

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No.: CV2020-02374

BETWEEN

ROZANA CAMPO GONZALES

Claimant

AND

RICARDO CAMPO

Defendant

BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES

APPEARANCES:

Claimant: Mr. B. Camejo

Defendant: Ms. N. Scott instructed by Ms. T. Samuel

Date of Delivery: August 10, 2023

JUDGEMENT

[1] The Claimant claimed against the Defendant the following Reliefs:

- I. A Declaration that the Claimant is legally and beneficially entitled to the said land freed of any interest, share, estate equity and/or entitlement of the Defendant therein.
- II. A Declaration that the Defendant's licence to occupy All and Singular the said land situate at and known as LP 53 Calvary Branch Road, Arima, is and has been revoked.
- III. An Order that the Defendant do deliver up possession of the said land situate at LP 53 Calvary Branch Road, Arima to the Claimant.
- IV. An Injunction restraining the Defendant whether by himself, his servants, agents, workmen or otherwise howsoever from engaging in any construction work or activity.
- V. An Injunction restraining the Defendant whether by himself, his servants, agents, workmen or otherwise howsoever from engaging in any construction work or activity, and/or any improvement or renovation works on the wooden structure or otherwise on the said land situate at LP 53 Calvary Branch Road, Arima and/or from continuing to construct any dwelling on the said land or exercising any right of dominion or ownership in respect of the same and/or exercising any proprietary right over the said land or any structure thereon.
- VI. A mandatory Injunction compelling the Defendant to break and demolish the concrete structure erected and/or in the process of being erected by him on the said land situate at LP 53 Calvary Branch Road, Arima.
- VII. An Order that the Defendant do pay the Claimant's costs of this action.

[2] The Claimant and Defendant, mother and son. She pleaded that after the breakdown of the Defendant's marriage in 2007, he asked her to stay at her home and she agreed to provide him with temporary accommodation in a wooden house on her lands which she had constructed in 1986. It was orally agreed between them that he would relocate as soon as his circumstances improved. Thereafter he moved into the said house which was occupied by the Claimant, her

husband, the Defendant's brother and the Defendant's eldest son and peacefully resided therein until the events related hereunder.

- [3] In or about 2013 the Claimant and her husband constructed and moved into a concrete dwelling house on the said lands adjacent to the wooden dwelling house.
- [4] In 2014 the Defendant began to claim exclusive proprietary rights over the wooden dwelling house. In furtherance of his claim he did the following acts without the permission/consent/agreement of the Claimant:
- i. In 2014 the Defendant built a minimart adjoining the wooden dwelling house and commenced selling goods therefrom;
 - ii. In 2018 the Defendant constructed a chicken pen adjacent to the wooden dwelling house;
 - iii. In 2018/2019 the Defendant cast a foundation in the vicinity of the existing wooden dwelling house and commenced repair and refurbishment works to the wooden dwelling house;
 - iv. Commenced planting bhaigan, ochro and pimento in the immediate vicinity of the wooden dwelling house;
 - v. The Defendant remarried and moved his wife into the wooden dwelling house and asserted that he was owner and entitled to ownership thereof.
- [5] On or about June 2020, the Claimant and her daughter Michele Campo-Amiable wrote to the Defendant advising him that he had not been given permission to construct, refurbish or make any alterations to the wooden dwelling house and that he should cease and desist from his actions in this regard with immediate effect.
- [6] The Defendant failed, neglected and/or refused to comply with the demand made in the said letter, and proceeded with his construction and refurbishing works unabated.
- [7] By letter dated June 13, 2020, the Defendant through his Attorney-at-Law wrote to the Claimant alleging that the Defendant had been in occupation of the said land for over sixteen (16) years

and had improved the property by effecting works thereon; which included the construction of a minimart, chicken pen, casting a concrete foundation and repairing the existing wooden house. By letter dated June 23, 2020 the Claimant's Attorney-at-Law demanded that the Defendant cease all construction activity on the said land and vacate same thereby revoking the Defendant's licence to occupy the said land. Despite receipt of this letter, the Defendant failed, neglected and/or refused to vacate the said land; and continued with his construction and refurbishment works thereon unabated.

- [8] The Defendant repeatedly threatened the Claimant and her family; as a result of which the Claimant made several reports against him at the Arima Police Station.

The Defence

- [9] The Defendant admitted that the Claimant, his mother, had constructed a three bedroom wooden house on the subject land and that he lived there with his siblings until his marriage to his first wife. He asserted that he left the premises in 2003 but returned after eighteen (18) months upon the collapse of his marriage. He however denied that he left in 2005 as claimed by the Claimant; he asserted that he in fact left the home in 2003.
- [10] The Defendant pleaded that prior to his departure from his mother's wooden house, he occupied lands adjacent to the house by clearing and cutting overgrown grass and planting fruit trees and short crops. He averred that these lands had been previously occupied by his uncle. He asserted that he also bought construction material to build a concrete dwelling house thereon but gave this material to his sister when he left in 2003.
- [11] It was averred by the Defendant that the Claimant built her concrete house on these adjacent lands sometime before 2005 when he returned to the subject lands.
- [12] He further pleaded that:
- a. The Claimant encouraged him to return home after he told her about the difficulties in his marriage. He acted on that encouragement and returned to the wooden house in 2005.
 - b. The Claimant did not tell him that his stay in the wooden house was meant to be temporary and 'understood' that he was returning to the house.

- c. The Claimant promised him that she would transfer her tenancy rights and the wooden house to him as soon as she moved into the new concrete house that she had erected on the adjacent lands where he had originally intended to build his home.
- d. He relied upon this promise and procured building materials to construct his home.
- e. The Claimant ran into financial difficulties and asked the Defendant for his construction materials to finish her home and he gave her the gravel, steel and construction tools that he had purchased so that she could complete her house.
- f. Upon his return in 2005 he was met with hostility by his stepfather who demanded that he vacate the wooden dwelling house as he no longer “had a place there”. The Claimant intervened and defended him and later promised the Defendant the wooden dwelling house together with the tenancy rights of the subject lands as she would soon be vacating and moving into her concrete structure on the adjacent lands which was previously occupied and maintained by the Defendant.
- g. The construction of the Claimant’s concrete home lasted for a number of years and was completed in or around mid-2009 and the Claimant and her husband vacated the wooden dwelling house and moved into her completed new concrete structure leaving the Defendant with the wooden dwelling house as promised by the Claimant.
- h. The Claimant, upon moving out of the wooden dwelling house in 2009, reminded the Defendant of her promise to him that the wooden home was now his; she advised him that he could start constructing his home as the wooden dwelling house was extremely dilapidated.
- i. In furtherance to the promise made by the Claimant to the Defendant, in 2009 the Claimant transferred the electricity account for the wooden house to the Defendant’s name and the Defendant liquidated the balance on the Claimant’s account. In 2010 the Defendant remarried and his wife resided in the wooden dwelling house with him.
- j. After the Claimant moved into her completed new home and transferred the electricity account in his name, the Defendant began exercising dominion and ownership in respect of the wooden dwelling house and the said subject lands, and claimed exclusive proprietary rights over the wooden dwelling house. However, contrary to the Claimant’s claim, his attitude and conduct regarding his occupation of the wooden dwelling house

was in accordance with the promise which the Claimant made to him and knowingly allowed and encouraged his belief in her assurance which the Defendant relied on.

k. The Claimant consented to the Defendant's construction of the minimart adjoining the wooden house in 2011.

l. In 2018 he built a chicken pen adjacent to the wooden house.

[13] He denied that his attitude changed upon the completion of the Claimant's concrete house and that contrary to the agreed intention that his stay in the wooden house was temporary, he began to assert proprietary rights to the wooden house by erecting the above structures including constructing a concrete foundation. He denied that those acts, including the erection of a concrete platform and planting short crops were done without the permission and/or consent of the Claimant. He asserted that one half of his concrete foundation was built in 2015 and the other half in 2017.

[14] The Defendant asserted that these works were effected peacefully without any opposition, interruptions or assertion of any ownership rights of the property by the Claimant. During 2015-2017 a separate cesspit was constructed by the Defendant with the knowledge and in full view of the Claimant whose new concrete dwelling house is located mere feet away.

[15] The Claimant encouraged him to erect a large tank stand located behind the Claimant's and Defendant's home; indeed the Claimant's water tank was placed on the said tank stand together with his own.

[16] No work was done in 2018 due to the Defendant's ill health and resultant hospitalisation.

[17] All of these works done by the Defendant were completed with the knowledge of the Claimant and in full view of her as she resided in her concrete home mere feet away from the Defendant.

[18] He admitted that he continued construction of the concrete house in 2020 until completion. He claimed to have spent approximately three hundred thousand dollars (\$300,000.00) for the construction of the house, minimart, large tank stand and cesspit. Further in reliance upon the Claimant's promises and representations he borrowed sums of money from several financial institutions including Aero Services Credit Union, Republic Bank Limited and Island Finance Limited to expend on the construction/refurbishment of his house.

[19] He denied ever threatening the Claimant and asserted that the Claimant made false reports against him which resulted in Police Officers continually harassing him. He averred that on the contrary, the Claimant continually cursed and threatened him and his wife. The Claimant made insulting comments about the Defendant's wife in church for which she apologised before the congregation.

[20] The Defendant counterclaimed against the Claimant for the Reliefs hereunder:

- I. A Declaration that the Defendant is the sole owner of the concrete home situate at LP 53 Calvary Branch Road, Arima.
- II. A Declaration that the Defendant is solely entitled to the concrete home at LP 53 Calvary Branch Road, Arima.
- III. A Declaration that the Defendant is the sole owner of the concrete minimart, namely, Heavenly's Minimart situate at LP 53 Calvary Branch Road, Arima.
- IV. A Declaration that the Defendant is solely entitled to the concrete minimart, namely, Heavenly's Minimart situate at LP 53 Calvary Branch Road, Arima.
- V. A Declaration that the Defendant is entitled to the tenancy rights of the subject lands by virtue of Promissory and/or Proprietary Estoppel.
- VI. A Declaration that the Claimant is not entitled to the Reliefs claimed or to any Relief.
- VII. An Injunction prohibiting the Claimant whether by herself, her servants, and/or agents howsoever otherwise from obstructing, entering, remaining upon, occupying, preventing, dealing with or in any way unlawfully interfering with the occupation and/or possession or peaceful enjoyment or effecting sale of or taking possession and/or evicting the Defendant, his servants and/or agents from the said lands and concrete dwelling.
- VIII. An Injunction restraining the Claimant whether by herself, her servants and/or agents howsoever otherwise from disturbing, harassing, intimidating, molesting, threatening or in any way interfering with the Defendant's peaceful enjoyment of the said lands and concrete dwelling house.

- IX. In the alternative, a Declaration that the Defendant has an equitable share and/or interest in the said land as the Court may determine and is entitled to occupy same or that the Claimant be ordered to compensate the Defendant to the value of the construction works and all expenses and labour incurred and other monies expended on the said lands and concrete dwelling house in reliance on the promises by the said Claimant.
- X. Damages.
- XI. Costs.
- XII. Interest.

Reply and Defence to Counterclaim

- [21] The Claimant admitted that the Defendant and his first wife lived in the wooden house for a short period in 2003 after their marriage but maintained that they vacated the home in that year to live elsewhere.
- [22] It was denied that the Defendant ever maintained the adjacent lands, clearing and cultivating same with shorts crops as he claimed in his Defence. It was also denied that the Defendant gave building material to his sister Michele Campo Amiable when he vacated the wooden house in 2003 since Michele had also left the premises in 1997 to live elsewhere.
- [23] The Claimant denied that she ever promised the Defendant her tenancy rights to the subject lands or the wooden house situate thereon. It was also denied that:
 - i. The Claimant asked the Defendant for, or accepted from him any construction material to build her house. All materials for building her home were purchased using her own monies as well as that of her husband's.
 - ii. There was never any altercation between the Defendant and her husband during which the latter demanded that he vacate the wooden house.
 - iii. The electricity account for the wooden house was transferred to the Defendant in furtherance of her promise to him that the house was now his; rather, it was done

because at this time he and his family were the sole occupants thereof and the sole consumers of the electricity supplied to the house.

- [24] The Claimant pleaded that she and her husband paid the Water and Sewerage rates for the entire parcel of land at all times. Further, she gave the Defendant permission to build the minimart because he complained of struggling financially; she believed that he could earn an income therefrom which would allow him to move out on his own once more.
- [25] The chicken pen was not used to house chickens by the Defendant or put to use otherwise since construction.
- [26] The Claimant averred that the concrete foundation on the land in the vicinity of the wooden house was built in 1995; however, while she was at work in Tobago and away from the subject premises the Defendant unilaterally and without her permission, consent and/or concurrence cast and added to the prior existing foundation. Upon being notified of the Defendant's unilateral and unauthorised actions, the Claimant stated that she called the Defendant to complain about his unauthorised acts; the Defendant however ignored her protests. The Claimant also pleaded that the two (2) cesspits currently on the subject lands both belong to her. The Defendant was put to strict proof of his claim that he built a cesspit thereon.
- [27] The Defendant sought and obtained the Claimant's permission to build the tank stand for their joint benefit as there had been serious water problems in the area for an extended period. The Claimant's two (2) water tanks were placed on the tank stand and the Defendant was allowed one (1) tank for his use.
- [28] The Claimant was forced to institute these proceedings against the Defendant since he ignored all her prior warnings to stop construction works on the subject land. She was reluctant at first to take her son to Court but was forced to do so as a result of his aggressive and hostile behaviour. She noted that even after an Injunction had been obtained from this Court ordering the Defendant to cease all works on the premises he continued to work apace. The concrete dwelling house was built by the Defendant in breach of Town and Country Planning Division's rules since he failed to obtain permission from the Division to erect a second house on one lot of land.

Evidence

- [29] The Claimant filed a Witness Statement which was generally consistent with her pleaded case and was cross-examined.
- [30] Mrs. Campo Gonzales related that before the breakdown in the relationship with the Defendant she always supported him as her son. When she was granted the tenancy by the Arima Borough Corporation, she built a wooden house in which all her children, including the Defendant, her husband and the Defendant's eldest son lived. She revealed that this grandson has always lived with her.
- [31] When his marriage broke down and he returned home in 2006/2007, the construction of her concrete house was halfway complete. She revealed that she was the tenant of one and a half lots which is fully fenced and her concrete house was built on that portion of the lot previously occupied by her uncle. She denied that the Defendant maintained this portion of the land when her uncle left. She also denied that the Defendant bought construction material to build a house on this portion of the lot before he left in 2003 after his marriage.
- [32] Rozana revealed that although she and her family moved to this new house in 2013, they continued to use the bathroom and washroom in the wooden house which was occupied at this time by the Defendant and his second wife. The Claimant explained that the electricity supply for the wooden house was transferred to the Defendant in 2009 in order for him 'to learn responsibility' since he and his wife occupied the wooden house exclusively but for the bathroom which was shared with the Claimant and her children.
- [33] She denied that the Defendant had built a cesspit on the land and claimed that she had done so before the construction of the wooden house. While she admitted that the Defendant had built the tank stand, Mrs. Campo Gonzales stated that it did not cost fifteen thousand dollars (\$15,000.00) as he alleged. The chicken pen was built by the Defendant without her consent. The Claimant asserted that she did not give the Defendant permission to rebuild the wooden house; the wooden house was in good condition except for one or two floorboards which needed replacing.
- [34] Mrs. Campo Gonzales indicated that she allowed the Defendant to build the minimart in order to earn an income 'because he had no income'.

Evidence for the Claimant

Michele Campo Amiable

- [35] This witness, a daughter of the Claimant and sister of the Defendant, gave a Witness Statement and was cross-examined.
- [36] She testified that she was born on the subject property and spent her early years thereon with her mother and three siblings including the Defendant. She revealed that in 1995, before the birth of her daughter, a concrete foundation with a toilet, bathroom and washroom were added to the wooden house.
- [37] Michele testified further that the Defendant married in 2003 and left the wooden house to live elsewhere with his wife, while she left in 1997 and only visited the family periodically thereafter. She denied the Defendant's accusation that he bought building material and left same for her when he left home since she had left some six (6) years before he did.
- [38] Michele testified that she was aware that the Defendant was experiencing marital problems and had asked the Claimant's permission to stay at the family home upon separating from his wife. At this time the Claimant and her husband, the Defendant's brother and son whom the Claimant had raised from the age of six (6) months lived in the wooden house.
- [39] She supported the Claimant's testimony that the latter and her husband moved into the new concrete dwelling house in 2013 and that the Defendant was left in occupation of the wooden house at that time. Michele stated that after her mother's relocation to the new house, during her visits, she began noticing the Defendant's possessive attitude toward the wooden house – he regarded it as his own and began doing works on the land without the permission of the Claimant and in spite of the latter's objection and remonstrations. He asserted that the house belonged to him now that the Claimant had moved to her new house.
- [40] In keeping with his claim to the wooden house, she observed that he built a chicken pen in 2018, planted a kitchen garden in the vicinity of the wooden house and in 2018/2019 he added to the existing foundation built by his mother and commenced repair and refurbishment works on the wooden house without the Claimant's permission or consent.
- [41] In cross-examination Michele stated that when she visited her family in 2009 the Defendant lived exclusively in the wooden house. She insisted that he added to an existing foundation built by her mother but was not certain as to the date when he did so. This witness admitted that the

Claimant lived in close proximity to the Defendant's structure and could not have avoided seeing the Defendant's works on the land. She asserted that she knew that her mother had given permission to the Defendant to stay in the wooden house temporarily after the breakdown of his marriage because she was so informed by the Claimant during her almost daily visits to the home. She also denied that the Defendant left any construction material for her to build her home when he left in 2003 since she had already left in 1997.

Mervyn Gonzales Jnr.

- [42] Mervyn is the son of the Claimant and brother of the Defendant; he lived together with family members including the Claimant, his father and the Defendant's son in the wooden house. He testified that in 2003, when he was nineteen (19) years old, the Defendant married and left the home to live with his wife elsewhere. He too testified that when the Defendant's marriage broke down in 2006/2007 the latter asked the Claimant to house him until he could find a place of his own. Mervyn asserted that the Claimant discussed the Defendant's request with the family. The Claimant finally told him that the Defendant will be permitted to return to the wooden house until he could find his own place.
- [43] Mervyn related that when the Defendant returned to the home in or about 2006/2007, his parents, nephew and he were in occupation. The Defendant at this time had purchased land in Paria and he was staying until he could 'catch himself'.
- [44] They lived peacefully together until the Defendant began treating the wooden house as his own against the wishes of his mother. Without the Claimant's consent, he built a chicken pen in 2018 and in 2018/2019 he cast an addition to an existing foundation built by his mother years before in the vicinity of the wooden house and continued repair and refurbishment of said house without permission or consent of the Claimant. He planted short crops on the land and moved in his second wife.
- [45] The Claimant repeatedly protested the Defendant's actions to no avail; the latter asserted that he owned the house and could do with it as he pleased. The Defendant's actions caused relations between him and his family to deteriorate to the point that the Defendant and his wife were disrespectful toward the Claimant and frequently spoke ill of her to others.
- [46] Mervyn contradicted his sister's evidence that the Defendant lived exclusively in the wooden house from 2009; he insisted that the Claimant and her family still lived in the house at that time. Whilst he acknowledged that he witnessed the Defendant building structures on the land

and refurbishing the wooden house, he claimed not to have observed the extension of its foundation by the Defendant in 2017.

- [47] He too stated that the Defendant did not build the cesspit. This witness testified that the Defendant completed a concrete house without assistance from the Claimant.

Mervyn Gonzales Snr.

- [48] Mr. Gonzales Snr. is the husband of the Claimant and stepfather of the Defendant. He gave a Witness Statement which was consistent with the Claimant's pleaded case and her evidence.
- [49] In cross-examination, Mr. Gonzales Snr. stated that before the Defendant left home in 2003, he used to maintain the lands adjacent to the wooden house 'on and off'; he however denied that the Defendant ever planted this portion of land.
- [50] He explained that while he was not present during the conversation between the Claimant and the Defendant when the latter asked her permission to return home upon the breakdown of his marriage, the Claimant discussed the issue with the family including himself. The Claimant then indicated that the Defendant asked to stay until he could 'catch himself' and she agreed to allow him to return temporarily.
- [51] This witness denied living with the Defendant and his wife in the wooden house, also stating that his stepson married in 2010. He admitted that he and the Claimant moved to the new house in 2009 but insisted that the wooden house was not gifted to the Defendant, he was allowed to occupy it until he could build on his own.

Joshua Roberts

- [52] Joshua, son of the Defendant and grandson of the Claimant, lived with the latter having been cared for by her from infancy to the present. He was born in 1999 and at the time of giving evidence he was eighteen (18) years old.
- [53] He grew up in the wooden house with his grandmother, father, aunt and Mr. Gonzales Snr. He testified that when he was three (3) years old the Defendant left the home when he married but returned in 2006/2007 upon the breakdown of said marriage. He 'understood' from discussions with the Claimant that the Defendant's stay was temporary until he could build his own home, the Defendant having purchased a parcel of land in Paria.

[54] In all other respects his Evidence in Chief was consistent with the Claimant's pleaded case.

[55] In cross-examination Joshua stated that the Defendant returned to the wooden house when he (Joshua) was six (6) years old, in 2005. This was a material departure from his Evidence in Chief and the Claimant's case. He explained that although his grandmother, Mr. Gonzales Snr., his uncle and himself relocated to the new concrete house in 2010, it was not finished; as a result they still used the bathroom attached to the wooden house until 2013 when construction of the house was completed.

The Defendant's Evidence

Ricardo Campo

[56] The Defendant gave a Witness Statement and was cross-examined. The Defendant testified that upon his return to the family home upon the breakdown of his marriage, his stepfather aggressively demanded that he leave the home since he no longer had a place there. His mother intervened, insisting that she had given him permission to return and promised that she would give to him the wooden house and surrounding lands as soon as they relocated to the new house. In his Defence he had pleaded that his mother also promised to give to him her tenancy rights to the land on which both houses stand.

[57] He testified that in mid-2009 the Claimant, his stepfather, brother and older son Joshua moved to the new house and the electricity account was transferred to his name in furtherance of the promise to gift him the house.

[58] Mr. Campo asserted that the hitherto good relationship with the Claimant broke down after he asked her to publicly apologise to his wife for comments made against her. Thereafter he alleged that the Claimant made certain racial and derogatory remarks against his wife.

[59] He claimed to have expended over three hundred thousand dollars (\$300,000.00) in the construction of his home, minimart, tank stand and cesspit, which were all done with the Claimant's encouragement and approval.

[60] In cross-examination the Defendant claimed that he now owned the land on which the wooden house previously stood since his mother gave it to him. He acknowledged that he had not obtained Town and Country Planning Division's permission to build the concrete house and that the roofs of his house and the Claimant's were almost touching.

- [61] He admitted that he gave up any interest that he had in the land to his sister in 2003 when he left and that this is what he stated in his Witness Statement¹.
- [62] He testified that he returned home after his marriage broke down because the Claimant agreed to help him in his difficulty and gave him a place to stay. He later asserted that his mother told him to take the wooden house and the land on which it stood. When confronted by the fact that in his response to the Claimant's written demand that he desist from building on the subject property, his then Attorney-at-Law had not indicated that the Claimant had promised him the wooden house and the land on which it stood, the Defendant stated that 'he was guided by his Attorney-at-Law whom he had told everything'².
- [63] The Defendant was also confronted by letter dated July 1, 2020 written on his behalf by his then Attorney-at Law³ and the fact that it was not asserted on his behalf that the Claimant had given him the tenancy rights to the land. In response he again stated that he was guided by his Attorney-at-Law. He gave a similar response when confronted with his Affidavit filed in the Injunction proceedings herein⁴ and his failure to state therein that his mother had promised him the wooden house and tenancy to the land. He admitted that the first time that the issue of the Claimant promising him the house and land was in his Defence.
- [64] Mr. Campo stated that receipts annexed to his Witness Statement⁵ in support of his claim that he gave construction material to his mother to assist her in building the new house were only some of the receipts. He acknowledged that he had not stated before that there were more receipts which he could not locate. He admitted that before the T&TEC account was transferred to him, his mother paid the electricity as well as the WASA accounts. He testified that he now obtains a supply of water from a neighbour and has done so since 2009.
- [65] Ricardo admitted that the receipts that he disclosed to this Court in support of his contention that he spent over three hundred thousand dollars (\$300,000.00) in building the concrete house, minimart and chicken pen only amounted to twelve thousand eighty-five dollars and thirty-one cents (\$12,085.31). His explanation was that he had spent more than the exhibited receipts but he did not have the other receipts because he did not think that this would happen.

¹ Paragraph 5 of the Defendant's Witness Statement

² Defendant attached to the Witness Statement of Rozana Campo Gonzales

³ Exhibit "Y" to Witness Statement of Rozana Campo Gonzales

⁴ Affidavit of Defendant filed on September 9, 2020

⁵ "RC3" to his Witness Statement

[66] This witness also agreed that his Loan Application Forms did not reveal the purpose for which the loans were obtained. He agreed that part of the proceeds of the loan from Aero Services Credit Union was used to purchase a car, while the remainder was used to build his house. He stated that part of the proceeds of the loan from Island Finance Limited was used as a down payment on land for his church which he pastored.

[67] The Defendant agreed that most of the receipts are dated after he received letters from the Claimant and her daughter asking him to stop construction. He also explained that he needed to build the roof after June 2020 and did so. Importantly, Ricardo admitted that most of the roof was constructed after June 2020. He agreed with his Attorney-at-Law's claim, written on his behalf, that he had acquired a proprietary interest on the basis of Proprietary Estoppel and/or gift.

[68] The Defendant did not agree that the area given to the Claimant comprised one and a half lots and was fenced with a concrete and steel fence.

Nyla Campo

[69] The Defendant's wife gave a Witness Statement in support of his case. She supported his case that the Claimant and her family moved into the new concrete house in mid-2009 after giving the board house to the Defendant. She also asserted that the Claimant physically and verbally assaulted her upon the breakdown of their relationship after the Defendant made the Claimant apologise to her in the presence of the congregation. Nyla claimed that the Claimant began to claim their house belonged to her in 2020 and not before.

[70] Mrs. Campo claimed that she earned about two thousand five hundred dollars (\$2,500.00) from the minimart monthly and earnings were also obtained from the sale of pimentos and ochroes from the vegetable garden. I note however that no documentary evidence of her earnings from the minimart or sale of pimentos and ochroes were disclosed to this Court.

Melissa Hurst

[71] Melissa Hurst was a member of the Defendant's church. She testified that she rented the minimart from the Defendant in 2017-2018 paying him between eight thousand to nine thousand dollars (\$8,000.00 - \$9,000.00) 'whenever she had the money'. This witness also claimed she made a monthly profit of three thousand dollars (\$3,000.00) from earnings from the minimart.

John Boneo

- [72] Mr. Boneo lived one house away from the Claimant – approximately sixty feet (60ft.) away. In 1986 he observed the Claimant and her family move into a wooden house they had built. He testified that one Glen Augustus ‘was living on the same land’ in a small ten feet by ten feet (10ft. x 10ft.) wooden house adjacent to the Claimant’s house. Mr. Glen eventually broke down this house and left. Mr. Boneo stated that he saw the Defendant planting, weeding and maintaining the piece of land once occupied by Mr. Glen including the strip alongside the wooden house from the age of twelve (12).
- [73] He testified further that he noticed the Claimant constructing a concrete house on the land formerly occupied by Glen; the Defendant returned home before the Claimant moved into the concrete house; when she did, the Defendant remained in the house. Sometime afterward, he saw the Defendant’s wife living with him in the wooden house. In 2011 he saw the Defendant building a concrete structure in front of the wooden house and began operating a minimart in 2013.
- [74] He witnessed the construction of the concrete house by the Defendant in full view of the Claimant. He claimed not to have witnessed any altercation between the Claimant and the Defendant until 2020.
- [75] In cross-examination, he reiterated that both houses were on the same lot and were enclosed by a concrete and steel fence and steel gate. He further admitted that he did not know the terms and conditions under which the Defendant returned home, nor did he have any information about the ownership of the land.

Lethia Paul

- [76] Lethia Paul is a member of the Defendant’s church. She testified of knowing both the Claimant and the Defendant since she was a child. She testified that she worked in the Defendant’s minimart in 2016 from 6:30a.m. to 4:00p.m. and never heard the Claimant voice any objection to the Defendant building the concrete house. She also testified that the Claimant attended the Defendant’s church where she prayed about him completing his house. Ms. Paul stated that in 2020 the Defendant completed his concrete house, taking down the final wooden portion at that time.

[77] In cross-examination this witness testified that she was paid one hundred and fifty dollars (\$150.00) a day for her work in the minimart. She agreed that all the structures were on one lot although she could not remember that the lot was enclosed by a concrete wall and steel gate. She was also unaware that the Defendant had left the premises in 2003 after his first marriage; Ms. Paul also admitted that she did not know the terms under which he returned to live in the wooden house.

Analysis and Conclusion

[78] Proprietary Estoppel arises when an owner of land, A, leads or allows B to believe that he (B) has or can expect some right or interest over A's land. To A's knowledge, B acts to his detriment in that belief. A then refuses B the anticipated right or interest in circumstances that make that refusal unconscionable - an equity then arises in B's favour⁶.

[79] In **Nester Patricia Ralph and Esau Ralph v Malyn Bernard and others**⁷, Lord Walker pointed out that while there is no universal position on a definition of Proprietary Estoppel which is both comprehensive and uncontroversial, that most scholars agree that the principle of Proprietary Estoppel is based on three (3) elements, although they express them in slightly different terms:

- i. A representation or assurance made to the Claimant;
- ii. Reliance on it by the Claimant; and
- iii. Detriment to the Claimant in consequence of his reasonable reliance.

[80] In **Mills v Roberts**⁸, Jamadar JA stated as follows:

"19 In respect of the Law of Proprietary Estoppel we are more troubled about the correctness of the Application of the Law. Whereas in Promissory Estoppel there must be a clear and unequivocal promise or assurance intended to effect legal relations or reasonably capable of being understood to have that effect, in the law of Proprietary Estoppel there is no absolute requirement for any findings of a Promise or of any intentionality."

⁶ Halsbury's Laws of England Vol. 16 (2) Para 959

⁷ [2009] UKHL 18

⁸ CA T 243 of 2012, paragraph 19

[81] In **Harry Fulchan v Naresh Fulchan**⁹, Rajkumar J (as he then was) noted that in dealing with the doctrine of Proprietary Estoppel that not each and every contribution made to a property would give rise to an equitable interest. The Learned Judge opined that the misconception has developed that any purported contribution, no matter how tenuous, trivial or remote can give rise to an equitable interest.

[82] This case falls to be determined on the facts as I find them. Where there is an acute conflict of evidence, the Judicial Committee of the Privy Council has laid down the following principles in the case of **Horace Reid v Dowling Charles and Percival Bain**¹⁰. Lord Ackner delivering the judgement of the Board outlined the approach to be adopted by the Trial Judge:

“Mr. James Guthrie, in his able submissions on behalf of Mr. Reid, emphasised to their Lordships that where there is an acute conflict of evidence between neighbours, particularly in rights of way disputes, the impression which their evidence makes upon the Trial Judge is of the greatest importance. This is certainly true. However, in such a situation, where the wrong impression can be gained by the most experienced of judges if he relies solely on the demeanour of witnesses, it is important for him to check that impression against contemporary documents, where they exist, against the pleaded case and against the inherent probability or improbability of the rival contentions, in the light in particular of facts and matters which are common ground or unchallenged, or disputed only as an afterthought or otherwise in an unsatisfactory manner. Unless this approach is adopted, there is a real risk that the evidence will not be properly evaluated and the Trial Judge will in the result have failed to take proper advantage of having seen and heard the witnesses.”

[83] Accordingly, the Trial Judge must check the impression that the evidence of the witnesses makes upon him against:

- i. Contemporary documents, where they exist;
- ii. The pleaded case; and
- iii. The inherent probability or improbability of the rival contentions.

⁹ CV2010-03575

¹⁰ Privy Council App. No. 36 of 1987, page 6

[84] I accepted the Claimant's case that she is the tenant of approximately one and a half lots of land on which she constructed two (2) houses; firstly, a small wooden one and later on a larger concrete dwelling. Even though no direct evidence of the exact size of the lot was adduced, it was not disputed that the entire parcel was fenced by the Claimant, and both houses as well as an additional land area were thereby enclosed. I note that the Defendant's witnesses Boneo and Paul agreed that all structures were contained on one lot and Boneo, the parties' neighbour, testified that the premises were fenced. I also accepted her denial that the Defendant gave her construction material which she used to build her concrete house.

[85] I bear in mind that the parties to this dispute are mother and son. I accept that the Claimant, as the Defendant's mother sought to assist him after the breakdown of his marriage, and therefore agreed to his return to the family home until he found his feet financially. The issue that falls for my determination is whether, the Claimant did more than grant the Defendant temporary accommodation and promised him the wooden house and the land on which it stood, and/or allowed him to expend significant sums on the subject land in the expectation that he would be given the wooden house, and said land on which it stood.

[86] What is clear from the evidence, is that from or about 2018/2019, on the Claimant's case, the Defendant began extending the foundation of the wooden house and effecting other construction works therein, in the full view of the Claimant. The Claimant testified that he began the extension of the foundation while she was working and living in Tobago, but upon return to her home she wrote to him in June 2020 demanding that he cease all works. The Defendant, on the other hand contended that the refurbishment works on the house commenced in 2015 pursuant to a promise made to him by his mother in 2007 that she would give to him the house and tenancy of the lands. In cross-examination Mr. Campo agreed that most of his receipts for construction of his house were dated 2020 – and that most of the roof and blockwork was done after June 2020 when the Claimant had asked him to desist.

[87] A review of the expenditure undertaken by the Defendant since the alleged promise was made to him in 2005 and after he was left in sole occupation of the wooden house shows the following:

- a. On his testimony, he extended the foundation of the house (disputed by the Claimant) in 2015-2017.
- b. In 2016-2017 he built a large tank stand used by himself and the Claimant.

c. In 2011 he built a minimart.

d. In 2018 he planted the area near the wooden house.

e. In 2015-2017 he built a cesspit (disputed by the Claimant).

f. Wooden portion of the home removed, incomplete concrete structure standing in 2020 with unplastered walls, missing window, incomplete toilet, no internal walls or roof.

[88] The Claimant pleaded that she consented to the Defendant building the minimart in 2011 as a source of income for himself, while the tank stand was used for her as well as his benefit. If indeed the Defendant built a cesspit for himself then that was certainly for his and his family's benefit also.

[89] I note that the works which the Defendant claimed to have undertaken over the years are not supported by the receipts which he disclosed. He claimed to have expended three hundred thousand dollars (\$300,000.00) in construction works but the receipts produced fell far short of this figure amounting to approximately just over seventy thousand dollars (\$70,000.00). When this sum is added to loans which the Defendant claimed were obtained for the purpose of construction of the house and other structures, the expenditure totals one hundred and forty-seven thousand three hundred and seventy-five dollars and eighty-six cents (\$147,375.86), less than one half the sum claimed. Further, the purpose for these loans are not disclosed in the documents from the lender adduced by the Defendant. I conclude that the failure to disclose the reasons for the loan was deliberate – since the evidence may not have supported the claim that the loans were obtained for construction purposes. This is especially so since it was only revealed in cross-examination of the Defendant that the proceeds from one of the loans from Aero Services Credit Union was for the purchase of a motor vehicle. Mr. Campo also revealed in cross-examination that part of the proceeds of a loan from Island Finance Limited was used as a down payment on lands for the church which he pastored. Significantly, the exact sums deducted for the purchase of the car and the deposit on the land were not disclosed.

[90] Apart from inconsistencies as to the date when the Claimant and her family moved to their new home (2013 or 2009) and the date when the Defendant returned to the family home (2005/2007), the testimony of the Claimant and her witnesses were credible and more plausible

than that of the Defendant and his witnesses. I do not consider that these inconsistencies were sufficient to undermine the reliability of the Claimant's case.

[91] The Defendant claimed that prior to his departure from his home in 2003, he had purchased construction material which he left for his sister and told her to build her home. This evidence was undermined by his sister's testimony, which was not disputed, that she had left home since 1997 and he had bought no such material.

[92] He pleaded that his mother had promised him the wooden house and tenancy rights to the land¹¹, but in his Witness Statement he testified that his mother promised that she would give him the wooden house and surrounding lands¹². This is a material inconsistency for which no explanation was given, and which undermines the basis upon which the Defendant's Defence and Counterclaim rest. It is rather incredible, that the Claimant, even though she is his mother, would offer the Defendant the tenancy rights to the land where she lived with her husband and grandson, and upon which she clearly intended to live. This intention was clearly demonstrated by the construction of her new home thereon. As I have found in this case, the Claimant was the tenant of one large lot of land which she had fenced. She could not have promised the Defendant the tenancy rights to the lot and to put up another house thereon, in breach of the Town and Country Planning Division's permission laws. The more probable case is that while she allowed him to stay, and build the minimart as a source of livelihood, this was meant to be temporary accommodation until he could 'catch himself' financially.

[93] Another important issue which went to the credibility of the Defendant and his case, is the fact that the first time that he asserted that his mother had promised him the house and land was when he filed his Defence to this claim. In written correspondence from his Attorneys-at-Law, responding to the Claimant's demand that he cease all works in June 2020, the Defendant claimed that he had been in occupation of the 'parcel of land over sixteen (16) years and had improved the property'¹³. This statement was clearly false since, on his case, he had been in sole occupation since 2009. The Claimant brought Injunctive proceedings against the Defendant in August 2020 in which she repeated and relied upon the facts pleaded in her Statement of Case. Again in his Affidavit in Reply, the Defendant made no mention of the promise made to him by the Claimant which he raised in his Defence for the first time two (2) months later. No satisfactory or no explanation was given by the Defendant for this material omission. The

¹¹ Paragraph 43 of Defence and Counterclaim

¹² Paragraph 8 of the Witness Statement

¹³ 'C' attached to the Statement of Case

Defendant had to proffer an explanation as to why he failed to raise this issue in answer to the Claimant's claim before he filed his Defence. His failure to do so caused me to conclude that this limb of his defence was a fabrication. I formed the view that his claim that Rozana promised him the wooden house and the lands on which it stood was not supported by any independent evidence apart from his own.

[94] The Defendant adduced no evidence relative to the quantum of his earnings during the period 2009 to 2020 to support his claim that he expended three hundred thousand dollars (\$300,000.00) in constructing a house and other buildings on the land. His wife had no independent source of income apart from the earnings of the minimart, evidence of which was not disclosed to this Court. I did not believe the Defendant's witness that she made a monthly profit of three thousand dollars (\$3,000.00) from sales at the minimart, nor that she paid the Defendant eight thousand dollars to nine thousand dollars (\$8,000.00 - \$9,000.00) for rental of same 'whenever she had the money'. I also disbelieved Nyla Campo's evidence of her monthly earnings of two thousand five hundred dollars to three thousand dollars (\$2,500.00 - \$3,000.00) from the minimart. I also disbelieved the evidence of Lethia Paul on being paid approximately two thousand five hundred dollars (\$2,500.00) a month as salary for working in the minimart. It is clear that those figures do not add up and it is not believable that this small shop could produce earnings of this magnitude, especially during the Pandemic. Given that this shop was the principal means of income of the Defendant and his wife who were not otherwise employed it is incredulous that they would hire others to operate the minimart. Significantly, if the sales from this small shop generated that level of income, then one would have expected the Defendant to have completed the house sooner, and not in the laborious piecemeal manner in which he had effected works thereto over a period of some eleven (11) years. Significantly no documentary evidence pertaining to sales from the minimart including bank deposits to support the income received from the minimart were disclosed by the Defendant.

[95] The Defendant stated for the first time, during his cross-examination that he could not locate all his receipts. Apart from his failure to plead this fact in his Defence and Counterclaim, he gave no explanation in his Witness Statement either.

[96] I did not believe the evidence of the Defendant and his witnesses all of whom I found to be lacking in creditworthiness on material issues in the case. I found the Claimant's evidence and that of her witnesses to be more credible, and her version of the case was to be more plausible.

- [97] The Defendant expended monies to build the minimart for his sole use and benefit. I accepted the Claimant's evidence that she gave him permission to do so in order for him to earn money until he could find his feet financially and leave. If indeed he built a cesspit, on his evidence, it was for his use and benefit but against the wishes of the Claimant. Whilst I accept that the Defendant undertook incremental repairs to the old wooden house over the years, I believe that he accelerated construction from or about 2019 and really pushed to complete in 2020 after receipt of the first letter from the Claimant demanding that he cease all works.
- [98] Given the asthmatic condition of his son, this Court allowed the Defendant to do some works to avoid the aggravation to his condition. Whilst I do not find that the Defendant has established a Promissory or Proprietary Estoppel based on the Claimant's promise to him, I am of the view that it would be unconscionable to order his removal without compensation for the works that he effected on the premises. The Claimant ought not to have allowed him to build anything on the land even from the minimart if she was serious about the fact that the accommodation to the Defendant was temporary. Given the proximity of the two (2) houses, it must have been clear to her and her husband that when the Defendant began expanding the foundation, he did not intend to leave. Steps should have been taken at that time to stop all further construction and not allow it to continue.
- [99] I do not accept that three hundred thousand dollars (\$300,000.00) was expended on an incomplete, small house, a minimart and tank stand; accordingly, based on a totality of the receipts provided, as well as loan amounts less deductions for the purchase of a car and a deposit on the purchase price for land, I award the Defendant the sum of one hundred and twenty-five thousand dollars (\$125,000.00) for the structures erected on the subject premises.
- [100] I therefore give judgement to the Claimant against the Defendant on the claim. The Counterclaim is dismissed save for the issue of compensation for the structures built on the premises.
- [101] I accordingly make the following Orders:
- i. A Declaration that the Defendant's licence to occupy All and Singular the wooden house now converted to an unfinished concrete structure by the Defendant situate at LP 53 Calvary Branch Road, Arima, is revoked.

- ii. An Order that the Defendant do deliver up possession of the said unfinished concrete house situate at LP 53 Calvary Branch Road, Arima to the Claimant.
- iii. An Order that the Defendant do deliver up possession of the land on which the said unfinished concrete house is located situate at LP 53 Calvary Branch Road, Arima to the Claimant.

[102] The Claimant is granted an Order of Possession for the concrete dwelling erected by the Defendant.

[103] The Defendant do pay to the Claimant the costs of the claim in the sum of fourteen thousand dollars (\$14,000.00).

[104] Stay of execution forty-two (42) days.

[105] The Reliefs sought at paragraph 54 (1) to (8) of the Counterclaim are hereby dismissed.

[106] It is Ordered that the Claimant do pay to the Defendant the sum of one hundred and twenty-five thousand dollars (\$125,000.00) as compensation for the concrete house refurbished by the Defendant as well as the other structures erected by him on the subject premises.

[107] The Claimant do pay to the Defendant costs in the sum of nine thousand dollars (\$9,000.00) on the Counterclaim.

[108] The Claimant do pay to the Defendant interest at the rate of three point five percent (3.5%) on such sums from January 2018 to the date of judgement.

Joan Charles

Judge