

**IN THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No: CV 2019-03858**

**BETWEEN**

**CHAVON JACK**

**CLAIMANT**

**AND**

**TEVIN GEORGE  
MARTIN GEORGE**

**DEFENDANTS**

Before: The Hon. Mr. Justice Westmin R.A. James

Date: April 22<sup>nd</sup>, 2024

Appearances: Mr Raphael Morgan, Attorney-at-Law for the Claimant

Mr Jonathan Bhagan and Mr Victor Chin Aleong, Attorneys-at-Law for the Defendants.

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**JUDGMENT**

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**Background**

1. This is a claim for trespass and defamation concerning the interest in the property situate at LP#10 Edward Street, Peter Hill, Mayaro owned by the Claimant pursuant to Deed of Conveyance registered as DE201801835008 (the 'subject property').
2. By Claim Form and Statement of Case filed 23<sup>rd</sup> September 2019, the Claimant claims against the Defendant:
  1. Damages for Trespass;
  2. Damages for Defamation;
  3. A declaration that the Claimant is the owner of the land and the house situate at LP #10 Edward Street, Peter Hill, Mayaro;
  4. An injunction restraining the Defendant and his servants and/or agents from trespassing on the premises situate at LP#10 Edward Street, Peter Hill, Mayaro;
  5. Costs;
  6. Interest;
  7. Such further and other relief as the Court may deem fit and just.

3. By Defence and Counterclaim filed 10<sup>th</sup> December 2019, the Defendants deny the Claimant's claim. The Defendants averred that the circumstances surrounding the conveyance are tainted by fraud and undue influence and denied using untrue words which could be understood by the public as referring to the Claimant. As such, the Defendants counterclaimed for the following reliefs:
  1. An order that the Deed DE201801835008 to be set aside and expunged on the grounds that it was procured fraudulently, by deception and by undue influence.
  2. A declaration that the Second Defendant is the Equitable and Beneficial owner of the house and parcel of land comprising **FOUR HUNDRED AND TWENTY-TWO POINT FIVE METERS SQUARE (422.5 M<sup>2</sup>)** situate at LP#10 Edward Street, Peter Hill, Mayaro.
  3. Such further and/or other reliefs that the Honourable Court may deem just in the circumstances of this case.
  4. Costs.
4. By Reply and Defence to Counterclaim filed on 31<sup>st</sup> January 2020, the Claimant denies the Defendants' Defence and Counterclaim.

### **The Claimant's Evidence**

#### *Chavon Jack*

5. By witness statement filed 5<sup>th</sup> March 2021, the Claimant gave evidence that she is the granddaughter of Melina George (the deceased) and grew up partially at LP#10 Edward Street, Peter Hill, Mayaro (the subject property) until her parents moved to their immediate family home nearby.
6. She indicated that sometime before her grandmother died on 11<sup>th</sup> November 2016, she indicated to her that she had been approached by Ursilla Raymond (her landlord) to purchase the land at the subject property pursuant to the Land Tenant (Security of Tenure) Act. At that time, her grandmother frequently discussed the purchase with her children, the Claimant, and her other grandchildren. The conversations with the Claimant's mother, Gloria Jack, her aunt, Margaret George-Joseph, and her uncle Junia "Peter" George about the purchase were often in her presence but they did not decide to purchase the subject property for various reasons.
7. She gave evidence that her grandmother approached her in or around 2014 to purchase the property because she was her only granddaughter and had a stable job as a nurse. She decided to purchase the property and accepted the oral assignment of the option to purchase from her grandmother. This conversation with her grandmother was in the presence of the Claimant's mother, Gloria Jack, her aunt, Margaret George-Joseph, and her now deceased uncle Junia "Peter" George. Upon the oral assignment, the Claimant and her grandmother met with Ursilla Raymond and

informed her that the Claimant would be purchasing the property. Ursilla Raymond indicated that the price would be \$20,000.00 and it was subsequently changed to \$30,000.00 in the ensuing months. The Claimant's grandmother died before she could amass the funds to purchase the property. Prior to her passing, the deceased paid a yearly rent as a tenant on the property and upon her passing, the Claimant's uncle Junia "Peter" George paid the rent on behalf of the Claimant in January 2017, evidenced by receipt dated 14<sup>th</sup> January 2017 whereby Ursilla Raymond received the sum of \$50.00 from Peter George of Edward Street Peter Road Mayaro for one year's land rent. Junia "Peter" George died on 10<sup>th</sup> November 2018.

8. The Claimant entered into an agreement for sale with Ursilla Raymond on 23<sup>rd</sup> November 2017 for the purchase price of \$30,000.00. The Claimant had the subject property valued by G.M. and Associates, Chartered Valuation Surveyor, Real Estate Consultants, and the Valuation Report dated 14<sup>th</sup> December 2017 provided by the Claimant indicated that the market value of the subject property was estimated to be \$135,000.00. The Claimant indicated however that due to the close relationship between Ms Raymond and the Claimant's family, the purchase price remained \$30,000.00 and not \$67,500, which was half the valued price as prescribed by the Land Tenants (Security of Tenure) Act. The Claimant completed the purchase and became the registered owner of the subject property inclusive of the concrete house erected upon it by her grandparents by Deed of Conveyance dated 25<sup>th</sup> July 2018 and registered as DE201801835008 on 29<sup>th</sup> August 2018.
9. The Claimant gave evidence that the First Defendant is her cousin who stayed on the subject property with her grandmother's permission and then continued to stay on the property with her permission. She revoked this permission after the First Defendant laid claim to a share of the property after she requested that he vacated temporarily to do renovations. She stated that in any event the First Defendant barely stayed at the room he was allowed to use at the subject property as he lived permanently with his girlfriend in St Augustine.
10. With respect to the house constructed on the property, the Claimant gave evidence that her grandparents both funded the construction of the house and her grandfather and father built the house. She indicated that she never saw her uncle, the Second Defendant, construct the house or contribute material or support for the same. She further stated that the Second Defendant was barely in communication with her grandmother, even when she became ill and he did not visit nor contribute to her palliative care. She stated it was never her grandmother's intention to have the Second Defendant share or manage the property after her death as she had already decided to assign her interest to the Claimant. She also indicated that the Second Defendant was never placed in charge of her grandmother's affairs when she died.
11. The Claimant gave evidence that on 5<sup>th</sup> September 2019 the First Defendant came with coworkers and changed the lock on the door to the bedroom he had previously

occupied. On 8<sup>th</sup> September 2019 he made another trip to the subject property and aggressively confronted the Claimant about her ownership of the property. When she brought police officers to quell the situation and have him removed, he began a Facebook live which he claimed was upon his attorney's instructions. After the police left he then began another series of Facebook live broadcast where he filmed the entirety of the subject property and made several disparaging remarks about the Claimant and her immediate family implying that they were money grubbing, hungry for land and stealing her grandmother's property. During the said Facebook live broadcasts, he accused the Claimant specifically of being greedy, "hungry mouth" and implied that she was stealing the items left behind by her grandmother from the house, when she informed him months prior that she intended to renovate the same. She indicated that she indeed removed items from the property which were not usable and left all usable items in the house. She stated that the defamatory comments continued on 9<sup>th</sup> September 2019 when the First Defendant posted a meme which implied that the Claimant was greedy for housing. She indicated that the First Defendant continues to come onto the property without her permission and to make defamatory statements through videos on his Facebook account. She stated that the First Defendant indicated to her that he was not going to be removed from the subject property unless he got a Court order and that he would continue to come and make his ownership of the property known. He began to bring his girlfriend to the house on occasion. She indicated that he continued to visit the subject property and make changes such as removing doors and changing locks.

12. In cross-examination, the Claimant indicated that although other people had interest in the property, it was never a consideration to get a written agreement from the others. She also indicated that she never brought up the idea to join in with other family members to purchase the property. She agreed that other than her word, there is no evidence of what the deceased's desire for the property was. She disagreed that she waited until the deceased passed away to purchase the property, clarifying that the timing just happened like that. She stated that the oral assignment would have taken place between 2016 and 2017, before her grandmother passed away in 2018 (the date of her grandmother's passing in her witness statement was 11<sup>th</sup> November 2016). She agreed that there was no signature on the sale agreement attached to her witness statement however indicated that this was not the full agreement, which did contain a signature. She indicated that she did not confer with the Second Defendant about his interest in the house prior to purchasing the property and there was no discussion at all about applying for Letters of Administration. She stated that the Second Defendant did not build anything on the property but stated that he did bring two barrels of cement onto the property. She could not say whether they were used towards construction of the house and indicated that certain parts of the yard were concrete, including some foot pathing, however she agreed there was a possibility that the cement brought by the Second Defendant could have contributed to the construction of the house.

13. The Claimant stated that at the time that the valuation report was done, which stated that she was the owner of the house, she did not consider herself the owner of the house. She disagreed that she was attempting to mislead the Court in saying that she did not know why the valuator stated she was the owner of the house, despite having previously told the Court that she had an oral assignment and owned the house. When asked by the Court she confirmed that at the time of the valuation, she did not own the house. She disagreed that this entire case was done to intimidate the First Defendant and remove him from the property.
14. With respect to the claim for defamation, the Claimant indicated that she knew of the defamation by having witnessed the Facebook live broadcast and agreed that there was no transcript of what the First Defendant had said.
15. She disagreed that in mid to late November 2023 she went near Betty Partap's house some time in the night and attempted to get her to discuss her witness statement with her. She indicated that she did have a conversation with Betty Partap about her coming to court for the trial as she indicated that she was not sure she wanted to come.
16. In answer to the Court's questions, she indicated that she owned the house when she purchased the land. She did not know who owned the house before she purchased the land. She indicated that she did not contribute to the construction of the house. She also indicated that with respect to the contribution of the Defendants, she was only aware of the Second Defendant's contribution of two barrels of concrete. She agreed that she was not in a position to say whether they contributed anything else to the construction of the house. She indicated that there was no valuation of the house. She did not accept that anyone other than her had an interest in the property prior to purchasing the land. She stated that her deceased aunt, Jennifer, her deceased uncle, Peter, the First Defendant and her cousin Akini Padmore were living at the property prior to her purchase. She indicated that her grandmother had 7 children, 6 of whom used to live in the house. She is the daughter of her grandmother's first daughter. At the time of her grandmother's death, among her children, Jennifer was alive for 4 months, Junia was alive for almost two years, Margaret George-Joseph, Gloria George-Jack and the Second Defendant were alive. The Claimant indicated that she lived at the house until she was about 13 or 14 years old, and then again after her grandmother passed away. She started living there around 2016 and stayed there with her boyfriend at the time, Akini Padmore and the First Defendant came on-and-off on weekends. She indicated that she never stopped any of them from coming onto the property until after she purchased the land.
17. With respect to the Court's questions on the defamation claim, she agreed that she did not state in her witness statement that the First Defendant stated her name on the Facebook live broadcast and agreed that she did not put the exact words said in relation to the Facebook live. She also indicated she was not photographed in the meme posted by the First Defendant, though 'Chev' was her Facebook name, nor was

she tagged. She also agreed that she did not state in her witness statement that the meme referred to her.

*Gloria George-Jack*

18. By witness statement filed 5<sup>th</sup> March 2021, the Claimant's mother gave evidence which mirrored the evidence the Claimant gave in her witness statement.
19. In cross-examination, Ms George-Jack indicated that the reason for her not being interested in buying the land was that she had her own house. She stated that the purchase was pertaining to the land, not the house. With respect to ownership of the house, she stated that her brother Junia lived there and her daughter lived there back and forth. She indicated that at the time the deceased asked about purchasing the land, it was considered a family home. She was never told by the Second Defendant what his reason was for not wanting to purchase the home and she never asked him. She also never had a conversation with him about the Claimant purchasing the land, nor did she discuss purchasing the land with either Defendant. She agreed that there was no evidence attached to her witness statement pertaining to any renovations that took place. She indicated that the First Defendant was asked to leave because renovations were about to take place, but had not happened yet. She clarified that the First Defendant, who came and went from the property, was asked to remove his belongings to facilitate the renovation but his belongings are still there and the renovations did not occur. She indicated that by "aggressively confronted" in her witness statement, she meant that the First Defendant was being verbally abusive to the Claimant, said that he is not moving out and that she does not own the house. She stated that the First Defendant was not asked to move out completely and that if he wanted to move back at this time there would be no impediment to that. She stated that when she stated neither of the Defendants were "vested with any share of the house or the land" in her witness statement, she came to this conclusion because they were not living there nor were they making any sort of contribution to the house.
20. She stated that the house was originally a board structure, and the lower portion of the house became a concrete structure because her deceased brother, her mother's eldest son, Anthony Nottingham, constructed the downstairs structure of the house. She agreed that this was not in her witness statement. She stated that the Second Defendant never built anything on the land with concrete but agreed that he brought two barrels of cement. She believed that he contributed the cement to the construction of the upstairs of the home and agreed that this was a contribution to the construction of the house. She confirmed that her mother died intestate and that no one applied for Letters of Administration for the Estate, nor was it discussed. She stated that she knew for a fact that the Second Defendant did not have a vested interest in the home. In re-examination, she clarified that her father took loans from his Credit Union to fund the construction of the house while the Second Defendant contributed barrels of cement that he got from work.

*Margaret George-Joseph*

21. By witness statement filed 5<sup>th</sup> March 2021, the Claimant's aunt gave evidence which mirrored the evidence the Claimant gave in her witness statement.
22. In cross-examination, Ms George-Joseph indicated that the Second Defendant did not have a vested interest in the property because he did not live there for some time and he did not help their parents construct the house. She indicated that he contributed some barrels of cement that he got from work which were thrown away years ago. She indicated that the cement had been used to build steps. She stated that in 2017 her brother Junia George paid the rent but did not agree that the Claimant should have consulted with him in buying the land. She initially said that he did not pay the rent in 2018 because he and the Claimant decided together to buy the land but then stated that they did not. She indicated that she knew that the Claimant owned the land but did not know who owned the house.

### **The Defendants' Evidence**

*Tevin George*

23. By his amended witness statement filed 22<sup>nd</sup> September 2021, the First Defendant gave evidence that he is the grandson of Melina George and her husband, Fessie George, and that he lived at the subject property all his life with his mother.
24. He gave evidence that in August 2017 he got into an argument with the Claimant who told him not to bring his girlfriend into the house and said "yuh go see just now". He stated that she accused him of owing her money for renting her car which was untrue because she never had a car for rent. He threw \$700 on the ground and she picked it up. He left the room and went by his uncle Martin George, the Second Defendant, and told him what happened. He stated that his grandmother left Martin George and Junia "Peter" George in charge of the house.
25. The First Defendant indicated that Junia George lived downstairs and paid the bill for downstairs while he and Akini Padmore lived upstairs and split the bill for upstairs. He indicated at trial that Junia George instructed himself and Akini Padmore to split the electricity bill; Junia George also informed him that he paid Ms. Ursilla Raymond the land rent after the deceased passed away and that he paid the bill for downstairs where he lived. These bills were paid in 2018. He indicated in his witness statement that he never knew that the Claimant had a Deed until he was told that she wanted to kick him out and breakdown the house around 2018. He stated that the house was in good condition with no leaks and no defects.
26. The First Defendant gave evidence in his witness statement that his grandmother always said that the house would remain a family house to be shared equally with

everyone and his grandfather used to say that everyone had equal rights in the house. He indicated that there was no will and the estate was not probated. He also indicated that he was not aware of the valuation or the purchase of land from Ursilla Raymond. He indicated that he did not remember the construction of the foundation and structural beams of the house but remembered his uncle, the Second Defendant, living at the property until about 2003 and that he refurbished downstairs while he lived there. He said it was always understood by the family that the Second Defendant helped build the house at every stage of construction. He believed the Second Defendant would be entitled to inherit the house from his grandparents before himself and the Defendant. He also indicated that he had conversations with his grandmother and she never said that the Claimant was to take over the house. He indicated that his mother took care of his grandmother's bills and when his mother died, his grandmother helped take care of him.

27. He indicated that the statements he made on social media did not mention the Claimant's name explicitly and that if he said there was fraud involved, he believed that this was the truth.
28. In cross-examination, the First Defendant indicated that he did not have any evidence of paying bills with respect to the house. He accepted that the Claimant had a Deed to the property. He indicated that he did not have the Claimant's permission to change the lock of the bedroom in which he stayed.
29. With respect to the defamation claim, he indicated that during the Facebook live broadcast he was speaking about the situation with the house. He stated that he could not recall saying the Claimant was greedy and hungry mouth. He also stated he did not insinuate that the Claimant was stealing their grandmother's belongings.
30. With respect to the counterclaim, he stated that he did not know at that time that the Claimant had the Deed. He accepted that despite pleading in his counterclaim that the Claimant misled the valuator, he did not ask the GM & Associates to be witnesses on behalf of the Defence. He indicated that he was not present for any conversation between the Claimant and Ms Ursilla Raymond, nor was he part of the transaction. He accepted that he could not say what legal advice Ms Raymond obtained during the transaction, and that he failed to invite Ms Raymond as a witness without cause. He indicated that he was aware that his grandmother did not own the land on which the house was situate and did not pay rent to Ursilla Raymond from the years 2016 to 2019. He indicated that no Letters of Administration were granted for his mother nor his grandmother's estate. He indicated not knowing that his grandmother was having conversations with her children about purchase of the house. He accepted that by the time he was old enough to remember, around 9 or 10 years old, the majority of the structure of the house was completed.



31. He indicated that in his affidavit in opposition filed on 10<sup>th</sup> December 2019, replying to the Claimant's Affidavit dated 23<sup>rd</sup> September 2019 in support of Application for an order of possession and injunction to restrain persons from trespassing, the statement that he saw the Second Defendant building the house at age 9 or 10 was correct. He stated however that it was not a lie in his witness evidence or in cross-examination that he did not remember how the construction of the house was done. He also indicated that he did not lie when he stated that the structure was almost finished by the time he was 9 or 10. He stated the materials for the construction of the house came from the Second Defendant who provided barrels of cement in which the First Defendant actually played in the yard with other friends. He agreed that this information concerning the barrels of cement does not form part of his witness statement, nor does the information about the Second Defendant being the source of the material for the construction of the house. He indicated that he did not recall the construction of the support beams but he did recall the Second Defendant living on the property until 2003.
32. He denied that he was asked by the Claimant to vacate the premises so that renovations could be done. He denied that he permanently lived with his girlfriend but accepted that he stayed with his girlfriend during the week and some weekends he did not go to the house because he had work. He disagreed that the Second Defendant did not construct the house. He denied that the house was constructed by his grandfather and the Claimant's father. In re-examination he indicated that his grandparents hired one Mr. Williams to conduct some repairs to the roof of the house which was leaking.
33. He accepted that he told the Claimant the only way he would move was if the police told him to move, which he clarified meant by court order. He indicated that he changed the locks before the Claimant asked him to move out for renovation.
34. When asked by the Court, he indicated that he did not contribute anything to the construction of the house. He stated he was there with his grandmother's permission, and after her death, his aunt Jennifer and uncle Junia George did not tell him anything about moving out. He indicated that his uncle, the Second Defendant, also gave him permission to stay there around the first time the Claimant and her mother confronted him, though he accepted that he did not include this in his witness statement.

*Martin George*

35. By his witness statement filed 15<sup>th</sup> February 2021, the Second Defendant indicated that he was the son of Melina and Fessie George. He stated that he is one of the persons entitled to apply for Letters of Administration of the estate of his deceased parents which, to his knowledge, had never been probated.

36. He indicated that for 10 years, from around 1986 he helped his parents financially, having made more money than anyone in the family at that time. He also brought 10 to 15 barrels of high grade cement acquired from his work, Haliburton Ltd, which had a policy of giving excess cement barrels from construction jobs to workers. He indicated that he used this cement for part of the foundation, beams and posts of the house at the subject property. He and his father also paid workers to work on the construction of the property. He indicated that he built a large share of the house at the subject property.
37. He gave evidence that the Claimant purchased the property from the previous owner Ursilla Raymond without his knowledge and consent. He stated that his mother Melina George (the deceased) told him that he and his siblings should come together to purchase the land when they got a price from Ms Raymond. He indicated that the deceased always intended for her grandchildren including the First Defendant to have access to the property. He also indicated that he and his brother Junia George earned more than Chavon at the time of the Claimant's purchase. He stated that the deceased often discussed the matter of land with him and never mentioned that she gave the Claimant the right to purchase the land or put the Deed in her name.
38. He stated that his brother Junia George paid rent and bills for the property on his own behalf and not as an agent for the Claimant. He also gave evidence that the Claimant signed the sale agreement and Deed to purchase the property without the family's knowledge. He indicated that after the deceased's passing it was understood that himself, Junia George and his sister Jennifer George were in charge of the house and there was never any conversation with the Claimant, who was not even living at the house and never spent much time at the house, having left when her mother constructed a house nearby on the road. Finally he stated that the statements made by Tevin George on Facebook were not defamatory because they were true.
39. In cross-examination, he indicated that he did not pay rent for the house in 2016, nor in 2017, 2018 or 2019. He indicated that he did not take over any bills after his mother's death nor did he pay any bills or for the maintenance of the yard between his mother's death and the bringing of the claim. He agreed that he did not provide any evidence of providing 10-15 barrels of high grade cement from Haliburton. He clarified in re-examination that receipts were not given by Haliburton at the time for barrels of cements given to workers. He disagreed that he only provided two barrels. He also agreed that he did not exhibit any receipts for payments to workers for work on the subject property, nor did he have his contributions to the construction of the house valuated.
40. He accepted that the Claimant had a Deed for the land. He accepted stating in his evidence that the Deed was fraudulently obtained and that he stated that the Claimant misled the valuator but did not bring the valuator as a witness. He agreed that he alleged that the Claimant exercised undue influence over Ms Ursilla Raymond. He

agreed that he was not present for any conversation between the Claimant and Ms Ursilla Raymond, nor was he part of the transaction. He accepted that he could not say what legal advice Ms Raymond obtained during the transaction, and that he failed to invite Ms Raymond as a witness without cause. In re-examination he clarified that he never had a conversation with Ms Raymond about purchasing the land despite the fact that he passed in front of her house and they spoke on occasion, nor was it ever discussed among his siblings.

41. He accepted that he did not try to buy the land after his mother's death nor did he apply for Letters of Administration. He accepted that he did not live on the premises since 2003 but denied that he left the premises because his mother asked himself and his spouse to leave. In re-examination he clarified that his spouse had her own property and when he vacated he allowed his sister Jennifer George to live on the premise downstairs where he resided, as space in the house was a concern. He accepted that his mother, before her death, invited him and his siblings to purchase the land but did not know whether any of his siblings attempted to purchase the land. He clarified in re-examination that he did not make an effort to purchase the property because it was always understood that his parents' intention was that it was a family property and that everyone in the family was to partake in the purchase of the land and the occupation of the house. He disagreed that the house was built by his father, Fessie George and brother in law, Steve Jack. He disagreed that his father took loans to build the premises while he was alive. He agreed that he was not left in charge of the house when his mother died. He stated that around the time of the purchase, he presumed the Claimant's salary was around \$5000-7000, a nurse's salary. He agreed that his mother worked outside the country from time to time but disagreed that she put money towards the house. He agreed that as he was not in charge of the house, he did not give the First Defendant permission to stay at the house.

*Betty Partap*

42. By witness statement filed 15<sup>th</sup> February 2021, this witness indicated that she has lived in Edward Street, Mayaro for most of her life. She is 61 years of age. She stated that she knew the Claimant, the Claimant's grandparents and both Defendants. She described the Second Defendant as a "favoured son". She recalled the Second Defendant and his father laying down the concrete foundation and working to build the house. She remembered builders hired by them coming to assist with the construction which carried on for years until 1995 to 1996. She recalled the construction work done on the two-storey concrete structure and recalled the Second Defendant being heavily involved in the construction as he was responsible for building the foundation and the ground floor section of the two-storey house. She indicated that at this time the Claimant was just a child and had no input.
43. She indicated that it would not have been the deceased's wish for the Claimant to have the house and land and to exclude the Defendants. She also recalled that the deceased

and the First Defendant were close as she helped to take care of and raise him after his mother's death in 2011. The deceased would cook for everyone and iron and wash the First Defendant's clothes for school as well as give him pocket money.

44. Finally she indicated that she never heard of the Claimant having a Deed or inheriting everything from her grandparents.
45. This witness' witness statement was sworn as evidence in chief with the amplification that the witness had a conversation with the Claimant two days prior to the trial where the Claimant told her that her witness statement was wrong and she signed by her father's place. She indicated that she was scared to be in court. In answer to the Court's questions, she accepted that no one threatened her to come to court or not come to court.
46. In cross-examination, Ms Partap indicated that she was not always present when steel drums with cement were being delivered. She indicated that she was sometimes there when materials were being brought for construction, but not when the materials were bought. She was also not there most of the time when the house was being built. She agreed that the Second Defendant was sometimes offshore and construction was being done in his absence; and that it was the Claimant's father and grandfather who carried out the construction. She agreed that she only saw the Second Defendant from time to time when he was not offshore and she would not have seen him pay any of the workers, nor could she say whether he contributed anything other than the steel drums of cement to the house. She agreed she could not say whether there was any discussion between the Second Defendant and his parents about him getting the house, nor can she say whose money funded the construction of the house. She also did not know who hired the workers to work on the construction on the house.

## **Issues**

47. The issues for this Court to determine are:
  - a. Whether the First Defendant defamed the Claimant?
  - b. Whether the Claimant's title to the property situated at LP#10 Edward Street, Peter Hill, Mayaro was fraudulently obtained or obtained by undue influence?
  - c. Whether the First Defendant trespassed on the Claimant's property situated at LP#10 Edward Street, Peter Hill, Mayaro?
  - d. Whether the Second Defendant/Ancillary Claimant has an equitable claim to the house built on the property situated at LP#10 Edward Street, Peter Hill, Mayaro?

### **Whether the First Defendant defamed the Claimant?**

48. The Claimant in submissions rightly abandoned this claim as he acknowledged that the evidence led at trial was insufficient to satisfy the requirements of the cause of action. It is therefore withdrawn.

### **Whether the Claimant's title to the property situated at LP#10 Edward Street, Peter Hill, Mayaro was obtained by fraud or undue influence?**

49. The Claimant has pleaded that she acquired title by Deed of Conveyance DE201801835008 dated 5<sup>th</sup> July 2018 between Ursulla Raymond and the Claimant.
50. It is to be noted that the Deed of Conveyance contained no Recital that the Claimant was a Tenant under the Land Tenants (Security of Tenure) Act or that the Claimant was assigned any Tenancy pursuant to the Act nor that the property was being conveyed pursuant to the provisions of that Act.
51. The Conveyance recited that in pursuance to the agreement with the Claimant for the sale of the lands for the price of Thirty Thousand Dollars (\$30,000.00) the said lands were transferred to the Claimant.
52. The owner of land with the paper title is deemed to be in possession of the land, as being the person with the prima facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner: *Powell v. McFarlane* [1977] 38 P & CR 452 at pages 471-472.
53. The Defendants however challenged the Claimant's title indicating that the Claimant intentionally obtained title in the land from Ursilla Raymond by secrecy, fraud, deception and undue influence. The Particulars of Fraud and Undue Influence were:

#### **Particulars of Fraud**

- i. The Claimant intentionally mislead the valuator GM and Associates as to her ownership of the building. The fact that the valuation did not include the building resulted in no stamp duty being paid by the Claimant on Deed DE201801835008.
- ii. The Claimant intentionally procured an Agreement for Sale dated 23<sup>rd</sup> November 2017 for the purchase of the freehold from Ursilla Raymond without informing the beneficiaries of the deceased Melina George. This was done in order to extinguish any equitable or beneficial interest that Junia "Peter" George and the Second Defendant Martin George had in the property.
- iii. The Claimant procured the conveyance of the freehold to herself by Deed DE201801835008 in secret without informing the Second Defendant, with the

intention of extinguishing the Second Defendant's equitable and beneficial interest in the property.

- iv. That the Claimant misled (sic) her Attorney-at-Law in procuring the aforementioned Deed.
- v. That the Claimant misled the Registry General's office in procuring the Deed.

#### **Particulars of Undue Influence**

- i. The Vendor Ursilla Raymond was not given independent legal advice as to the equitable interest of the Second Defendant Martin George and the rights of the beneficiaries of the estate of Melina George.
- ii. The Vendor Ursilla Raymond did not receive independent legal advice as to the need for the estate of Melina George to be administered in order for the assignment to purchase to be validly assigned to a successor in title.

#### *Fraud*

54. In relation to i. of the Particulars of Fraud there is no evidence that the Claimant misled the valuator as to the ownership of the concrete structure. Further the owner of the concrete structure was irrelevant to the valuation as what was being purchased was the land owned by the Vendor and described in the Conveyance for the purposes of stamp duty. Even if the Claimant misled the Valuator about the ownership of the house that would not have constituted fraud for the procurement of the Deed that would vitiate the title to the property.
55. In relation to particulars ii. and iii. the Defendants have not presented any legal authority that there is a legal obligation of the purchaser of land to inform the beneficiaries of an estate who were tenants that they either entered into a contract to purchase the land or that they actually purchased the land.
56. In relation to iv. and v. there is absolutely no evidence produced by the Defendants of the Claimant misleading her Attorney-at-Law or the Register General's office. No evidence was led by the Defendants of anything that was said to the Attorney-at-Law or the Register General Department. In fact, the Defendants indicate that they knew nothing about the conveyance.
57. Having considered the totality of the evidence I find on a balance of probabilities that the subject Deed was not procured by fraud.

#### *Undue influence*

58. In relation to the Undue Influence of the Vendor. The evidence led by the Defendants in this case also do not rise to any undue influence.

59. Undue influence is a form of pressure that is less severe than duress but nevertheless renders a transaction voidable. There are two types of undue influence or two forms of conduct that constitute undue influence. They are (1) actual undue influence: overt acts of improper pressure or coercion such as unlawful threats or (2) presumed undue influence: where there exists a relationship between two people where one has acquired a measure of influence over another, or control, of which the person with the control takes unfair advantage of that power.
60. There is no evidence that the Vendor was either overtly pressured or threatened as the evidence of all the parties was that the Vendor was offering to sell the land for some time. There was no evidence that the Claimant was in a position to influence the Vendor to enter into the conveyance. A relationship of influence should not be made on the slimmest of evidence and there is no proof that the Vendor placed trust and confidence in the Claimant in relation to the management of the Vendor's financial affairs. There is not even evidence of dependency or vulnerability of the Vendor or even closeness or mutual trust and confidence between the parties.
61. There was also no evidence that Ursilla Raymond did not obtain legal advice. Neither Ms Raymond, the Attorney nor the witness to the Conveyance ever came to give evidence about the circumstances surrounding the execution of the Conveyance.
62. Having considered the totality of the evidence, I find that on a balance of probabilities that the subject Deed was not procured by undue influence.

*Estate Rights*

63. The Defendants' undue influence and fraud claims seem to be harbouring under a misconception that the estate of the Melina George had the right to purchase the land and the Defendants, as beneficiaries of the estate of Melina George, had a legal right to property. This misconception stems from the view that the deceased was a statutory tenant at the time of the sale to the Claimant. For completeness, I will address this issue.
64. It is accepted by all parties that Melina George in 1981 became a statutory tenant of the said lands. The land was rented and Melina George and her husband built the structure on the lands they occupied before 1981. The provisions of the Land Tenants (Security of Tenure) Act applied granting a 30-year lease. The problem for parties in this case is that there is no evidence of a renewal of that statutory tenancy before its expiry in May 2011. There is no notice of renewal produced by either of the parties and there is no evidence from the Landlord that the tenancy was renewed. As indicated earlier the Conveyance makes no reference to any such tenancy or being transferred pursuant to such a right under the Act. There is therefore no evidence that Melina George was a statutory tenant at the time of the Conveyance. Without evidence of that renewal the only right in the property that Melina George would have had was that of a tenant holding over on a yearly lease if she was paying any rent. The

only evidence of payment of rent was one receipt made in the name of Peter George for land rent due for 2017.

65. Without evidence of a renewal of the statutory tenancy, there can be no declaration that Melina George had a statutory tenancy and so there would not have been the right to purchase the property for half the market value pursuant to the Land Tenants (Security of Tenure) Act.
66. Even if there was such a tenancy, the right to purchase would have subsisted even if the Landlord sold the land to the Claimant as it would have been subject to the statutory tenancy. However, the pleadings of the Defendants in this case is not that there was a statutory tenancy existing but that the Claimant purchased the land pursuant to that statutory tenancy and they sought to set aside the Conveyance.
67. Therefore, on the evidence that is before this Court, contrary to the perception of both of the parties, in this case there is no evidence of a statutory tenancy existing at the time of the Conveyance and therefore, I hold that the estate and therefore the Defendants have no right to purchase the same under the provisions of the Act.
68. In relation to this claim and the finding of the Court that there is no issue as to fraud and undue influence, the Claimant holds valid paper title. Since the Claimant has paper title and the Defendants are in possession without the consent of the Claimant, the burden of proof then shifts to the Defendants to prove their claim of a right to equitable relief and possession in relation to the house.

#### **EQUITABLE INTEREST**

69. The Defendants in their defence and counterclaim sought a declaration that the Second Defendant is the equitable and beneficial owner of the house and parcel of land comprising FOUR HUNDRED AND TWENTY-TWO POINT FIVE METERS SQUARE (422. 5 m<sup>2</sup>) situate at LP#10 Edward Street, Peter Hill, Mayaro.
70. The law relating to promissory and proprietary estoppel in this jurisdiction is well traversed. In CV2016-03644 **Kurt Farfan and Ors. v Anthony White**, Kokaram J as he then was, discussed the application of the doctrines of promissory and proprietary estoppel as follows:

***“1) For a promissory estoppel to arise there must be a clear and unambiguous promise intended to affect the legal relations between the parties and which is reasonably expected to be relied on by the person to whom it is made. In Snell's Equity 31st Edition 2005, the learned author states at paragraph 10-08: “Where by his words or conduct one party to a transaction freely makes to the other a clear and unequivocal promise or assurance which is intended to affect legal relations between them (whether contractual or otherwise) or was***



reasonably understood by the other party to have that effect, and, before it is withdrawn, the other party acts upon it, altering his or her position so that it would be inequitable to permit the first party to withdraw the promise, the party making the promise or assurance will not be permitted to act inconsistently with it.

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

71. In ***Esther Mills v Lloyd Roberts*** Jamadar JA reviewed the principles of proprietary estoppel as follows:

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

*(i) An equity arises where:*

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

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

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

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

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

...

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

72. The Defendants therefore had to prove that there was either a promise or an assurance that the Second Defendant would obtain an interest in the said house and land. The Second Defendant also had to prove that they relied upon the promise or assurance in expending monies or other payments to their detriment; or, alternatively, that there was silent encouragement or inducement by the deceased or acquiescence in such detrimental reliance.

### **Assurance & Detrimental Reliance**

73. The Second Defendant's own evidence does not show any assurance or promise made to him.

74. The Second Defendant stated that his mother Melina George told him that he and his siblings should come together to purchase the land when they got a price from Ms Raymond. He indicated that his mother always intended for her grandchildren including the First Defendant to have access to the property. He also indicated that he and his brother Junia George earned more than the Claimant at the time of the Claimant's purchase. He stated that his mother often discussed the matter of land with him and never mentioned that she gave the Claimant the right to purchase the land or put the Deed in her name.

75. That was the extent of any evidence of assurance or promise. As can be seen from the Second Defendant's evidence there is nothing that constitutes a promise or assurance that he would get an interest in the land and house. The Second Defendant's mother told the siblings that they should come together and purchase the property when she got a price from Ursilla Raymond. Even if it constitutes some assurance, the Second Defendant and his siblings did not act on it. In fact, the evidence was that they did not have the money to do it.

76. Moreover, in relation to detrimental reliance, the Second Defendant's evidence does not disclose that he acted on this assurance or promise to his detriment. The Second Defendant indicated that for 10 years, from around 1986 he helped his parents financially, having made more money than anyone in the family at that time. He said he also brought 10 to 15 barrels of high grade cement acquired from his work, Haliburton Ltd, which had a policy of giving excess cement barrels from construction jobs to workers. He indicated that he used this cement for part of the foundation, beams and posts of the house at the subject property. He and his father also paid workers to work on the construction of the property. He indicated that he built a large share of the house at the subject property. Now these facts were disputed and the Second Defendant has not produced any receipts or any evidence of actually doing these improvements but it is of no moment because these acts were done well before the alleged promise or assurance the Second Defendant said the deceased made. They were not made in pursuant to any assurance or promise and therefore no detrimental reliance could be shown.

77. On a balance of probabilities, I therefore cannot find that there was any detrimental reliance on any assurances, enough to ground a claim in estoppel against the deceased much less the Claimant.
78. I therefore would dismiss the Defendants' counterclaim.

### **House after the end of statutory tenancy**

79. The Defendants indicated that the Court should consider the house separate from the land and determine the Defendants' interest in the house.
80. Unfortunately for the Defendants, when the statutory tenancy expired and upon the expiry of the relevant notice to quit served by the Claimant, the Claimant is entitled to possession of the land which includes the structure permanently affixed thereon. The Court has no jurisdiction to give the estate or the Second Defendant any interest in the house or compensate them for the structure. The issue of compensation being paid by the owner of the land to a former statutory tenant after the expiration was settled by the Privy Council in **Herman Ramdass v. Marilyn Bahaw-Nanan** [2009] UKPC 51. Therein the Privy Council stated that no jurisdiction exists for the Court to order such compensation and by extension any interest in the structure.
81. Therefore, neither the estate of Melina George nor the Defendants as beneficiaries will have an interest in the structure being permanently affixed to the land which goes with the land.

### **Mesne Profits**

82. Counsel for the Claimant submitted that the Defendants remaining on the property after the licence had expired made them trespassers. The Claimant argues that she is entitled to mesne profits where the normal measure of recovery is more restitutionary than damages for loss. Under mesne profit, the Claimant would be entitled to the market rental value of the property for the period of wrongful occupation, had the Defendant not wrongfully occupied it. The Court considers the learning in **Swordheath Properties Ltd v. Tabet and others** [1979] 1 WLR 288 where Megaw, L.J stated:

*"It appears to me to be clear, both as a matter of principle and of authority, that in a case of this sort the plaintiff when he has established that the defendant has remained on as a trespasser in residential property, is entitled, without bringing evidence that he could or would have let the property to someone else in the absence of the trespassing defendant, to have as damages for the trespass the value of the property as it would fairly be calculated: and, in the absence of anything special in the particular case it would be the ordinary letting value of the property that would determine the amount of the damages."*

83. While the Claimant is entitled to damages for the Defendants' occupation, the documentary evidence as to the ordinary letting value of the house, was not produced to aid with determining the amount of these damages. The valuation produced only had the value of the land and did not value the house or have a rental value. The Claimant in submissions also acknowledged that the Claimant would only be entitled to nominal damages.
84. For the First Defendant's occupation of the Claimant's premises from 29<sup>th</sup> August 2019 to present, I will award nominal damages in the sum of \$1,000.00 per month which I consider to be reasonable in the peculiar circumstances of this case. This will amount to 56 months x \$1,000.00 = \$56,000.00.

### **Costs**

85. At the trial of the matter, the Court raised every single difficulty with both the Claimant and the Defendants' case. The Court reserved its Decision and extended the time to file submission to allow the parties, having heard the evidence, a final opportunity of many to resolve the matter. Once again that opportunity was ignored.
86. In the circumstances, the court was constrained to order that there be judgment for the Claimant with a stay of execution for 3 months.
87. Having regard to the above I make the following orders:

[1] Judgment for the Claimant against the Defendants;

[2] The Claimant is declared the sole owner and entitled to exclusive possession of ALL AND SINGULAR that certain piece of parcel of land situate at LP#10 Edward Street, Peter Hill, Mayaro, in the Ward of Guayaguayare in the island of Trinidad comprising FOUR HUNDRED AND TWENTY-TWO POINT FIVE METRES SQUARE (422.5 m<sup>2</sup>) be the same more or less, and bounded on the North by Edward Street, on the South by a drain, on the East by Lot 2 and on the West by Lot 4 and which said piece or parcel of land is shown as LOT#3 in the survey plan annexed and marked 'C' (being a portion of a larger parcel of land comprising TEN ACRES) and described in the Protocol of Deed Registered as No DE201801835008 together with the dwelling house thereon.

[3] The Defendants, their servants and or agents, give up possession of ALL AND SINGULAR that certain piece of parcel of land situate at LP#10 Edward Street, Peter Hill, Mayaro, in the Ward of Guayaguayare in the island of Trinidad comprising FOUR HUNDRED AND TWENTY-TWO POINT FIVE METRES SQUARE (422.5 m<sup>2</sup>) be the same more or less, and bounded on the North by Edward Street, on the South by a drain, on the East by Lot 2 and on the West by Lot 4 and which said piece or parcel of land is shown as LOT#3 in the survey plan annexed and marked 'C' (being a portion of a larger parcel of land comprising TEN ACRES) and described in the Protocol of Deed Registered as No

DE201801835008 together with the dwelling house thereon on or before 31<sup>st</sup> July 2024;

[4] The Claimant is awarded mesne profits in the sum of \$56,000.00 with 2% interest per annum with effect from 29<sup>th</sup> August 2019 to date of judgment and thereafter statutory interest of 5% per annum until payment;

[5] The Claimant is awarded prescribed costs on the Claim in the sum of \$16,242.67;

[6] The Claimant is awarded mesne profits of \$1,000.00 per month commencing 1<sup>st</sup> May 2024 until the Defendants vacate the said property.

[7] The Defendants' Counterclaims are dismissed; and

[8] The Claimant is awarded prescribed costs on the counterclaims in the sum of \$14,000.00.

/s/Westmin James  
Westmin R.A. James  
Judge