, the claim is statute barred and the equitable doctrine of laches ought to be applied as the defendant has slumbered on her rights[2].

6. However, these principles of law were never pleaded by the claimant but were raised after the evidence in his closing submissions. In general, a Claimant has a duty to set out his case. This includes a short statement of all the facts on which he relies as well as any document which the claimant considers necessary to his case – Rule 8.6 Consolidated Civil Proceedings Rules 2016 ("CPR").

7. Further, the Court of Appeal decision of *Charmaine Bernard (Legal Representative of the Estate of Reagan Nicky Bernard) -v- Ramesh Seebalack* (2010) UKPC 15 and quoting the dicta of Lord Woolf in *McPhilemy -v- Times Newspapers Ltd* [1999] 3 All ER 775 states:

[1] Halsbury's Laws of England Fifth Edition Volume 22 paragraph 296
[2] Halsbury's Laws of England Fifth Edition Volume 47 paragraphs 253-255

> "The need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged. In the majority of proceedings identification of the documents upon which a party relies, together with copies of that party's witness statements, will make the detail of the nature of the case the other side has to meet obvious. This reduces the need for particulars in order to avoid being taken by surprise. This does not mean that pleadings are now superfluous. Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader. This is true both under the old rules and the new rules."

8. Based on the authorities, the parties are required to mark out the parameters of the case that is being advanced, so that the extent of the dispute can be identified. The importance of pleadings is to inform the other side about the case it has to meet to avoid being taken by surprise. In this case, the claimant has failed to identify the extent of its dispute and has belatedly in his closing submissions raised the issues of undue influence, laches and limitation. Therefore, the defendant was taken by surprise and deprived of the opportunity to advance its defence to the claimant's allegations.

9. In the case of CV2016-02192 *Gwendolyn Brown -v- Enid Cielto-Collins* where the matter of undue influence was not pleaded by either the claimant or the defendant in that case, the Honourable Justice Rahim held that the issue did not arise for the court's consideration.

10. A party who wishes to benefit from a limitation defence must plead the defence and apply for the claim to be struck out[3]. Additionally, Part 10.6 of the CPR prescribes the consequences not setting out the defence:

[3] Zuckerman on Civil Procedure 3rd Edition at 25.4; *Ketteman -v- Hansel Properties* [1987] AC 189, 219

> "(1) The defendant may not rely on any allegation which he did not mention in his defence, but which he should have mentioned there, unless the court gives him permission to do so.
> (2) The court may give the defendant such permission at a case management conference.
> (3) The court may not give the defendant such permission after a case management conference unless the defendant can satisfy the court that there has been a significant change in circumstances which became known after the date of the case management conference."

11. Accordingly, the claimant has not put forward any details to suggest that there has been a significant change in circumstances and as such the claimant cannot rely on the allegations. For these reasons, undue influence, laches and limitation do not arise for the court's consideration.

B. Whether the defendant's counterclaim ought to be struck out

12. The defendant submitted in her supplemental submissions filed on the 8th January 2020 that the claimant's defence to the counterclaim is a bare denial of the facts, does not disclose a defence to the counterclaim and ought to be struck out. The basis of the submission was that the claimant's defence to the counterclaim does not comply with Part 10.5 of the CPR which states:

> "(1) The defendant must include in his defence a statement of all the facts on which he relies to dispute the claim against him.
> (2) Such statement must be as short as practicable.
> (3) In his defence the defendant must say—
> (a) which (if any) allegations in the claim form or statement of case he admits;
> (b) which (if any) he denies; and
> (c) which (if any) he neither admits nor denies, because he does not know whether they are true, but which he wishes the claimant to prove.
> (4) Where the defendant denies any of the allegations in the claim form or statement of case—
> (a) he must state his reasons for doing so; and

(b) if he intends to prove a different version of events from that given by the claimant, he must state his own version.

(5) If, in relation to any allegation in the claim form or statement of case the defendant does not—

(a) admit or deny it; or

(b) put forward a different version of events, he must state each of his reasons for resisting the allegation.

(6) The defendant must identify in or annex to the defence any document which he considers to be necessary to his defence."

13. Furthermore, the defendant relied on the case of Civil Appeal No. 244 of 2008 *M.I.5 Investigations Limited -v- Centurion Protective Agency Limited* where Mendonca JA held that the days where a bare denial was allowed are over as it must be accompanied by the defendant's reasons for the denial in line with the provisions of Part 10.5 of the CPR. At paragraph 10 of the judgment he stated:

> "Where a defence does not comply with Rule 10.5(4) and set out the reasons for denying the allegation or a different version of events from which the reasons for denying the allegation will be evident, the Court is entitled to treat the allegation in the claim form or statement of case as undisputed or the defence as containing no reasonable defence to the allegation."

14. In line with the learnings, the court finds that the claimant failed to comply with Part 10.5 of the CPR in relation to the defence to the counterclaim as he did not set out the reasons for denying the defendant's counterclaim or set out a different version of events. This is especially so as the claimant attempted to rely on undue influence, laches and limitation as discussed above which ought to at least have been pleaded therein. As a result, in line with *M.I.5 Investigations* [supra] the defendant's counterclaim stands undisputed as there was no reasonable defence to the allegations.

C. Was it the common intention of the claimant and the defendant that the property be shared equally between them;

15. The claimant submitted the House of Lords decision of *Stack -v- Dowden* [2007] 2 All ER 929[4] wherein Baroness Hale distinguished that in the domestic context, a conveyance into joint names assumes that all parties derive legal and beneficial joint tenancy, unless and until the contrary is proved. In proving the contrary, it is necessary to ascertain the parties' shared intentions (actual, inferred or imputed) with respect to the property, in light of their whole course of conduct in relation to it. In such cases, it is necessary to ascertain "did the parties intend their beneficial interests to be different from their legal interests?" and "if they did, in what way and to what extent?".

16. The burden rests with the person seeking to show that the parties did intend their beneficial interests to be different from their legal interests and in what way, although in joint name cases, it is unlikely to lead to a different result unless the facts are very unusual. Also, joint name cases are not vulnerable to challenge in the courts simply because the owners contributed unequally to their purchase. At paragraph 69 Baroness Hale commented:

> "In law, 'context is everything' and the domestic context is very different from the commercial world. Each case will turn on its own facts. Many more factors than financial contributions may be relevant to divining the parties' true intentions. These include: any advice or discussions at the time of the transfer which cast light upon their intentions then; the reasons why the home was acquired in their joint names; the reasons why (if it be the case) the survivor was authorised to give a receipt for the capital moneys; the purpose for which the home was acquired; the nature of the parties' relationship; whether they had children for whom they both had responsibility to provide a home; how the purchase was financed, both initially and subsequently; how the parties arranged their finances, whether separately or together or a bit of both; how they discharged the outgoings on the property and their other household expenses. When a couple are joint owners of the home and jointly liable for the mortgage, the inferences to be drawn from who pays for what may be very different from the inferences to be drawn

[4] At paragraphs 56 to 69

> when only one is owner of the home. The arithmetical calculation of how much was paid by each is also likely to be less important. It will be easier to draw the inference that they intended that each should contribute as much to the household as they reasonably could and that they would share the eventual benefit or burden equally. The parties' individual characters and personalities may also be a factor in deciding where their true intentions lay. In the cohabitation context, mercenary considerations may be more to the fore than they would be in marriage, but it should not be assumed that they always take pride of place over natural love and affection. At the end of the day, having taken all this into account, cases in which the joint legal owners are to be taken to have intended that their beneficial interests should be different from their legal interests will be very unusual."

17. The claimant submitted that the defendant did not satisfy the burden of showing that the beneficial interest is to be different from the legal interest of the parties. Therefore, the conclusion that has to be drawn from the facts and the defendant's conduct is that, from the inception she knew and accepted that the property was to be the home of the claimant and herself and any monies spent thereafter would have been for the benefit of both parties in order to preserve and secure the property as they were joint owners.

18. The court notes that the defendant at no time ever contended or pleaded that the beneficial interest of the parties is to be different from the legal interest. In this regard the claimant's submissions is misconstrued. The defendant's case is and has always been that both parties jointly held the beneficial and legal interests in the property despite whatever contributions were made by each party. The defendant's evidence is that both parties started cohabitating as a family with her children in an apartment next door to the property. They then took a joint loan from Republic Bank to acquire the property, they both repaid the loan and later jointly refinanced another loan with Scotiabank. Up until 1999 when the claimant was incarcerated the parties lived together as husband and wife together in the said

property. Even after the claimant was incarcerated the nature of the parties' relationship is still illustrative of love as the defendant testified about getting up early in the morning to visit the claimant and she even participated in illegal activities to ensure that the claimant was comfortable in prison. Up to this point the intention of the parties as it related to the legal and beneficial interest of the property jointly owned by them, was as normally expected.

19. While prima facie the defendant's evidence is suggestive that most of the contributions towards the household and the eventual repayment of the loan was borne by her and her sons, it was never her case that she held a greater title in the property than the claimant or that the beneficial interests ought to be treated different from the legal interests of the parties.

20. What the defendant is alleging is that there came a time when the claimant promised that he would pass his interest in the property to the defendant's son Rajesh, if the defendant would do the same. Therefore, the issue of joint ownership was never in contention by the defendant and the common intention of the parties before the promise was made was that the property was to be shared equally between them. As such she has no burden to discharge to show that the beneficial interest was to be different from the legal interest of the parties and the authority of *Stack -v- Dowden* is irrelevant to the subject matter before the court.

D. Did the claimant make a promise and/or representation to the defendant to gift his share in the property to a third party i.e. the defendant's son Rajesh and whether the defendant acted on this promise to her detriment

21. The defendant asserts that during the term of the claimant's incarceration the claimant made a promise to her, in the presence of her son Rueben Kanhai, that he would transfer his share in the property to the defendant's other son Rajesh Kanhai if she also agreed to transfer her share in the property to Rajesh. The defendant's evidence is that she agreed to the proposition. In agreement and reliance on the claimant's promise it is the defendant's case that she expended large sums of money on the improvement and renovation of the property. In the circumstances, the defendant relies on the law of promissory and proprietary estoppel and as a result it would now be unjust for the claimant to rescind the promise he made to her.

22. According to the Halsbury's Law of England[5] an estoppel may arise where a property owner makes a representation to another party, usually relating to the current or future ownership or interest in land, and in reliance the other party acts to their detriment. If the party to whom the representation has been made acts to their detriment in reliance on that representation, the representation cannot be revoked and the courts will enforce it despite the lack of a written agreement.

23. In the case of CV2014-01253 *Hemchand Surrattan and Yvonne Surrattan -v- Joyce Persad* the Honourable Madame Justice Wilson set out the law of promissory and proprietary estoppel as follows:

> "51. More recently, in *Kurt Farfan and Ors v Anthony White* CV2016-03644 Kokaram J discussed the application of the doctrines of proprietary and promissory estoppel as follows:
>
> > 1) For a promissory estoppel to arise there must be a clear and unambiguous promise intended to affect the legal relations between the parties and which is reasonably expected to be relied on by the person to whom it is made. In Snells Equity 31st Edition 2005, the learned author states at paragraph 10-08:

[5] Volume 23 (2013 paragraph 153

> "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."

2) The principles of proprietary estoppel are neatly summarised in the recent Privy Council decision of *Henry v Henry* [2010] 75 WIR. There must be representation, reliance and detriment. The element of each will vary with the circumstances of the case and the Court must take into account all of the circumstances and adopt a broad approach to these questions with the overriding test of unconscionability of conduct. Reliance and detriment are often intertwined. In *Henry v Henry*, Sir Jonathan Parker noted at paragraph 55:

> '[55] As to the relationship between reliance and detriment in the context of the doctrine of proprietary estoppel, just as the inquiry as to reliance falls to be made in the context of the nature and quality of the particular assurances which are said to form the basis of the estoppel, so the inquiry as to detriment falls to be made in the context of the nature and quality of the particular conduct or course of conduct adopted by the claimant in reliance on those assurances. Thus, notwithstanding that reliance and detriment may, in the abstract, be regarded as different concepts, in applying the principles of proprietary estoppel they are often intertwined…..In the instant case, that is certainly so."

24. In the Court of Appeal decision of Civil Appeal No. T 243 of 2012 *Ester Mills -v- Lloyd Roberts* a distinction in the nature of the promise between the law of promissory estoppel and proprietary estoppel was considered:

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

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

(i) An equity arises where:

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

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

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

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

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

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

(i) an assurance or representation by O;

(ii) reliance on that assurance or representation by C; and

(iii) some unconscionable disadvantage or detriment suffered by C."

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

25. Before the court analyses the evidence as it relates to estoppel, the defendant in its closing submissions highlighted the fact that the claimant failed to deny or join issue to the new matter raised in its defence relating to the promise made by the claimant to leave his share in the property to Rajesh. As a result, the defendant submitted that the court ought to disregard the claimant's evidence in chief and evidence elicited by way of cross examination on this issue of whether a promise was made as the pleadings were closed and as such the issue is no long before the court to make a determination on.

26. In response, the claimant highlighted that it did indeed join issue with the new matter raised. By virtue of paragraph 1 of its Reply to the Defence filed by the claimant on the 11th January 2016 the claimant stated that, "The Claimant joins issue with the Defendant on the Defence save in so far as the same consists of admissions."

27. Furthermore, the claimant relied on Blackstone's Civil Practice 2005 at paragraph 27 which states:

"Although a claimant may file a reply to a defence, he does not have to do so, and failure to file a reply must not be taken as an admission of any of the matters raised in the defence. If a reply is filed, but fails to deal with a matter raised in the defence, the claimant shall nevertheless be taken to require that matter to be proved. Thus, strictly speaking, it is unnecessary for the reply to commence with a statement joining issue with the defendant

> upon all matters not specifically admitted in the defence (the old 'general traverse'), as there is an implied joiner of issue. Where, however, the defence includes a counterclaim to which it is intended to file a defence, it is suggested that a formal reply should also be filed in the conventional manner, joining issue with the Defendant on his defence and counterclaim, although the rules do not specifically provide for, of require this to be done."

28. The court is in disagreement with the submissions of the defendant. The defendant is obliged to prove the allegation made that there was a promise in the terms claimed by her. According to the learnings in Blackstone there is in implied joinder of issue on all matters that were not specifically admitted in the defence. In any event, paragraph 1 of the defendant's reply joined issue with the matters not admitted. In this regard, since the promise was not specifically admitted as highlighted by the defendant, by virtue of paragraph 1 of the claimant's Reply, the claimant automatically joined issue with the details raised in the defence relative to the promise.

29. As it relates to the defendant's assertions in estoppel, the court must first determine whether there was a promise or a representation made by the claimant to the defendant as it relates to property in question. The defendant's evidence is that on several occasions in or about the year 2005 during private visits at the prison, the claimant would tell her in Rueben's presence that he had agreed to leave his share of the property to Rajesh, if the defendant also agreed to leave her share to Rajesh. The defendant agreed to this and when asked if she could rely on this promise the claimant informed her that upon his release from prison, he expected to be entitled to claim several years' salary from the State and that he would go to live in Penal where he had some land next to his sister's house. He also promised to repay all the legal fees paid on his behalf.

30. The claimant on the other hand stated that he never promised the defendant or her son Rueben during the year 2005 that he would leave his share of the property to her son Rajesh[6]. The claimant maintained his position under cross examination wherein he affirmed that it was never discussed with him in the presence of Rueben that he would give his share of the property to Rajesh and that he only became aware of these details when the action was filed through the defence.

31. In determining the version of the events more likely in light of the evidence, the Court is obliged to check the impression of the evidence of the witnesses on it against the: (1) contemporaneous documents; (2) the pleaded case: and (3) the inherent probability or improbability of the rival contentions[7].

32. The court notes the contents of the claimant's second Pre-Action Protocol Letter dated the 15th March 2014 where it states at paragraph 2, "We would again reiterate the contents of the said letter and finally say the property cannot be held whereby only you and your son benefit from same to the exclusion of our client." The 'said letter' referred to is the first Pre-Action Protocol Letter dated the 5th February 2014. Therein mention is made of the subject property held jointly between the parties. It then suggests a joint valuation in order to divide the value of the property equally in final settlement of the matter, in default of which, the claimant informed that legal proceedings would be initiated. The second Pre-Action Protocol Letter, seems to support the position that some sort of arrangement was made between the claimant and the defendant where the claimant led the defendant to believe that he surrendered his interest in the property to the defendant and her son.

[6] Witness Statement of Ramdath Jokan filed on the 14th October 2016 at paragraph 12
[7] *Horace Reid -v -Dowling Charles and Percival Bain* Privy Council Appeal No. 36 of 1897 cited by Rajnauth-Lee J (as she then was) in CV 2006-01661 *Winston Mc Laren -v- Daniel Dickey*

33. The defendant's evidence is that her son Rajesh and his family lived with her. This is although it was Rueben who paid off the second mortgage secured by the claimant and defendant from Scotia Bank. The fact that out of the defendant's three children, Rajesh lived in the home suggests and supports the defendant's evidence that she and the claimant promised that the property would go to Rajesh.

34. Under cross examination the defendant gave evidence indicating that the discussions held between the claimant and herself was that if she gave her share to Rajesh, the claimant would also give his share to same. The court is satisfied that as between the claimant and the defendant this promise was made and it was clear so that each party understood the terms of the promise that they made.

35. However, the defendant admitted that she and the claimant never came to a final agreement as to how the promise would be fulfilled. This is evidenced by the fact that neither of them passed their interest the property to Rajesh.

36. The promise was sufficiently clear and explicit that neither party could be faulted for relying on it. There was a clear and unequivocal promise to satisfy the requirements under promissory estoppel. There was a clear and unambiguous promise. The promise must have intended to affect the legal relations between the parties as they would no longer own the property jointly, but instead pass their interest to an agreed upon third party. It must have been reasonably expected that both parties could have relied on the promise they made to each other when dealing with the property.

37. However, the court does find that there were representations made by claimant to the defendant to the effect that he would give his share to the defendant's son. This conclusion was drawn based not only on

defendant's evidence but also from the claimant's own Pre Action Protocol Letters which suggest that some discussions were held between the parties that led the defendant to believe that the claimant would transfer his share to the defendant's son.

38. As between the claimant and defendant and the promise made by the claimant to the defendant, they were free to resile. It does not mean however that a resiliation would be without consequence in equity. If it can be proved that a party relied on the promise to their detriment and it would be unconscionable for court to not have regard to the reliance and the detrimental effect, then the court would have such reliance.

39. The defendant's evidence is that in reliance on the claimant's agreement to leave his share in the property to Rajesh she spent large sums of money on renovating the property. At times over the years as the renovations were done in part, she would borrow money from her brother amounting to the sum on $150,000.00 which she has not yet repaid. The defendant avers that during the period 2003 to 2011 she conducted renovations and improvements which she provided details and photographs of in her evidence amounting to approximately $435,000.00-$450,000.00. Furthermore, she called the contractor Mr. Cuthburt Lee who performed the renovations on the property as a witness to testify on her behalf.

40. It is not passing strange that the defendant would act in that manner. Rajesh was her son and her share would go to him as well as the fact that the claimant was incarcerated. One could see that the defendant would have considered that whatever she did and all the money she spent would go to her son Rajesh as he would eventually own the property.

41. The claimant's evidence on the other hand is that in taking pride in the family home, the claimant on his own before his incarceration in 1999, hired experienced persons to conduct renovations of the pre-existing house. In so doing, tile work in the bathroom, kitchen and living room was performed, cupboards in the kitchen and bedrooms were installed and the outside of the house and all the rooms were painted. The claimant avers that material and labour in this regard amounted to $28,000.00. Even if this is so, this expenditure was made at a time before the promise was made by him.

42. The claimant's denial that the defendant ever spent $450,000.00 in renovations and additions to the property as those were carried out prior to his incarceration. This does not accord with his means as he described them.

43. Before this court are three valuation reports conducted on the property. The first is dated the 12th January 2005 where the property was valued as a residential property in the sum of $210,000.00 prepared by the valuator Mr. Ian Brathwaite of Raymond & Pierre Limited ("2005 Report"). The second valuation report is dated the 11th January 2015 where the property was valued at a sum of $650,000.00 for the existing residential purpose prepared by David Bally for and on behalf of Raymond & Pierre Limited ("2015 Report"). The third valuation report was dated the 21st March 2016 valuing the said property at $660,000.00 for residential purposes by Ronald Heeralal ("2016 Report").

44. During the trial the valuator Ian Brathwaite of Raymond & Pierre Limited was summoned to give evidence for the truth of the contents of the 2005 Report. Mr. Ian Brathwaite stated that he prepared the report based on the notes of the field officer who surveyed the property. His evidence was that although he did not see a frame for a

tire shop business but a frame for a garage covered in a steel roof, a tire shop business could have been operated by the garage. When asked by counsel for the claimant, he could not say what the rental value for a tire business would be at in 2005 and confirmed that the valuation of the property was done as a residential property.

45. The claimant and the defendant purchased the property in 1987 at a cost of $45,000.00. They then jointly secured a mortgage in the amount of $140,000.00 which can be assumed was granted based on the value of the property. Both parties agreed that after the property was purchased immediate repairs were done to the property. The claimant's evidence was that he spent $28,000.00 doing works on the property before his incarceration in 1999. Six years later in 2005 the 2005 Report was conducted which valued the property at $210,000.00. Therefore, the court is of the view that whatever renovations were done by the claimant on his own accord contributed to the increase in the property's value reflected in the 2005 Report.

46. Subsequently, in 2015 the 2015 Report was prepared which valued the property at $650,000.00. Therefore, within the ten year period of 2005 to 2015 there was an increase in the value of the property in the amount of $440,000.00. While one would expect that property appreciates, improvements would also have contributed to the large increase in the value of the property.

47. The defendant itemized all the works that she did on the property during the periods 2003 to 2011. She corroborated this evidence through the provisions of receipts to support the monies expended and she also called the contractor who performed the works and signed the said receipts as a witness testifying on her behalf that the works to the property were indeed carried out. In support of her case the defendant called her sister Ms. Shara Dowlah whose evidence was that after the

claimant's release, when the claimant began visiting Tableland in 2012, he would stop off by Mala's house and her mother's house and would comment to her that the defendant has done a lot of work to improve the house after seeing workmen carrying out work on the property.

48. It must be unconscionable for the defendant not to get the benefit of her reliance on the claimant's promise, when it is he who has decided that he would not keep the promise that he made to give his share and interest in the property to Rajesh.

49. The claimant submitted, that a substantial portion of the monies were spent by the defendant on the property as a necessity to preserve and protect the property as she was living there and not due to any promise made by the claimant.

50. However, not all the works conducted by the defendant was structural in nature to preserve the property. The defendant's evidence through her receipts[8] and contractor is that other works were conducted such as the construction of a new toilet and bathroom in the basement ($10,000.00); removal of a staircase from the eastern side of the property replacing it with a concrete structure on the western side of the property ($25,000.00); extension of the house from a 20 x 24 feet structure to a 35 x 35 feet structure; foundation and the installation of concrete posts to accommodate the extension of the house; replacement of wooden front door to glass and aluminium sliding doors ($5,000.00); replacement of louvre panes to sliding windows; installation of burglar proof ($9,000.00); replacement of all inside doors and construction and installation of a steel gate at the front of the house ($11,000.00); installation of floor tiles ($10,000); replacement of wooden roof with a steel structure ($78,000); construction and installation of built-in cupboards in the kitchen and bedrooms

[8] Note that some of the receipts were not visible

($22,000.00); and the construction of steel shed at the front of the house ($30,000.00).

51. It can be therefore inferred that she expended the monies on the property for the benefit not only of herself, but being comfortable and confidence that the claimant promised that he would give his interest to Rajesh.

52. The claimant was released on the 23rd November 2011. The court is satisfied that he knew Rajesh was living on the said property. The claimant waited some three years to write to the defendant and then file his claim approximately three years and seven months after his release from prison.

53. By then, he must have known that the defendant had conducted major improvement works on the property.

54. He did not enquire about the said works or offer to contribute from the monies he said he would collect from his job. He must have had some interest in how the renovations were financed as, according to him his money went into paying his legal fees. Instead, he allowed the defendant to continue with the ongoing works at the property.

55. Therefore, the court concludes that the defendant relied on the claimant's promise that her son Rajesh would be the sole owner. Having expended in excess of $400,000.00 since the claimant made his promise, it would be unfair for the claimant, having withdrawn the promise, to benefit from increase in value to the property since he made the promise.

56. There is no evidence that allows the court to disaggregate the increase in value of the property after 2005 and ascribe some of the increase to the renovation and improvements undertaken by the defendant.

57. The court finds that it would be an unconscionable disadvantage to the defendant to enforce the rights the claimant had in the property at the current market value. This is the reason for the law of equity and it is the duty of the courts to accommodate such estoppel by the promise to prevent such unfairness between parties.

58. Therefore, by virtue of the equitable doctrine of promissory estoppel the court finds that the claimant is entitled to his share or portion of the property as per the 2005 Report. The 2005 Report is contemporaneous with the promise made by the claimant, and all things being equal between the parties, it is from when the claimant expressed that Rajesh should own the property; once both the claimant and defendant transfer their share to him.

59. The court made no finding that the defendant is entitled to rely on proprietary estoppel as the discussions between the parties while amounting to a promise that they both understood was not defined sufficiently in form and function as to amount to a representation within the meaning of *Henry v Henry* (supra).

E. Whether the defendant expended a substantial sum in renovating the property and paying legal fees for the claimant during his incarceration and whether she is entitled to recover same

60. As previously discussed the court is satisfied that the defendant did spend substantial sums on developing and improving the property.

61. As it relates to the legal fees the claimant exhibited receipts indicating payments for legal fees from 1998 to 2000. A perusal of the receipts indicate that payments were made both in the name of the claimant

and the defendant and there was even a cheque issuing payment from Foreign Wheelers Tyre Centre signed by Rueben Kanhai to E. Roopnarine. A calculation of all the receipts submitted by the claimant amounts to $67,600.00.

62. The claimant maintained in cross examination that he was responsible for paying his legal fees and the monies he used came from his savings. He further stated that the defendant had access to his saving via his bank card and that if she used her money he would pay her back. The claimant also gave evidence in cross examination that his savings amounted to $40,000.00 because in 1997 there was a new mortgage so his salary was released and his take home was in the vicinity of $3,000.00 to $3,500.00. However, contrary to his witness statement evidence[9] the claimant averred that as the first mortgage was not paid off and both mortgages were consolidated, he continued to pay the monthly instalment of $2,300.00 for the first mortgage and the defendant's son paid the outstanding balance.

63. The court had the opportunity of viewing this witness's demeanour under cross examination and found him to be untruthful. Against the witness his also the evidence of his criminal conviction for dishonesty. His conviction also impact his credibility. In any event, the monies earned by the claimant after living expenses were deducted together with his savings would not have been sufficient to cover the legal expenses as exhibited by the receipts.

64. The court prefers the defendant's evidence in this regard. After the proceeds of the second mortgage was used to pay off the first mortgage, the defendant used the balance of the second mortgage to contribute towards part of the claimant's legal fees. After the claimant

[9] At paragraph 7

was incarcerated he no longer received an income and the repayment of the mortgage was the burden of the defendant and her son.

65. However, the even if, as the court finds, the defendant paid some of the claimant's legal fees, and even if, as the court finds the defendant promised to pay or repay the defendant for the legal fees, the court is satisfied that no cause of action can be sustained by the defendant.

66. The payment of the claimant's legal fees were done in circumstances when the claimant and defendant lived as husband and wife. They arranged as a family, how the bills were to be shared and how they were to be paid. The payment of the legal fees was undertaken as a family expense and it is not recoverable from either party. The payment of the claimant's legal fees, in the court view, is no different to the defendant's payments of the claimant's maintenance obligations to his biological children he shared with his ex-wife. The defendant cannot expect to recover those payments that she undertook as a family expense, similarly she cannot recover any legal fees that she paid during her family relationship with the claimant.

67. As to the defendant's entitlement to the sums expended on the renovations of the property was an alternative claim, in the event that her claim in estoppel failed. The defendant succeeded in proving promissory estoppel such that no detriment shall befall her for relying on the claimant's promise. Therefore, the alternative claim ought to be dismissed.

Disposition

68. It is hereby ordered that there be judgment for the claimant against the defendant as follows:

A. the claimant is entitled to ½ share the said property registered DE198800230011, as determined by the 2005 valuation report. The said ½ share being the sum of $105,000.00;
B. the defendant shall pay to the claimant the sum of $105,000.00 within a reasonable time or no more than 6 months from the date of this order;
C. if the defendant's fails to pay the claimant for his share and value of the property in keeping with this order, the court be at liberty to order a sale of the property and out of the proceeds of said sale the claimant shall recover his interest in the sum of $105,000.00;
D. at the time of payment of the sums from the defendant to the claimant representing the claimant's share and value of the said property, the claimant shall transfer his share and interest in the said property to the defendant or whoever she nominates;
E. if the defendant pays the claimant for his share and interest in the property in the sum of $105,000.00 and claimant refuses or fails to transfer his share and interest in the property to the defendant, the court shall be at liberty to direct the Registrar of the Supreme Court to act in place of the claimant to effect the legal transfer of the claimant's share and interest in the said property registered DE198800230011 to the defendant;
F. the defendant shall cover all legal fees and costs associated with the claimant's transfer of his share and interest in the said property registered DE198800230011 to the defendant;
G. the claimant being partly successful on the claim each party to bear their own costs; and
H. the defendant's counterclaim is dismissed. On the counterclaim the defendant shall pay the claimant's costs in the sum of $14,000.00

…….

Justice Avason Quinlan-Williams

JRC: Romela Ramberran