THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO: CV2018-00029

BETWEEN

JEAN CAYONNE also called JEAN HENRIETTA CAYONNE

(Acting via her duly constituted attorney JUDITH MARCETTE PIERRE by virtue of Power of Attorney dated 10th day of July, 2017 and registered as DE201701936241)

JUDITH MARCETTE PIERRE

JUDY MARCELLE PIERRE

(Acting via her duly constituted attorney JUDITH MARCETTE PIERRE by virtue of Power of Attorney dated 7th day of July, 2017 and registered as DE201701936120)

Claimants

AND

GLEN MOLLINEAU

JO-ANNE MOLLINEAU

Defendants

Before the Honourable Madame Justice Quinlan-Williams

Appearances: Mr. Colin Selvon for the Claimants

Mr. Keith C. Scotland SC instructed by Ms. Karina Dookie for the Defendants

Date of Delivery: 10 August 2021

JUDGMENT

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1. The property in dispute is a dwelling house situate at Sagangar Trace, Four Roads, Diego Martin standing on rented lands of Victor Carter. By Deed of Conveyance dated 11 June 1979, No. 13546 of 1979 the dwelling house was conveyed to the first claimant ("Jean") for herself and to the first claimant to hold on trust for the second and third claimants until they attained the age of 18 years. The second and third claimants are twin daughters of Jean.

2. In or around 1983, Jean tenanted the dwelling house to the first defendant. Later, the second defendant and first defendant married, moved into the dwelling house and they have remained in occupation as tenants to the time of the trial.

3. In 2017, the claimants proposed to the defendants that the parties enter a new lease, with a proposed increase in rent. The second and third claimants met with the defendants to have those discussions. The defendants did not accept the proposed terms and did not sign the proposed lease. Following this, the claimants caused a Notice to Quit to be served on the defendants.

4. The claimants assert that the defendants have refused to vacate the dwelling house. As a consequence, the claimants claim against the defendants for:

a. A Declaration that the Claimants are entitled to possession of ALL AND SINGULAR that dwelling house situate at Sagangar Trace, Four Roads, Diego Martin, in the Ward of Diego Martin, in the island of Trinidad and constructed from hollow clay blocks comprising two bedrooms, a sitting room, dining room combined a kitchen, toilet and bath and a garage (hereinafter called "dwelling house") standing on rented lands of Victor Carter comprising ONE LOT;
b. An Order that the First and Second Named Defendants do deliver up vacant possession of ALL AND SINGULAR that portion of the property presently occupied by them and situate at Sagangar Trace, Four Roads, Diego Martin, in the Ward of Diego Martin, in the island of Trinidad standing on rented lands of Victor Carter comprising ONE LOT;
c. Damages for Trespass;
d. Cost; and
e. Any other relief that the Court may deem necessary in the circumstances.

5. On the other hand, the defendants' rely on an agreement made between Jean and themselves that Jean will sell and the defendants will purchase the dwelling house. Accordingly, the defendants counterclaimed against the claimants for:
    a. A declaration that a valid contract exists between the Claimants and the Defendants in which the First Named Claimant agreed to sell and the Defendants agreed to purchase the dwelling house;
    b. A declaration that the Defendants continued additions, repairs and improvements to the dwelling house in pursuance of the Doctrine of Part Performance;

c. Specific Performance of the contract entered into between the First Named Claimant and the Defendants permitting the Defendants to purchase the dwelling house;
d. Costs; and
e. Such further and/or other relief as the Court may deem just in the circumstances of this case.

Issues

6. The main issues for the court's determination are:
    a. whether the relationship between the claimants and the defendants: are they landlord and tenant, seller and purchaser by virtue of an enforceable agreement or because of part performance; and
    b. whether Jean, the second and third claimants are legally obligated to sell the dwelling house to the defendants by virtue of proprietary estoppel or are they entitled to possession consequent on the end of the tenancy.

Summary of findings

7. The claimants are entitled to recover from the defendants, possession of the dwelling house. They are the legal owners and undisputed landlords of the defendants. The defendants have not renewed the tenancy agreement, and were subsequently lawfully served with a Notice to Quit. As such, the tenancy has been terminated and the claimants are entitled to recover possession.

8. The court was not satisfied that there was an enforceable agreement for sale made between the claimants and the defendants. Further, the court was not satisfied that the defendants have successfully raised an estoppel,

which would make it unconscionable for the claimants to recover possession of the dwelling house.

The Evidence

9. Jean Cayonne and Judith Pierre gave evidence for the claimants and both defendants testified in support of their defence and counterclaim.

- **The claimants' evidence**

10. The claimants say there was never any agreement between Jean and the defendants for the sale of the dwelling house.

11. Pursuant to Jean's divorce and by Order of the Court, the dwelling house was transferred on 11 June 1979 to Jean for herself and upon trust for the second and third claimants until they attainted the age of eighteen. The second and third claimants attained the age of 18 years on 17 July 1982.

12. According to the schedule, the dwelling house comprised four rooms with a garage built of hollow clay blocks and covered with galvanize, measuring approximately twenty-two feet by twenty-three feet situate on lands belonging to Victor Carter.

13. In 1983, Jean rented the dwelling house to the first defendant ("Glen") at a rent of $400.00 per month. By this time, the second and third claimants were adults. Jean acknowledged that minor repairs were needed.

14. During the pendency of the relationship, the parties entered into different periodical rental agreements. Jean lives in the USA and so the parties executed those rental agreements when Jean visited Trinidad and Tobago.

15. The defendants stopped paying rent in February 1996. In October 1997, while Jean was in Trinidad, she attempted without success, to have a new

tenancy agreement executed. However, she signed the tenancy agreement and gave her Attorney instructions to execute same.

16. Jean visited Trinidad in December 1999 and discovered that the defendants still had not paid rent. Therefore, Jean visited the defendants to regularize the outstanding rental payments and have them sign a new tenancy agreement.

17. Glen informed Jean that he spent approximate $25,000.00 on repairs and additions to the dwelling house. Jean asserted that she never consented or authorized Glen to do any repairs and/or renovations to the dwelling house. Nevertheless, Jean agreed to offset the cost of the repairs from the rents due and owing. Jean also agreed to offset a claim for a "light bill" in the sum of $725.00, from the rent due for the period March 1996 to December 1999. The agreement and offset arrangements are shown in Table 1 below:

Table 1 – Offsetting of money spent on repairs for rent owed

PERIOD	AMOUNT
Rent for 3/1/1996 – 12/1/1999	46 months @ $400.00 - $18,400.00
Cash to the Defendants on 12/10/1990[1]	$2000.00
Rent for December 2000 – January 2001	$4400.00
Partial rent payment – February 2001	$25.00

[1] Note that the tenancy agreement dated 16th November 2000 at Trial Bundle page 31 illustrates the date as 12/10/1999

18. The tenancy agreement was amended to reflect the above, and acknowledged by Glen when he affixed his initials to the amendment. Thereafter, the parties executed the tenancy agreement.

19. Subsequently, the rent was increased to $450.00.

20. In or around 28 February 2002, Jean met with the defendants to sign a new tenancy agreement, this was the first time that the parties engaged in discussions regarding the sale of the dwelling house. At that time, there was no agreement on a purchase price but they decided that the defendants would make an offer, which Jean would consider. This arrangement was inserted as an amendment to the 2002 tenancy agreement to archive that discussions to sell the dwelling house had occurred and that Jean Cayonne agreed to sell the dwelling house to the defendants "once both parties agree to purchase price within the above lease period". In a similar manner as the previous lease, Glen initialed the amendment and they executed the tenancy agreement for one year.

21. Despite this arrangement, the defendants made no offer to Jean during the period of the tenancy and they continued to pay Jean the rent of $450.00 per month.

22. Prior to 2002, Jean avowed that she never had any discussions with the defendants regarding the sale of the dwelling house to them. By that time, her trusteeship of the dwelling house on behalf of the second and third claimants had ended and they were then co-owners in their own right. As a result, Jean was aware that she could not sell the dwelling house without their consent and/or authorization.

23. Moreover, Jean asserted that she never needed permission from the landowner Mr. Carter to do any additions, construction or renovations to

the dwelling house. When Mr. Carter passed away, Jean paid rent to his daughter who subsequently passed away. Prior to Mr. Carter's death, Jean says that they never had any conversations regarding the sale of the dwelling house to the defendants nor did she have any such conversation with his daughter.

24. Jean avows that she never authorized or encouraged the defendants to conduct any survey on the premises, and she was unaware of such a survey.

25. In January 2017, the second claimant ("Judith") as co-owner of the dwelling house engaged the defendants on behalf of her mother, Jean to review and increase the rent of the dwelling house from $450.00 to $700.00. In so doing, she presented a notarized authorization from Jean. However, the defendants refused to engage Judith. Consequently, in March 2017 the claimants had the defendants served with a Notice to Quit.

26. The defendants responded to the Notice to Quit via their Attorney. The defendants asserted, inter alia, that they had acquired an equitable interest in the dwelling house based on an agreement made in the early 1990's that Jean would sell the dwelling house to the defendants. The defendants in furtherance of that agreement, expended monies to make additions and improvements to the dwelling house.

27. The claimants served the defendants a pre-action letter and the defendants responded.

28. In the response to the pre-action protocol letter, the defendants alleged that Jean agreed to sell the defendants the dwelling house in the early 1990's. Further, the defendants say that they approached Jean whenever she visited Trinidad regarding the promise to purchase the house. They

also denied signing a tenancy agreement for the period 2002 to 2003 with the terms included.

- **The defendants' evidence**

29. Glen was a good friend of Jean and her late husband, Christopher Cayonne.

30. In or about 1985, Glen entered into an agreement to tenant the dwelling house from Jean at the cost of $400.00 per month. As Jean lived in the USA, over the years, several persons collected rent and issued receipts on Jean's behalf. Those persons include Lily Bethlemy, Irma Nelson and Juanita Hall.

31. Upon entering into possession of the dwelling house Glen observed the following:
    a. The roof of the dwelling house was leaking and required repairs;
    b. The walls of the dwelling house required repainting;
    c. There was no face basin in the bathroom of the dwelling house;
    d. The toilet had to be replaced; and
    e. The dwelling house contained absolutely no fixtures.

32. Glen repainted the walls of the dwelling house, replaced the toilet and constructed cabinets in the kitchen area at his own expense.

33. In or about 1987, when Jean visited Trinidad she offered to sell the dwelling house to Glen. While Glen was interested in purchasing the dwelling house, he was not in a financial position to do so and indicated that to Jean.

34. In or about 1990, a year after Glen's marriage to the second defendant ("Jo-Anne"), Jean approached the defendants and inquired whether they were interested in purchasing the dwelling house. After expressing their

interest, Jean agreed to sell the dwelling house to the defendants and informed that they would hold discussions to agree on a price. Having Jean's word that she planned to sell the dwelling house to them, the defendants decided to carry out the following repairs at their own expense:

a. Installation of a face basin in the bathroom area;
b. Repair of the roof; and
c. Installation of further cabinetry in the kitchen area.

35. Throughout the years when Jean visited Trinidad, the defendants would inquire about the sale of the dwelling house. They asked Jean whether she settled on an asking price. In response, Jean indicated that she still intended to sell the dwelling house to the defendants and would make the necessary arrangements upon her next visit to Trinidad.

36. In or about 1996, the defendants again inquired about the sale of the dwelling house and Jean reassured that she would soon relay the price to them. In addition, the defendants told Jean that they wished to make additions and further improvements to the dwelling house but were hesitant to do so as she still had not given a price. Jean reassured that she would sell the dwelling house to the defendants and that they could make the additions subject to the approval of the landowner Mr. Henry Carter.

37. Thereafter, Glen informed Mr. Carter who lived nearby that Jean had agreed to sell the dwelling house to himself and Jo-Anne. Glen further indicated that they wanted to make additions and improvements to the dwelling house and its immediate surroundings. Mr. Carter had no objections and told the defendants that when they purchased the dwelling house, he would sell them the land.

38. Having received Mr. Carter's permission, the defendants then proceeded to make further improvements to the dwelling house at their own expense which included:
    a. The construction of an additional room attached to the kitchen;
    b. The construction of a garage;
    c. Repainting the dwelling house; and
    d. The casting of the entire front yard of the dwelling house, which was gravel.

39. In or about 2002, Glen again approached Mr. Carter with respect to purchasing the land. Mr. Carter assured that he would sell the land after Glen and Jo-Anne purchased the dwelling house and after the land was severed. Glen then asked Mr. Carter to have a survey of the land conducted in preparation for the purchases. A survey of the land dated 20 August 2003 was conducted.

40. In or about 2006 when Jean visited Trinidad she again reassured that she would sell the dwelling house to the defendants. As a result, between the years 2007 and 2008 the defendants at their own expense made the following improvements to the dwelling house:
    a. Paving the entire yard surrounding the dwelling house;
    b. Reinforcing the dwelling house;
    c. Repairing and conducting a complete flush of the cesspit tanks; and
    d. Installing an insulator in the dwelling house.

41. In or about 2014, the defendants again repainted the dwelling house at their own expense. The defendants' evidence is that due to Jean's friendship and her continued assurance that she would sell them the dwelling house, they relied on her word and promise by making continuous improvements at their own expense.

42. In or about 2017, Judith and third claimant ("Judy") visited the dwelling house and presented the defendants with a new lease, demanding that it be signed. The tenancy agreement in question referred to Judith and Judy as the landlords.

43. At no point did Jean ever mention that the dwelling house was co-owned nor did Judith or Judy state that they were acting on Jean's behalf. Moreover, the tenancy agreement contained substantially different terms from what was agreed with Jean and there was no option to purchase the dwelling house. When the defendants attempted to explain to Judith and Judy that Jean previously indicated that she would sell the dwelling house to them, they refused to entertain the conversation in a hostile manner.

44. On or about 20 February 2017, Judith wrote to the defendants indicating that if the tenancy agreement in question was not signed, they would be served with an eviction notice effective 30 June 2017. In or about March 2017, the defendants received a Notice to Quit dated 26 March 2017 requiring them to vacate the dwelling house by 26 April 2017.

45. Having been unable to reach Jean to ascertain her position, the defendants visited their Attorneys and instructed them to prepare a letter in reply to the Notice to Quit dated 11 March 2017. In November 2017, the defendants received a pre-action protocol letter dated 13 November 2017 from the claimants attaching a tenancy agreement dated 16 November 2002 containing written amendments initialed and signed by Glen.

46. The defendants' evidence was that the last tenancy agreement signed by Glen was dated 16 November 2000. As such, Glen asserts that he never saw the tenancy agreement dated 16 November 2002 containing written

amendments before reading the pre-action protocol letter and certainly never initialed the said amendments nor did he sign the document. The defendants responded to the pre-action protocol letter by letter dated 29 December 2017.

47. Jo-Anne largely supported the evidence given by her husband. In 1990 Jean offered to sell them the dwelling house, by this time they were in a financial position to purchase the dwelling house and they agreed to do so. Since that time, they have been waiting on Jean to give them the price for their purchase of the dwelling house. Jo-Anne's evidence is that Jean provided them with a new tenancy agreement for the rental of the dwelling house every year, the last dated 16 November 2000.

Findings of Fact

48. According to the learning in *Horace Reid v Dowling Charles and Percival Bain*[2] cited by Rajnauth-Lee J (as she then was) in *Winston Mc Laren v Daniel Dickey and Ors,*[3] 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. The Court of Appeal in *The Attorney General of Trinidad and Tobago v Anino Garcia*[4] took the position that in determining the credibility of the evidence of a witness, any deviation by a party from his pleaded case immediately calls his credibility into question.[5]

[2] Privy Council Appeal No. 36 of 1987
[3] CV2006-01661
[4] Civ. App. No. 86 of 2011 at paragraph 31
[5] As cited by Madame Justice Margaret Mohammed in CV2017-01900 *Prakash Thackoor v Sarah Ramdeen* at paragraph 15

49. The first and undisputed finding of fact is that the defendants were up to the expiration of the last rental agreement, tenants of the claimants. They refused to execute a new rental agreement – but have remained in occupation and according to them, have continued to pay the rent. The defendants have, appropriately, not argued against a finding that as tenants without more, the claimants are entitled to end that relationship and regain possession of the dwelling house.

50. The defendants say that in this case there is more to the relationship between themselves, Jean and the other claimants, which makes the simple proposition not applicable.

51. When the house was first tenanted, the second and third claimants were adults; the trust having ended with the passage of time, they, together with Jean owned the house. The second and third claimants have not complained that Jean acted without their knowledge or authority in renting the house and renewing the tenancy agreements over the years or by any decisions made by Jean regarding the house. Further, in 2017 the second and third claimants were negotiating the renewal of the tenancy agreement on their own as well as on Jean's behalf.

52. Therefore, there is no issue that the acts of Jean or the second and third claimants would not bind all of them.

53. There is no dispute, between the parties, that the first rental agreement was executed in 1985. The first defendant's evidence is that Jean offered to sell him the house in 1987 and then in 1990 Jean offered to sell the dwelling house to both defendants. The court does not believe that there was any agreement between Jean and the first defendant. Jean's as well

as the behaviour of the defendants from 1990 onwards, support this finding.

54. The evidence has shown that Jean was meticulous with keeping records regarding the relationship with the first defendant and later the first and second defendant and herself. Jo-Anne's evidence is that Jean executed a new tenancy agreement every year. There are written rental agreements for the various periods, written rental receipts and even endorsements and overwriting on the rental agreements of changes and information of note.

55. It is difficult for the court to find, and the court does not believe, that Jean would not have reduced into writing the agreement she reached with the defendants since 1990 to sell them the dwelling house.

56. The claimants' pleaded case and Jean's evidence is that the first time discussions were held relative to the sale of the dwelling house was in 2002. However, in answer to questions posed in cross-examination Jean stated that she first offered to sell the dwelling house to Glen in 1987. When it was put to Jean that she agreed to sell the dwelling house to Glen, her response was, "I could say anything. I don't bound to sell him the house. I did not give him any authority to build house to do anything. It had no agreement. I didn't give him any big agreement. I just said yes and that is it. I never put anything in writing."

57. What is clear is that the discussions between Jean and the first defendant over the years were casual discussions. It seems to the court that neither Jean nor the defendants took them seriously. Rather, the defendants were content to continue being tenants and executing new tenancy agreements every year or every other year. None of those agreements made any

mention of any agreement for sale. The defendants were clearly satisfied by the terms of each new tenancy agreement as evidenced by their execution.

58. The question is, whether the "talk" about the sale of the dwelling house ever changed its character or caused the defendants to act upon it to their detriment. In 2002, the parties clearly took a decision to consider the possibility of entering a sale agreement.

59. The claimants' pleaded case and evidence demonstrates that the 2002 tenancy agreement was amended by a handwritten insertion, initialed by Jean and Glen to reflect the discussions between the parties. The insertion was "I Jean Cayonne agree to sell property to Mr & Mrs Glen Mollineau, once both parties agree to purchase price within the above lease period".

60. Under cross-examination when counsel for the defendants asked Jean whether the said insertion was her handwriting, Jean vehemently denied that it was her handwriting. When asked whether it was her signature on the tenancy agreement she insisted that it was not her handwriting and she did not know anything about that.

61. The court believes that this note was made by Jean or with Jean's approval. The notation on the rental agreement is in keeping with Jean's modus operandi. Jean was careful with keeping records and making notes of important information.

62. The ordinary meaning of the insertion on the 2002 tenancy agreement is that the parties were agreeing that if Jean offered them a sale price for the dwelling house and if the defendants accepted that price, then Jean would sell them the dwelling house. They also agreed that Jean was to make the

offer and the defendants were to accept the offer during the period of the 2002 tenancy agreement.

63. Whatever casual discussions the parties had over the years, 2002 was a watershed of sorts, as they decided to give consideration as to whether they should have an agreement for the sale of the dwelling house.

64. The defendants' behaviour both before and after the 2002 rental agreement was executed, concretizes the court's findings.

65. The repairs allegedly completed before 2002 included the:
    a. construction of an additional room attached to the kitchen;
    b. construction of a garage;
    c. repainting the dwelling house; and
    d. casting of the entire front yard of the dwelling house, which was gravel.

66. The defendants produced bills and receipts. Jean and the defendants agreed to offset the cost of the repairs plus a bill, in the total sum of $25,725.00 from the rent due for the outstanding period ending in 1999.

67. Thereafter, the new tenancy agreement dated 16 November 2000 was amended by handwritten insertions to reflect the agreement and the manner in which the $25,725.00 was liquidated by Jean in favour of the defendants.

68. The court noted that there were two versions of the 2000 tenancy agreement admitted into evidence. The defendants' version[6] was unsigned and contained different amendments from the 2000 tenancy agreement attached to Jean's witness statement.[7]

69. Handwritten to the claimants' version of the 2000 tenancy agreement under "Other Terms" states, "Lessee was authorized to spend $25000.00 during 1997 (Twenty Five Thousand Dollars) plus $725 for light bill. Amt Applied to rent due from 3/96 then 12/99 = (18,400) $25,725. Renting Amt [payable] $7325". Jean's initials followed. After the signatures portion of the lease, the handwritten note continued, "Lessor Reimbursed Glen Mollineau $2000.00 on 12/10/1999. Amt AVAIL $5,325 as of 12/10/99 Five Thousand Three Hundred + Twenty Five dollars". Glen's initials then followed.

70. The defendants' version of the 2000 tenancy agreement under "Other Terms" states, "As of 12/10/99 Lessee had a credit Bal of $5325.00 Amt Applied through [1/1/2000 to] 11/1/2000 (11mths @400) $4400 NEW credit Bal as of 11/10/2000 is $925.00". Underneath the signature portion of the tenancy agreement which was unsigned had another note showing how the credit balance of $925.00 was liquidated, "$925 credit bal $450 Applied to 12/2000, $450 Applied to 1/2001, $25 Applied to 2/2001". It further stated that "Arrangements will be made by Lessor to have rent due by effective 2/2002 picked up".

71. The court is satisfied that the written amendments in both agreements demonstrated the liquidation of $25,725.00. The signed tenancy

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[6] Exhibit "B" of the Defence and Counterclaim. Note that the 2000 tenancy agreement was attached to Glen Mollineau's witness statement as "G.M.2" but the document was not properly scanned.

[7] Exhibit "J.C.3" of Jean Cayonne's witness statement

agreement adduced by the claimants illustrates that the $18,400.00 in rent that was due for the period March 1996 – December 1999, was deducted from the $25,725.00 leaving a balance of $7,325.00 due to the defendants. On 12 October 1999, Jean reimbursed Glen $2,000 leaving a balance of $5,325.00 which Glen initialed on the agreement of the sums owed to him.

72. The other 2000 tenancy agreement adduced by the defendants subsequently documented the reimbursement of the balance of $5,325.00. For the period 1 January 2000 to 1 November 2000 spanning 11 months, Jean did not collect any rent and credited the defendants' $4,400.00 to the remaining balance for that period leaving a new credit balance of $925.00. This balance Jean applied to the rent at a rate of $450.00 for December 2000 and January 2001 and the remaining $25.00 was applied to the rent for February 2001.

73. The 2000 tenancy agreement held by Jean was of interest to her because it illustrated the monies she credited to the defendants. Whereas the 2000 tenancy agreement held by the defendants was of interest to them demonstrating how the credit balance of $5,325.00, owed to them was subsequently liquidated.

74. The defendants cannot seek, in these circumstances, to rely on the repairs they did to the house as evidence of detriment. The defendants admitted that the sums expended ($25,725.00) were offset against rent owed by them to Jean. The sums expended, were not offset against the sale price of the home, nor did the defendants seek to enter negotiations for the sale of the house and have the sum offset from the sale price. They were content for the relationship of landlord and tenant to continue and their contentment was concretized when they executed a new lease. After Jean

offset the monies, the defendants executed a new rental agreement in 2002 and resumed paying rent.

75. Sometime around 2007 and 2008 the defendants say they made additional improvements to the dwelling house. They paved the entire yard, reinforcing the dwelling house, repaired the cesspit and installed an insulator in the dwelling house. The defendants produced receipts for the works already refunded by Jean, yet produced no receipts for the extensive works allegedly done in 2007 and 2008. I do not accept the defendants' evidence that they carried out repairs in 2007 and 2008. Their pattern of retaining receipts and documents belies their evidence. I find that they would have established this with proof of receipts as they have done for all their other assertions.

76. Additionally, the defendants testified they added a garage. The claimants vehemently denied this and insisted that the garage was always there. The court prefers the claimants' evidence. This preference is supported by the Deed which described the dwelling house as comprised of "two (2) bedrooms, one (1) sitting room, one (1) dining room combined a kitchen, one (1) toilet and bath and a garage". The garage, contrary to the defendants' assertion, was always there.

77. In 2014, the defendants say they repainted the dwelling house. The court notes that the receipts produced, are dated December 2014 and total approximately $1,000.00. The traditional Christmas clean up seems an appropriate explanation for this expenditure. I also find that the defendant exaggerated when they claimed to have repainted the dwelling house in 2014. The amount spent on paint and the fact that they purchased the paint in December, suggest to this court that the defendants did no more than the traditional Christmas sprucing up.

78. It is clear to the court that the defendants have been disingenuous, deceptive and overzealous in describing the works they did to the dwelling house. Further, the defendants recouped the monies spent in 1996 when they engaged in the offsetting exercise before they executed the 2002 rental agreement.

79. While the defendants say they approached Mr. Carter to do repairs to the dwelling house, the court does not believe this. Glen was at pains to detail that he has done repairs to the dwelling house from his first occupation in 1985. He did not ask Mr. Carter. In fact, the court is also satisfied that Glen did not ask Jean's permission to do whatever minor repairs he did in 1985.

80. It however made sense that the defendants would approach Mr. Carter to purchase the land after the discussions with Jean in 2002, and after Jean documented that the parties would consider the sale and purchase of the dwelling house. The defendants' evidence is that in or about 2002, Glen approached Mr. Carter with respect to purchasing the land. Mr. Carter agreed on the explicit condition that Jean sold him the dwelling house. Glen asking Mr. Carter for permission to have a survey conducted in preparation for the purchase of the land. The survey had nothing to do with the purchase of the dwelling house. Glen's evidence is that Mr. Carter had two conditions, firstly that Jean sold him the dwelling house and secondly, that Glen subdivided the land. It is more likely that the survey and the plan dated 20 August 2003, was done in the event that Mr. Carter's conditions were met.

81. Glen also claims that he informed Mr. Carter that Jean agreed to sell the dwelling house to him and asked Mr. Carter for permission to do renovations to the dwelling house. The defendants say having received the relevant permission, they proceeded to construct an additional room, a

garage, cast the front yard and repainted the dwelling house. The court also does not believe that the defendants sought permission from Mr. Carter to do repairs to the dwelling house. According to them, they have been doing repairs since the Glen first moved in – with Jean's consent. Why then would they ask Mr. Carter for permission in 2002?

82. Having made the findings of fact on the evidence adduced, the court then applied it to the law relevant to determine the issues.

The Law and Analysis

- **What is the relationship between the claimants and the defendants: are they landlord and tenant, seller and purchaser by virtue of an enforceable agreement or because of part performance?**

83. Counsel for the claimant submitted that there was no offer made by Jean for the sale of the dwelling house, but any such representation made by her was an invitation to treat. Justice Rahim in his judgment *Bisnath Bally v Anne Mahabir and Ivy Mahabir*[8] stated the law on the elements required for the formation of a contract:

> "126. Before a contract can become legally binding and enforceable, the parties must have the capacity to contract, there must be an intention to create legal relations, there must be the consent of the parties coupled with offer and acceptance and there must be valuable consideration.
>
> 127. An offer is an expression by one person or group of persons made to another of his willingness to be bound to a contract with that other on terms either certain or capable of being rendered certain. An offer must be distinguished from a mere invitation to treat. An invitation to treat is a mere declaration of willingness to enter into negotiations; it is not an offer, and cannot be accepted so as to form a binding contract.

[8] CV2017-02848

> 128. An acceptance of an offer is an indication, express or implied, by the offeree made whilst the offer remains open and in the manner requested in that offer of the offeree's willingness to be bound unconditionally to a contract with the offeror on the terms stated in the offer.
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> 129. Consideration for a promise may consist in either some benefit conferred on the promisor, or detriment suffered by the promisee, or both. On the other hand, that benefit or detriment can only amount to consideration sufficient to support a binding promise where it is causally linked to that promise. It is not necessary that the promisor should benefit by the consideration. It is sufficient if the promisee does some act from which a third person benefits, and which he would not have done but for the promise.
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> 130. The test to be applied in determining whether an agreement has been made is an objective one. Lord Clarke in RTS Flexible Systems Ltd v Molkerei Alois Muller GmbH and Co KG (a case relied on by both parties) had the following to say;
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>> "…The general principles are not in doubt. Whether there is a binding contract between the parties and, if so, upon what terms depends upon what they have agreed. It depends not upon their subjective state of mind, but upon a consideration of what was communicated between them by words or conduct, and whether that leads objectively to a conclusion that they intended to create legal relations and had agreed upon all the terms which they regarded or the law requires as essential for the formation of legally binding relations."

84. The facts are that in 1987 Jean first offered to sell the dwelling house to Glen, which offer he refused.

85. The next time any discussions regarding the sale of the dwelling house occurred was in 1990. At that time, Jean inquired whether the defendants were interested in purchasing the dwelling house and the defendants expressed their interest. No sale price was agreed and there were no discussions to determine a sale price.

86. Based on the conduct of the parties at most there was an invitation to treat.[9] The defendants' subjective state of minds on what they believed to have occurred is irrelevant to the finding of an agreement. What matters is a consideration of the objective conduct between the parties; whether they intended to create legal relations.

87. When Jean made her inquiry into the defendants' interest in purchasing the dwelling house, these actions objectively demonstrated her willingness to enter into negotiations. On a balance of probabilities, it seems as though Jean simply asked the defendants whether they were still open to the option of purchasing the dwelling house. She never made an offer with the consequence of being bound to a contract with the defendants.

88. Jean did not suggest a purchase price nor was one determined. The defendants' evidence is that those discussions were to be held, but they never materialized. As such, Jean made no offer and therefore the defendants had no opportunity to accept an offer. Based on the defendants' evidence, the most generous interpretation the court can give to the evidence is that the parties never entered nor moved beyond the negotiation stage or beyond an invitation to treat. Jean simply and perhaps continuously expressed her intention and willingness to sell the dwelling house to the defendants, if they could agree on terms.

89. In the 2002 tenancy agreement, a clause was inserted that the purchase price was to be agreed by both parties during the term of the 2002 tenancy agreement. The parties did not arrive at an agreement as to the purchase/sale price during the period of the 2002 tenancy. This was

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[9] *Bisnath Bally* [supra]

confirmed by Glen under cross-examination, when he said there was no agreement on a purchase price during the period 2002-2003.

90. Jean's willingness to sell, without more, cannot be accepted by the defendants so as to form a binding contract. It is irrelevant that the defendants took Jean's assurances that she was willing to sell and open to negotiations as an offer to sell. The court isn't even satisfied of that assertion on the behaviour of the defendants. Based on an objective view of the defendants' evidence, the court does not find that there was any contract to sell the dwelling house. Jean's assertions that she would sell the dwelling house to the defendants was no more than an invitation to treat.

91. Madam Justice Rajnauth-Lee in the case of *Vishnu Andrew Sagar v Bissoondaye Mungroo and Rajesh Sagar*[10] considered the law on the doctrine of specific performance and acts of part performance. In her judgment, she observed the relaxation of the rigor of the requirements of the doctrine of part performance.

92. In *Steadman v Steadman*[11] the Law Lords opined that in order to rely on the doctrine, the acts of part performance must be pursuant to a contract and not in the expectation that a contract would follow. Lord Reid at pages 541-542 opined:

> "I am aware that it has often been said that the acts relied on must necessarily or unequivocally indicate the existence of a contract. It may well be that we should consider whether any prudent reasonable man would have done those acts if there had not been a contract but many people are neither prudent nor reasonable and they might often spend money or prejudice their position not in reliance on a contract but in the optimistic expectation that a

[10] CV2007-02831
[11] [1976] AC 536

> contract would follow. So if there were a rule that acts relied on as part performance must of their own nature unequivocally show that there was a contract, it would be only in the rarest case that all other possible explanations could be excluded.
>
> In my view, unless the law is to be divorced from reason and principle, the rule must be that you take the whole circumstances, leaving aside evidence about the oral contract, to see whether it is proved that the acts relied on were done in reliance on a contract: that will be proved if it is shown to be more probable than not."

93. Further Lord Simon of Glaisdale said at page 564:

> "I am therefore of opinion not only that the facts relied on to prove acts of part performance must be established merely on a balance of probability, but that it is sufficient if it be shown that it was more likely than not that those acts were in performance of some contract to which the defendant was a party."

94. Viscount Dilhorne (at page 553) also cited the judgment of Upjohn L.J. in *Kingswood Estate Co. Ltd. v Anderson* [1963] 2 Q.B. 169 where he stated:

> "The true rule is in my view stated in Fry on Specific Performance, 6th ed., p. 278, section 582: 'The true principle, however, of the operation of acts of part performance seems only to require that the acts in question be such as must be referred to some contract, and may be referred to the alleged one; that they prove the existence of some contract, and are consistent with the contract alleged.'"

95. Based on the learnings expounded above, the Law Lords were pellucid as they all emphasized that acts of part performance relied on must be consistent with, referable to and be in the performance of a contract. Therefore, to determine whether the defendants can rely on the doctrine of part performance, the court must first be satisfied, on a balance of probabilities that there was a contract for sale of the dwelling house.

96. The authorities cited in the case of *Vishnu Andrew Sagar* [supra] demonstrates that any act of part performance must be pursuant to a

contract. The court has already found that there was no contract for the sale of the dwelling house by the claimants to the defendants. What improvements and additions done by the defendants to the dwelling house over the years were likely for their own comfort while paying such low rent. Perhaps the defendants also were in hopeful expectation that Jean would eventually sell the dwelling house to them. However, that hopeful expectation nor the time they rented the dwelling house has proved evidence that there was any agreement for sale or that there were acts of part performance in pursuance to an agreement for sale of the dwelling house.

97. Based on the court's finding that there was no contract to sell the dwelling house between Jean and the defendants, the defendants' counterclaim grounded in the doctrine of part performance automatically fails.

- **Are Jean, the second and third claimants obligated to sell the dwelling house to the defendants by virtue of proprietary estoppel or are they entitled to possession consequent on the end of the tenancy?**

98. The law on the doctrine of proprietary estoppel was succinctly featured by Madame Justice Margaret Mohammed in the case of *Prakash Thackoor v Sarah Ramdeen*[12] at paragraphs 10 – 11 of her judgment as follows:

> "10. A distinction on the nature of the promise between the law of promissory estoppel and proprietary estoppel was considered in the Court of Appeal decision of Ester Mills v Lloyd Roberts where it was stated that:
>
> > "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

[12] CV2017-01900

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." (Emphasis added)

11. The Court of Appeal at paragraphs 25 and 26 in Ester Mills stated the test to determine whether a claim in proprietary estoppel has been established in the following terms:

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

(i) The court should adopt a cautious approach.
(ii) The court must consider all of the circumstances in order to discover the minimum equity to do justice to the claimant.
(iii) The court however enjoys a wide discretion in satisfying an equity arising from proprietary estoppel.
(iv) Critical to the discovery of the minimum equity to do justice, is the carrying out of a weighing process; weighing any disadvantages suffered by the claimant by reason of reliance on the defendant's inducements or encouragements against any countervailing advantages enjoyed by the claimant as a consequence of that reliance.
(v) In determining the balance in the relationship between reliance and detriment: just as the inquiry as to reliance falls to be made in the context of the nature and quality of the particular assurances,

inducements and encouragements which are said to form the basis of the estoppel, so also the inquiry as to detriment falls to be made in the context of the nature and quality of the particular conduct or course of conduct adopted by the claimant in reliance on the assurances, inducements and encouragements.

(vi) Though in the abstract reliance and detriment may be regarded as different concepts, in applying the principles of proprietary estoppel they are often intertwined.

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

(i) Reliance and detriment are often intertwined. However, the fundamental principle that equity is concerned to prevent unconscionable conduct, permeates all of the elements of the doctrine.

(ii) Detriment is not a narrow or technical concept; it need not consist of the expenditure of money or other quantifiable detriment, so long as it is substantial.

(iii) Whether the detriment is sufficiently substantial is to be tested by whether it would be unjust or inequitable to allow the assurance to be disregarded; in this regard, the essential test is unconscionability.

(iv) The aim of the court in satisfying an equity arising from a proprietary estoppel is to decide in what way the equity can be satisfied in the context of a broad inquiry as to unconscionability."

99. To succeed in their claim pursuant to the doctrine of proprietary estoppel, the defendants rely on an assurance by Jean that she would sell them the dwelling house and as a result, they suffered some unconscionable disadvantage or detriment.

100. The defendants' evidence and the facts are that in 1987, Jean first offered to sell the dwelling house and Glen refused as he was not in a financial position to purchase. Thereafter, in the year 1990, after discussions were held involving the sale of the dwelling house, and upon Jean's assurances that she was willing to sell them the dwelling house, the defendants installed a face basin, repaired the roof and installed further cabinetry in the kitchen at their own expense.

101. Again, in 1996 Jean told the defendants that she would sell them the dwelling house. Also in 2006, when Jean visited Trinidad, she again told the defendants that she would sell them the dwelling house.

102. Regarding the assurance made by Jean to sell the defendants the dwelling house, the defendants would have to prove they relied on those assurances, to their detriment and further, that it would be unconscionable for the court to permit Jean to retreat from that assurance.

103. The court made a finding of fact that in 2000, Jean agreed to reimburse the defendants the sum of $25,725.00 for the monies expended on additions and improvements to the dwelling house. The arrangement to refund the defendants was endorsed on the 2000 tenancy agreement.

104. In support of their claim for the works done on the dwelling house, the defendants adduced receipts for the materials purchased in 1996, evidencing their expenditure, which did not include the cost of labour. Under cross-examination, Glen stated that the labour costs incurred was approximately $2,000.00. The receipts for expenditure in 1996 totaled $21,548.36. The other receipts adduced were for paint purchased in 2014 amounting to $996.95.

105. In relation to the defendants' expenditure in 1996, the court is not of the view that they suffered any detriment in reliance on Jean's assertions that she would sell the dwelling house to them. The court found that Jean reimbursed the sum of $25,000.0 to the defendants, in full and without question or proof of expenditure.

106. The defendants' evidence was that in 2006 upon Jean's reassurance that she would sell them the dwelling house, at their own expense paved the yard, reinforced the dwelling house, repaired and conducted a complete flush of the cesspit tanks and installed an insulator. The court noted that the defendants did not proffer any evidence in support of their expenditure in 2006, nor did they photograph any of the improvements allegedly done. The court also found as a fact that the defendants exacerbated about what works they did, including their evidence about adding a garage.

107. Therefore, regarding the alleged expenditure on improvements the defendants say they made to the dwelling house, the court was not satisfied that the defendants have shown that they acted to their detriment.

108. The court also considered the judgment of *Prakash Thackoor* [supra] that the court enjoys a wide discretion in satisfying an equity arising from proprietary estoppel; that it must weigh any disadvantages suffered by the defendants by reason of reliance on the claimants' inducements or encouragements against any countervailing advantages enjoyed by the defendants as a consequence of that reliance. The essential test is unconscionability; would it be unjust to allow the assurance to be disregarded.

109. The court considered what countervailing detriment the defendants' could have suffered. It is possible that they could have purchased land and built a home or purchased a home over the 35 years that they rented and believed that Jean would sell them the house.

110. Alternatively, the defendants enjoyed the comfort of the dwelling house for over 35 years at a very low rental of $400.00 and later $450.00. Such a low rental should have afforded the defendants an excellent opportunity to save towards the acquisition of land or house and land. The defendants were satisfied to pay a very low rent and not make any real effort to enter into any negotiation to complete an agreement for sale of the dwelling house.

111. Even if the defendants had been successful in raising an equity, the circumstances here do not show that the defendants acted to their detriment. Therefore, it would not be unjust or inequitable for Jean's utterances of selling the house to the defendants to be disregard.

112. As it relates to the painting of the dwelling house in 2014, the learned Justice Rajkumar in CV2010–03575 *Harry Fulchan v Naresh Fulchan* opined that expenditure on painting amongst other things, may be ancillary to other contributions but would rarely suffice on their own to create an equitable interest in real property. Therefore, those sums expended by the defendants on painting allegedly on reliance on Jean's assertion that she would sell the dwelling house to them does not amount to a detriment.

113. Additionally, the court is not satisfied that there was any unconscionable disadvantage or detriment suffered by the defendants

because of Jean's assertions that she would sell the dwelling house to them. Therefore, the defendants' counterclaim under the doctrine of propriety estoppel fails. As such, the claimants are not bound by law to sell the dwelling house to the defendants.

114. The court finds that the defendants were and remained up to the trial, tenants of the claimants. Since the defendants have decided not to agree to the terms for a new tenancy agreement, and having been given notices to quit, the claimants are entitled to possession of the dwelling house.

DISPOSITION

115. Having applied the facts to the law I am satisfied on a balance of probabilities that there be judgment for the claimants against the defendants on the claimants' claim:

a. The court declares that the claimants are entitled to possession of ALL AND SINGULAR that dwelling house situate at Sagangar Trace, Four Roads, Diego Martin, in the Ward of Diego Martin, in the island of Trinidad and constructed from hollow clay blocks comprising two bedrooms, a sitting room, dining room combined a kitchen, toilet and bath and a garage standing on rented lands of Victor Carter comprising ONE LOT;
b. Court Orders that the first and second defendants do deliver up vacant possession on or before 30 November 2021 - of the dwelling house;
c. The defendants are liable to pay rent up to the date they vacate the dwelling house;

d. The defendants shall pay the claimants' costs on the claim in the sum of $10,000 (the claimant have failed to prove damages for trespass);

116. The defendants' counterclaim is dismissed; and

a. The defendants shall pay the claimants' costs on the counterclaim in the sum of $14,000.00

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Justice Avason Quinlan-Williams

JRC: Romela Ramberran