THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. P088 of 2015

Claim No. 2012-02773

Claim No. 2012-03211

BETWEEN

TARUN MANO

Appellant

AND

ANDEAN HOLDINGS LIMITED

Respondent

Panel:

M. Mohammed, J.A.

P. Rajkumar, J.A.

A. des Vignes, J.A.

Appearances:

Mr. G. Delzin and Ms. A. Goddard appeared on behalf of the Appellant.

Mr. T. Bharath and Ms. S. Vailloo appeared on behalf of the Respondent.

Date of Delivery: 28 JULY 2020

I have read the judgment of Rajkumar JA and I agree.

……..

Justice of Appeal

Mark Mohammed

I have read the judgment of Rajkumar JA and I too agree.

…….

Justice of Appeal

Andre des Vignes

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Delivered by Peter A. Rajkumar JA

A. Background

1. The appellant's claim is in respect of a property situated at lower Don Miguel Road, San Juan (the subject property or the property). He claims that he was employed at Rotoplastics Ltd (Rotoplastics), a company affiliated with the respondent, and that he had relationships with Mr. Ralph Ross and the Ross family, (shareholders and directors of Rotoplastics), providing general services to them primarily as a handyman. The respondent is the legal owner of the subject property and several of its directors are also on the Rotoplastic's board of directors. On 27th March 2015, the trial judge dismissed the appellant's claim, and in the related and consolidated action, brought by the respondent against the appellant, granted judgment in favour of the respondent and ordered that the appellant was to vacate and deliver up possession of the property.

B. The Alleged Agreement

2. The appellant's claim is that in the year 1998, after he had indicated to Mr. Ralph Ross (Mr. Ross) that he intended to move to Couva, he was persuaded to enter into an oral agreement with Mr. Ross, (the alleged agreement or the alleged oral agreement) as follows: i) the appellant was to find an available dwelling house for sale in close proximity to Rotoplastics and would communicate the details to Mr. Ross, ii) Mr. Ross on behalf of the **respondent** was to purchase the house and thereafter put the appellant and his family into occupation, iii) the appellant would repay the cost of the dwelling house to the respondent by way of monthly installments of seven hundred dollars until the entire cost of the dwelling house was repaid (the $700 monthly payment was understood by him to be a payment on a mortgage) and iv) the respondent would transfer the title to the property to the appellant upon full repayment. It is not in dispute that the respondent did purchase the subject property on 16th May, 1999. What is in dispute is whether there was any agreement as alleged under which title was to be eventually transferred to the appellant.

C. The Renovations

3. In or around June 2000 renovations were effected to the subject property. The appellant claims that he maintained the premises by clearing brush and had assisted the contractor, hired by Mr. Ross, with the renovation works without receiving compensation. Further, when the appellant's contractor's services were terminated in or around October 2000, he and his family thereafter continued the renovation works with the express prior authority of Mr. Ross by:
    i. Filling holes in the yard[1], adding an outside toilet and constructing a shed on the eastern portion of the property[2];
    ii. Constructing a shed on the northern side;
    iii. Paving the yard;
    iv. Installing a concrete sink; and
    v. Further continued with the renovations, and maintenance of the subject property to date. He estimates that he spent $60,000.00 not including the value of his labour[3].

4. This is disputed. The respondent avers that it purchased the property, a dilapidated structure, as a company house for its own purposes, intending to rent it to workers proving services to it and its affiliate. It paid $75,000.00[4] and spent a further $105,000.00 renovating it, using its own contractor, Mr. Hospedales, without the appellant's involvement. Further, the only permission granted to the appellant to make improvements was for construction of a garage at his own expense[5].

[1] See witness statement of the appellant, paragraph 24 page 653, volume 2 – Record of Appeal.
[2] See amended statement of case, paragraph 3, page 19 volume 1 - Record of Appeal.
[3] See paragraph 84 page 665 volume 2 record of appeal.
[4] And not the $85,000.00 that the appellant claims was the initial sale price nor the $80,000.00 that he claims that he subsequently was told was the price at which it was acquired. (See Record of Appeal, page 1959 volume 5 last line)
[5] See Paragraph 18 of the witness statement of Mr. Ralph Ross at 726 volume - Record of Appeal

5. The appellant's case is that he was put into occupation of the subject property on November 4th 2000, and that it was agreed, between himself and Mr. Ross (one month after, in **December 2000)**[6], that the sale price to him of the property (or the acquisition price), would be two hundred and fifty thousand dollars ($250,000.00), towards which he would pay the sum of $700 per month. He accepted that when he said that the $700/month payment was agreed to in 1996 (or **in 1998**)[7], that this was incorrect[8][9].

6. According to the appellant it was agreed that when the total amount was paid off then the title would be transferred to him. He claims a. that he relied on the agreement and the representations made to him, b. that he acted to his detriment in i. forgoing the opportunity to live in Couva, ii. in paying the sums of $700/month **towards the acquisition** of the subject property, iii. in expending money on materials ($60,000,00) and labour for further renovation works on the subject property, iv. that after relying on the arrangements for all these years, he has now passed the age when he can qualify for a mortgage or make alternative arrangements for accommodation, and v. that apart from the services which he provided to the Ross family as a contractor, (which he invoiced, and for which he was paid), he provided additional unpaid services because of the alleged oral agreement. He therefore claims that the respondent holds the property in trust for him and seeks a declaration, inter alia, that he is equitably entitled to the fee simple interest in the property.

7. The respondent claimed that the appellant was simply put into occupation as a tenant, at a **rental** of $700/month under a written tenancy agreement dated January 1st 2001, (the tenancy agreement). This was because he was providing services to Rotoplastics, (a company associated with the respondent as an independent contractor for which he provided invoices. He was not its employee and in fact had a full time job at the Ministry

[6] At page 1967 volume 5 record of appeal, paragraph 25 page 653 w/s of appellant volume 2 record of appeal.
[7] At paragraph 2 Amended Statement of Case page 19, record of appeal.
[8] See page 1968, record of appeal line 3.
[9] Contrary to paragraph 4 (iii) of the Appellant's submissions filed on 28th May, 2020.

of Health where his working hours concluded at 2.00 pm. He fell into arrears of rent at one point and executed a promissory note, (the promissory note), to repay arrears of rent. The respondent contends that it effected all the renovations at its own expense and without the involvement of the appellant. The appellant had no permission from the respondent to make any expenditures on, or alteration to the property, apart from construction of a shed, at his own expense, to provide shelter for his vehicle.

D. Issues

8. The issues that arise therefrom include:

i. whether, as a question of fact, the alleged or any oral agreement existed;

ii. whether the contemporaneous documentation, including the receipts for payment, the tenancy agreement and the promissory note, supported or contradicted the existence of the alleged oral agreement;

iii. whether the tenancy agreement and the promissory note were executed under duress as alleged;

iv. if the alleged oral agreement was not proved what was the nature of the appellant's occupation;

v. whether the appellant established that he acted to his detriment;

vi. as a question of fact what were the appellant's actual contributions in respect of the property;

vii. whether the appellant's alleged contributions, direct or indirect, were such as to create an equitable interest in the subject property;

viii. if so, what would be the extent of any such equitable interest;

ix. whether in the circumstances, any interest was created as a matter of law for the benefit of the appellant either a. by reason of proprietary estoppel based on i. the alleged oral agreement or ii. the alleged expenditure or other contributions, or, b. a **Pallant v Morgan**[10] equity, c. any other type of trust or d. any other reason.

[10] [1953] Ch 43.

E. Conclusion

9. The appellant's claim to an interest in the subject property is based upon factual matters asserted by him. The trial judge's findings of fact in relation to those matters can be revisited and reviewed by an appellate court only in limited circumstances. These are generally summarised as requiring a demonstration that the trial judge was plainly wrong. The trial judge made findings of fact that:

   i. the alleged oral agreement was not proved[11].

   ii. the documentation supported only a tenancy agreement[12].

   iii. implicitly therefore the court found that the tenancy agreement and the promissory note were not executed under duress.

   iv. implicitly therefore if the appellant's occupation was as a tenant under a tenancy agreement his payments of $700 per month were simply rent.

   v. the appellant failed to prove any detriment or any peculiar advantage to the respondent above and beyond acquisition of a property in the normal course of business dealings[13], and that a *Pallant v Morgan* type equity would not apply.

   vi. The judge implicitly rejected the alleged indirect contributions by the appellant by the finding that any agreement that was entered into by the parties was a commercial transaction reduced into writing as a tenancy agreement.[14]

   vii. In finding that the arrangement was commercial, and that this commercial transaction was reduced into writing as the **tenancy** agreement, and in not accepting that there was anything special about the relationship between the appellant and the respondent[15], the trial judge logically rejected all consideration of the appellant's rent payments as a contribution to the acquisition price.

   viii. In rejecting the alleged oral agreement[16], in also concluding that any agreement that was entered into between the parties was a commercial transaction embodied in

[11] paragraph 42 of the judgment,
[12] paragraph 40,
[13] paragraph 44
[14] paragraph 40
[15] paragraph 39
[16] See paragraphs 42 and 43.

the tenancy agreement and in rejecting the alleged special relationship, the trial judge effectively rejected the assertion of indirect contributions based upon expectations encouraged by that alleged oral agreement.

10. This left only the alleged expenditure by the appellant of which $38,000.00 was in respect of materials purchased and $22,000.00 was in respect of maintenance type expenditure over a period of 8 ½ years of occupation[17]. The trial judge was aware that the respondent's case was that the appellant had sought and received permission to construct the shed[18]. In rejecting the appellant's claim against the respondent[19] the trial judge implicitly rejected the appellant's contention that his expenditure in constructing the shed or his alleged expenditures on maintenance, sufficed to establish an entitlement to any equitable interest. If as a matter of fact the appellant's **direct contributions** were not such as to create equitable rights in the property, as a matter of law no equitable interest could be created in the property. If as a matter of fact the arrangement was a tenancy embodied in the tenancy agreement, and not otherwise, then no equitable interest could be created in the property by the alleged **indirect contributions.**

11. Upon careful examination those findings of fact are supportable on the evidence and have not been demonstrated to be plainly wrong. No interest was created as a matter of law for the benefit of the appellant either a. by reason of **proprietary** estoppel based on i. the **promise** in the alleged oral agreement, ii. **expenditures** on the property, iii. **indirect contributions** encouraged or acquiesced in by assurances from Mr. Ross b. a ***Pallant v Morgan*** type equity, c. any other type of **trust** or d. for any other reason.

F. Disposition and Order

12. In those circumstances the appeal must be dismissed and the orders of the trial judge must be affirmed.

[17] Referred to at paragraphs 10 to 12 of judgment.
[18] See paragraph 21 of the judgment.
[19] See paragraph 46 of the judgment.

G. Analysis

i. Reviewing Findings of Fact by the Trial Judge

13. The circumstances in which an appellate court would review essentially findings of fact by a trial court are by now too well known to require rehearsal. See **Beacon Insurance Company Limited v Maharaj Bookstore Limited** [2014] UKPC 21[20], **Petroleum Company of Trinidad and Tobago v Stanley Ryan and Anor** [2017] UKPC 30 at

[20] **Beacon Insurance Company Limited v Maharaj Bookstore Limited [2014] UKPC 21**
The role of an appeal court
12. In Thomas v Thomas [1947] AC 484, to which the Court of Appeal referred in its judgment, Lord Thankerton stated, at pp 487-488:
"I Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence ***should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial judge's conclusion;*** *II The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence; III The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court."*

In that case, Viscount Simon and Lord Du Parcq (at pp 486 and 493 respectively) both cited with approval a dictum of Lord Greene MR in Yuill v Yuill [1945] P 15, 19:
"It can, of course, only be on the rarest occasions, and in circumstances where the appellate court is convinced by the plainest of considerations, that it would be justified in finding that the trial judge had formed a wrong opinion."
It has often been said that the appeal court must be satisfied that the judge at first instance has gone "plainly wrong". *See, for example, Lord Macmillan in Thomas v Thomas at p 491 and Lord Hope of Craighead in Thomson v Kvaerner Govan Ltd 2004 SC (HL) 1, paras 16-19. This phrase does not address the degree of certainty of the appellate judges that they would have reached a different conclusion on the facts: Piggott Brothers & Co Ltd v Jackson [1992] ICR 85, Lord Donaldson at p 92.* ***Rather it directs the appellate court to consider whether it was permissible for the judge at first instance to make the findings of fact which he did in the face of the evidence as a whole.*** *That is a judgment that the appellate court has to make in the knowledge that it has only the printed record of the evidence. The court is required* ***to identify a mistake*** *in* ***the judge's evaluation of the evidence*** *that is* ***sufficiently material to undermine his conclusions****. Occasions meriting appellate intervention would include when a trial judge* ***failed to analyse properly the entirety of the evidence****: Choo Kok Beng v Choo Kok Hoe [1984] 2 MLJ 165, PC, Lord Roskill at pp 168-169.*

14. The Board has adopted a similar approach in this jurisdiction. See Harracksingh v Attorney General of Trinidad and Tobago [2004] UKPC 3 in which it referred (at para 10) to the formulation of Lord Sumner in SS Hontestroom (Owners) v SS Sagaporack (Owners) [1927] AC 37, 47:
"… not to have seen the witnesses puts appellate judges in a permanent position of disadvantage as against the trial judge, and, ***unless it can be shown that he has failed to use or has palpably misused his advantage,*** *the higher court ought not to take the responsibility of reversing conclusions so arrived at, merely on the result of their own comparisons and criticisms of the witnesses and of their own view of the probabilities of the case.*

… If his estimate of the man forms any substantial part of his reasons for his judgment the trial judge's conclusions of fact should … be let alone."

paragraph 15[21], **Harracksingh v Attorney General of Trinidad and Tobago** [2004] UKPC 3, **Bahamas Air Holdings Limited v Messier Dowty Inc** [2018] UKPC 25[22].

ii. Nature of Relationship between Appellant and Respondent

14. The appellant's claim is founded upon an alleged oral agreement between himself and Mr. Ralph Ross. He contends that that agreement, under which the respondent was to acquire a property for his use, benefit and ultimately ownership, was based on a special relationship between them. It was therefore necessary for that claim to be examined.

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[21] *15. ….It is sufficient to refer to Lord Reed's summary in Henderson v Foxworth Investments Ltd [2014] 1 WLR 2600, para 67: "67. It follows that, in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has* ***no basis in the evidence****, or a demonstrable misunderstanding of relevant evidence, or a demonstrable* ***failure to consider relevant evidence****, an appellate court will interfere with the findings of fact made by a trial judge* ***only*** *if it is satisfied that his decision* ***cannot reasonably be explained or justified****."*

[22] *The proper approach to the review by an appellate court to the findings of a trial judge*
32. As was observed in DB v Chief Constable of the Police Service of Northern Ireland [2017] UKSC 7, para 78 the United Kingdom Supreme Court on a number of occasions recently has had to address the issue of the proper approach to be taken by an appellate court to its review of findings made by a judge at first instance. And, as was said in that case, perhaps the most useful distillation of the applicable principles is to be found in the judgment of Lord Reed in the case of McGraddie v McGraddie [2013] UKSC 58; [2013] 1 WLR 2477.

33. In para 1 of his judgment Lord Reed referred to what he described as "what may be the most frequently cited of all judicial dicta in the Scottish courts" - the speech of Lord Thankerton in Thomas v Thomas [1947] AC 484 which sets out the circumstances in which an appeal court should refrain from or consider itself enabled to depart from the trial judge's conclusions. Lord Reed's comprehensive and authoritative discussion ranged over the speech of Lord Shaw of Dunfermline in Clarke v Edinburgh & District Tramways Co Ltd (1919) SC (HL) 35, 36-37, where he said that an appellate court should intervene only if it is satisfied that the judge was ***"plainly wrong"****; the judgment of Lord Greene MR in Yuill v Yuill [1945] P 15, 19, and the speech of Lord Hope of Craighead in Thomson v Kvaerner Govan Ltd [2003] UKHL 45; 2004 SC (HL) 1, para 17 where he stated that:*
"It can, of course, only be on the rarest of occasions, and in circumstances where the appellate court is convinced by ***the plainest of considerations****, that it would be justified in finding that the trial judge had formed a wrong opinion."*

36. The basic principles on which the Board will act in this area can be summarised thus:
1. "… ***[A]ny appeal court must be extremely cautious about upsetting a conclusion of primary fact.*** *Very careful consideration must be given to the weight to be attached to the judge's findings and position, and in particular the extent to which, he or she had, as the trial judge, an advantage over any appellate court. The greater that advantage, the more reluctant the appellate court should be to interfere …" - Central Bank of Ecuador v Conticorp SA [2015] UKPC 11; [2016] 1 BCLC 26, para 5. 2. Duplication of the efforts of the trial judge in the appellate court is likely to contribute only negligibly to the accuracy of fact determination - Anderson v City of Bessemer, cited by Lord Reed in para 3 of McGraddie.*
3. ***The principles of restraint "do not mean that the appellate court is never justified, indeed required, to intervene."*** *The principles rest on the assumption that "the judge has taken proper advantage of having heard and seen the witnesses, and has in that connection* ***tested their evidence by reference to a correct understanding of the issues against the background of the material available and the inherent probabilities.****" Where one or more of these features is not present, then the argument in favour of restraint is reduced - para 8 of Central Bank of Ecuador.* (All emphasis added)

15. The evidence is that the respondent is a company affiliated with Rotoplastics, and that Rotoplastics is essentially owned and controlled by members of the Ross family. There was sufficient material available to the trial judge to support an inference that when the appellant testified as to his dealings primarily with Mr. Ross, that he assumed that Mr. Ralph Ross was acting with the authority of Rotoplastics, members of the Ross family, and the respondent owner of the subject property. At that time Ralph Ross was the company secretary of Andean and not a director although he later became one. For the purposes of this judgment it can be assumed, without deciding, that in those circumstances, even though the appellant did not know at the time of the alleged oral agreement that the property would be placed in the name of Andean Holdings, and not Rotoplastics itself, this would not be of great significance.

16. The respondent claimed that the appellant was a handyman. He acted all at times as an independent contractor and was not its employee. He did work for the principals of Rotoplastics at its Directors' homes and at the premises of Rotoplastics on a part time basis, for which he was paid based on invoices he provided. In fact at all times he was a full time employee at the Ministry of Health and became available only after his working day there had concluded at 2 pm.

17. The Trial Judge found[23]that there was nothing particularly special about the relationship between the appellant and the respondent, and the agreement entered into between the parties was a commercial transaction which was reduced into writing as a tenancy agreement. There was however evidence that suggested that the appellant's relationship with the Ross family, with Ralph Ross, and with Rotoplastics, was that of a trusted worker. He worked not only at the Rotoplastics factory but also at the homes of the directors of Rotoplastics, members of the Ross family. The duties that he was hired for were diverse and wide-ranging in nature – from inter alia, feeding the parrot when Ralph Ross was on vacation to performing bar tending duties at Christmas

[23] at paragraph 40 of the judgment

functions, to transporting of children to karate lessons. The issue that the trial judge appeared to be addressing however, was whether that relationship of trust was so peculiarly special that it resulted, as a question of fact, in the alleged oral agreement. That alleged agreement was not just to provide rental accommodation, (allegedly below market rates though that is unsupported by evidence), to the appellant for many years without any increase whatsoever, but also to actually provide for the transfer of title to him after the payment of the sum of $700/month when the alleged acquisition price of $250,000.00 was paid off. That was the special relationship the trial judge rejected.

iii. Ostensible Authority

18. It is unnecessary to consider whether Mr. Ralph Ross had ostensible authority such that any representations that he made to the appellant could bind the boards of either Rotoplastics or Andean when, as the trial judge found, the alleged oral agreement, comprising **offer** and **acceptance of those alleged representations**, was not even proved.

iv. The Alleged Oral Agreement

19. The evidence in this regard may be reviewed by an appellate court with a view to ascertaining whether the trial judge failed to take any relevant matter into account or conversely took irrelevant matters into account, or committed any other error of the types identified in the cases set out previously. It would not however be a relevant factor in such a review that the appellate court would have arrived at a different conclusion itself, unless the process of reasoning leading to the trial judge's conclusion can be demonstrated, in one or more of the ways identified and highlighted in those cases, to have been plainly wrong.

20. The court also found[24] that there was a lack of certainty and completeness regarding the proof of the alleged oral agreement. On the evidence before that court the subject property at the time of the alleged oral agreement in 1998 had not yet been identified. No acquisition price had been determined. No payment arrangement had been agreed. The trial judge clearly did not accept the alleged oral agreement. On the alleged agreement, the property would only have been paid for after 357 months, (or more than 29 years), assuming no default.

v. Alleged Oral Agreement and Constructive Trust

21. There were discrepancies between the appellant's pleading in his amended statement of case and his witness statement. In his pleading he asserted that the payment installment of $700/month had been agreed in 1996, the date of the alleged oral agreement. 1996 was corrected to **1998** in his witness statement. He further sought to amend his evidence by stating[25], that the monthly installment was only agreed in **December 2000**, one month after he and his family had entered into occupation of the renovated property. It was suggested that the oral agreement in 1998 was an agreement in principle with further important terms, such as i. the **acquisition price** ii. the alleged **monthly installment** for repayment and iii. the **actual property** to be acquired, to be determined subsequently.

22. However those **uncertainties** at the time of the initial oral agreement would preclude the appellant from relying on the oral agreement on the basis that it created a **constructive trust**. These further terms for the acquisition of the property which remained to be agreed were all matters that were fundamental to determining whether the appellant could acquire any interest in any property acquired. That situation was clearly contemplated at paragraph 68 of **Generator Developments Ltd v Lidl UK GmbH** [**2018**] **EWCA Civ 396**l citing Arden LJ in Herbert v Doyle.

[24] At paragraph 42 of the judgment.
[25] At paragraph 25 of his witness statement, confirmed in cross examination.

68. In Herbert v Doyle [2010] EWCA Civ 1095; [2011] 1 EGLR 119 Arden LJ considered the decision of the House of Lords in Cobbe. At [57] she said:

"In my judgment, there is a common thread running through the speeches of Lord Scott and Lord Walker. Applying what Lord Walker said in relation to proprietary estoppel also to constructive trust, that common thread is that, if the parties intend to make a formal agreement setting out the terms on which one or more of the parties is to acquire an interest in property, or, ***if further terms for that acquisition remain to be agreed between them so that the interest in property is not clearly identified,*** *or if the parties did not expect their agreement to be immediately binding,* ***neither party can rely on constructive trust as a means of enforcing their original agreement****."* (all emphasis added)

That would not be surprising given that the subject matter of such alleged trust was property not yet identified, far less acquired.

23. Even on the final version of the appellant's case the fact that important terms of the alleged oral agreement remained to be agreed meant that no **constructive trust** could have arisen. This flows both from i. the judge's **finding of fact** that the oral agreement was not proved, as well as ii. **as a matter of law even if** the appellant's final version of **that agreement** were to have been **proved**.

24. Under the alleged oral agreement with monthly payments of $700, the alleged agreed acquisition price of $250,000.00 would have taken more than 29 years to pay off. The appellant was 41 years old at the time of the alleged oral agreement and 43 years old in December 2000 when the monthly installment was allegedly agreed. Nowhere was it contended that the alleged oral agreement made provision for i. earlier payment by increased installments, ii. payment by his children when he became unable to work, iii. acknowledgement of the fact that he would have been paying for the property under

the agreement after he was 72 years old. Neither did it make provision for what was to happen to his alleged mortgage payments already paid if his services were terminated before full repayment. For example, if having paid all but the last installment he was unable to continue to make the final payment towards the acquisition price.

25. These matters, raised in cross examination, were supportive of the trial judge's conclusion that there was a lack of certainty and completeness in respect of the proof of the alleged oral agreement[26].

vi. Alleged Set Off Of Expenditure on Property

26. Additionally he suggested in cross examination[27] that the agreement extended to his being permitted to set off expenditures by him on the subject property[28]. However this was not always the appellant's position. In the letter before action dated 12th March 2012 from Mr. Junkére on behalf of the appellant, he called upon Andean Holdings to enter into a purchase agreement with the appellant for the sale of the property for the sum of $250,000.00, less the sum of $95,900.00 representing the "amalgamation" of the $700/month installments. The letter did not also seek deduction of the sum of $60,000.00 in alleged further renovation work and improvements although it mentioned these in the preceding paragraph. Although he claimed that those expenditures amounted to $60,000.00 and were made starting even before he moved in, the receipts that he provided were all dated 2009. His evidence of expenditure included $22,000.00 for upkeep of the property, for example maintenance of toilet pipes[29]. Under cross examination he did concede however that if he was living in the property he had to maintain it.

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[26] See paragraph 42 of the judgment.

[27] At page 2093 volume 5 record of appeal

[28] Q: So you included that in the **purchase price?**
A: Yes
Q: So you adding $98,000 to the $68,000?
A: Yes

[29] See Page 2059 volume 5 record of appeal, and Page 2093 volume 5 record of appeal.

vii. The Contemporaneous Documentation

27. That arrangement was not only undocumented but it was the subject of documentation to the contrary effect, which evidenced a tenancy with the payments being in respect of rent only. The documents that were produced at trial included i) **a promissory note,** ii) **a tenancy agreement** dated January 1st 2001, iii) receipts. The promissory note was with respect to arrears of unpaid rent. That documentation was alleged to have been generated by the respondent, and signed by the appellant under duress on the 10th April 2002. He claims that he was forced to sign them after being subjected to a drug test, and his services had been terminated as a result on the 5th April 2002. He further contended that the **tenancy agreement** was then backdated to 2001. Neither document refers to any payment towards a purchase price, or the rent to own arrangement that the appellant seeks to describe.

28. He further asserted that his request to Mr. Ross to regularize the documentation to reflect the alleged oral agreement were consistently ignored. He claims that he requested that the arrangements be put in writing. The response from Mr. Ross was that he had to make the arrangement appear as though he were leasing the subject property from the respondent. However he assured him that the respondent would eventually transfer the property to him when he had paid in full.

viii. Alleged Duress

29. The trial judge in the oral decision specifically made reference to these documents at paragraph 14 of the judgment, and therefore took them into account in rejecting the appellant's claim. The appellant's case is that the documents that he signed were in the absence of legal advice or legal representation, and on the basis of Mr. Ross's assurance that the defendant would convey the dwelling house to him in due course[30].

[30] Paragraph 32 witness statement page 654 record of appeal volume 2.

30. The trial judge was entitled to form a view as to the validity or otherwise of those documents. The judge had to do so based upon:

    a) the terms of the **documents** themselves and
    b) the explanation given by the appellant as to why those documents, **inconsistent** as they were with the arrangement that he described, yet existed.

31. The trial judge clearly rejected the appellant's explanation as to how they came into existence, that they were backdated, or executed under duress. This constituted a finding of fact which an appellate court would only reverse if the trial court was shown in effect to be plainly wrong. However the trial judge was entitled to take into account the entirety of the evidence, including the lack of certainty and completeness of the alleged oral agreement, and the fact that these documents which directly contradicted it, needed to be explained away if the alleged oral agreement were to be accepted. The trial judge was unpersuaded by the alleged oral agreement, and equally unpersuaded by the alleged duress involved in the execution of the documents, with no complaint by the appellant for several years thereafter.

32. The trial court upheld the counterclaim of the respondent for possession of the premises, after having found that the appellant had failed to establish his claim to any entitlement. The trial judge clearly had to choose between two conflicting versions of events. The judge chose to reject the evidence of the appellant and his explanation of the content of the contemporaneous documents, which directly contradicted the case that he purported to raise. The trial judge was also entitled to base **the** rejection of the appellant's case as to the alleged oral agreement on the incompatibility of that case with **all** the documentary evidence. In accepting the tenancy agreement the trial judge implicitly and necessarily rejected his claim that those documents came into being because of duress applied to him as a result of a failed drug test.

ix. Adverse inference – Non-attendance of Anna Knox/Receipts

33. Apart from the documents executed by the appellant there were several receipts that were issued to him with respect to his monthly payments. The trial judge's conclusion that the receipts were admissible, having been part of the agreed bundle, and that their authenticity had been admitted by appellant's counsel[31], cannot now be challenged, especially because the appellant himself needed to rely upon those documents to establish the payments that he made. The trial judge did not automatically conclude that those payments were for rent. It was an issue as to whether they were for rent or whether they were for mortgage payments as alleged. The trial judge considered all the evidence before rejecting the latter alternative. Ms. Knox's attendance to authenticate those receipts would not have changed that position.

x. If the Alleged Oral Agreement was not Established what then was the Nature of the Appellant's Occupation

34. The trial judge's finding that the agreement between the parties was the one that was actually reduced into writing as a tenancy agreement was significant. The trial judge thereby accepted that the tenancy agreement was, as its terms reflected a tenancy agreement, and that payments thereunder were for rent. In the absence of proof of the alleged oral agreement, with the appellant not having established that the written tenancy agreement and promissory note were procured by duress, and were not reflective of the actual arrangement, there could be no conclusion other than that the appellant's occupation was as a **tenant** under a tenancy agreement. Consequently all payments of $700.00/month must be disregarded in so far as it was contended that they were to be applied towards an acquisition price of $250,000.00 for the property.

[31] At Page 1992 volume 5 - record of appeal.

xi. Alleged Actual Contribution - Alleged Expenditure on Property

35. The appellant also referred to his expenditures on the property. The appellant contends that he paid $98,000.00 in the form of monthly installments, $38,000.00 on the shed and $22,000.00 on maintenance over 8 ½ years[32]. The respondent contends that the receipts for monthly payments tendered in evidence totalled approximately $90,000.00 ($90,450.00)[33]. In cross examination[34] he indicated that he installed a toilet in 2009, and that the works that he conducted on the premises in 2009 cost approximately $38,000.00, (slightly more than the $33,000.00 in receipts attached to his witness statement). He clarified that the $60,000.00 that he claimed (in his witness statement) to have spent was from the time he was living there until the date of cross examination (25th March 2014). The $22,000.00 therefore, for which he had no receipts, was over a period of 8 ½ years. He described that work as i. maintaining the toilet pipes, ii. changing ridging to the top. He accepted[35] that "well when you living in the property I have to be maintaining it sir" and the $22,000.00 spent over the years was for maintenance. He filled holes in the yard using actual material on the premises – blocks and whatever was around the premises. He spent $1,100.00 when he moved in for two inch steel pipe and a sink[36].

xii. Direct or Indirect Contributions - Whether giving rise to Proprietary Estoppel

36. The respondent does accept that there was a minor addition performed by the appellant shortly after he entered into possession to construct a shed for his motor vehicle. Apart from that the respondent's case is that its only agreement with the appellant was for the rental of the premises, and that any other additions, renovations or expenditures if made, were without its knowledge (and therefore not based on any assurances given to the appellant).

[32] See page 2079 - record of appeal.
[33] Page 2109 record of appeal.
[34] Starting at page 2057 volume 5 of the record of appeal.
[35] At page 2059 of the record of appeal.
[36] Page 2061 of the record of appeal.

xiii. Works and Services for the Ross Family/Detriment

37. Having found that the **alleged oral agreement** had not been proved, the issue of alleged detriment, based on services allegedly provided to the Ross family, some of which were under invoiced, or not invoiced at all, in reliance upon such an agreement, would not have arisen.

xiv. Findings of Fact by Trial Judge

38. The legal consequences which would flow from any of the several alternative legal bases upon which the appellant claims an equity in the property arises necessarily required findings as to its factual foundation. The parties' factual versions contradicted each other on material matters.

39. The trial judge made significant findings of fact as follows: i) as to the lack of certainty regarding the proof of the alleged oral agreement[37] ii) that no actual fiduciary duty existed or had been proved between the appellant and the respondent[38], and iii) as to the acceptance of the tenancy agreement as a tenancy agreement[39] under which rent was paid.

40. Based thereon the trial judge concluded, either directly, or as a necessary consequence of the findings made, that i. **the alleged oral agreement** between the appellant and the respondent **was not accepted**, ii. the documentation supported only a tenancy agreement for the payment of **rent,** iii. the allegation that the tenancy agreement and the promissory note were executed under **duress** was necessarily **rejected** iv. the alleged oral agreement not being accepted, the only arrangement that the trial judge did accept was the tenancy agreement, which could create no beneficial interest in the appellant. This necessarily meant that payments in the sum of approximately $90,000 were simply **rent** and not contributions towards the purchase price. v. As to expenditure, of the alleged expenditure by the appellant on the subject property

[37] At paragraph 42.
[38] At paragraph 45.
[39] At paragraph 40.

$22,000 was in respect of maintenance over 8 ½ years of occupation, and **was not based** on **assurances** in the alleged oral agreement. Approximately $38,000.00 spent on the garage was based on **permission** for him to do so at his **own expense**. vi. Services performed for the Ross family, even if under invoiced or not invoiced, could **not** have been **based** upon the unproved alleged **oral agreement**.

41. Based upon those findings of fact, and conclusions and logical inferences therefrom, there could have been no basis for accepting his claim to have contributed to the extent of acquiring an equitable interest in the property.

xv. Constructive trust - Law

42. The legal consequences that flow from these findings of fact must therefore be considered to ascertain whether there exists any basis for review of the trial judge's decision.

43. For the reasons set out previously at paragraph 22 the appellant's claim cannot succeed on the basis of a constructive trust because, even if his evidence as to the alleged oral agreement is accepted, **as a matter of law** the arrangement described would be too uncertain to be enforced as such[40].

xvi. Estoppel by convention

44. It was submitted[41] that the respondent was estopped from denying the true nature of the arrangement between the parties as a convention had been applied in relation to the treatment of the payment by the appellant as installments towards the purchase price. However the alleged convention would be dependent on a finding that the alleged oral agreement had been proved. It had not.

[40] (See *Generator Developments v Lidl* at paragraph 68 ibid)
[41] At paragraph 85 of the respondent's submissions

xvii. Course of dealings

45. The trial judge, having found that the appellant had not proved the alleged oral agreement, was entitled to find that the contemporaneous documentation was to be accepted and did reflect a commercial transaction, namely a tenancy agreement for occupation of the premises on payment of **rent**. Examination of the parties' course of dealings, especially the forbearance to take enforcement action when rent was in arrears, or on the multiple occasions when the appellant's services were terminated, could not make up for the deficiencies that the trial judge perceived in the actual proof of the alleged oral agreement. The assessment of the evidence that was available to that court has not been demonstrated to be plainly wrong within the meaning of that term as explained previously.

xviii. Agency/Fiduciary Duty

46. The trial judge also found that there was no fiduciary duty between the appellant and the respondent. Even on the appellant's own version of events he did not advance any money towards the purchase of the property. He provided no tangible value towards its initial acquisition.

xix. Detriment

Reliance and Detriment

47. There is no dispute however that he did acquire the benefit of accommodation at the subject property. Although there is no evidence that the monthly payment was below market rent, neither is there any evidence or allegation that the monthly sum was higher than a market rental. In relation to the monthly payment therefore if the monthly payment were held to be in respect of rent it could not be claimed that it constituted a detriment.

48. On the other hand however, the evidence was that the appellant was permitted to occupy a house for ten years at a rent of $700/month which never increased thereafter

being constant during the period of the appellant's occupation[42]. The appellant acknowledges that the respondent failed to increase the rent over the entire 11 year period[43]. This is consistent with the appellant actually **benefitting** from the arrangement, even if it were purely a tenancy, and inconsistent with the **detriment** that he sought to establish. He was aged 43 in the year 2000.

49. His assertion that by relying on the alleged oral agreement he gave up the opportunity to obtain a mortgage and acquire his own property was not substantiated by any evidence that a. he would have qualified for a mortgage at age 43, or b. if he did the quantum of a mortgage loan that he would qualify for, or c. whether that would have been sufficient to permit him to acquire any property[44]. In 2007 the appellant turned 50 and told Mr. Ross that he would not be able to obtain a mortgage to pay off in full for the property. However his evidence was that the alleged oral agreement was itself a mortgage without interest. If by that statement it is to be understood that he meant that he could not pay off for the property before he expected to retire then this would have been obvious as a matter of arithmetic at the time the alleged monthly installment was agreed in December 2000.

50. Apart from the assertion of the alleged oral agreement in 1998, which was rejected by the trial judge, there is no other factual basis pleaded for any claim that the respondent was acting as his agent in acquiring the property. At all times the appellant remained in full time employment at the Ministry of Health. The trial judge had to assess the evidence inter alia as a matter of logic, and consider whether a company, even if it wished to reward and benefit a trusted service provider, (not an employee), 43 years old, performing unskilled handyman type duties, would purchase a property intended for his sole ownership, and wait to receive payment after more than 29 years of monthly payments.

[42] (Ground 7 of the Appellant's grounds of appellant, page 6 of the record of appeal).
[43] Paragraph 47 (d) of the appellant's submissions filed 28th May 2020.
[44] Record of Appeal, Page 657 volume 2.

51. It was contended that at the time of the alleged oral agreement the appellant acted to his detriment in not moving to Couva to live[45], or in delaying his acquisition of his own house beyond the age when he could qualify for a mortgage. At the time of the alleged oral agreement in 1998 the appellant was 41 years old. The opportunity that the appellant had to move to Couva, or to acquire a house either there or elsewhere, was never substantiated by further particulars or evidence. The description of this opportunity[46], remained vague. Accordingly the trial judge could not be faulted in finding[47] that the appellant had failed to prove he laboured under any detriment.

xx. Whether a joint venture

52. The statement in the oral judgment that the arrangement between the appellant and respondent was not in the nature of a joint venture, can readily be understood as referring to a finding that there was no arrangement as contended for the joint acquisition of the property such that the appellant was to acquire an immediate equitable interest therein.

xxi. Pallant v Morgan /Constructive Trust

53. Because the appellant had partially relied upon invocation of the principle in *Pallant v Morgan,* and because the case of **Generator Developments v Lidl UK 2018 EWCA Civ 396 (delivered March 8, 2018)** had considered, reviewed, and explained that principle comprehensively, the parties were invited to consider and make submissions on this case if necessary. Both parties accepted this invitation.

xxii. The Pallant v Morgan Equity

54. This relates to a situation where in certain circumstances a pre-acquisition arrangement between parties for the acquisition of property by one of them can give rise to an equitable interest in the non-acquiring party if he had acted to his detriment, or the

[45] Paragraph 11 of the witness statement.
[46] Also referred to at paragraph 2 of the amended statement of case.
[47] At paragraph 44 of the judgment

acquiring party has obtained an advantage thereby in relation to the acquisition of the property.

55. In *Generator* Lord Justice Lewison considered the analysis of *Pallant v Morgan* by a previous UK Court of Appeal in the case of ***Banner Homes Holdings Ltd v Luff Developments Ltd [2000] Ch. 372*** and in particular the review of the cases conducted by Chadwick LJ.

56. As explained in ***Banner Homes*** per Chadwick LJ, (cited at paragraph 43 of ***Generator Developments),*** the ***Pallant v Morgan*** equity was described as follows:

> 43. At the end of his review of the authorities Chadwick LJ concluded that the *Pallant v Morgan* equity was a species of constructive trust. He then set out the conditions under which such an equity could be raised:
>
> *"(1) A Pallant v Morgan equity may arise where the arrangement or understanding on which it is based precedes the acquisition of the relevant property by one party to that arrangement. It is the pre-acquisition arrangement which colours the subsequent acquisition by the defendant and leads to his being treated as a trustee if he seeks to act inconsistently with it…. As I have sought to point out, the concepts of constructive trust and proprietary estoppel have much in common in this area…..*
>
> *(2) It is unnecessary that the arrangement or understanding should be contractually enforceable. Indeed, if there is an agreement which is enforceable as a contract, there is unlikely to be any need to invoke the Pallant v Morgan equity; equity can act through the remedy of specific performance and will recognise the existence of a corresponding trust. … In particular, it is no bar to a Pallant v Morgan equity that the pre-acquisition arrangement is too uncertain to be enforced as a contract ... nor that it is plainly not intended to have contractual effect: see Island Holdings Ltd v Birchington Engineering Co Ltd….*

(The second principle was doubted in *Generator* at paragraph 45[48]).

[48] 45. In addition, having regard to the way in which the case was actually decided, I do not consider that *Island Holdings Ltd v Birchington Engineering Co Ltd* supports the last part of Chadwick LJ's second principle, namely that the equity can be invoked in a case in which the parties "plainly intend" the arrangement not to have "contractual effect".

(3) It is necessary that the pre-acquisition arrangement or understanding should contemplate that one party ("the acquiring party") will take steps to acquire the relevant property; and that, if he does so, the other party ("the non-acquiring party") will obtain some interest in that property. Further, it is necessary that (whatever private reservations the acquiring party may have) he has not informed the non-acquiring party before the acquisition (or, perhaps more accurately, before it is too late for the parties to be restored to a position of no advantage/no detriment) that he no longer intends to honour the arrangement or understanding.

(4) It is necessary that, in reliance on the arrangement or understanding, the non-acquiring party should do (or omit to do) something which confers an ***advantage*** *on the acquiring party* ***in relation to the acquisition of the property****; or is* ***detrimental*** *to* ***the ability of the non-acquiring party to acquire the property on equal terms****. It is the existence of the* ***advantage*** *to the one, or* ***detriment*** *to the other, gained or suffered as a consequence of the arrangement or understanding, which leads to the conclusion that it would be inequitable or* ***unconscionable*** *to allow the acquiring party to retain the property for himself, in a manner inconsistent with the arrangement or understanding which* ***enabled*** *him to acquire it. …*

(5) That leads, I think, to the further conclusions: (i) that although, in many cases, the advantage/detriment will be found in the agreement of the non-acquiring party to keep out of the market, that is not a necessary feature; and (ii) that although there will usually be ***advantage*** *to the one and* ***correlative disadvantage to the other****,* ***the existence of both advantage and detriment is not essential—either will do****. What is essential is that the circumstances make it* ***inequitable*** *for the acquiring party* ***to retain the property for himself*** *in a manner inconsistent with the arrangement or understanding on which the non-acquiring party has acted…."* (all emphasis added)

57. What is clear from the ***Generator*** case is that whether or not the ***Pallant v Morgan*** principle is applicable depends on the **facts found** by the trial judge[49]. It is **also** there emphasised that an appellate court is very reluctant to interfere with the trial judge's findings of fact, (see paragraph 3 citing ***Henderson v Foxworth Investments*** [2014] UKSC 41 and citing in particular paragraph 67 per Lord Reed).

[49] (See Paragraph 2).

"It follows that, in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified."

58. At paragraphs 34 and 35 of *Generator* (set out hereunder) Lewison LJ in setting out the *Pallant v Morgan* equity recognised and emphasised that the finding of fact as to which of two versions concerning the acquisition by purchase of a parcel of land was correct was **crucial**.

> *34. The Pallant v Morgan equity takes its name from that case: [1953] Ch 43. Two neighbours were interested in acquiring a piece of amenity land which was to be sold by auction. Each instructed an agent. Shortly before the auction the two agents agreed that one of the owners would refrain from bidding and that, if the other one succeeded in obtaining the land, he would divide it between them. Having secured the land, the new owner refused to divide it up. The two agents gave different accounts of what had taken place just before the auction. Harman J said that which of the two accounts was correct was* ***"crucial".*** *He summarised the two accounts thus:*
> *"Mr. Mason says that he agreed not to bid on the faith of an assurance from Mr. James that, if he refrained, the defendant, if he acquired lots 15 and 16, would convey over the portions "C" and "A" to the plaintiff at a price to be settled in accordance with the formula arrived at on September 11. Mr. James, on the other hand, says that all he did was to make what he called a friendly gesture to Mr. Mason to the effect that it would be better for Mr. Mason in his client's interest not to bid and that he (Mr. James) felt sure that in that event there would be no great difficulty in arriving at an agreement."*
>
> *35. Harman J preferred Mr Mason's account. Based on his* ***finding of fact****, Harman J went on to hold that:*
> *"… the proper inference from the facts is that the defendant's agent, when he bid for lot 16, was bidding for both parties on an agreement that there*

should be an arrangement between the parties on the division of the lot if he were successful." (All emphasis added)

xxiii. Conceptual basis of Pallant v Morgan Equity

59. At paragraph 36 and 37 Lewison LJ opined that the liability which arose in *Pallant v Morgan* was squarely based on the **fiduciary** obligations owed by an **agent** towards his **principal** and that the agreement for the acquisition of the land in that case was a contract of **agency**. In the case of *Pallant v Morgan* therefore the defendant's agent was, for the purpose of bidding, the agent for both parties. As an **agent** he would owe **fiduciary** duties to his principals[50] (See paragraph 36).

60. What is clear is that the findings that the appellant needs to rely upon to invoke an equitable interest based upon a *Pallant v Morgan* type equity are **findings of fact**. Specifically the findings required are primarily the acceptance by the trial judge of the appellant's assertion, and characterisation, and existence of, the alleged oral agreement. *Pallant v Morgan* and all cases which have followed thereafter involve acquisition of property and pre-acquisition agreements between persons which would render it **unconscionable** for the acquiring party not to recognise equitable interests which have been created in the other party to the agreement.

[50] 36. In other words, he found that the defendant's agent was, for the purpose of bidding, the agent for both parties. As an agent he would, of course, owe fiduciary duties to his principals. That is entirely in line with the previous authority which he considered, namely *Chattock v Muller* (1878) LR 8 Ch D 177 in which Malins V-C said:

"It is clear that the defendant attended the auction partly on his own account and partly as the plaintiff's agent, and if he had then purchased the estate, he must have been held to be a trustee for the plaintiff of the house and the 80 or 90 acres which it had been arranged that he should have. The subsequent negotiations were treated as carried on by the defendant on behalf of himself and the plaintiff, and he treated the purchase as a joint purchase in various letters until 25 July, when he appears to have become enamoured with the estate, and astonished the plaintiff by his letter of that date, in which he assumed to be the owner of the estate, part of which he had unquestionably purchased as the agent of the plaintiff. This was a flagrant breach of duty, which in this court has always been considered as a fraud."

61. In the instant case the crucial finding of fact by the trial judge was that the pre-acquisition agreement contended for by the appellant had not been proved due to a lack of certainty and completeness in its terms. That being so, unless that finding can be demonstrated to have been plainly wrong, in the sense described previously, discussion of a *Pallant v Morgan* type equity arising would be futile. This is so because the factual foundation would not exist.

62. On the **agency** analysis therefore, when the property was acquired by the respondent, the alleged oral agreement having been rejected, there would be no basis for any finding that the respondent was also acting as agent for the appellant in acquiring the property. In fact the evidence was that the appellant did not even know the actual price at which the property was acquired, (claiming to have been told $80,000.00 when the property was purchased for $75,000.00).

63. Despite the rationale being demonstrated for the conceptual basis of a *Pallant v Morgan* type equity being **agency**, and a breach of fiduciary duty giving rise to the equity, the court in *Generator* felt unable to depart from the position of the majority in *Crossco No. 4 UnLtd v Jolan Limited [2011] EWCA 1619* or follow Etherton LJ in treating *Banner Homes* as having any other ratio than the imposition of a constructive trust[51].

64. The difficulty that the appellant faces in enforcing the agreement that he described on the basis of a constructive trust has been alluded to previously at paragraph 22 above[52].

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[51] 72. Although Arden and McFarlane LJJ were attracted to Etherton LJ's legal analysis, they both considered that it was not open to this court to treat *Banner Homes* as having any other ratio than the imposition of a constructive trust. Despite the temptation to build on Etherton LJ's analysis, I consider that we must loyally follow the decision of the majority in *Crossco* in that respect.

[52] In *Generator* at paragraph 68 Lewison LJ cited with approval the analysis of Arden LJ in Herbert v Doyle as follows: *68. In Herbert v Doyle [2010] EWCA Civ 1095; [2011] 1 EGLR 119 Arden LJ considered the decision of the House of Lords in Cobbe. At [57] she said:*

*"In my judgment, there is a common thread running through the speeches of Lord Scott and Lord Walker. Applying what Lord Walker said **in relation to proprietary estoppel also to constructive trust**, that common thread is that, if the parties intend to make a formal agreement setting out the terms on which one or more of the parties is to acquire an interest in property, or, **if further terms for that acquisition remain to***

65. The following principles can be extracted from the reasoning above. The special specie of *Pallant v Morgan* type equity therefore requires:

    i. a factual basis, and therefore an **evidential finding** that **a pre-acquisition arrangement** or understanding should exist which contemplates that if one party takes steps to acquire a property and does so the other party would acquire an interest in it;

    ii. it is not necessary that the arrangement or understanding should be sufficiently certain to be enforced as a contract. However the pre-acquisition arrangement which colours the subsequent acquisition by the acquiring party, and leads to him being treated as a trustee of the property for the benefit of the non-acquiring party if he seeks to act inconsistently with it, must also clearly be based on **evidence**, accepted by a trial court that it actually exists;

    iii. based on *Pallant v Morgan* it is necessary either that the non-acquiring party, in reliance upon the pre-acquisition arrangement, should do something which confers an **advantage** on the acquiring party **in relation to the acquisition of the property** or was detrimental to the ability of the non-acquiring party **to acquire the property on equal terms. Either** advantage to the acquiring party or a detriment to the non-acquiring party would do;

    iv. it is essential that the circumstances make it **inequitable** for the acquiring party to retain the property for himself in a manner inconsistent with the arrangement or understanding under which the non-acquiring party has acted.

66. Whether therefore the *Pallant v Morgan* type equity is i. a subset of **constructive trust** simpliciter, ii. whether it shares common elements with the doctrine of **proprietary estoppe**l, or iii. whether it derives its existence from a factual underpinning of **agency**, and therefore a fiduciary relationship, would in this case make little practical difference if the appellant failed to prove the substratum of fact which would underpin each

***be agreed between them so that the interest in property is not clearly identified**, or if the parties did not expect their agreement to be immediately binding, **neither party can rely on constructive trust as a means of enforcing their original agreement**."* (all emphasis added)

alternative. It is therefore not necessary for the purpose of this judgment on the facts of the instant case to arrive at a definitive conclusion as to the conceptual basis, save to note the careful and thorough analysis of Lewison LJ in *Generator (ibid).*

xxiv. Findings Required

67. It is appreciated that the *Pallant v Morgan*[53] analysis is merely one framework, though not the only one within which the appellant sought to frame his claim to an equitable interest in the property. Other possible legal frameworks relied upon to establish the alleged equitable interest included the principles applicable to proprietary estoppel, or to constructive trust in the wider sense. The common thread throughout those frameworks is that his claim is fundamentally based in equity. Before the claim can be analysed under any of those frameworks, findings were required as to inter alia a. **the actual arrangement between the parties**, b. **reliance** by the appellant upon assurances made to him, c. the existence of **detriment**, d. the existence of **unconscionable** behaviour on the part of the respondent. These matters, though not an exhaustive list, are all matters which ultimately determine whether the legal title in the property had been displaced by an underlying equitable interest in favour of the appellant.

68. Equitable estoppel, being an equitable concept, is not to be constrained by technicalities. It must be recognised that at least one of the parties to the alleged oral agreement, (the appellant) was not a commercial entity. He could not have been expected to act with the precision and experience of such an entity. However all considerations as to the legal effect of the actual arrangements between the appellant and the respondent depend on findings of fact of the trial judge. Findings of fact were required, and were made with respect to:
    i. the alleged oral agreement;
    ii. the effect of the written tenancy agreement and its bona fides.

[53] [1953] Ch 43.

xxv. Proof of Alleged Arrangement

69. It was therefore critical for the trial judge to make **findings** concerning the alleged oral agreement contended for by the appellant. The trial judge rejected that oral agreement on the evidence. The court did so on the basis that there was a lack of certainty and completeness in respect of the proof of the oral agreement. While the agreement did not need to be sufficiently certain to be contractually enforceable, its existence certainly needed to be **proved**.

xxvii. Terms of the alleged oral agreement

70. The trial judge, at paragraph 43 of the oral judgment, explained the reasons for rejecting the alleged oral agreement as including i. the property at the time of the alleged oral agreement had not yet been identified. Further no payment arrangement had been agreed. The evidence is that the purchase price of the property, the cost of the renovations thereto, the alleged agreed upon acquisition price of $250,000.00, and the acquisition terms -the alleged agreed monthly installments and the period of repayment or provisions upon default, were all unknown in 1998. Clearly further terms for that acquisition remained to be agreed between the appellant and the respondent so that the interest in the subject property had not been clearly identified. It could not have been even on the appellant's own evidence[54]. The fact that these terms were allegedly supplied on acquisition of the property and completion of the renovations would not, even if proved, have allowed the appellant to enforce the alleged oral agreement on the basis of a constructive trust.

71. The finding that the alleged oral agreement had not been proved necessarily involved **rejection** of the appellant's evidence that the tenancy agreement and the promissory note were executed under duress, and did not reflect the true nature of his monthly payments. If those payments were rent as found, it also involved rejecting the

[54] See paragraph 68 *Generator* and *Herbert v Doyle* above

appellant's evidence of the assurances that he alleged were made to him that they were to be treated otherwise, namely as payments toward acquisition of the property.

72. The trial judge's finding of fact as to the absence of proof of the alleged oral agreement in this regard would negate acquisition of an equitable interest by virtue of proprietary estoppel because the promise has not been proved.

xxviii. Requirement for Unconscionability

73. In *Generator* Lewison LJ recognised and emphasised (at paragraph 76) the requirement for unconscionability before an equity could arise:

> *The real question under this head was whether there was a sufficient understanding that the property would be acquired (whether by Lidl, Generator or a joint venture vehicle) for the joint benefit of both Lidl and Generator. I agree, subject to the important qualification that looking at the overall circumstances, it must be* ***unconscionable*** *for Lidl to keep the property for itself.* (Emphasis added)

In the context of the trial judge's finding of fact that the alleged oral agreement had not been proved, that consequently no assurances could have been made based thereon, that all monthly payments were simply for rent, and that the monthly rental was never increased over several years, it would not be possible to discern unconscionable behaviour on the part of the respondent in relation to the property.

xxix. The requirement to prove detriment

74. The need for a factual finding that the appellant acted to his detriment was critical to important aspects of the appellant's claim. As explained later such detriment was required to be established in relation to the acquisition of property in order for the principle in *Pallant v Morgan* to apply. It was also an element of detrimental reliance, necessary in order for an equitable interest to arise under the doctrine of proprietary estoppel. These are both equitable concepts.

xxx. Proof of Detriment or Advantage

75. The Court also explained[55] that the appellant had failed to prove that he laboured under any detriment, or that the respondent secured any peculiar advantage, and therefore rejected any contention that a *Pallant v Morgan* brand of equity existed. The court failed to find proof with respect to each, and therefore clearly had in mind the requisite **evidential basis** for a *Pallant v Morgan* type equity to have applied. In this regard the trial judge was plainly correct. There was no evidence before the court that the respondent acquired any advantage in the acquisition of the property as a result of the involvement of the appellant, even if he had located the property and identified its owner.

76. On the appellant's own evidence the asking price for the property was $85.000.00. His evidence is that he was told by Mr. Ross that the property was purchased for $80,000.00. He was therefore not aware that the actual sale price was $75,000.00. Clearly therefore his involvement in negotiations for its purchase did not result in any concessions or reductions in price attributable to him. It is clear that even if he had identified the property as being available for sale, the negotiations which resulted in its acquisition at $10,000.00 below sale price, (unknown to him), were without his involvement. His assertion of being involved in negotiations would appear on the evidence to have been overstated. To the extent that the appellant submits[56] that the trial judge failed to appreciate Mr. Ross' evidence which apparently confirmed that the appellant negotiated its sale, this would be without foundation. There was evidence before the trial judge which painted a more comprehensive picture of his involvement and the judge was not bound to accept that his involvement was as extensive as he sought to portray. Certainly there was no evidence that any involvement by him in relation to the location or acquisition of the property produced any advantage for the respondent "above and beyond the acquisition of a property in the normal course of

[55] At paragraph 44 of the judgment
[56] At page 20 of his submissions paragraph 46 (e)

business dealings". The trial judge was acutely aware of this and expressly so found at paragraph 44 of the judgment.

77. There was no evidence that the appellant suffered any detriment **in relation to the property.** The submission at paragraph 64 of the appellant's written submissions that "*the appellant in pursuance of the oral agreement located the subject property and referred the vendors to Mr. Ross to complete the sale, thereby keeping himself out of the market"* is a non sequitur. There is no evidence inter alia that the appellant himself was ever interested in acquiring that property. He has not contended that he himself was in a position to acquire the property. Neither had he demonstrated on the evidence that the acquisition by the respondent was under any circumstances that were inequitable, or so coloured that acquisition by it that it would require it being treated as a trustee for the appellant. Once the alleged oral agreement was rejected there is nothing on the evidence that would render it inequitable for the respondent to retain the property for itself. That issue only even arises as a matter of law if it had acted in a manner inconsistent with the alleged oral agreement.

78. The further submission (at paragraph 68) that the trial judge failed to appreciate *that the respondent acquired subject property through the efforts of the appellant* requires a very expansive and generous interpretation of the term "efforts", and in any event was not borne out by the evidence.

79. The trial judge properly considered the following issues raised by the appellant mainly,
    i. was the respondent acting as the **agent** of the appellant in purchasing the property,
    ii. the existence of a **fiduciary duty** (whether the respondent was in the circumstances constituted a fiduciary of the appellant in relation to its acquisition of the property), or
    iii. whether the arrangement for the purchase of the property involved both the appellant and the respondent.

80. The trial judge rejected the existence of a factual foundation in relation to each (joint venture or involvement of each – paragraph 41, fiduciary duty – paragraph 45). It is apparent that in rejecting any evidential foundation for a joint venture or involvement, for the existence of the oral agreement, and for the existence of a fiduciary duty, that the trial judge also rejected any inference of agency. Accordingly the appellant's submission that the trial judge completely failed to consider whether a common intention constructive trust arose in favour of the appellant would not be justified. The assertion that the trial judge failed to take into account the parties' conduct in their dealings concerning the property, and should have factored this into the evidence for the purpose of supplying and filling in the gaps regarding any imprecision or uncertainty in the oral arrangement, would also not be justified. This is because the trial judge's rejection of the proof of the oral agreement was based, not simply on imprecision or uncertainty but also on the inherent improbability of an arrangement in 1998 concerning a property not yet identified, an acquisition price not yet determined and a repayment schedule not even determinable until a property had been purchased, its acquisition price determined and its renovation cost crystallized in 2000. Until that had been done it could not be known whether it was even possible that the payment terms which the appellant could accept or comply with, could be arrived at.

xxxi. Matters subsequent to the alleged oral agreement

81. Even if the alleged oral agreement was not proved, and there is no evidential foundation for the creation of an equitable interest based thereon, the appellant did testify as to contributions made by him in relation to the subject property subsequent to its purchase. For the sake of completeness those contributions need to be considered with a view to ascertaining whether they could have given rise to any equitable interest. In this case such an interest could be derivable subject to evidence, from a proprietary estoppel based upon conduct and acquiescence, as distinct from a proprietary estoppel based on the unproven promise.

xxxii. Law - Proprietary estoppel by acquiescence

82. Apart from proprietary estoppel based on a promise it is well established that proprietary estoppel can arise also from conduct and acquiescence. See for example Snell's Principles of Equity 33rd Ed. Para. 12-034**.**

(a) An acquiescence-based principle

In Fisher v Brooker, (2009 UKHL 4) Lord Neuberger stated that: "The classic example of proprietary estoppel, standing by whilst one's neighbor builds on one's land believing it to be his property, can be characterized as acquiescence".
The principle is certainly long-established: its operation can be seen, for example, in The Earl of Oxford's case. It applies where B adopts a particular course of conduct in reliance on a mistaken belief as to B's current rights and A, knowing both of B's belief and of the existence of A's own, inconsistent right, fails to assert that right against B. If B would then suffer a detriment if A were free to enforce A's right, the principle applies. It therefore operates in a situation in which it would be unconscionable for A, as against B, to enjoy the benefit of a specific right.
The application of the principle can be seen in Lord Carnworth L.C.'s statement in Ramsden v Dyson that
"[i]f a stranger begins to build on my land supposing it to be his own, and I, perceiving his mistake, abstain from setting him right, and leave him to persevere in his error, a court of equity will not allow me afterwards to assert my title to the land on which he had expended money on the supposition that the land was his own."

In that example, the ***acquiescence principle*** *operates so as to preclude A's assertion of a right and it can therefore sensibly be seen as an example of "****proprietary estoppel****". Nonetheless, decisions such as Ramsden that developed the principle made no reference to estoppel and the principle can certainly apply* ***even in the absence of any specific representation or communication made by A to B****. It also seems, moreover, that it can operate not only so as to impose an equitable restraint on A's assertion of a right, but may also be* ***capable of imposing a liability on A*** *and thus lead, for example, to A's being ordered to grant B a particular right……*

83. In **Mary Gomez & Ors v Ashmeed Mohammed Civ App S153/2015** (a decision of the local Court of Appeal upheld on appeal to the Privy Council in *[2019] UKPC 46)*, at paragraph 74 the following was noted:

In ***Ramsden v Dyson (1866) LR HL 129 (1866)*** *at page 170 Lord Kingsdown stated as follows:*
"If a man, under a verbal agreement with a landlord for a certain interest in land, or, what amounts to the same thing, under an ***expectation, created or encouraged***

*by the landlord, **that he shall have a certain interest**, takes possession of such land, with the consent of the landlord, and **upon the faith** of such promise or **expectation, with the knowledge of the landlord and without objection by him, lays out money upon the land, a Court of equity will compel the landlord to give effect to such promise or expectation**."*

*(Although this was a dissenting judgment it was adopted and approved by the Privy Council in **Plimmer v. Wellington Corporation** (1884) 9 A.C. 699 and applied in Inwards v Baker infra[57].)*(See also paragraph 29 of **Mohammed v Gomez** [2019] UKPC 46 delivered December 19th 2019)

xxxiii. Alleged assurances by the respondent

84. In order to determine whether a proprietary estoppel could have arisen from conduct findings of fact would be required. See **Thorner v Majors [2009] UKHL 18 per Lord Scott paragraph 17[58].** The appellant's evidence is that he was constantly assured over a

[57] That principle was applied even in relation to licensees in the case of Inwards v Baker [1965] 2 Q.B 229 at pages 36 to 37 where Lord Denning MR stated, in relation to a licencee (all emphasis added) :

"We have had the advantage of cases which were not cited to the county court judge - cases in the last century, notably Dillwyn v. Llewelyn and Plimmer v. Wellington Corporation. This latter was a decision of the Privy Council which expressly affirmed and approved the statement of the law made by Lord Kingsdown in Ramsden v. Dyson. It is quite plain from those authorities that if the owner of land requests another, or indeed allows another, to expend money on the land under an expectation created or encouraged by the landlord that he will be able to remain there, that raises an equity in the licensee such as to entitle him to stay. He has a licence coupled with an equity."

…. So here, too, the present plaintiffs, the successors in title of the father, are clearly themselves bound by this equity. It is an equity well recognised in law. It arises from the expenditure of money by a person in actual occupation of land when he is led to believe that, as the result of that expenditure, he will be allowed to remain there. **It is for the court to say in what way the equity can be satisfied….**

[58] **[17]** My Lords, there seems to me, if I may respectfully say so, to be an inconsistency between, on the one hand, the Lord Justice's acceptance of the judge's finding that it was reasonable for David to have relied on Peter's representations that he (David) would inherit Steart Farm and, on the other hand, the Lord Justice's conclusion that no representation had been made by Peter that it had been reasonable for David to have taken as *intended* to be relied on. Whether the representations made by Peter to David about the ownership of Steart Farm after his (Peter's) death were intended by Peter to have been relied on by David must surely depend upon an *objective* assessment of Peter's intentions in making the representations. If it is reasonable for a representee to whom representations have been made to take the representations at their face value and rely on them, it would not in general be open to the representor to say that he or she had not intended the representee to rely on them. This must, in my opinion, particularly be so if, as here, the representations are repeated or confirmed by conduct and remarks over a considerable period. There may be circumstances in which representations cannot reasonably be taken to have been made with any intention that they should be acted on, or with any intention that, if acted on, rights against the representor would ensue, but **a finding** that it was reasonable for the representee to have relied on the representations, and to have acted to his or her detriment in that reliance, would, in my opinion, be inconsistent with the existence of any such circumstances. It could not be thought reasonable for a representee to rely on a representation that, objectively viewed, was not intended by the representor to be relied on. To put the point in context, the judge's **factual finding** that it was reasonable for David to have relied on Peter's representation that he

period of several years that the oral agreement under which he was to acquire the property by payment of the monthly installments, would be given effect. This was so: i. although the alleged oral agreement was not put in writing, ii. although the only agreement that was put into writing was the alleged tenancy agreement, iii. although every receipt he obtained had the word rent on it, and iv. although even when his services had been terminated on more than one occasion, he took no step to place on record his claim to an interest in the property.

85. Those are matters that were before the trial judge on the evidence and also constitute circumstances that weighed against the existence of the alleged oral agreement. It followed that if the alleged oral agreement were rejected, then any allegations as to constant assurances that the alleged oral agreement would prevail, (and that his monthly payments were not rent, but were actually payments towards an agreed acquisition price), would also necessarily have to be rejected. It would also follow that any claim that the appellant made that his alleged expenditures on the property were based upon or encouraged by such assurances would also have to be rejected.

xxxiv. Contributions/Expenditure/Reliance

86. That need not be the end of the analysis as an equity could arise even in the absence of any specific representation or communication made by Mr. Ross. However this is a question of fact. The evidence is that the expenditures by the appellant proved by receipts by the appellant amounted to approximately $38,000.00. Expenditure in 2009 was for a garage for which permission was granted provided that it was at his own expense. In respect of the remaining $22,000.00 the evidence revealed in cross examination is that that expenditure was primarily of a maintenance type nature made over 8 ½ years of occupation. Paragraph 51 of the appellant's witness statement page 658 record of appeal volume 2 is significant. After detailing the approximate costs of

(David) would inherit Steart Farm, a finding accepted by Lloyd LJ, carries with it, in my opinion, an implicit finding that it was reasonable for David to take the representation as intended by Peter to be relied on.

the renovations that he undertook in 2009 he states "*the reason my family and I performed the renovation works was because I relied on all the **assurances** made by Mr. Ralph Ross that the monies I was paying towards the subject property was (sic) going towards the purchase price*".

87. The trial judge expressly rejected the oral agreement to that effect in relation to rental payments, and necessarily rejected the expansion upon that alleged oral agreement to include other payments. The appellant had not proved that there was **any** arrangement under which he would eventually acquire title to the property. That evidence having been rejected, what remained was the evidence of the respondent that the only permission the appellant had been given was for the construction of the garage at his own expense and that any other renovations were without the respondent's knowledge and consent[59]. The issue of assurances, or acquiescence in relation to those expenditures, would therefore not arise as a question of fact. Any expectation by the appellant that he would thereby acquire an interest in the property would not have been created or induced by the respondent. At highest the evidence would be that it was self-induced. **Accordingly it must be concluded that there would be no factual basis for any equitable interest to have arisen on the basis of the alleged expenditures**.

xxxv. Quantifying any alleged equitable interest

88. In the event that the appellant could have been entitled prima facie to an equitable interest in the property by his expenditure thereon, (which is directly contradicted by the evidence before the trial judge), for the sake of completeness **only** the nature of such equity would be examined. The appellant's evidence is that in July 2012 when he went to pay $700.00 he was told that the guards had been instructed not to accept anything from him[60]. The appellant has therefore now been in occupation for 8 years

[59] (See for example page 1346 record of appeal volume 2).
[60] (see page 81 witness statement page 664 record of appeal)

without making any payment for occupation. If the rental agreement had been continued he would have paid $58,800.00 in rent, (coincidentally almost the amount of his alleged expenditures).

89. If the factual basis for an equitable interest had been established the court would have been required to discover the minimum equity to do justice to the claimant. It would have been required to weigh any disadvantages suffered by the appellant against any countervailing advantages enjoyed by the appellant as a consequence of reliance upon any inducements by the respondent. In the circumstances the lengthy period of rent free occupation of the property could reasonably be set off against the alleged expenditures by the appellant, (even including those of a maintenance type nature which would not normally be taken into consideration). No further interest in the subject matter of the property would therefore have been required. This issue was considered by the Court of Appeal in this jurisdiction in the case of **Esther Mills v Lloyd Roberts C.A. Civ T243/2012 (**upheld by Privy Council at paragraph 36 of **Mohammed v Gomes).**

> Quantifying the interest - The minimum equity
> In **Esther Mills v Lloyd Roberts C.A. Civ T243/2012** per the Honourable Jamadar JA, the guidelines of the Privy Council in **Theresa Henry v Calixtus Henry** Privy Council Appeal No. 24 of 2009 at paragraph 25 were adopted and applied as follows**:-**
> *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.

The issues of detriment, reliance, and unconscionability were considered to be relevant in determining the extent of the minimum equity. See **Esther Mills** at paragraph 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:*
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.***

The weighing process therefore involves weighing any disadvantages suffered by the appellants by reason of reliance on the respondent's inducements or encouragements against any countervailing advantages enjoyed by the appellants as a consequence of that reliance. (all emphasis added)

90. Considering the benefit to the appellant of payment free occupation over the period of 8 years, in the context of his alleged expenditure on the property of $38,000.00 with alleged and unsubstantiated maintenance expenditure in the sum of $22,000.00, there

would be no basis for considering that such expenditures in the circumstances could have given rise to any equitable interest in the property.

F. Conclusion

91. The appellant's claim to an interest in the subject property is based upon factual matters asserted by him. The trial judge's findings of fact in relation to those matters can be revisited and reviewed by an appellate court only in limited circumstances. These are generally summarised as requiring a demonstration that the trial judge was plainly wrong. The trial judge made findings of fact that:

i. the alleged oral agreement was not proved[61].

ii. the documentation supported only a tenancy agreement[62].

iii. implicitly therefore the court found that the tenancy agreement and the promissory note were not executed under duress.

iv. implicitly therefore if the appellant's occupation was as a tenant under a tenancy agreement his payments of $700 per month were simply rent.

v. the appellant failed to prove any detriment or any peculiar advantage to the respondent above and beyond acquisition of a property in the normal course of business dealings[63], and that a *Pallant v Morgan* type equity would not apply.

vi. The judge implicitly rejected the alleged indirect contributions by the appellant by the finding that any agreement that was entered into by the parties was a commercial transaction reduced into writing as a tenancy agreement.[64]

vii. In finding that the arrangement was commercial, and that this commercial transaction was reduced into writing as the **tenancy** agreement, and in not accepting that there was anything special about the relationship between the appellant and the respondent[65], the trial judge logically rejected all consideration of the appellant's rent payments as a contribution to the acquisition price.

[61] paragraph 42 of the judgment,
[62] paragraph 40,
[63] paragraph 44
[64] paragraph 40
[65] paragraph 39

viii. In rejecting the alleged oral agreement[66], in also concluding that any agreement that was entered into between the parties was a commercial transaction embodied in the tenancy agreement and in rejecting the alleged special relationship, the trial judge effectively rejected the assertion of indirect contributions based upon expectations encouraged by that alleged oral agreement.

92. This left only the alleged expenditure by the appellant of which $38,000.00 was in respect of materials purchased and $22,000.00 was in respect of maintenance type expenditure over a period of 8 ½ years of occupation[67]. The trial judge was aware that the respondent's case was that the appellant had sought and received permission to construct the shed[68]. In rejecting the appellant's claim against the respondent[69] the trial judge implicitly rejected the appellant's contention that his expenditure in constructing the shed or his alleged expenditures on maintenance, sufficed to establish an entitlement to any equitable interest. If as a matter of fact the appellant's **direct contributions** were not such as to create equitable rights in the property, as a matter of law no equitable interest could be created in the property. If as a matter of fact the arrangement was a tenancy embodied in the tenancy agreement, and not otherwise, then no equitable interest could be created in the property by the alleged **indirect contributions.**

93. Upon careful examination those findings of fact are supportable on the evidence and have not been demonstrated to be plainly wrong. No interest was created as a matter of law for the benefit of the appellant either a. by reason of **proprietary** estoppel based on i. the **promise** in the alleged oral agreement ii. **expenditures** on the property, iii. **indirect contributions** encouraged or acquiesced in by assurances from Mr. Ross, b. a ***Pallant v Morgan*** type equity, c. any other type of **trust** or d. for any other reason.

[66] paragraphs 42 and 43
[67] (referred to at paragraphs 10 to 12 of judgment
[68] (paragraph 21 of the judgment),
[69] (paragraph 46 of the judgment)

G. Disposition and Order

94. In those circumstances the appeal must be dismissed and the orders of the trial judge must be affirmed.

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Peter A. Rajkumar

Justice of Appeal