

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE  
Port of Spain**

**Claim No. CV2016-01031**

**BETWEEN**

**ROWLAND MOZE**

**Claimant**

**AND**

**JENNIFER KALLOO**

**Defendant**

**JUDGMENT**

**Before the Honourable Mme. Justice Jacqueline Wilson**

**Date of Delivery: March 13, 2019**

**APPEARANCES:**

Ms. Hyacinth Griffith and Ms. Kimberly Peterson Attorneys-at-law for the Claimant

Ms. Ruth Van Lare and Ms. Dzifa Van Lare Attorneys-at-law for the Defendant

**INTRODUCTION**

1. The primary issue that arises for determination in these proceedings is whether the defendant is entitled to a proprietary interest in property owned by the claimant and located at St. Ann's Gardens, St. Ann's (the property).
2. The claimant has brought proceedings against the defendant for an order requiring her to vacate the property.

3. The property was occupied jointly by the parties for a number of years in which they enjoyed a co-habitational relationship. The relationship broke down and the claimant moved out of the property leaving the defendant in occupation. The defendant has remained in occupation since that time and asserts that she is entitled to so remain by virtue of promises and representations made to her by the claimant.

### **BACKGROUND**

4. The claimant is a retired Orthopaedic Surgeon and the defendant a retired Flight Attendant. They first met in December 1994 and shared a co-habitational relationship from February 1995 to September 2003 when they both lived on the property.
5. The defendant states that she and the claimant became engaged on 2 April 1996. The claimant strongly denies the assertion and attributes the statement to the defendant's machinations.
6. In 1997 the defendant was injured in the course of her duties as a Flight Attendant and was unable to continue with her line of work. She continued to receive a salary for four years after which the payments were discontinued.
7. In September 2005 the defendant brought proceedings in the Magistrates' Court against the claimant for maintenance pursuant to the Co-habitational Relationships Act, 1998. The parties entered into a consent order under which the claimant agreed to pay the defendant a monthly sum of \$4000.00 commencing on 15 October 2006 for a period not exceeding three years, or sooner, in the event that the defendant, within six months of the order, applied to the High Court for a lump sum

payment or property adjustment order. The defendant made no further application for financial relief with the result that the order providing her maintenance expired in October 2009.

8. The claimant has since made requests to the defendant to vacate the property but she has failed to do so. Her continued occupation has led to the institution of these proceedings by the claimant, in which he seeks an order for vacant possession. The defendant contests the proceedings on the basis of an alleged entitlement to an equitable interest in the property.
9. It is significant that the claimant did not own the property during the course of his co-habitational relationship with the defendant. The status of his occupation at the time was not made clear but it appears that the property may have been provided to him as a housing benefit by the Government in the course of his employment. It appears further that the claimant was involved in negotiations to purchase the property from the Government for quite some time, with the property ultimately being transferred to him in October 2007 for the purchase price of \$750,000.00.
10. The defendant maintains that in the course of her relationship with the claimant and for several years thereafter he repeatedly assured her that she could live on the property for as long as she wished, that the property would be put in their joint names, that the property would always be her home and that she need never worry about a place to live. The claimant strongly denies having given any such assurances to the defendant. He admits being concerned about her welfare and that he

had agreed in the past to provide her with sufficient funds to secure alternative accommodation.

11. The defendant alleges that after she moved onto the property she purchased clothing and expensive gifts for the claimant. She claims that she paid the telephone bill and purchased food and household items including drapery, sheet sets, lamps, living room sets and ornaments to make the home comfortable. She states that she bought furniture and furnishings as the house was barely furnished and that she painted the inside of the house and did artwork on the dining room wall to improve its condition.
12. The defendant alleges that when the claimant moved out of the property in September 2003, he did so out of concerns for his son and not as a result of the termination of their relationship. She states that the relationship continued thereafter and that the defendant provided for her upkeep until around 2013, as a result of which she did not make any further application to the court for her maintenance. She states that she visited the defendant at his new home and stayed overnight on many occasions, when she did his laundry, took care of his dogs, cooked for him and provided for his care after he underwent surgery.
13. The defendant alleges that the claimant assured her that upon the purchase of the property it would be transferred in their joint names and that consequent upon these assurances she treated the property as her home and made the necessary repairs and renovations to keep it in good order.

14. In or around 2 January 2005, a large tree fell on the property causing substantial damage as well as injury to the defendant. The cost of the repairs was met substantially by the defendant, with the assistance of her brothers. The defendant alleges that the repairs cost approximately \$22,000.00.
15. In or around June 2013, the parties and their Attorneys became involved in negotiations with a view to the payment by the claimant of a lump sum to the defendant to facilitate her in finding alternative accommodation. The proposal at the time was for the claimant to pay the defendant one quarter of the value of the property based on a valuation ranging between \$3.5 and \$4 million. In the alternative, it was proposed that the claimant would meet the cost of suitable accommodation for the defendant.
16. The parties and their Attorneys held ongoing discussions and negotiations, in the course of which the claimant increased the proposed lump sum payment to the defendant, first to \$1.2 million and then to \$1.5 million based on a \$5 million valuation of the property. The defendant rejected the offers and counter-offered the sum of \$2 million, which was similarly rejected by the claimant.
17. The negotiations did not yield any fruitful result and by letter dated 10 October 2013 the claimant wrote to the defendant requiring her to vacate the property on or before 28 October 2013. The defendant persisted in her efforts to identify alternative accommodation and to have the claimant bear the costs of the intended purchase. This too was unsuccessful and by letter dated 15 July 2014 the claimant again called upon the defendant to deliver up possession of the property. The

defendant agreed to vacate the property on condition that the claimant provide her with a reasonable sum to secure alternative accommodation for herself and the animals in her care. The defendant alleges that by letter dated 14 October 2014 her Attorneys informed the claimant's Attorneys that she was prepared to accept the sum of \$1.5 million upon payment of which she would make appropriate arrangements to vacate the property. There is some dispute whether this letter was received by the claimant's Attorneys. However, there were no further developments on the matter.

18. The claimant denies giving assurances to the defendant that the property would be held in their joint names or that she would acquire an interest in the property or the right to occupy it for the rest of her life. He states that the defendant made promises and assurances that she would vacate the property and that he was reluctant to evict her and felt constrained to make an ex gratia offer to facilitate her relocation. He states that every offer made to the defendant was rejected and that, faced with the proceedings brought by him, the defendant asserted a right to occupy the property until death.
19. The claimant admits that at the beginning of the co-habitational relationship the defendant made some contribution to the household expenses and purchased household items. However, her contributions were minor and the improvements made by her were mostly decorative. The claimant admits that after the relationship broke down he continued to assist the defendant financially even after the court order requiring him to do so had expired. He asserts that the defendant continued to pursue him in her efforts to resume a relationship but he repeatedly rejected her advances.

20. The claimant states that he maintained very little contact with the defendant after moving out of the property and that he did not at any time invite her to join him at his new home. He states that after undergoing spinal surgery in 2003, the defendant visited him on two occasions but she was not responsible for attending to his care as he had a helper at the time who, with the assistance of his son, took care of his immediate needs.
21. The claimant alleges that the defendant's continued occupation of the property has prevented him from maintaining the property, causing its value to decline, and that she has caused him to incur significant financial loss by frustrating the potential sale of the property.
22. The claimant states that he suffers from serious health challenges and that as a result of his deteriorating health he ceased his private practice in May 2015.

## **DISCUSSION**

### Legal Principles

23. The primary issue for determination in these proceedings is whether the defendant is entitled to a proprietary remedy as a consequence of her reliance on assurances purportedly given to her by the claimant.
24. The defendant invokes the principles of proprietary estoppel as the basis for the grant of the equitable interest to which she claims to be entitled.

25. The relevant principles of law relating to proprietary estoppel and the general approach that the court should adopt in applying those principles have been stated and re-stated by the courts.
26. In the leading case of *Gillett v Holt* [2002] 2 All ER 289 at 301 (e)-(g) Oliver J, as he then was, described the doctrine of proprietary estoppel as “equity intervening to prevent unconscionable conduct.” Its principles concern the positive acquisition of rights and interests in the land of another person where the essential features of representation, reliance and detriment are found to exist, as demonstrated in the following scenario:

*“If A under an expectation created or encouraged by B that A shall have a certain interest in land thereafter, on the faith of such expectation and with the knowledge of B and without objection from him, acts to his detriment in connection with such land, a court of Equity will compel B to give effect to such expectation”*: *Taylor Fashions Ltd v Liverpool Victoria Trustee Co Ltd*. [1982] QB 133 at 144.

27. The authorities demonstrate that the essential features of representation, reliance and detriment must be considered as part of a wider inquiry as to unconscionability and not in reliance on an established formula: *Gillett v Holt* [2002] 2 All ER 289 at 301 (e)-(g); *Taylor Fashions Ltd v Liverpool Victoria Trustee Co Ltd*. [1982] 1 QB 133;
28. In *Taylor Fashions Ltd* Oliver J held that courts of equity had a wide discretion to intervene in cases where the assertion of strict legal rights was found to be unconscionable and that there was no requirement for the facts of a case to “be fitted within the confines of some preconceived



formula serving as a universal yardstick for every form of unconscionable behavior.”

29. In *Gillett v Holt*, *Walker LJ*, as he then was, elaborated as follows:

“...it is important to note at the outset that the doctrine of proprietary estoppel cannot be treated as subdivided into three or four watertight compartments. Both sides are agreed on that, and in the course of the oral argument in this court it repeatedly became apparent that the quality of the relevant assurances may influence the issue of reliance, that reliance and detriment are often intertwined, and that whether there is a distinct need for a ‘mutual understanding’ may depend on how the other elements are formulated and understood. Moreover the fundamental principle that equity is concerned to prevent unconscionable conduct permeates all the elements of the doctrine. In the end the court must look at the matter in the round.”

30. In commenting on the nature and quality of the constituent elements of proprietary estoppel, Lord Scott, in *Thorne v Major* [2009] 3 All ER 945 at 951 (j) – 952(a) stated as follows:

“Lord Walker...identified three main elements requisite for a claim based on proprietary estoppel as, first, a representation made or assurance given to the claimant; second, reliance by the claimant on the representation or assurance; and third, some detriment incurred by the claimant as a consequence of that reliance. These elements would, I think always be necessary but might, in a particular case, not be sufficient. Thus, for example, the representation or assurance would need to have been sufficiently

clear and unequivocal; the reliance by the claimant would need to have been reasonable in all the circumstances; and the detriment would need to have been sufficiently substantial to justify the intervention of equity.” [Emphasis mine.]

31. In *Theresa Henry v Calixtus Henry* [2010] UKPC 3, at para 55, Sir Jonathan Parker discussed the interplay of the conditions required for the grant of proprietary estoppel as follows:

“As to the relationship between reliance and detriment in the context 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 enquiry 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.”

32. Where the conditions for proprietary estoppel are satisfied, the court’s inquiry is directed to the minimum equity that is required to do justice between the parties: *Plimmer v Mayor, Councillors and Citizens of the City of Wellington* (1884) 9 App Cas 699 at pp 713-714.

#### **THE PRESENT CASE**

33. As indicated above, the claimant roundly denies giving assurances to the defendant that she could live on the property for the rest of her life. In cross-examination both parties were resolute in their respective

positions as to whether the alleged assurances were given. The question that arises is which of the two conflicting versions of evidence is the more credible having regard to all of the circumstances of the case including other facts that are found to be incontrovertible.

34. Before embarking on a summary of the undisputed facts a word should be said about the demeanour of the parties. It is clear that this matter involved highly-charged emotions on both sides and that it aroused considerable anxiety in the defendant and considerable frustration in the claimant. The claimant's evidence was punctuated with volatile and erratic outbursts. His antics served to prolong the hearing of the matter and caused unnecessary difficulty to the process. His evidence was inconsistent in many respects. However, at the end of the day certain material facts remained unchallenged, as discussed further below.
  
35. It is not disputed that the claimant did not own the property at the time of his co-habitation with the defendant. He did not acquire ownership for approximately four years after the co-habitation ended. To the extent that the defendant, by virtue of representations made by the claimant, may have harboured an expectation that she could live on the property for the rest of her life, such an expectation must at the very least have been speculative as contingent upon the claimant himself acquiring a similar or superior interest. In the absence of such an interest, any representations made by the claimant regarding the defendant's permanent occupation of the property could not reasonably have been considered to be binding or irrevocable. The defendant's reliance on representations that were known to be tenuous or uncertain would, similarly, be unjustifiable.

36. After having acquired the property, the claimant's intention to sell it was known to the defendant. The defendant made unsuccessful efforts to identify an alternative home to which she could relocate at the claimant's expense. The parties also held discussions and negotiations with a view to the claimant's payment of a portion of the value of the property to the defendant to facilitate her relocation. Ultimately, they were unable to agree on a mutually acceptable sum.
37. In my view, the above factors suggest that the defendant's occupation of the property was at the will of the claimant. There is no independent evidence to suggest that the claimant encouraged a belief in the defendant that she had an irrevocable licence to occupy the property for the rest of her life. The unchallenged evidence is that for several months both the claimant and the defendant explored a number of options to secure the defendant's departure from the property. In those circumstances, any assurances that were alleged to have been given by the claimant must necessarily have been understood to be withdrawn, whether expressly or impliedly, by the parties' conduct. The defendant's active involvement in seeking to relocate undermines the assertion that her reliance on the claimant's assurances was firm and unwavering.
38. In effect, it may readily be inferred that it was as a result of the defendant's unsuccessful efforts to negotiate a better deal than that offered by the claimant that she seeks to assert an entitlement to an equitable interest in the property. The authorities postulate that the remedy of proprietary estoppel may not be invoked as a mechanism to otherwise address the failed expectations of a disappointed negotiator: *Yeoman's Row Management Ltd and another v Cobbe* [2008] UKHL 55 at para. 38.

39. Even if it is accepted that the claimant did in fact represent to the defendant, or encouraged her to believe, that she could live on the property for the rest of her life, in order for a proprietary interest to be granted the defendant must show that she altered her position to her detriment in reliance on the claimant's promises. While the detriment need not be established in purely financial terms, the defendant must demonstrate that in relying on the promises she deprived herself of more attractive prospects or opportunities elsewhere: *Lissimore v Downing* [2003] 2 FLR 309, at para. 19; *Greasley and others v Cooke* [1908] 3 All ER 710 at 713. This requirement must be approached as part of a broad inquiry as to whether repudiation of the assurance is unconscionable in all the circumstances: *Gillett v Holt* [2002] All ER 289 at p. 308 c-d.
40. In determining whether the requirement of detriment is satisfied the court must conduct a balancing exercise, weighing the disadvantages suffered by the defendant by reason of her reliance on the claimant's assurances against the countervailing advantages that she enjoyed as a result of such reliance: *Theresa Henry & Ors v Calixtus Henry* [2010] UKPC 3 at para 51.
41. There is minimal evidence of detriment suffered by the defendant as a consequence of her reliance on the claimant's assurances. There is nothing to suggest that the defendant opted to forego other opportunities that were available to her. The evidence shows that the defendant was unable to identify alternative accommodation that met her requirements. In any event, the cost of such accommodation was to be borne by the claimant.

42. In so far as countervailing advantages are concerned, the evidence establishes that the defendant has lived rent-free on the property since 1995. Her expenditure towards its maintenance was minimal and sporadic. The only substantial expenditure incurred by her, or on her behalf, was for the purpose of repairing damage sustained by a fallen tree at a time when the claimant no longer resided on the property.
43. In my opinion, this is not a case in which a remedy can be granted to the defendant on the basis of proprietary estoppel. It cannot be said that the defendant has suffered detriment in reliance on the claimant's assurances to such an extent that it would be unconscionable to allow the claimant to resile from them. While the authorities make it clear that the court must adopt a broad and unified approach in the application of principles of estoppel, it is equally clear that the approach "is emphatically not a licence for abandoning careful analysis for unprincipled and subjective judicial opinion:" *Yeoman's Row Management Ltd and another v Cobbe* [2008] UKHL 55 at para. 59.
44. The defendant's assertion that she is entitled to relief on the grounds of proprietary estoppel must therefore fail.
45. The order for vacant possession sought by the claimant is granted. The parties are at liberty to determine, within fourteen days of this decision, the period in which the defendant shall give vacant possession of the property (and such other terms and conditions as they consider appropriate) failing which the period would be fixed by the court.

Jacqueline Wilson

Judge